



# STATE OF INDIANA

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February 3, 2015

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

*Re: Formal Complaint 14-FC-330; Alleged Violation of the Access to Public Records Act by the Office of the Prosecuting Attorney, 20<sup>th</sup> Judicial Circuit*

Dear Mr. Disser,

This advisory opinion is in response to your formal complaint alleging the Office of the Prosecuting Attorney, 20<sup>th</sup> Judicial Circuit (“Prosecutor”), violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* Prosecutor, Mr. Todd J. Meyer, Esq., has responded and his 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 December 31, 2014.

## BACKGROUND

Your complaint dated December 31, 2014 alleges the Office of the Prosecuting Attorney, 20<sup>th</sup> Judicial Circuit violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to allow you to inspect records.

On or about December 1, 2014, you received a letter from the Prosecutor notifying you that documents you had requested were available to pick up. On December 9, 2014, you went to the Prosecutor’s office to inspect the records to decide whether you wanted them copied. You were told you would have to remit a copying fee because they had been copied from originals and the Prosecutor’s Office does not allow the originals to be inspected. You also claim there are records responsive to your request that were not produced.

The Prosecutor responded to your complaint indicating he would have allowed you to inspect the records had you made an appointment. Additionally, all of the records the Prosecutor maintains responsive to your request have been provided to you.

## 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, 20<sup>th</sup> 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).

It appears as if there was some miscommunication from the Prosecutor’s office as to your ability to inspect the records. Interested members of the public do indeed have the right to inspect any public records which are disclosable. However, in order to do that a public agency may sometimes need to curate the records to separate the disclosable information from the producible material. The Prosecutor has indicated tighter communication protocols have been established to be consistent with the APRA. However, it is permissible for an agency to ask for requestors to make an appointment before inspection.

As to the missing records, I have no way of verifying your speculation certain material was omitted from the record production. While I do not simply “take their word for it”, it seems as if the Prosecutor has made a good faith effort to comply with your request. If there are missing materials, a public agency does have the obligation to affirmatively state the reason for non-disclosure under Ind. Code § 5-14-3-9. It is suggested the records you identified as being missing may be maintained by another agency.

While I decline to make a definitive conclusion as to a violation, I invite you to contact me with any concerns, in order to able to facilitate a resolution to this matter if any controversy remains.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish at the end.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Todd J. Meyer, Esq.