



# STATE OF INDIANA

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March 17, 2010

Mr. Marvin Taylor, Sr.  
DOC #995801  
One Park Row  
Michigan City, IN 46360

*Re: Formal Complaint 10-FC-39; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office*

Dear Mr. Taylor:

This advisory opinion is in response to your formal complaint alleging that the Marion County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The Prosecutor's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that the Prosecutor violated the APRA by failing to respond to your request for access to public records. In his response on behalf of the Prosecutor, Communications Director Mario Massillamany claims that the Prosecutor never received your request. It is my understanding that the Prosecutor has reviewed the request that you enclosed with your complaint to this office and has now determined that no responsive records exist.

## 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. The Prosecutor does not dispute that it is a public agency subject to the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the Prosecutor's 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 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 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.

Here, the Prosecutor asserts it did not receive your request. If the Prosecutor did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). 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, it did not violate the APRA by not responding. *See Opinion of the Public Access Counselor 09-FC-44; 10-FC-12.*

It is my understanding that the Prosecutor has checked its files and determined that it has no records responsive to your request. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61; see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Mario Massillamany