



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 18, 2013

Mr. Keith Ware #5265
Indiana State Prison
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 13-FC-307; Alleged Violation of the Access to Public Records Act by the Lake County Probation Department

Dear Mr. Ware,

This advisory opinion is in response to your formal complaint alleging the Lake County Probation Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Jan Parsons, Director of Probation, responded to your formal complaint. Her 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 October 21, 2013.

BACKGROUND

Your complaint dated October 21, 2013 alleges the Lake County Probation Department violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

On or about September 3, 2013 you served upon the Department a request for production of records for information related to your presentencing report in your criminal court case.

Upon receipt of your request on September 6, 2013, the Department contends that a letter was sent to you acknowledging your request and directing you to a different public agency that is the custodian of the records you seek. This letter apparently did not find its way to you.

On September 12, 2013, you sent a second request to the Department seeking the same records. The Department claims it never received the second request.

As confirmation the Probation Department is not the custodian of the records, Mr. Tom Q. Jones of the Indiana State County Administration advised the Department the retention of felony case files is the responsibility of the Court in which your case was litigated. However, on September 18, 2013, you were informed by the Lake County Clerk of the Circuit and Superior Court they also had no records responsive to your request. Your formal complaint does not identify the Clerk as a respondent.

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 Lake County Probation Department 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 Department’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.

Similar to your complaint in 13-FC-306, it is clear from the information provided the Department made reasonable good faith efforts to comply with the APRA pursuant to your request. As I am not a finder of fact, I cannot conclusively state why the September 6, 2013 correspondence was returned as undeliverable. From previous experience, this Office recognizes there are often logistical challenges associated with the various Department of Correction facilities in regard to mail delivery.

As I have stated in various previous opinions, a public agency is not required to produce records it does not maintain. The agency is not obligated to search and retrieve information from another agency. The Department asserts they are not the custodians of the records responsive to your request. If this assertion is accurate, they are justified in denying your request. In fact, the Department went beyond the usual course of denial and directed you to the appropriate agency. Again, it is unclear why the Clerk of Lake County Circuit and Superior Court does not have the presentence report you seek.

CONCLUSION

For the foregoing reasons, the Lake County Probation Department has not violated the Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Jan Parsons