

August 15, 2007

Orza Salone
DOC #944875 CE504
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-209; Alleged Violation of the Access to Public Records Act by the Howard County Prosecuting Attorney

Dear Mr. Salone:

This is in response to your formal complaint alleging the Howard County Prosecuting Attorney ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. I find that the Prosecutor did not violate the APRA.

BACKGROUND

In your complaint you allege that on June 11, 2007 you requested from the Prosecutor access to records maintained by the Prosecutor. You specifically requested records related to Cause number 06D01-9407-CF-39. You submitted your complaint on July 12, and I received it on July 17, alleging you had not received a response.

The Prosecutor responded to your complaint on July 26. The Prosecutor indicated the records you requested were from a case in Boone County rather than Howard County and as such, the Prosecutor's office has no responsive records. The Prosecutor also indicated the person to whom you directed your request has not been the Prosecutor since 1994.

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." Ind. Code §5-14-3-1. The Prosecutor 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 Prosecutor

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, the agency must respond to the request within seven days of receipt. I.C. §5-14-3-9(b).

Here the Prosecutor seems to indicate he did not receive your original request for records. If the Prosecutor did receive your request, he would have a duty under the APRA to respond within seven days of receipt even if the records requested are not maintained by the Prosecutor. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Prosecutor did not receive your request, he did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, I find that if the Howard County Prosecuting Attorney did not receive your request, he did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: James Fleming, Howard County Prosecuting Attorney