



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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May 15, 2013

Mr. Bradley Keffer  
230 East Ohio Street, Suite 600  
Indianapolis, IN 46204

*Re: Formal Complaint 13-FC-101; Alleged Violation of the Access to Public Records Act  
by the Marion County Prosecutor's Office*

Dear Mr. Keffer:

This is in response to your formal complaint alleging the Marion County Prosecutor's Office violated the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following opinion in response to your complaint. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.* Ms. Laurel Judkins, Chief Counsel, responded on behalf of the Marion County Prosecutor's Office ("MCPO"). Her response is enclosed for your reference.

## BACKGROUND

Your complaint alleges that the MCPO violated the APRA by denying you access to records. In a letter sent to Mr. Terry Curry, Marion County Prosecutor, in his capacity as chairman of the Marion County Traffic Safety Partnership on March 11, 2013, you requested a "list of all currently approved locations for sobriety checkpoints within Marion County" and "[t]he dates and times of all currently schedule sobriety checkpoints within Marion County for the 2013 calendar year." It is not clear from the information before me when the City received your request.

Ms. Jennifer Morris responded to your request in a letter dated March 13, 2013, acknowledging your request. The March 13, 2013 letter also stated that your request would be "carefully considered" and that an "appropriate response" would be provided in accordance with the APRA as soon as possible. You then filed this complaint on March 25, 2013, alleging that the MCPO had improperly denied you access to records as of March 21, 2013. You state in your complaint that you have received no further communication from the MCPO concerning your request.



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Ms. Judkins's response on behalf of the MCPO confirms the factual outline regarding your previous correspondence and request for records submitted to MCPO. However, Ms. Judkins argues that the MCPO has not violated the APRA by improperly denying your request for records. Ms. Judkins notes that the APRA only establishes specific timeframes within which a public agency must acknowledge a request for public records. The APRA does not impose a specific time requirement within which public agencies must actually produce records responsive to a request, but only provides that responsive records be disclosed within a reasonable period of time. Further, Ms. Judkins argues that your complaint is not ripe, presumably because the MCPO does not believe that it had denied your request as of the time of your complaint.

## 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. Accordingly, any person has the right to inspect and copy a public agency's 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 by mail, email 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 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. Here, the City received your request and sent a written acknowledgment of your request two days later on March 13, 2013. The City's acknowledgement of your request was well within the time limitation imposed by the APRA.

After acknowledgment of a request, the APRA does not prescribe timeframes for the actual production of records. In accordance with section 3(b) of the APRA, the public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Your complaint alleges that you were denied access to records as of March 21, 2013, which is eight (8) days after the MCPO responded to your request. Your complaint does not explicitly allege that the time period for producing the requested records has been unreasonable. Based on the information provided to me, I cannot say that a time period of at least eight (8) days is a patently unreasonable time period in which to produce the requested records.



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To apply these standards to the present situation, your complaint suggests that you believe that the MCPO was required to produce the records you requested within seven (7) days of receiving your request. Such an interpretation of the APRA is inconsistent with the findings of previous opinions of the public access counselor. *See Opinions of the Public Access Counselor 00-FC-31; 01-FC-30; 07-FC-173; 11-FC-60; 11-FC-308; 12-FC-178.* The public access counselor has long held that the APRA only requires a response from an agency within seven (7) days of receiving a request for records. The APRA does not require that an agency actually produce responsive records within seven (7) days of receiving a request; rather, Section 3(b) the APRA requires that an agency provide responsive documents within a reasonable time. Based on the information provided in the complaint and in the MCPO's response, I cannot say that the MCPO has acted contrary to section 3(b) of the APRA by denying you access to public records.

## CONCLUSION

For the foregoing reasons, it is my opinion that the MCPO has not violated Section 3(b) of the APRA by improperly denying you access to records, or by not providing responsive records to you as of March 21, 2013.

Please contact me if I can be of additional assistance.

Best regards,

Jennifer L. Jansen  
Acting Public Access Counselor

Cc: Ms. Laurel S. Judkins, Chief Counsel, Marion County Prosecutor's Office