



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

February 7, 2014

Mr. James D. Huffman #138508
Wabash Valley Correctional Facility
6908 S. Old U.S. Hwy. 41
Carlisle, IN 47838

Re: Formal Complaint 14-FC-01; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office

Dear Mr. Huffman,

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.* The Prosecutor has responded via Chief Counsel Laurel Judkins, Esq. 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 January 3, 2014.

BACKGROUND

Your complaint dated January 2, 2014, alleges the Marion County Prosecutor's Office violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On December 18, 2013, you served upon the Prosecutor a request for access to public records seeking information under your criminal cause number. You specified a number of different records, all of which were denied December 23, 2013 by the Prosecutor due to their office already having provided you copies of the documents during your criminal defense trial.

In its response, the Prosecutor's Office reiterates that the copies of the documentation have previously been provided to your attorney and they claim they are under no obligation to provide duplicate copies to you.

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 Marion County Prosecutor’s Office 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 Prosecutor’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.

Based on the information provided, it appears you are in the post-conviction relief stage or your criminal proceeding. The Access to Public Records Act does not provide an exception for public agencies to deny access to records merely due to the fact they have been provided to a defendant’s counsel during the criminal trial. This Office recognizes an appeal for post-conviction often necessitates the release of documentation which may have been provided by a public agency in the past to defendant’s counsel. It is unknown if your attorney retained the documents or returned them to you after your conviction.

Despite the Prosecutor’s assertion, I do not have any information before me suggesting you may be abusing your Access to Public Records Act (APRA) rights in seeking multiple duplicate copies. I do not find it a compelling argument to assert an APRA exception based on inconvenience to a public agency. Your request does not appear to be vexatious or unduly burdensome, however, please be advised you may be assessed a fee for the copying cost.

That being said, I do often encounter complaints during the discovery phase of a legal proceeding. Please note it is much more efficient and expeditious to avail yourself of the discovery process than it is to file a formal complaint with my Office. While all of the documents should be released to you by the Prosecutor’s Office, a court of law has significantly more enforcement power than I do to compel the production of documents.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Marion County Prosecutor’s Office violated the Access to Public Records Act by refusing to produce documentation sought pursuant to your request.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Laurel S. Judkins, Esq.