

June 11, 2003

Keith Ware
#5265 C-206
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 03-FC-40*: Alleged Denial of Access to Public Records by the Lake County Prosecuting Attorney's Office.

Dear Mr. Ware:

This is written in response to your formal complaint, which was received on May 30, 2003. You have alleged that the Lake County Prosecuting Attorney's Office ("Prosecutor's Office") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Prosecutor's Office denied you access to public records by failing to respond to your April 30, 2003 request. Ms. Kathleen O'Halloran of the Prosecutor's Office responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Prosecutor's Office did not respond to you within the time period required under Indiana Code section 5-14-3-9(b) and that this failure to respond constituted a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you sent a request to the Prosecutor's Office dated April 30, 2003. You asked for a copy of the probable cause affidavit and the names only of any listed witnesses related to Cause No. 1CR-17-175-75. You addressed your request to Ms. O'Halloran. You had not received a response as of May 26, 2003 so you filed your formal complaint with this Office.

In response to your complaint, Ms. O'Halloran provided a copy of her written response to your April 30th request. By telephone, Ms. O'Halloran explained that she did not respond because she had responded to your April 16th request for public records for the same or similar records. In response to your formal complaint, Ms. O'Halloran has provided you with a copy of the names of witnesses as listed on the indictment in the Cause you referenced, but she stated again that the Prosecutor's Office does not have a copy of any probable cause affidavit.

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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Prosecutor's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Prosecutor's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to the information provided, the Prosecutor's Office did receive your April 30th request, but failed to respond within the seven (7) day period after receiving that request. For this reason, it is my opinion that the Prosecutor's Office did deny you access in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(b). While it does not alter my opinion concerning the timeliness of the Prosecutor's Office response to your request, Ms. O'Halloran has now responded to that request.

CONCLUSION

It is my opinion that the Lake County Prosecuting Attorney's Office did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that this constituted a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Kathleen O'Halloran, LCPO