



# STATE OF INDIANA

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May 18, 2010

Mr. Marvin F. Taylor, Sr.  
Indiana State Prison  
One Park Row  
Michigan City, IN 46360

*Re: Formal Complaint 10-FC-99; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion County Prosecutor's Office*

Dear Mr. Taylor:

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

## BACKGROUND

According to your complaint, you sent a request for court records to the Prosecutor on March 19, 2010. After you received no response from the Prosecutor, you filed your complaint with this office on April 12, 2010.

My office forwarded a copy of your complaints to the Prosecutor. Brian Cusimano, special assistant to the Prosecutor, responded by stating that the Prosecutor never received your request. He further states that the Prosecutor will procure a file that might contain your requested record from the Prosecutor's off-site storage facility and review it to determine whether the records exist and are disclosable. Thereafter, the Prosecutor will send you a communication regarding the status of your request.

## 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

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).

Here, the Prosecutor asserts it did not receive your request. If the Prosecutor had received your request, the APRA would have obligated the Prosecutor to respond to you within seven days of receiving the request. 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 failing to respond. *See Opinion of the Public Access Counselor 09-FC-44.*

That said, I trust the Prosecutor will conduct a search for the requested records and notify you regarding any responsive, non-confidential records as soon as possible. I hope this resolves your complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor did not violate the APRA if it never received your request.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Brian Cusimano