



STATE OF INDIANA

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August 28, 2008

George Wilson
DOC #918837
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 08-FC-195; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Prosecuting Attorney

Dear Mr. Wilson:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Prosecuting Attorney ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Prosecutor's response to the complaint is enclosed for your reference.

BACKGROUND

You allege that you sent to the Prosecutor on July 10, 2008 a request for copies of an arrest warrant and a statement made by an individual on September 1, 1990. You allege the Prosecutor did not respond to the request. You mailed this complaint on August 7, and my office received it on August 12.

The Prosecutor responded to the complaint by letter dated August 15 from Chief Deputy Prosecutor Douglas Brown. Mr. Brown indicates the office has determined the requested documents have been destroyed. Mr. Brown also provides evidence that you were sent a copy of the probable cause affidavit and sentencing transcripts from the proceedings.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Prosecutor is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Prosecutor during regular business hours unless the public records are

excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). Mr. Brown does not indicate whether the Prosecutor received your request. If the Prosecutor received your request in July and did not respond until the August 15 letter to my office, the response was untimely under the statute.

If, however, the records you requested are the same records previously provided by the Prosecutor, it is my opinion the Prosecutor did not violate the APRA by not responding to the request. The APRA requires an agency to provide one copy of a record (*See* I.C. § 5-14-3-8(e)), but in my opinion the APRA does not require an agency to answer repeated requests for the same records once those records have initially been provided.

A public agency is required to protect public records from loss, alteration, mutilation, or destruction. I.C. § 5-14-3-7(a). Notwithstanding this provision, public records subject to Ind. Code 5-15 may be destroyed only in accordance with record retention schedules under Ind. Code 5-15. I.C. § 5-14-3-4(e). In other words, records must be protected and safeguarded by a public agency and may be destroyed only when the retention schedule applicable to that record permits destruction. The determination of when a record may be destroyed is affected by the age of the record and statutory requirements applying to that specific type of record.

So long as the Prosecutor has destroyed the records as allowed by an approved retention schedule for the records at issue, the Prosecutor has not violated the APRA by destroying the records or allowing the records to be destroyed.

CONCLUSION

For the foregoing reasons, it is my opinion the Prosecutor's response was untimely under the APRA if the Prosecutor received the request in July and did not respond within seven days of receipt and if the Prosecutor has not previously provided you copies of the requested records. Further, it is my opinion the Prosecutor did not violate section 7(a) of the APRA if the records were destroyed in accordance with an approved retention schedule established under Ind. Code 5-15.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Douglas R. Brown, Office of the Vanderburgh County Prosecuting Attorney