



STATE OF INDIANA

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April 7, 2014

Mr. Lamarr T. Crittenden #148648
3038 West 850 South
Indianapolis, IN 46914

Re: Formal Complaint 14-FC-50; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office

Dear Mr. Crittenden,

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Prosecutor's Office responded to your complaint via Ms. Laurel Judkins, Esq.. 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 March 13, 2014.

BACKGROUND

Your complaint alleges the Marion County Prosecutor's Office violated the Access to Public Records Act by denying the production of records responsive to your request.

On or about February 25, 2014, you requested a copy of the entirety of your Marion County Superior Court record from the Marion County Prosecutor's Office. On March 19, 2014 the Prosecutor denied your request and directed you to seek the records from the official court record. Alternatively, they suggested you may use the discovery process as a method for obtaining records.

ANALYSIS

The public policy of the APRA states that "(p) roviding a person 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 Marion 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 Office 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.

The advice referenced in the Prosecutor's response was based partially upon my advisory opinion found at *14-FC-01*. In it, I stated:

I do often encounter complaints during the discovery phase of a legal proceeding. Please note it is much more efficient and expeditious to avail yourself of the discovery process than it is to file a formal complaint with my Office. [A] court of law has significantly more enforcement power than I do to compel the production of documents.

The preceding case noted was virtually identical to the present instance and also involved the Marion County Prosecutor's Office as well. Subsequent to the publication of that Opinion, I have had conversations with Ms. Judkins as to the best method of responding to requests from offenders who are seeking post-conviction relief. The Prosecutor argues you have been provided copies of your record during the trial court-level criminal litigation as evidenced by the State's Notice of Discovery Compliance. Furthermore, you have the post-conviction discovery process to which you may avail yourself. As stated above, this is a much better method of obtaining documents during the litigation process.

In the prior case, the materials were provided to the offender's attorney of record and not to the offender himself. Because he had not directly been given his one entitled copy of the record, my ultimate conclusion was a flat denial by the Prosecutor to be violative of the APRA. However, I find the Prosecutor's response to be an appropriate one under these circumstances by advising you to seek the records through discovery or directly from the official court of record. The Public Access Counselor should not be a factor in civil or criminal litigation when there are established Rules of Trial Procedure to guide litigants in the course of pursuing documents. Therefore, it is my Opinion the Prosecutor issued an appropriate denial by offering alternatives to satisfy your records request.

CONCLUSION

For the foregoing reasons, the Marion County Prosecutor's Office has not violated the APRA.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the main signature.

Luke H. Britt
Public Access Counselor

Cc: Ms. Laurel Judkins, Esq.