

August 15, 2007

Orza Salone
DOC #944875 CE504
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-211; Alleged Violation of the Access to Public Records Act by the Howard County Public Defender's Office

Dear Mr. Salone:

This is in response to your formal complaint alleging the Howard County Public Defender's Office ("Public Defender") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. I find that the Public Defender is required to provide its disclosable public records, or if appropriate, to give you a written denial that meets the requirements of the APRA.

BACKGROUND

In your complaint you allege that on June 11, 2007 you requested from the Public Defender access to records. You specifically requested records related to Mr. William Menges's representation of you. You submitted your complaint on July 12, and I received it on July 17, alleging you had not received a response.

Mr. Menges responded to your complaint on July 30. In his response, Mr. Menges, who is no longer with the Public Defender's Office and is now a Judge in Howard Superior Court, indicated he chose not to respond to your request for a number of reasons. First, he indicated he is not responsible for the maintenance or keeping of records for or on behalf of the Public Defender. Second, he does not have any knowledge of the existence of any records of the Public Defender, and finally, he does not have the authority to authorize release of records of the Public Defender. Judge Menges further indicates all of the records you request would be considered confidential documents generated within the context of an attorney/client relationship. Further, any records generated by Judge Menges in his capacity as Deputy Public Defender were not required to be kept and have been destroyed.

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." I.C. §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, the agency must respond to the request within seven days of receipt. I.C. §5-14-3-9(b).

If the public agency intends to deny a written request for a record, it may do so in writing by stating the exemption(s) authorizing the public agency to withhold the public record and the name and title or position of the person responsible for the denial. I.C. §5-14-3-9(c).

I cannot ascertain from your complaint whether you sent the request to Judge Menges personally or to the office of the Public Defender. If you sent the request directly to Judge Menges, it was appropriate for him to respond that he does not have the authority to authorize release of records of the Public Defender. However, this request should have been directed to the Public Defender for response since it was a request for records created or maintained by the Public Defender.

If you sent the request to the Public Defender's office, the Public Defender should have responded within seven days of receipt of the request. If the Public Defender neither responded within seven days nor provided the records within a reasonable period of time, the Public Defender violated the Access to Public Records Act. In addition, if the Public Defender believes that the records you requested are not disclosable, the Public Defender was required to issue a denial that meets the requirements of the Access to Public Records Act. I.C. §5-14-3-9(c).

CONCLUSION

For the foregoing reasons, I find that the Public Defender is required to provide its disclosable public records, or if appropriate, to give you a written denial that meets the requirements of the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: William C. Menges, Jr., Judge, Howard Superior Court I
Howard County Public Defender's Office