



# STATE OF INDIANA

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July 19, 2016

Mr. Louis Fromer - #241520  
Wabash Valley Correctional Facility  
Post Office Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 16-FC-136; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Public Defender's Office*

Dear Mr. Fromer:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Public Defender Office ("Office") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via counsel, Mr. Douglas J. Masson. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 15, 2016.

## BACKGROUND

Your complaint dated June 10, 2016, alleges the Tippecanoe County Public Defender's Office violated the Access to Public Records Act by denying your public records request. You have since amended your complaint, stating you were denied access to records because the black-and-white copies are illegible.

On May 19, 2016 you mailed a request to the Office seeking personnel records of your public defender and color copies of text messages used as evidence in your case. You had previously received copies in black-and-white but could not read them. On June 9, 2016 the Office responded to your request, fulfilling your request for text messages, but denying your request for personnel information as confidential. You complain exclusively about the legibility of the black and white copies.

On June 28, 2016 the Office responded to your complaint. The Office states the photographs were retained in a black-and-white format.

## 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 Indiana Code § 5-14-3-1*. The Tippecanoe

County Public Defender's Office is a public agency for the purposes of the APRA. *See Ind. Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Office's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 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 (7) days of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Office has stated it only possesses records in a black-and-white format. The APRA does not require a public agency to provide records it does not possess. Therefore, the Office did not violate the APRA by failing to provide you with color copies. I have not been given the opportunity to view the messages to determine whether they are legible or not. My recommendation to any public agency is that copies of public records be delivered in a format which is a reasonable facsimile of the original. In this case, if black and white copies are the only copies available, they should be produced in a manner which would allow the recipient to read those messages as long as the originals are legible as well. Again, without viewing the copies, I cannot make a conclusive determination. If clearer copies are available to the Public Defender's Office, I encourage the Office to send those pursuant to this Opinion.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a stylized flourish extending from the bottom left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Douglas J. Masson, Esq.