

February 3, 2006

Stuart Showalter  
P.O. Box 374  
Lebanon, IN 46052

*Re: Formal Complaints 06-FC-7; 06-FC-14; and 06-FC-28; Alleged Violations of the  
Access to Public Records Act by the Boone County Prosecutor's Office*

Dear Mr. Showalter:

This is in response to your formal complaints alleging that the Boone County Prosecutor's Office ("Office") violated the Access to Public Records Act ("APRA") by failing to respond to your requests for records. I find that if the Office did not respond to your requests within seven days, the Office violated the Access to Public Records Act.

#### BACKGROUND

You filed three formal complaints against the Office. In the first, #06-FC-7, you allege that on December 9 you sent a request to the Office seeking the upcoming trial schedules of three prosecutors. In #06-FC-14, you sent a December 15 request to the Office seeking reports of the financial costs of prosecutions in 2004. In #06-FC-28, you sent a request on December 21 for any policy stating how a person charged with a felony can be accepted into the Pretrial Diversion Program in compliance with IC 33-39-1-8. In each complaint, you allege that the Office never responded or sent you the records.

I sent a copy of each complaint to the Office. Prosecutor Todd Meyer responded to your complaints. I have enclosed copies of the letters for your reference. In his responses, the Prosecutor stated that no records exist; supplying you with the information would require the Office to create a report that it does not maintain in the normal course of its business and which it is not required to maintain. In addition, there are other agencies that may maintain records from which you could compile the information. Finally, Prosecutor Meyer contends that your repeated requests are an attempt to harass and annoy the Office. For #06-FC-7 and #06-FC-14,

the Prosecutor stated that he responded without specifying what date the response was issued; for #06-FC-28, the Prosecutor averred that the Office never received the request.

### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request for a record via U.S. Mail must respond to the request within seven (7) days of receipt, or the request is deemed denied. IC 5-14-3-9(b). If the public agency denies a written request for a record, the denial must be in writing and include a statement of the specific exemption or exemptions authorizing the agency to withhold the record, and the name and title of the person responsible for the denial. IC 5-14-3-9(c). If a public agency does not maintain a record that is responsive to a request, the APRA does not require that the public agency create a record just to supply the requester with the information. If a public agency does not maintain the record, the public agency should so inform the requester within the timeframes set out for response. *See* IC 5-14-3-9(b).

In the response to your complaints, the Office indicates that for your December 21 request, the Office did not receive your request. If no request was received by the Office, it had no duty to issue a response at all. The Office avers that for your December 9 and December 15 requests, it “denied the request” on the grounds stated above. I do not know whether the Office issued the denial within seven days of its receipt of the requests, but you allege that as of the date you filed your complaint, you had not received any response. If the Office did not timely respond, the Office violated the Access to Public Records Act.

### CONCLUSION

If the Boone County Prosecutor’s Office failed to timely respond to your requests for records, it violated the Access to Public Records Act. The Office was not required to create a record to supply you with information you requested, but the Office should tell you that it does not maintain the records.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Todd Meyer