

September 28, 2006

John R. Lane-El  
P.O. Box 30  
Pendleton, IN 46064

*Re: Formal Complaint 06-FC-153; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office*

Dear Mr. Lane-El:

This is in response to your formal complaint alleging that the Marion County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act by failing to respond to your request for records. I find that the Prosecutor did not violate the Access to Public Records Act.

#### BACKGROUND

You filed your formal complaint on August 29, 2006. You stated that you had requested various records of the Prosecutor regarding an incident in 1992. The Prosecutor has yet to respond, you allege.

I sent a copy of your complaint to the Prosecutor. Chief of Staff Lisa Borges filed a response with my office, a copy of which is attached for your reference. Ms. Borges told me that the Prosecutor conducted a search for your request and could not determine that your request was ever received. Ms. Borges also enclosed a letter telling you that the Prosecutor has now learned of your request for the first time, and will review your request and expedite a fuller response once the review is complete.

#### ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular hours of business, except as provided in section 4 of the APRA. IC 5-14-3-3(a). An agency is required to respond to a request for records within certain timeframes. If a request

is mailed, sent by facsimile, or sent by electronic mail, the agency is required to respond within seven (7) days of its receipt of the request. 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. A failure to respond timely to a request for records is deemed a denial under the APRA. IC 5-14-3-9(b).

The Prosecutor has stated that he did not receive your request. If the Prosecutor did not receive your request he is under no duty to respond to you. The Prosecutor did not violate the APRA when he did not respond to a request he did not receive. The Prosecutor has indicated that he will search for responsive records and inform you whether responsive records exist within 7 to 10 working days.

### CONCLUSION

For the foregoing reasons, I find that the Marion County Prosecutor did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Lisa Borges