



STATE OF INDIANA

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March 30, 2010

Mr. Wayne A. Campbell
DOC # 113575
Pendleton Correctional Facility
4490 W. Reformatory Road
Pendleton, IN 46064

*Re: Formal Complaint 10-FC-55; Alleged Violation of the Access to
Public Records Act by the Crawford County Prosecutor's Office*

Dear Mr. Campbell:

This advisory opinion is in response to your formal complaint alleging the Crawford 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, on February 7, 2010, you submitted a request to the Prosecutor for access to a copy of a crime scene videotape. As of February 19, 2010, you received no response from the Prosecutor.

In response to your complaint, the Prosecutor states that she did not receive your request until February 11, 2010. Her office was closed on February 9th and 10th due to snow, and February 11th was her first day back in the office following a major surgery. The Prosecutor spoke with the Crawford County Circuit Court Reporter ("Court Reporter") on Friday, February 12th. The Court Reporter informed the Prosecutor on February 18th that the Court did not have the videotape.

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 does not contest that it 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 states that neither her office nor the Court Reporter maintains a copy of the videotape you seek. 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 the Prosecutor did not violate the APRA by failing to produce a record that her office does not maintain.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Cheryl Hillenberg