

February 25, 2008

Marvin Taylor
DOC #995801
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 08-FC-46; Alleged Violation of the Access to Public Records Act by the Marion County Public Defender Agency

Dear Mr. Taylor:

This advisory opinion is in response to your formal complaint alleging the Marion County Public Defender Agency ("Public Defender") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Public Defender's response to the complaint for your reference. It is my opinion the Public Defender has not violated the APRA.

BACKGROUND

You allege that you submitted several requests to the Public Defender, seeking a copy of an arrest warrant from your file. You provide copies of letters the Public Defender sent you dated November 17, 2007 and December 12, 2007, indicating the Public Defender had sent you the entire contents of your file. You sent another request to the Public Defender dated January 11, 2008. You filed this complaint on January 25.

The Public Defender responded to your complaint by letter dated February 5 from City of Indianapolis Assistant Corporation Counsel Marc Pe-Caine Sultzer. The Public Defender contends that you have been sent the entire contents of your file and that the Public Defender is under no obligation to explain to you how to find the requested record.

ANALYSIS

The public policy of the APRA states, "(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." Ind. Code § 5-14-3-1. The Public Defender is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2.

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

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

If a person is entitled to a copy of a public record under the APRA and the public agency in possession of the record has reasonable access to a machine capable of reproducing the record, the agency must provide at least one copy of the record to that person. I.C. §5-14-3-8(e).

Here, you have submitted repeated requests to the Public Defender for the same record. The Public Defender has provided you a copy of your entire file, as required by I.C. §5-14-3-8(e). Pursuant to that subsection, the Public Defender is not required to provide you additional copies of the same record. Further, nothing in the APRA requires the Public Defender to explain to you how to obtain the record the Public Defender does not maintain.

CONCLUSION

For the foregoing reasons, it is my opinion the Public Defender did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: David Cook, Chief Public Defender
Marc Pe-Caine Sultzer, Office of Corporation Counsel