



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 29, 2014

Mr. Rocky M. Shroyer
New Castle Correctional Facility
100 Van Nuys Road
New Castle, IN 47362

Re: Formal Complaint 14-FC-62; Alleged Violation of the Access to Public Records Act by the Whitley County Prosecuting Attorney's Office

Dear Mr. Shroyer,

This advisory opinion is in response to your formal complaint alleging the Whitley County Prosecuting Attorney's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Prosecutor has provided a response to your complaint via Mr. D.J. Sigler, Jr., Esq., Chief Deputy Prosecutor. His response 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 on March 27, 2014.

BACKGROUND

Your complaint dated March 27, 2014 alleges the Whitley County Prosecuting Attorney's Office violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(a).

On February 17, 2014, you served a public records request upon Special Prosecutor John Dowd who was the Prosecutor assigned to the case about which you have sought records. I do not have a copy of your original request, so I cannot determine when the Prosecutor's Office received it. Mr. Dowd had since retired; therefore, your request was handled by Mr. Sigler. He denied your request stating the record was not in his possession at the time and directed you to Hamilton County Superior Court 2, where the case was prosecuted. He also stated "[t]ypically, prosecutors do not make their files available to non-parties and you are [sic] obviously not a party to this action". You take exception to that statement as well as the denial.

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.” See Ind. Code § 5-14-3-1. The Whitley County Prosecuting Attorney’s Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, 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).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

You state you addressed your request to Prosecutor John Dowd; however, it is unclear where the request was sent. Mr. Dowd had retired and your request for public records did not end up at the Prosecutor’s Office until after the timeframe for responding had elapsed. Although outside the seven days for response, this oversight appeared to be merely an accidental and harmless error.

I have spoken with Mr. Sigler and expressed my concern over his statement regarding case files not being open to a non-litigant to the case. I believe Mr. Sigler is now aware of my position on the matter. Even though you are a non-party, you are entitled to the records you seek unless they are sealed by the court under limited circumstances. Having that settled, Mr. Sigler indicated to me the records were not available to him at the time of your request. It is my opinion he properly directed you to the appropriate public agency maintaining custody of the record – Hamilton County Superior Court 2 – who can satisfy your request.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Whitley County Prosecuting Attorney’s Office has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. D.J. Sigler, Jr., Esq.