



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

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)

October 8, 2012

Mr. Alan J. Sirinek  
2710 Franklin Street  
Michigan City, Indiana 46360

Re: *Informal Inquiry 12-INF-41*

Dear Mr. Sirinek:

This is in response to your informal inquiry regarding the LaPorte County Prosecutor ("Prosecutor"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* Christopher L. Willoughby, Attorney, responded on behalf of the Prosecutor.

## BACKGROUND

On or about July 23, 2012, you submitted four (4) separate written requests to the Prosecutor for email correspondence and other records initiated within the Prosecutor's office. In response, you received a total of four (4) documents, all dated July 19, 2012. You provide that Mr. Willoughby advised that email correspondence or any other documents generated from the Prosecutor were not maintained on the county server and that the Prosecutor maintained a separate server for its emails and other records. Your attempt to have this explanation reduced to writing was denied.

You maintain that the records that were requested are not protected under the APRA, and even if they were, the explanation has not been forthcoming. You inquire whether you are entitled to the records that have been sought and whether said records should be maintained and available for public inspection.

In response to your informal inquiry, Mr. Willoughby advised that the Prosecutor provided all records that were responsive to your request and no records were withheld. Mr. Willoughby stated that you must have misunderstood his response, as at no time did he indicate that the Prosecutor maintained a separate server for any email correspondence or documents, or that any other records or documents existed that were not provided.

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

A request for records may be oral or written. *See* I.C. § 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* I.C. § 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). The seven-day time period does not commence until the public agency is in receipt of the request for records. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

The APRA provides that a public record means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency. *See* I.C. § 5-14-3-2(n). As applicable here, regardless of whether the records that were requested were maintained on the county’s or the Prosecutor’s server, it is my opinion that such records would be considered “public records” under the APRA. Accordingly, the Prosecutor would be required to either disclose the records in response to a request or issue a proper denial pursuant to section 9 of the APRA.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. The parties’ recollection of the conversation that occurred regarding the records that were disclosed varies greatly. You provide that Mr. Willoughby denied you access to those records maintained on the Prosecutor’s server. In response, Mr. Willoughby provided that at no time did he indicate that there was a separate server for email correspondence and other records, or that any other records existed. Further, Mr. Willoughby advised that he informed you that all records maintained by the Prosecutor that were responsive to your request were provided. If the Prosecutor denied your request for records based solely on the contention that records maintained on the Prosecutor’s server were not considered “public records”, it is my opinion that the Prosecutor would have acted contrary to the requirements of the APRA. However, if the

Prosecutor provided all records that it maintained that were responsive to your request, it is my opinion that it did not violate the APRA.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Christopher L. Willoughby