

February 7, 2005

Mr. Maurice A. Samson  
Pendleton Correctional Facility  
P.O. Box 30  
Pendleton, IN 46064

*Re: Formal Complaint #05-FC-8; Alleged Violation of the Access to  
Public Records Act by the Lake County Clerk and the Lake County  
Prosecutor's Office*

Dear Mr. Samson:

This is in response to your formal complaint alleging that the Lake County Clerk ("Clerk") and the Lake County Prosecutor's Office ("Prosecutor") have denied you a record in violation of the Access to Public Records Act ("APRA"). I find that neither the Clerk nor the Prosecutor violated the APRA.

#### BACKGROUND

You sent a request for records first to the Clerk around the last week of November, 2004. You sought two records: 1) a copy of a "police statement and witness statement" in Cause Number #4CR-3-182-17, Count I; and booking information from the same charge.

The Clerk responded stating that the booking information would be provided, but the Clerk did not maintain the police and statement report you requested. The Clerk suggested that you seek these records from the Lake County Prosecutor or the "arresting agency."

You sent a request to the Prosecutor seeking the same records, which the Prosecutor received on December 14. On December 17 the Prosecutor responded, stating that the police statement and victim statement were investigatory records of law enforcement, and were exempt under Ind.Code 5-14-3-4(b)(1).

You filed your formal complaint with my office on January 6, 2005. I sent a copy of your complaint to both the Clerk and the Prosecutor. The response of the Prosecutor is enclosed for your reference.

## ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless the record is exempted from disclosure under section 4 of the APRA. IC 5-14-3-3(a). An agency is required to respond to a request within certain timeframes, and the failure to do so is deemed a denial of the record. IC 5-14-3-9. For a mailed request, the agency is required to respond within seven (7) calendar days of receiving the request. IC 5-14-3-9(b). You do not allege that the response of either the Clerk or the Prosecutor are untimely, and indeed it does not appear that more than seven days elapsed from the time that either party would have actually received your requests and the time that each responded.

Also, your complaint alleges no wrongdoing on the part of the Clerk, and I note that the Clerk told you it would make one record available to you, but did not maintain the other record. This response is not a denial in violation of the APRA, because the APRA does not require that an agency make a record available for inspection and copying that it does not maintain.

Rather, you complain that the Prosecutor should not have denied you the police statement and witness statement record under the investigatory record exception. Under the APRA, investigatory records of law enforcement may be withheld from disclosure at the discretion of the public agency. IC 5-14-3-4(b)(1). An "investigatory record" means information compiled in the course of an investigation of a crime. IC 5-14-3-2. The information that you seek was compiled in the course of an investigation of a crime, as you describe the record. Therefore, the Prosecutor may withhold that record in its discretion.

## CONCLUSION

For the foregoing reasons, I find that the Clerk and the Prosecutor did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

Cc: Clare Bradley, Lake County Prosecutor's Office  
Thomas Philpot, Clerk