



STATE OF INDIANA

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July 16, 2010

Ms. Sharon A. Land
205 W. Walnut St.
Greencastle, IN 46135

Re: Formal Complaint 10-FC-147; Alleged Violation of the Access to Public Records Act by the Putnam County Prosecutor's Office

Dear Ms. Land:

This advisory opinion is in response to your formal complaint alleging the Putnam 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. A copy of the Prosecutor's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege that the Prosecutor denied your request for access to a copy of a series of digital recordings of your "testimony" to a police officer regarding a criminal investigation. You state that the Prosecutor refuses to either allow you to listen to the recordings or obtain a copy of them. You also requested access to pictures of injuries you sustained as a result of a violent crime. The Prosecutor provided you with only "half of the pictures." You filed a motion in Putnam County Circuit Court, where the related criminal case is pending, but your motion was denied.

My office forwarded a copy of your complaint to the Prosecutor. As of today, we have not received a response. However, I note that in the Prosecutor's response to your motion, the Prosecutor claimed that the records you sought were exempt from disclosure as investigatory records of a law enforcement agency under Ind. Code § 5-14-3-4(b)(1).

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." IC § 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 public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Prosecutor refused to provide you with all of the records you sought pursuant to Ind. Code § 5-14-3-4(b)(1). Under that subsection of the APRA, a law enforcement agency generally has the discretion to withhold investigatory records. Investigatory records are defined by the APRA as records compiled during the investigation of a crime. I.C. § 5-14-3-2(h). The Prosecutor's motion indicates that the records you sought were gathered during a criminal investigation by a law enforcement officer. In that case, the Prosecutor did not violate the APRA by refusing to provide the records to you because the APRA grants the Prosecutor the discretion to withhold investigatory records.

CONCLUSION

For the foregoing reasons, if the records you sought were compiled by the Prosecutor in the course of a criminal investigation, it is my opinion that the Prosecutor did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Tim Bookwalter