



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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July 17, 2012

Samuel R. Hampton
DOC 195123
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-163; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office

Dear Mr. Hampton:

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Laurel S. Judkins, Chief Counsel, responded on behalf of the Prosecutor. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Prosecutor on May 20, 2012 for records you needed as part of your Petition for Post-Conviction Relief. As of June 19, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that you have failed to receive a response from the Prosecutor.

In response to your formal complaint, Ms. Judkins advised that your request was denied as you have previously been provided copies of the records that have been requested. This fact is evidenced by the State's Notice of Discovery Compliance that you provided with your formal complaint. Further, you have an active case against the Prosecutor seeking Post-Conviction Relief. The ultimate determination of such requests is based solely on the record from the trial court and your request only serves to circumvent the discovery rules governing your current request for relief.

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* I.C. § 5-14-3-1. The Prosecutor is a public agency for the purposes of the APRA. *See*

I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Prosecutor's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 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* I.C. § 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* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The APRA provides the right to inspect and copy records of a public agency. However, it is separate and distinct from other court proceedings, both civil and criminal. *See Opinion of the Public Access Counselor 11-FC-314*. An agency may not deny a request for records in light of other pending litigation and/or discovery between the parties. *See Opinion of the Public Access Counselor 02-FC-38*. To the extent that the Prosecutor failed to respond to your request, it is my opinion that it acted contrary to section 9 of the APRA. However, as to the substance of the Prosecutor's denial, the APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). The Public Access Counselor has issued multiple opinions that have provided that a public agency is not required to provide duplicative copies of the same record. *See Opinions of the Public Access Counselor 07-FC-19; 08-FC-75; and 08-FC-259*. As the Prosecutor has on a prior occasion provided you with the records that are responsive to your request, it is under no obligation to provide you with additional copies. As such it is my opinion that the Prosecutor did not violate the APRA.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor acted contrary to the requirements of the section 9 of the APRA in failing to respond to your written request within seven (7) days of its receipt. However, as the Prosecutor has already provided you with records that are responsive to your request, it is under no obligation to provide you with additional copies.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Laurel S. Judkins