



# STATE OF INDIANA

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November 17, 2008

Keith Ware  
DOC #5265  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 08-FC-222; Alleged Violation of the Access to Public Records Act by the Lake County Prosecuting Attorney*

Dear Mr. Ware:

This advisory opinion is in response to your formal complaint alleging the Lake County Prosecuting Attorney ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. It is my opinion the Prosecutor violated the APRA if the office received the request and did not respond to it.

## BACKGROUND

You allege that on September 15, 2008 you submitted a request to the Prosecutor for access to records related to a case against you. You allege that the Prosecutor failed to respond to the request. You mailed this complaint on October 14, and my office received it on October 16.

My office sent a copy of your complaint to the Prosecutor and invited the Prosecutor to respond. To date my office has not received a response to the complaint.

## 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).

If the Prosecutor received your request, the agency had a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). If the Prosecutor received the request and did not respond to the request within seven days, the Prosecutor violated the APRA by denying you access to records without providing the statutory exemption allowing the Prosecutor to withhold the records from disclosure.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Prosecutor violated the APRA if the office received the request and did not respond to it.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Bernard Carter, Lake County Prosecuting Attorney