

April 29, 2008

Misty Cramer
7308 Jackie Court
Indianapolis, Indiana 46221

Re: Formal Complaint 08-FC-91; Alleged Violation of the Access to Public Records Act by the Marion County Prosecuting Attorney's Office, Child Support Division

Dear Ms. Cramer:

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecuting Attorney's Office, Child Support Division ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Prosecutor's response to the complaint is enclosed for your reference. It is my opinion that if the Prosecutor did not initially respond to your request within seven days, the response was untimely under the statute. It is my opinion the Prosecutor did not otherwise violate the APRA.

BACKGROUND

You allege that on March 10, 2008 you sent by facsimile transmission a request to the Prosecutor. You sought a copy of your case file. You allege that you telephoned the office a week later to follow up on the request. You allege that on March 26 Marielle Vincent of the Prosecutor's office returned your call and indicated there would be no fee for the copies. You allege you telephoned the Prosecutor again on April 3 to inquire about the status of the request but did not receive a reply. You filed this complaint on April 9, alleging denial of access.

The Prosecutor responded by letter dated April 11 from Ms. Vincent. Ms. Vincent contends that you were told a number of times a fee might be involved with the request. Ms. Vincent contends you indicated you wanted the records regardless of the fee. Ms. Vincent further contends she has been in contact with you several times during the thirty days between your request and the filing of your complaint. Ms. Vincent contends that you did not indicate which records you sought. Finally, Ms. Vincent contends that due to the heavy caseload, she did not know how long it might take to process the request. Ms. Vincent sent an additional letter to my office dated April 23, in which she indicated that as of April 23 all of the requested copies were mailed to you.

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. 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, facsimile, or email 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). If the request is made in person or by telephone and the agency does not respond within twenty-four hours, the request is deemed denied. I.C. § 5-14-3-9(a).

Here you made the request on March 10. You contend that you did not hear from the Prosecutor until March 26, when Ms. Vincent returned your call. Ms. Vincent contends she spoke to you a number of times during the thirty days between the request and the complaint but does not indicate when the Prosecutor initially responded to the request. If March 26 was the first response from the Prosecutor, the response was untimely and therefore a violation of the APRA. *See* I.C. § 5-14-3-9(b). If the Prosecutor responded within seven days of receipt of the request, there was no violation. Contrary to your assertion, the Prosecutor was not required by I.C. § 5-14-3-9 to respond in writing unless the Prosecutor was denying the request in whole or in part.

While the APRA requires a response within a certain timeframe, the response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Previous public access counselors have stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, considering the Prosecutor did communicate with you to inquire exactly which records you sought, considering the heavy caseload Ms. Vincent contends was before the office, and considering the records had to be reviewed to prohibit the disclosure of attorney work product or other material excepted from disclosure, it is my opinion that the Prosecutor did not take an unreasonable amount of time to produce records in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Prosecutor did not initially respond to your request within seven days, the response was untimely under the statute. It is my opinion the Prosecutor did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Marielle Vincent, Marion County Prosecuting Attorney's Office