



STATE OF INDIANA

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October 25, 2016

Mr. Howard Harris - #967376
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 16-FC-236; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office

Dear Mr. Howard:

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office, Mr. Clarke Campbell, Esq., Deputy Prosecutor violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Marion County Prosecutor's Office responded via 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 September 21, 2016.

BACKGROUND

Your complaint alleges the Marion County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act by not fulfilling your records request. On August 5, 2016, you requested any written communication concerning any guilty plea offers extended prior to trial to you. You have not received a response from the Prosecutor.

The Prosecutor has responded to the complaint filed, claiming they did not receive the request for records. They indicated, if they had received request, it would have been denied and you would have been directed to seek records from the official court record.

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 PO's 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 in person and the agency does not respond within 24 hours, the request is deemed denied. *See Indiana 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 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.

This Office is familiar with situations wherein prisoner mail does not reach its destination. This may simply be an administrative error. As for the substantive denial, the advice referenced in the Prosecutor's response was based upon *Advisory Opinion 14-FC-50*. In it, I stated a criminal litigant should "seek records through discovery or directly from the official court of record. The Public Access Counselor should not be a factor in civil or criminal litigation when there are established Rules of Trial Procedure to guide litigants in the course of pursuing documents". You should seek those records through the discovery process as opposed to a public access request.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Marion County Prosecutor's Office has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Jennifer Morris