



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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July 25, 2012

James E. Allen
504 Redfern Drive
Beech Grove, Indiana 46107

Re: Formal Complaint 12-FC-200; Alleged Violation of the Access to Public Records Act by the Owen County Prosecutor

Dear Mr. Allen:

This advisory opinion is in response to your formal complaint alleging the Owen County Prosecutor ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Don VanDerMoere, Owen County Prosecutor, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that your vehicle was stolen in October of 2011. After a suspect was arrested, you further allege that you did not receive any information from the Prosecutor until January 30, 2012, at which time you provided the agency with the requested information to apply for restitution. You do not have the capability to contact the Prosecutor by telephone. In March 2012, you had a friend contact the Prosecutor as to the status of the restitution. You provide that the office stated that it would be in touch with you regarding this matter. After not hearing back from the Prosecutor, you mailed a letter asking the status of the matter. As of the date you filed your formal complaint with the Public Access Counselor, you allege you have still yet to receive any response from the Prosecutor.

In response to your formal complaint, Mr. VanDerMoere advised that the case that is the subject of your inquiry has been successfully adjudicated and that there has been a restitution amount entered as a term of probation for the defendant for your benefit. Mr. VanDerMoere reviewed the respective file and stated that his office has apprised you of the status of the case and that he has no knowledge of the office being contacted by your associate regarding this issue. Regardless, all records regarding the criminal matter are enclosed for your review. The records contain the most recent address for the defendant, who is currently residing in the Owen County Jail due to the Prosecutor's Petition to Revoke Probation.

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).

Under the ARRA, a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21, 00-FC-15, 10-FC-120*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for *information* may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to create a record that complies with the requesting party’s request.

After reviewing your request, it is my opinion that your request sought a status update on the criminal matter adjudicated by the prosecutor, rather than a request for records. Under the APRA, the Prosecutor is not obligated to answer generalized inquiries. *See Opinion of the Public Access Counselor 11-FC-07*. However, immediately upon receiving a copy of your formal complaint, the Prosecutor issued a response and enclosed all records regarding the current status of the criminal matter regarding the theft of your vehicle and the most recent address of the defendant. As such, I trust that this is in satisfaction of your formal complaint. In the future, should you wish to correspondence with the Prosecutor via U.S. Mail, I would encourage you to utilize the following address:

Owen County Prosecuting Attorney
c/o Don VanDerMoere
P.O. Box 150
Courthouse
Spencer, Indiana 47460-0150

CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Don VanDerMoere