



STATE OF INDIANA

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June 7, 2010

Mr. Craig F. Brown
2314 Sequoya Dr.
Lafayette, IN 47909

Re: Formal Complaint 10-FC-113; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Prosecutor's Office

Dear Mr. Brown:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Prosecutor's Office (the "Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*, by denying you access to public records. The Prosecutor's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you sent a request for access to public records to the Prosecutor's office on or about April 21, 2010. You claim the Prosecutor failed to respond as of May 5, 2010.

My office forwarded a copy of your complaint to the Prosecutor. Tippecanoe County Prosecutor Patrick K. Harrington responded by stating that the office has no records responsive to your request. He notes that you requested divorce records, which the Prosecutor typically does not maintain because they are not related to criminal proceedings. He further states that the office has no record of your request, but acknowledges that it is possible that a staff member mistook your request "as a citizen venting about the system in general as opposed to a request for specific information."

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 a "public agency" under the APRA. 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 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Thus, if the Prosecutor received your request and failed to respond within seven (7) days, the Prosecutor violated the APRA. However, the Prosecutor's office was not obligated to respond to your request if it never received it.

Regardless, the Prosecutor does not maintain any records responsive to your request. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

CONCLUSION

For the foregoing reasons, it is my opinion that if the Prosecutor received your request and failed to respond within seven (7) days, the Prosecutor violated section 9 of the APRA. Because the Prosecutor does not maintain any records responsive to your request, the Prosecutor has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Patrick K. Harrington