



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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September 14, 2012

Termaine D. Chapman
DOC 892147
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-244; Alleged Violation of the Access to Public Records Act by the Allen County Public Defender

Dear Mr. Chapman:

This advisory opinion is in response to your formal complaint alleging the Allen County Public Defender ("Public Defender") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Joy Penson, Office Manager, responded on behalf of the Public Defender. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Public Defender on or about July 18, 2012. On July 23, 2012, Ms. Penson advised that a complete copy of your file was provided to you in December 2009. A copy of the certified mail receipt and confirmation of delivery was included in the Public Defender's response. Ms. Penson advised that if you wish to obtain additional copies, you may contact the Allen County Clerk's Office. You allege that the Public Defender has not previously provided you with the records that you now seek.

In response to your formal complaint, Ms. Penson provided previous correspondence submitted to you from the Public Defender's Office where the agency stated all discoverable portions of your file were provided to you in December 2009. Some items, such as crime scene photos, were maintained by the Allen County Prosecutor's Office.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. The Public Defender is a public agency for the purposes of the



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APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Public Defender's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). The Public Defender provided in its response that a copy of your file was sent to you in December 2009. The Public Defender further provided copies of the certified mail receipt and confirmation of delivery from the 2009 disclosure. To the extent that you allege that all records were not previously provided, I would note that the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 11-FC-167*. Advisory opinions are issued based upon the facts presented. If the Public Defender in 2009 provided all records that were responsive to your request, it is my opinion that it did not violate the APRA.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Public Defender did not violate the APRA if it previously provided you with all records that were responsive to your request in December 2009.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Joy Penson