



STATE OF INDIANA

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December 7, 2009

Mr. Antonio Phillips
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 09-FC-260; Alleged Violation of the Access to Public Records Act by the Allen County Prosecutor's Office

Dear Mr. Phillips:

This advisory opinion is in response to your formal complaint alleging the Allen County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, it is my opinion that the Prosecutor did not violate the APRA.

BACKGROUND

In your complaint, you allege that the Prosecutor violated the APRA by refusing to provide you with the "names of the two African American females on the prosecution team." You further stated that you believed one of the individuals was named Yolanda. Deputy Prosecuting Attorney David H. McClamrock responded to your request via letter in which he stated that the Prosecutor does not categorize employees by race and does not appear to have an employee named Yolanda. Mr. McClamrock further asked you to provide the cause number of the case in which you saw them in the courtroom.

My office forwarded a copy of your complaint to the Prosecutor. Mr. McClamrock's response is enclosed for your review. In it, Mr. McClamrock states that your request did not identify any record that could be inspected and copied. The Prosecutor's office does not maintain records in which employees are categorized by race, so there is no public record of personnel information relating to "the two African American females on the prosecution team." Mr. McClamrock further responds that you failed to provide the cause number of the case in which you allegedly saw the two women in the courtroom, so it is not possible to identify any public records regarding that case.

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.” I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The Prosecutor does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Prosecutor during regular business hours unless the records fall within one of the APRA’s exceptions to disclosure. I.C. § 5-14-3-3(a).

The Prosecutor claims that it does not possess records responsive to your request. If the Prosecutor does not maintain the records you have requested, it has not violated the APRA by failing to produce them to you. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created and maintained by the agency. *See Opinion of the Public Access Counselor 09-FC-135.*

Moreover, a request for inspection and copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but Counselor Neal noted that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *Opinion of the Public Access Counselor 08-FC-176.* In my opinion, the Prosecutor did not violate the APRA by requesting clarification with regard to your records request. It is my understanding that you did not provide any additional information that would have assisted the Prosecutor in identifying the record(s) you seek.

CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: David H. McClamrock, Office of the Prosecuting Attorney, Allen County