



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

PUBLIC ACCESS COUNSELOR

402 West Washington Street, Room W460
Indianapolis, IN 46204-2745
Telephone: (317) 233-9435
1-800-228-6013
FAX: (317) 233-3091
www.IN.gov/pac

September 16, 2005

Linda Matney
2637 N. Jacksonburg Rd.
Cambridge City, IN 47327

Re: Formal Complaint 05-FC-169; Alleged Violation of the APRA by the Randolph County Prosecutor

Dear Ms. Matney:

This is in response to your formal complaint alleging that the Randolph County Prosecutor ("Prosecutor") violated the Access to Public Records Act ("APRA") by failing to respond to your request for access to public records.

BACKGROUND

In your formal complaint, filed with this office on August 17, 2005, you indicate that you mailed a letter to the Prosecutor on July 29, 2005. You requested information concerning a speed protection device and the circumstances surrounding a May 8, 2005 incident in which you received a speeding ticket. You cited IC 5-14-3 and "rules of discovery" in making your request. As of August 15, 2005 you had not received a response from the Prosecutor.

Randolph County Prosecutor David M. Daly responded to your complaint by letter dated August 29, 2005. I will paraphrase Mr. Daly's response; a copy of the full response is enclosed for your reference. Mr. Daly states that your request was received on August 1, 2005 and that he was out of the office during the week of August 1-5. When he returned to the office the week of August the 12th your letter was discussed at a staff meeting. Mr. Daly states that as your request cited to IC 5-14-3 and "rules of discovery" it was decided at the staff meeting that you were attempting to obtain information from Officer Woods and the Indiana State Police Department through the use of interrogatories. He states that this decision was based in part on the fact that your request was in the form of questions seeking information. The Prosecutor then proceeded to handle your request solely according to discovery procedures.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to

Equal Opportunity Employer

respond within seven days of its receipt of the request, the request is deemed denied. The Prosecutor is a public agency for purposes of the APRA. IC 5-14-3-2(1)(6).

The Prosecutor states that he did not respond because he determined that your request was a discovery request rather than an APRA request. However, you clearly stated that you are making your request pursuant to both IC 5-14-3 and the rules of discovery. In *Opinion of the Public Access Counselor 02-FC-38*, the City of Carmel (“City”) denied a request for access to public records because the City believed the request was an attempt to by-pass the proper discovery procedures set forth in the Trial Rules. This office did not find any language in the Trial Rules that would prohibit a party in litigation from making a public record request under the APRA.

The Prosecutor was required to respond to your request within seven days of its receipt on August 1, 2005; therefore, it should have responded by August 8, 2005. At a minimum the prosecutor was required to provide you with a response that acknowledged receipt of your request and informed you as to how the prosecutor intended to proceed, including an indication of when you could expect to hear from the Prosecutor again. The Prosecutor could have indicated that since your request was pursuant to both the APRA and rules of discovery that he would be reviewing both to determine his response under each. The Prosecutor did not provide the required APRA response within seven days of receiving your request. The Prosecutor’s failure to provide you with a response within the required time frame is a violation of the APRA.

The Prosecutor has raised two additional issues that I will address briefly. First he states that he was out of the office the week that your request was received. The requirement to respond within seven days begins tolling upon the date that the *agency* receives the request. The request was date stamped by the agency as received August 1, 2005. As the response is not required to include the requested records or a specific denial at that time, another person in the agency should have provided you with the response acknowledging the receipt of your request and indicating when you could expect to hear from the agency again.

Additionally, the Prosecutor states that you never asked for information from his office or files, but rather that you submitted questions. A request for records must identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). While not required to, you included a citation that clearly identified you were making a request pursuant to the APRA. As you specifically stated that your request was pursuant to the APRA, the Prosecutor should have been put on notice that you were seeking records. While you did not specifically state that you wanted records, the APRA does not require a certain form for the request and requestors often state their requests in the form of questions. A request may be made in the form of a question, to which the agency must respond by providing records that are responsive to the question. If the agency does not have a record that would answer the question, it must notify the requestor that it does not maintain such a record.

Finally, I will note that on September 2, 2005 the Prosecutor notified this office that it mailed a discovery response to you on that date. While the production of some of the records that you requested will satisfy the requirements of APRA, the discovery response does not entirely satisfy the requirements of the APRA in regards to your request. Specifically, records have not been produced in answer to items # 4-6. Pursuant to the APRA, the Prosecutor must

provide you with a written denial that specifies the exemption or exemptions authorizing the withholding of any records responsive to those requests. IC 5-14-3-9(c). If the Prosecutor does not have any records responsive to those requests, he should affirmatively state so. Regarding response # 1, the Prosecutor answered your question rather than provide a record. Under the APRA, he is not required to answer a question, only to provide records maintained by his office. A requestor may agree that an answer to a question will satisfy a request. If such is not the case then the agency should note that it is required under the APRA to provide you with the opportunity to inspect and copy the records containing that information.

CONCLUSION

For the foregoing reasons, I find that the Randolph County Prosecutor violated the Access to Public Records Act when he failed to respond to your request within seven days of receipt.

Sincerely,

Karen Davis
Public Access Counselor

cc: David M. Daly