

June 24, 2004

Mr. John E. Seely
3330 Irvington Drive
Fort Wayne, Indiana 46805

*Re: 04-FC-92; Alleged Violation of the Access to Public Records Act by the
Allen County Public Defender*

Dear Mr. Seely:

This is in response to your formal complaint alleging that the Allen County Public Defender (Public Defender's Office) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it failed to timely respond to your request for records. The Public Defender's Office did not submit a written answer to your complaint.¹ For the reasons set forth below, I find that the Public Defender's Office failed to timely respond to your request for records in violation of the APRA.

BACKGROUND

According to your complaint, on May 14, 2004, you submitted a written request for records to the Public Defender's Office. Your request sought personnel file information for an employee of the office. Specifically, you sought records required to be produced under Indiana Code 5-14-3-4(b)(8)(A), 4(b)(8)(B), and 4(b)(8)(C), including basic information on the employee's compensation and qualifications, the status of any formal charges pending against the employee, and the factual basis of any final discipline taken against the employee resulting in suspension, demotion or discharge. On May 26, 2004, you prepared and submitted this complaint asserting that the Public Defender's Office failed to respond to your record request in violation of the APRA.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or

¹ Pursuant to Indiana Code 5-14-5-8, this Office forwarded a copy of your complaint and confirmed receipt by the Public Defender's Office on June 15, 2004, through facsimile transmission, and requested a response to the complaint by June 22, 2004. The Public Defender's Office did not submit a response to your allegations.

produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. IC 5-14-3-9(b). A request submitted in person requires a response within 24 hours. IC 5-14-3-9(a). If the statutory response period elapses without a response, the request is presumed denied. IC 5-14-3-9(b). Absent evidence to the contrary, and consistent with the practice in other contexts, this office assumes receipt within three (3) days of the date of mailing. *Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).

The Public Defender's Office did not respond to the complaint, therefore I consider the allegations of your complaint uncontested. You do not say whether you served your request in person or by mail or facsimile. For purposes of this opinion I assume that you served your request by mail, and that the Public Defender's Office received the request on May 17, 2004, three days from the date of your request. Assuming receipt, the Public Defender's Office was required to respond to your record request in writing on or before May 24, 2004. If that office failed to do so, and that is the uncontested claim before me, that failure to respond in a timely manner violates the APRA. Further, the agency's continuing failure to respond to the request and either aver that it does not have responsive documents or produce, subject to any applicable exemptions, any responsive documents that it does maintain, constitutes a continuing violation of the statute subject to enforcement in a court of competent jurisdiction. IC 5-14-3-9.

CONCLUSION

For the reasons set forth above, I find that the Public Defender's Office failed to timely respond to your request for records in violation of the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Charles Leonard