



STATE OF INDIANA

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March 4, 2010

Mr. Archie A. Robertson
1800 W. Markland Ave.
Kokomo, IN 46901

Re: Consolidated Formal Complaint 10-FC-34 and 10-FC-35; Alleged Violations of the Access to Public Records Act by the Tipton County Prosecutor's Office and Tipton Police Department

Dear Mr. Robertson:

This advisory opinion is in response to your formal complaints alleging that the Tipton County Prosecutor ("Prosecutor") and Tipton Police Department ("Department") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* I have consolidated your complaints against these agencies due to the relatedness of the allegations.

BACKGROUND

In your complaints, you allege that you sent records requests to both the Prosecutor and the Department for which you never received a response. In response to your complaints, the Department states that it forwarded a copy of your letter to the Prosecutor and your attorney, Laura Closer. The Department's understanding was that your attorney would update you regarding the status of your request. The Prosecutor maintains that he cannot speak with you directly due to the Indiana Rules of Professional Conduct, which prohibit a prosecutor from contacting a defendant directly who is represented by defense counsel. Thus, the Prosecutor and Department communicated with your attorney regarding your requests and assured your attorney that you would receive everything that you are entitled to under the law.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. Neither the Department nor the Prosecutor disputes that it is a public agency

within the meaning of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the these agencies' public records 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 access to public 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four (24) hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

Here, it appears that both agencies responded directly to your attorney in accordance with the above standards. As the Prosecutor has observed, he cannot contact you directly without violating Indiana's Rules of Professional Conduct. In my opinion, neither agency violated the APRA by responding to your requests via your attorney, who acts as your agent and is representing you in your pending criminal case. Moreover, it is not clear to me that either agency ever denied any of your requests because both agencies have assured your attorney that she will receive all disclosable records in the usual course of business. For these reasons, it is my opinion that neither agency has violated the APRA with respect to your requests.

CONCLUSION

For the foregoing reasons, it is my opinion that neither the Prosecutor nor the Department violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Jay D. Rich, Tipton County Prosecutor
Jon "Kevin" Stiner, Chief of Police, Tipton Police Department