



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

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August 24, 2016

Mr. Eric Barnett - #111879  
Pendleton Correctional Facility  
4490 West Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 16-FC-167; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office*

Dear Mr. Barnett:

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office ("Office") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Ms. Jennifer Morris. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 18, 2016.

## BACKGROUND

Your complaint dated July 13, 2016 alleges the Marion County Prosecutor's Office violated the Access to Public Records Act by denying your records request. On June 14, 2016, you sent a records request to the Office for documents contained in your case file. You received a response, dated July 6, 2016 in which your request was acknowledged. The Office denied your request suggesting that you attempt to seek the records through the discovery process or directly from the court instead of through the Access to Public Records Act.

On July 20, 2016 the Office responded to your complaint. The Office submitted the request you initially sent which differs from the items you specify in your complaint. It attached the request received from you in which you seek "all documentation or records of proceedings" filed under two (2) specified cause numbers.

## 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 Indiana Code § 5-14-3-1.* The Marion

County Prosecutor's Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Agency's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

I find the Prosecutor's response to your initial request to be an appropriate one under these circumstances by advising you to seek the records through discovery or directly from the official court of record. The Public Access Counselor should not be a factor in civil or criminal litigation when there are established Rules of Trial Procedure to guide litigants in the course of pursuing documents.

The advice referenced in the Prosecutor's response was based partially upon my advisory opinion found at *Advisory Opinion 14-FC-50*. In the Opinion, I stated:

I do often encounter complaints during the discovery phase of a legal proceeding. Please note it is much more efficient and expeditious to avail yourself of the discovery process than it is to file a formal complaint with my Office. [A] court of law has significantly more enforcement power than I do to compel the production of documents.

Furthermore, my office has stated on several occasions the Public Access Counselor will not interfere with the judiciary's exclusive jurisdiction to adjudicate discovery requests under the trial rules. Indeed, the discovery process would be frustrated if an executive branch official were to preempt the court's authority by issuing an opinion on production of documents.

### CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Marion County Prosecutor's Office did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Jennifer M. Morris