

March 28, 2007

A.B. Corley
#940811
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 07-FC-52; Alleged Violation of the Access to Public Records Act by the Indiana Prosecuting Attorneys Council

Dear Mr. Corley:

This is in response to your formal complaint alleging that the Indiana Prosecuting Attorneys Council (“IPAC”) violated the Access to Public Records Act by failing to respond to your request for records. I find that the IPAC did not receive your request so IPAC had no duty to respond. I also find that the IPAC bears the burden to show that its training materials are exempt under the Access to Public Records Act.

BACKGROUND

You allege that you requested “around February 7” certain records, including the IPAC Ethics Handbook, and the IPAC policy guidelines and procedures for Indiana. The IPAC’s Executive Director Stephen J. Johnson has responded by stating that the IPAC has no record that it ever received your request. The IPAC responded in substance to your request for records, stating that it has no handbooks that are responsive to your request. In addition, the IPAC has training materials that it makes available to the prosecuting attorneys that the IPAC serves, but these materials are the work product of an attorney and are exempt under Indiana Code 5-14-3-4(b)(2), and are deliberative materials and therefore exempt under Indiana Code 5-14-3-4(b)(6).

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If

a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

The IPAC has stated that it has no record of receiving a request for these records from you. Accordingly, the IPAC was not required to respond within seven days to a request it did not receive. In addition, the IPAC has explained that it does not have the precise records you are requesting because it maintains no handbooks concerning ethics and policy guidelines.

The IPAC does maintain training materials, which it provides to prosecuting attorneys under the IPAC's statutory authority at IC 33-39-8. The IPAC may deny you the training and educational materials if the materials fit any one of the exemptions in Indiana Code 5-14-3-4. The public agency bears the burden to show that a public record is exempt under section 4 of the APRA. *See* IC 5-14-3-1; IC 5-14-3-9(g).

CONCLUSION

For the foregoing reasons, I find that the Indiana Prosecuting Attorneys Council has not violated the Access to Public Records Act by failing to respond to a request the IPAC did not receive.

Sincerely,

Karen Davis
Public Access Counselor

cc: Stephen J. Johnson