



STATE OF INDIANA

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October 9, 2014

Mr. Steven M. Bethel #863706
Indiana State Prison
One Park Row
Michigan City, IN 46064

Re: Formal Complaint 14-FC-203; Alleged Violation of the Access to Public Records Act ("APRA") by the St. Joseph County Prosecuting Attorney

Dear Mr. Bethel,

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Prosecuting Attorney ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Director of Special Projects and Media Relations, Jessica McBrier's response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 8, 2014.

BACKGROUND

Your complaint dated September 1, 2014, alleges the St. Joseph County Prosecuting Attorney violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about July 20, 2014, you sent a request for public records to the Prosecutor seeking a number of law enforcement documents. The Prosecutor did not acknowledge your request until September 18, 2014. The Prosecutor denied your request as they have been considered law enforcement records.

The Prosecutor responded to your formal complaint conceding they did misfiled your request and was made aware of it only after you filed with this Office. Furthermore, they denied your request in part due to a portion of the records being law enforcement records. They remainder of the documents were denied as they are not the custodians of those records.

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

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Prosecutor acknowledges the oversight in not responding to your request within seven (7) days of receipt. This is a clear violation, however, it is mitigated by the fact their denial is justified and would have occurred regardless of an acknowledgement. Additionally, it appears as if the Prosecutor has taken steps to train personnel on APRA requirements since the oversight to ensure compliance in the future.

The release of investigatory records is discretionary based on Ind. Code § 5-14-3-4(b)(1). Prosecutor’s offices are part of the law enforcement process and they can decide whether to release investigatory records maintained by them. The Prosecutor does say the office has a policy to deny request for investigatory records. I encourage them to reevaluate that policy and not have a blanket denial policy, but rather treat requests on a case-by-case basis. This is especially true for closed cases as the integrity of an investigation would not be compromised.

The Prosecutor also argues it does not maintain some of the other records you seek and directs you to the appropriate agency upon which to re-direct your request. This is reasonable in these circumstances.

CONCLUSION

It is the Opinion of the Public Access Counselor the St. Joseph County Prosecuting Attorney has violated the Access to Public Records Act by not acknowledging your complaint, but has not violated the APRA by actually denying the records.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Jessica McBrier