

August 4, 2003

Mr. Keith Ware, 5265  
Location C-203  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

Re: *Advisory Opinion 03-FC-53*: Alleged Denial of Access to Public Records by the Lake County Prosecutor's Office.

Dear Mr. Ware:

This is in response to your formal complaint, which was received on July 7, 2003. You have alleged that the Lake County Prosecutor's Office ("Prosecutor's Office") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you allege that you were wrongfully denied access to copies of any all information dealing with or related to a ballistics test comparison done under cause number 1CR-17-175-75 by the Chicago Police Department Forensic Services. Mr. Kathleen O'Halloran, Deputy Prosecutor, responded via telephone to this Office. It is my opinion that the Prosecutor's Office did not violate the APRA by refusing to provide access to the records you requested pursuant to Indiana Code section 5-14-3-4(b)(1), the investigatory records exception.

## BACKGROUND

According to your complaint, in a letter dated June 23, 2003 you requested from the Prosecutor's Office copies of any and all information dealing with or related to ballistic test comparisons done under cause number 1CR-17-175-75 by the Chicago Police Department Forensic Services. Ms. O'Halloran responded in writing to your request in a letter dated June 26, 2003. Mr. O'Halloran stated in her letter that "the records you are seeking are investigatory records of law enforcement exempted from the Indiana Access to Public Records Act." You then filed your complaint with this Office. In a telephone conversation with Ms. O'Halloran, she asked that her response to your request be considered her response to this Office.

## 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-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).

One of the exceptions to disclosure, Indiana Code section 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over whether or not to disclose its investigatory records. Law enforcement agency "means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, and the security division of the state lottery commission." Ind. Code § 5-14-3-2 (Emphasis added). It is my opinion that the Prosecutor's Office is a law enforcement agency as defined by Indiana Code section 5-14-3-2. The Prosecutor's Office, therefore, has discretion over the disclosure of investigatory records-they may either disclose or not disclose these public records in response to a public records request under the APRA.

## CONCLUSION

It is my opinion that the Prosecutor's Office had discretion over the disclosure of the records relating to the ballistics test comparison under Indiana Code section 5-14-3-4(b)(1). Therefore, it is my opinion that Lake County Prosecutor's Office did not improperly deny you access to public records in violation of the Indiana Access to Public Records Act by denying your request pursuant to Indiana Code section 5-14-3-4(b)(1).

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor

Enclosure

Cc: Ms. Kathleen O'Halloran, Deputy Prosecutor

