



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

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

November 18, 2013

Mr. Daniel Mola, Offender #219297
Miami Correctional Facility
3038 West 850 South
Bunker Hill, IN 46914

Re: Formal Complaint 13-FC-304; Alleged Violation of the Access to Public Records Act by the Lake County Prosecutor's Office

Dear Mr. Mola,

This advisory opinion is in response to your formal complaint alleging the Lake County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Chief Deputy Prosecutor Barbara McConnell, Esq., responded to your formal complaint. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 15, 2013.

BACKGROUND

Your complaint dated October 20, 2013 alleges the Lake County Prosecutor's Office violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

On or about September 13, 2013, you served upon the Prosecutor a request for the following records:

Any and all information relating to the status of any formal charges against Angela Mattozzi, Aleksandra Dimitrijevic, Jamise Perkins, and Michael Toth and/or the factual basis for any disciplinary actions in which final action was taken and which resulted in either employee being suspended, demoted, or discharged.

You addressed your request to the Custodian of the Records in the Prosecutor's Office. The Prosecutor did not acknowledge your request in the timeframe set forth by the APRA, and is therefore deemed a denial. The Prosecutor in its response, concedes the

deadline for acknowledgement inadvertently lapsed and Ms. McConnell sent you a letter reflecting the denial after the filing of your formal 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 Ind. Code § 5-14-3-1. The Lake County Prosecutor’s Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Prosecutor’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Due to the Prosecutor’s concession the timeframe for acknowledging your request had lapsed by the deadline of seven days after the receipt of your request, it is determined the lack of response is a denial. This is not necessarily a violation of the APRA, as the Prosecutor had grounds for the denial.

Ind. Code § 5-14-3-4(b)(8) holds:

Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

You specifically requested information relating to formal charges against the individuals listed in your complaint. The Prosecutor maintains no formal charges were brought against those individuals and therefore no violation can be found against the Prosecutor. You are correct in your assertion the production of records related to formal charges of a

public employee would need to be disclosed; however, it appears there was no disciplinary action in this case.

CONCLUSION

For the foregoing reasons, the Lake County Prosecutor has not violated the Public Records Act by denying your records request.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Barbara McConnell, Esq.