



STATE OF INDIANA

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December 5, 2014

Mr. Kurt Disser
7210 E. County Rd. 700 N.
Brownsburg, IN 46112

Re: Formal Complaint 14-FC-265; Alleged Violation of the Access to Public Records Act by the Office of the Prosecuting Attorney, 20th Judicial Circuit

Dear Mr. Disser,

This advisory opinion is in response to your formal complaint alleging the Office of the Prosecuting Attorney, 20th Judicial Circuit (“Prosecutor”), violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* Chief Administrative Deputy Prosecutor, Ms. Lori N. Schein, Esq., has responded and her reply is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor October 31, 2014.

BACKGROUND

Your complaint dated October 26, 2014 alleges the Office of the Prosecuting Attorney, 20th Judicial Circuit violated the Access to Public Records Act (Ind. Code § 5-14-3) by using an in-house public records request form which is contrary to the APRA.

On or about October 6, 2014 and again on October 8, 2014, you hand-delivered a request for public records to the Prosecutor. You were denied the request because you did not fill out the Prosecutor’s in-house request form in its entirety. This form asks the requestor for a number of details including Social Security number, driver’s license, date of birth and the reason for submitting the request. You contend this is violating the APRA and point to *Opinion of the Public Access Counselor 10-FC-174* as authority.

The Prosecutor responded to your formal complaint by stating you did not fill out the form and therefore the records will not be provided to you. They claim the form does not need to be filled out in its entirety in order for you to receive the records.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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.” See Ind. Code § 5-14-3-1. The Office of the Prosecuting Attorney, 20th Judicial Circuit is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Prosecutor’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

As you have indicated in your complaint, *Opinion of the Public Access Counselor 10-FC-174* addresses this very issue regarding a Prosecutor from another jurisdiction. It is hereby incorporated by reference and will be distributed to both parties as an addendum to this Opinion. In it, former Public Access Counselor Kossack opined a public agency must show the necessity of requiring extraneous information before providing records. I agree with his analysis and similarly opine that a form requiring this information (without justification) is an inherent barrier to access.

Ind. Code 5-14-3-3(a)(2) states a request for information may be, at the discretion of the agency, in writing on or in a form provided by the agency. Therefore, I do not take exception with the form provided by the Prosecutor. Nor, do I take exception with their requirement that you must first fill it out. But I do not agree you must fill it out *in its entirety*. The extraneous requested information should be labeled as optional and should not be considered mandatory. The way the form is currently written, it appears as if the requestor is obligated to provide the additional information. This is reinforced by the Prosecutor’s response on October 8, 2014 indicating you must fill out the form in its entirety.

To be clear, you will still have to fill out the form in a manner which provides the Prosecutor with sufficient information to be responsive to your request. There is also a questionnaire portion of the form soliciting responses as to the intent to use (i.e. do the requested records contain confidential information; will they be used for commercial purposes, etc.). I do not consider these questions to be a barrier to access, but is merely for office use in order to be more efficient with responses to the request.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Office of the Prosecuting Attorney, 20th Judicial Circuit has violated the Access to Public Records Act. The violating is not based upon requiring a form, but what information that particular form solicits.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Lori N. Schein, Esq.