

September 20, 2007

Curtis Coonrod  
5664 Caito Drive, Suite 120  
Indianapolis, Indiana 46226

*Re: Formal Complaint 07-FC-253; Alleged Violation of the Access to Public Records Act by the Knox County Prosecuting Attorney*

Dear Mr. Coonrod:

This is in response to your formal complaint alleging the Knox County Prosecuting Attorney (“Prosecutor”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to records. A copy of the Prosecutor’s response is enclosed for your reference. I find no evidence the Prosecutor has violated the Access to Public Records Act.

#### BACKGROUND

You filed a complaint with this office on August 21, 2007. You did not provide a narrative description of the nature of your complaint but instead attached copies of several communications between you and the Prosecutor. As such, I will attempt to characterize the facts as accurately as possible. In the future, please provide a narrative description of the nature of your complaint. It is my understanding you allege that on August 7 you requested from the Prosecutor access to records. Specifically, you requested copies of engagement letters, contingent fee agreements, notifications of expenses, and copies of written statements and remittances regarding the Prosecutor’s hiring of attorneys to perform legal services. You also requested any other documents provided by such attorneys relevant to the Prosecutor’s duties under I.C. §34-24-1 (related to seizure of certain items), including correspondence, invoices, statements, and accountings. You requested all items dating from January 1, 2003 to the date of your request.

By letter dated August 13, the Prosecutor responded to your request. With the response, the Prosecutor produced approximately fifty pages of copies of records, including a copy of a contract for legal services as well as many statements which appear to be billing statements. The Prosecutor further indicated he was working to obtain documents prior to 2005 since they were not included in this production. You sent a letter to the Prosecutor on August 20, indicating you did not believe the records to be responsive to the request and indicating you believe the

Prosecutor has denied your request. You indicated in the letter your intent to file a complaint with this office but did not elaborate as to the nature of the complaint.

The Prosecutor did not respond to your complaint at my invitation to do so.

#### 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 and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here you have claimed the Prosecutor has denied you access to records. From the materials you have submitted, it appears to me that, first, the Prosecutor responded to your request within the seven days allowed by the APRA. I.C. §5-14-3-9(b). Second, if your complaint stems from the Prosecutor's indication that the 2003 through 2005 records are not included, the Prosecutor has not violated the APRA by indicating he is endeavoring to obtain those records for you.

Finally, to the extent you indicate the records you received are not responsive to the request and as such you have been denied access, I do not have enough evidence to agree with that allegation. The documents I see that you included with your complaint seem to me to be responsive to your request. The packet contains settlement information, statements, and a copy of the contract for services. To the extent you believe the Prosecutor maintains additional documents responsive to your request, it is my suggestion you communicate what additional items you are seeking to the Prosecutor. If the Prosecutor does maintain further records

responsive to your request and not excepted from disclosure under I.C. §5-14-3-4, the Prosecutor must produce those records. I.C. §5-14-3-3.

#### CONCLUSION

For the foregoing reasons, I find no evidence the Prosecutor has violated the Access to Public Records Act.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: John Sievers, Knox County Prosecuting Attorney