

December 21, 2006

Tyrone Frazier
#910476
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 06-FC-205; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor

Dear Mr. Frazier:

This is in response to your formal complaint alleging that Marion County Prosecutor (“Prosecutor”) violated the Access to Public Records Act by failing to respond to your request for records. I find that the Prosecutor did not timely respond to your request, in violation of the Access to Public Records Act. However, the Prosecutor has reviewed your request and issued a response seeking clarification of your request.

BACKGROUND

You filed your formal complaint alleging that the Prosecutor had not responded to your request for an unaltered copy of the tape recorded statement referred to in the State’s Supplemental Notice of Discovery Compliance in Cause No. 49G050212FB294197. You allege that you mailed this request on November 1, 2006.

I sent a copy of your complaint to the Prosecutor. Ms. Lisa Borges, Chief of Staff, responded by letter, a copy of which is attached. She stated that your request was actually postmarked October 27, but was misrouted to a deputy prosecutor who was on vacation. She received your request on November 14 and responded that same date. The Prosecutor has taken steps to attempt to ensure that any record request is promptly delivered to the Chief of Staff. The new Chief of Staff as of January 1, 2007 will be Helen Marchal.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

It is apparent that the Prosecutor’s office received your request, but through oversight did not timely handle the request. Because of this oversight, the response of the Prosecutor was not timely. This was a violation of the Access to Public Records Act, but the Prosecutor has taken steps to avoid such inadvertent violations in the future.

As the Prosecutor explained in his response dated November 14, the audiotape was already provided to you in the discovery process. Ms. Borges has asked that you clarify what tape you are requesting, if different from the tape you received. Where a request is not “reasonably particular,” the public agency is required to seek clarification. Your original request stated that you wanted an “unauthered” copy of the tape, but from your complaint, you requested an unaltered copy of the tape. If you believe that the tape you received in discovery was altered, but it was not, in fact, altered, then there is no other record to provide you. I recommend that you write to the Prosecutor to clarify your request.

CONCLUSION

For the foregoing reasons, I find that the Marion County Prosecutor’s Office violated the Access to Public Records Act when it did not issue a response to your request within the timeframe provided for response.

Sincerely,

Karen Davis
Public Access Counselor

cc: Lisa Borges