



STATE OF INDIANA

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August 26, 2008

Derek Morris
DOC #104145
Miami Correctional Facility
PO Box 900
Bunker Hill, Indiana 46914

Re: Formal Complaint 08-FC-194; Alleged Violation of the Access to Public Records Act by the Marion County Public Defender Agency

Dear Mr. Morris:

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

BACKGROUND

You allege that the Agency violated the APRA by taking failing to respond to your request dated July 10, 2008. You submitted the complaint on August 8, 2008, and I received it on August 12, 2008.

The Agency responded to the complaint by letter dated August 22 from City of Indianapolis Assistant Corporation Counsel Logan Patrick Harrison. The Agency contends it received a request from you in June 2008. The Agency responded to that request on June 11. The Agency contends it did not receive the July 10 request but indicates the information you requested is not a record maintained by the Agency.

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." I.C. § 5-14-3-1. The Agency is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Agency 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).

Here, the Agency received and responded to your June request. The Agency contends it did not receive the July 11 request. If the Agency did receive your request, it would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Agency did not receive your request, it did not violate the APRA by not responding.

The Agency has now responded, in its August 22 letter to my office, that it maintains no records responsive to your request.

CONCLUSION

For the foregoing reasons, it is my opinion the Agency has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Logan Patrick Harrison, Assistant Corporation Counsel, City of Indianapolis
Robert Hill, Marion County Public Defender Agency