

July 18, 2007

Diana Elliott
4971 East CR 400 North
Brownsville, Indiana 47325

Re: Formal Complaint 07-FC-168; Alleged Violation of the Access to Public Records Act by the Office of the Union County Prosecuting Attorney

Dear Ms. Elliott:

This is in response to your formal complaint alleging the Office of the Union County Prosecuting Attorney ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. A copy of the Prosecutor's response to your complaint is enclosed for your reference. The Prosecutor provides evidence he did respond to your request. As such, I find the Prosecutor did not violate the APRA.

BACKGROUND

Your complaint alleges that you received a letter from the Prosecutor on June 5, 2007, indicating you were denied access to the public records you requested. You do not provide any further information regarding the records you requested or the date of your request.

In response to your complaint, the Prosecutor provided the statutory authority for his denial of access to the records. He indicates the records to which you request access are excepted from the disclosure requirements of the APRA under IC 5-14-3-4(b)(1) and (2). He further indicates that under IC 35-41-4-2(e), a prosecution for the offense of child molesting, vicarious sexual gratification, child seduction or incest is barred unless commenced before the date that the alleged victim of the offense reaches thirty-one years of age. Should further information become available before the alleged victims in this particular case reach the age of thirty-one years, further investigation could ensue.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided

in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2.

If a request is initially made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:

- (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and

- (B) the name and title or position of the person responsible for the denial.

IC 5-14-3-9(c).

The Prosecutor’s June 5 denial indicated the specific exemption authorizing the withholding of the records. In this instance, the Prosecutor relies on IC 5-14-3-4(b)(1) in denying access to “investigatory records of law enforcement agencies.” “Investigatory record” means information compiled in the course of the investigation of a crime. IC 5-14-3-2(h).

Without further details regarding the particular records requested, I can only rely on the Prosecutor’s response to your complaint that the records are indeed investigatory in nature.

The Prosecutor’s denial did not specifically state the name and title or position of the person responsible for the denial. However, because the response letter was signed by the elected official who has authority over the public agency, I believe it is reasonable to assume the denial came from the Prosecuting Attorney himself. If the denial had been signed by an employee of the agency with no indication who was responsible for denying the record, I would find this denial to violate section 9(c) of the APRA.

CONCLUSION

For the foregoing reasons, I find the Union County Prosecuting Attorney did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Ronald Jordan, Union County Prosecuting Attorney