



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 7, 2010

Mr. Paul K. Ogden
Roberts & Bishop
118 N. Delaware St.
Indianapolis, IN 46204

Re: Formal Complaint 10-FC-174; Alleged Violation of the Access to Public Records Act by the Marshall County Prosecutor's Office

Dear Mr. Ogden:

This advisory opinion is in response to your formal complaint alleging the Marshall County Prosecutor's Office (the "Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I have enclosed the Prosecutor's response for your reference.

BACKGROUND

According to your complaint, you recently requested certain records from the Prosecutor. In response, the Prosecutor forwarded you a copy of Form 451495-D (the "Form"), which is titled "Document Request: Non-Discovery." The Prosecutor informed you that the Form must be filled out in its entirety before the Prosecutor would comply with your request. You allege that the Form violates the APRA by asking why the requester seeks the requested information, by asking for a copy of the requester's driver's license, by requiring that the request be signed under oath, and by requiring that the requester identify exceptions to the APRA that would require or allow the public agency to withhold the records. You argue that the Form "creates an onerous and improper burden" and that it should not be used before an agency complies with the APRA.

My office forwarded a copy of your complaint to the Prosecutor. In response, the Prosecutor sent my office a copy of your request and noted that he sent you the Form to fill out. The Prosecutor also appeared to note on your request that the Prosecutor does not have records responsive to your request.

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

Under the APRA, an agency may require that public access requests are submitted on a particular form. Specifically, the APRA provides that “[a] request for inspection or copying must: (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.” I.C. § 5-14-3-3(a). The APRA does not explicitly outline what an agency may or may not include on a public records request form, but it is clear that “[n]o request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.” *Id.* The APRA further provides that a public agency “may not deny or interfere with the exercise of the right [to inspect and copy public records] stated in subsection (a).” I.C. § 5-14-3-3(b).

Here, the front of the Form reads, “This form **MUST** be filled out **IN ITS ENTIRETY.**” Section 7 of the Form includes the following question: “Why are you requesting this document? (Please be specific as to your interest/intended usage - you may attach more paper to this form if needed.)” In other words, the Prosecutor will not process the request unless the form is filled out completely, but the Form cannot be filled out completely until the requester identifies the reason for his or her request. In effect, the Prosecutor has refused to comply with a public records request unless the requester gives a reason for such request. If a requester refuses to state the purpose of a request, the APRA only allows a public agency to deny the request if the agency must do so to comply with another applicable statute. Because the Prosecutor has identified no such statute here, it is my opinion that section 7 of the Form violates subsection 3(a) of the APRA.

With regard to the fact that the Form asks for a copy of the requester’s driver’s license and requires that the request be signed under oath, the APRA contains no such requirements. Thus, the burden is on the Prosecutor to show why such procedures are necessary. *See* I.C. § 5-14-3-1. In 2004, Counselor Davis issued an opinion regarding the legality of a public records request form used by a county planning commission. In that matter, the form restricted requesters’ ability to request public records to a certain category of records. Counselor Davis opined that the form violated the APRA, and she added that the form’s requirement that the request be typewritten was an illegal interference with the right to inspect and copy public records:

Upon review of the form provided to you, I find . . . that it allows a requestor to request access only to a certain type of information, not all public records maintained by the agency. Because the Commission

failed to respond to your requests, I do not know if your request was or would have been denied on the basis that it was not submitted on the Commission's form. To the extent that the Commission requires a person to submit requests for records on its form, and the form allows a person to request only a certain type or types of records and excludes requests for other records, use of that form denies and interferes with the exercise of a person's right to inspect and copy the public records of the agency. Therefore, required use of such a form is a violation of the Access to Public Records Act. . . .

You further allege that the Commission requires that the records request form be typewritten. While an agency may require that a request for public records be submitted in writing, it cannot require that the request be typewritten. Few people have access to the means with which to submit a typewritten request. Therefore, requiring a request be in such a format denies and interferes with the exercise of a person's right to inspect and copy the public records of a public agency.

Opinion of the Public Access Counselor 04-FC-167. Similarly here, unless the Prosecutor can show that requiring requesters to submit a request under oath with a copy of the requester's driver's license is necessary to safeguard confidential records or comply with some other applicable statute or rule, it is my opinion that such requirements interfere with the rights of a requester under subsection 3(a) of the APRA.

Finally, the Form inappropriately places the burden for identifying exceptions to the APRA's disclosure requirements on the requester. The APRA clearly states that such burden rests upon the public agency. *See I.C. § 5-14-3-1.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Form violates the APRA insofar as it denies access to requesters who refuse to state the purpose of their request. Moreover, it is my opinion that the Prosecutor has not met its burden to demonstrate why it is necessary for a requester to enclose a copy of his or her driver's license and submit the Form under oath. Finally, the burden for nondisclosure of a public record rests with the agency that would deny access to the record and not on the person who requested access to it.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: David R. Holmes