



STATE OF INDIANA

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May 23, 2016

Joshua Sims - # 164988
New Castle Correctional Facility
Post Office Box A
New Castle, Indiana 47362

Re: Formal Complaint 16-FC-90; Alleged Violation of the Access to Public Records Act by the Allen County Office of the Prosecuting Attorney

Dear Mr. Sims:

This advisory opinion is in response to your formal complaint alleging the Allen County Office of the Prosecuting Attorney; Mr. David McClamrock ("Office") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Mr. David McClamrock, Esq., Deputy Prosecuting Attorney. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 18, 2016.

BACKGROUND

Your complaint dated April 12, 2016 alleges the Allen County Office of the Prosecuting Attorney violated the Access to Public Records Act by failing to provide records responsive to your request.

On March 9, 2016 you sent a records request to the Office, seeking documents from the file of a prosecutor. Your request was denied under the investigatory exemption, Indiana Code § 5-14-3-4(b)(1). The Office suggested you may request the records from the attorney who represented you. On March 20, 2016 you requested a list of all documents in the file of the prosecutor. The Office informed you it did not possess such a list and noted the APRA does not require creation of a list.

On April 20, 2016 the Office responded, declaring the denial was proper for the reasons asserted in your denial.

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 Indiana Code § 5-14-3-1. The Allen County Office of the Prosecuting Attorney is a public agency for the purposes of the APRA. See Indiana Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Indiana Code § 5-14- 3-3(a).

Initially, it should be noted neither you nor the Office has provided a copy of the original request. Therefore, I do not know the exact scope of your records request. If you requested copies of the materials within the prosecutor’s file, the Office properly exercised the investigatory exemption pursuant to Indiana Code § 5-14-3-4(b)(1). This Office has traditionally considered Prosecutors’ Offices an extension of law enforcement before trial and may invoke the exemption to disclosure under subsection (b)(6).

Furthermore, the law does not require a compilation in the form of a list which would effectively create an entirely new public record. If you requested a list of items in the prosecutor’s file, the Office has stated it does not have such a list and therefore the creation of one is not required by law. As the Prosecutor has argued, any discoverable documents would have been available via court order during your criminal investigation.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Allen County Office of the Prosecuting Attorney has not violated the Access to Public Records Act.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. David McClamrock, Esq.