

January 14, 2008

Derek Morris
DOC #104145
Pendleton Correctional Facility
PO Box 30
Pendleton, Indiana 46064

Re: Formal Complaint 08-FC-8; Alleged Violation of the Access to Public Records Act by the Marion County Public Defender Agency

Dear Mr. Morris:

This 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. It is my opinion that the Public Defender violated the APRA.

BACKGROUND

In your complaint you allege that you submitted to the Public Defender a request for access to records dated November 14, 2007. Hearing no response, you sent this complaint on December 14, and I received it on December 17.

While I sent a copy of your complaint to the Public Defender, I have not received a response from the Public Defender regarding your complaint.

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 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). The response is not necessarily required to include production of the records. In a response the agency should acknowledge the request has been received and indicate how and when the agency intends to comply. The records should be produced within a reasonable period of time.

If the public agency intends to deny a written request for a record, it may do so in writing by stating the exemption or exemptions that authorize 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 do not have the benefit of a response to your complaint from the Public Defender. I assume for the purposes of this opinion that the Public Defender has not responded to your request or provided the records. If the Public Defender received your request and 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. *See* I.C. §5-14-3-9(c).

CONCLUSION

For the foregoing reasons, it is my opinion the Public Defender has violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: David Shircliff, Marion County Public Defender Agency