



STATE OF INDIANA

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March 6, 2009

Ray Elmer Bennett
DOC #172475
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 09-FC-48; Alleged Violation of the Access to Public Records Act by the Elkhart County Prosecuting Attorney

Dear Mr. Bennett:

This advisory opinion is in response to your formal complaint alleging the Elkhart County Prosecuting Attorney ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. It is my opinion the Prosecutor violated the APRA if the office received your request and did not respond to the request within seven days.

BACKGROUND

You allege that on January 5, 2009 you sent to the Prosecutor a request for access to a number of records. You allege that as of the date of your complaint you had not received a response from the Prosecutor. Your complaint was postmarked on February 4, and my office received it on February 11.

My office sent a copy of the complaint to the Prosecutor and invited the Prosecutor to respond. To date my office has not received a response to the complaint.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The Prosecutor is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Prosecutor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 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 days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you allege you mailed the request to the Prosecutor on January 5. As of February 4, you had received no response. If the Prosecutor received your mailed request, the Prosecutor had the duty to respond to the request within seven days of receipt. I.C. § 5-14-3-9(b). If the office failed to do so, the agency violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Prosecutor violated the APRA if the office received your request and did not respond to the request within seven days.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Curtis Hill, Elkhart County Prosecuting Attorney