



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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September 29, 2014

Mr. Brian Culp  
60 S. Jefferson St.  
Martinsville, IN 46151

*Re: Formal Complaint 14-FC-215; Alleged Violation of the Access to Public Records Act ("APRA") by the Morgan County Prosecuting Attorney*

Dear Mr. Culp,

This advisory opinion is in response to your formal complaint alleging the Morgan County Prosecuting Attorney ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Prosecutor Steven P. Sonnega's 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 September 17, 2014.

## **BACKGROUND**

Your complaint dated September 17, 2014, alleges the Morgan County Prosecuting Attorney 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 or about September 12, 2014, you submitted a public records request to the Prosecutor seeking documents related to a police action shooting which took place on September 5, 2014. On September 15, 2014, the Prosecutor responded acknowledging your request indicating he did not have any records responsive to your request and that the incident is under investigation by the Indiana State Police. The Prosecutor responded to your formal complaint in the same manner. The piece of information at controversy is the name of a victim of a police action shooting.

## **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 Morgan County Prosecuting Attorney'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.

Ind. Code § 5-14-3-5 states:

- (a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:
  - (1) Information that identifies the person including the person's name, age, and address.
  - (2) Information concerning any charges on which the arrest or summons is based.
  - (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
    - (A) time and location of the arrest or the issuance of the summons;
    - (B) investigating or arresting officer (other than an undercover officer or agent); and
    - (C) investigating or arresting law enforcement agency.
  
- (b) If a person is received in a jail or lock-up, the following information shall be made available for inspection and copying:
  - (1) Information that identifies the person including the person's name, age, and address.
  - (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held.
  - (3) The time and date that the person was received and the time and date of the person's discharge or transfer.
  - (4) The amount of the person's bail or bond, if it has been fixed.

The Prosecutor maintains that his Office does not retain any records responsive to your request because they are still under investigation by law enforcement agencies. Other arguments notwithstanding, criminal charges have not been filed therefore the Prosecutor is not obligated to produce or create records which do not exist.

## CONCLUSION

It is the Opinion of the Public Access Counselor the Morgan County Prosecuting Attorney has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Steven P. Sonnega, Prosecutor