



STATE OF INDIANA

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August 31, 2011

Mr. Rocky M. Shroyer
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 11-FC-217; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office Clerk ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Laurel Judkins, Chief Counsel, responded on behalf of the Prosecutor. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request in writing on August 1, 2011 for a copy of the Affidavit of Probable Cause filed under Cause No. 49-G05-0104-CF-078237, State of Indiana vs. Philip D. Hinkle. As of August 25, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have not received a response from the Prosecutor.

In response to your formal complaint, the Prosecutor advised that it had never received your request for records.

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." See I.C. § 5-14-3-1. The Prosecutor is a public agency for the purposes of the APRA. See 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 confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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.

The Prosecutor maintains that it did not receive a request from you. If the Prosecutor did not receive your request, it was not obligated to respond to it. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Prosecutor received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). If the Prosecutor did receive your request and did not respond to it within these timeframes, the Prosecutor violated the requirements of section 9(c) of the APRA.

I trust that the Prosecutor will respond to your request in accordance with the APRA. If you want to ensure that your request reaches the Prosecutor in the future, I would advise you to send it via certified mail or make arrangements for your request to be hand-delivered to the Prosecutor's office.

CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Laurel Judkins