

November 21, 2005

Sent Via Facsimile

Bruce A. Brightwell
730 W. Main Street, Suite 200
Louisville, KY 40202

Re: Formal Complaint 05-FC-222; Alleged Violation of the Access to Public Records Act by the Floyd County Prosecutor

Dear Mr. Brightwell:

This is in response to your formal complaint alleging that the Floyd County Prosecutor (“Prosecutor”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for records. I find that the Prosecutor failed to respond to your request, in violation of the Access to Public Records Act.

BACKGROUND

According to your complaint filed with the Office of the Public Access Counselor on October 20, 2005, you mailed a request for a record to the Prosecutor on October 7, 2005. You requested “any and all documents that in any manner refer or relate to a criminal complaint made by Tiffany L. Lippert.” You also provided the Prosecutor with additional information concerning the nature of the criminal complaint, such as the approximate time and the name of the alleged perpetrator. You allege that the Prosecutor has never responded to your request.

I sent a copy of your complaint to the Prosecutor. Keith Henderson, the Prosecuting Attorney for Floyd County, sent me a copy of a November 18 letter to you. The letter states that in response to your October 7 request, the Prosecutor does not have a responsive record.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). The Prosecutor is a public agency under the APRA. IC 5-14-3-2(1)(6). A public agency that receives a request for a record via U.S. Mail is required to respond to the request within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b).

From your complaint, it is evident that the Prosecutor received your request on October 11, 2005. The Prosecutor should have responded to your complaint by October 18. His November 18 responsive letter was untimely, in violation of the Access to Public Records Act. However, the Prosecutor has stated that his office has no responsive record. While the fact that the Prosecutor does not maintain a responsive record does not excuse the agency's tardy response, your complaint will not lead to your obtaining the records you seek. However, if you believe that the Prosecutor is withholding a record, you may file a motion to compel in circuit or superior court, under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Floyd County Prosecutor violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Keith Henderson