



# 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)234-0906  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

July 21, 2016

Mr. James Stewart - #936449  
Wabash Valley Correctional Facility  
Post Office Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 16-FC-139; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office*

Dear Mr. Stewart:

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office ("Office") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Ms. Jennifer Morris, Executive Assistant. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 21, 2016.

## **BACKGROUND**

Your complaint dated May 30, 2016, alleges the Marion County Prosecutor's Office violated the APRA by failing to respond to your records request within seven (7) days. On or about May 2, 2016, you submitted a public records request to the Office for phone records of a state's witness. As of the filing of your complaint, you had not received a response. You note in your complaint the information you are requesting is needed for an action you filed in District Court.

On July 6, the Office responded. The Office states it did not receive your request and contends you are using the APRA to circumvent discovery in your appeal.

## **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 Indiana Code § 5-14-3-1*. The Marion County Prosecutor's Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Office's disclosable public

records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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.

The Office has stated it did not receive your request. Unfortunately, your request was likely a casualty of the prison mail system. Because your request was not received the Office did not violate the APRA by failing to respond.

The Office also notes you have a pending appeal. This office has stated on several occasions the Public Access Counselor will not interfere with the judiciary's sovereign jurisdiction to adjudicate discovery requests under the trial rules. You are requesting records related to the search and production of evidence. Because your request for records is related to documents obtainable through discovery, this office will not address any requests for records related to your case until your proceeding has concluded. Furthermore, the records you seek are likely investigatory records. If this is the case, the prosecutor may withhold them as discretionary under Indiana Code § 5-14-3-4(b)(1).

### CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Marion Prosecutor's Office did not violate the Access to Public Records Act.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Ms. Jennifer Morris