

November 12, 2002

Mr. Larriante J. Sumbry  
#965137 C-455  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-55*; AAlleged Denial of Access to Public Records by the Lake County Prosecuting Attorney's Office.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on November 4, 2002. You have alleged that the Lake County Prosecuting Attorney's Office ("Prosecutor's Office") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Office failed to respond to your public records request dated September 30, 2002. Ms. Kathleen M. O'Halloran, Deputy Prosecuting Attorney, responded to your complaint. A copy of her response is enclosed for your information. For the reasons set forth below, it is my opinion that the Office did not violate the APRA with respect to your September 30th public records request because it appears that the Office never received your request.

### BACKGROUND

According to your complaint, on September 30, 2002 you made a request to the Prosecutor's Office for various public records related to two cases, 45G01-9908-CF-153 and 45G01-9908-CF-148. Some of the records you requested included the police file, the prosecutor's file, names of the arresting officers in 1998, the original arrest warrant, witness statements, informant's sworn testimony, informant's criminal history, omnibus hearing transcripts, and a tape of an alleged controlled buy. You did not provide this Office with a copy of your public records request to the Prosecutor's Office. When you did not receive a response by October 29, 2002, you filed your complaint with this Office. As of the filing of your formal complaint, you allege that you had received no response from the Prosecutor's Office.

In response, Ms. O'Halloran stated that she had no record of receiving your September 30th request as she could not locate it. She did review your October 10th letter to this Office in which you described your request to the Prosecutor's Office. Ms. O'Halloran did provide a substantive response to your public records request. She stated that with the exception of the omnibus hearing transcripts you requested, all other records you requested are investigatory records under Indiana Code section 5-14-3-4(b)(1) and exempt from disclosure under the APRA. As for the hearing transcripts, Ms. O'Halloran stated that the

Prosecutor's Office does not maintain these public 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." Ind. Code § 5-14-3-1. The Prosecutor's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Prosecutor's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it appears that the Prosecutor's Office never received your September 30, 2002 public records request.<sup>1</sup> For this reason, it is my opinion that the Prosecutor's Office did not deny you access to public records in violation of the APRA because that Office never received your request. In any event, Ms. O'Halloran has now provided you with a substantive response to your request as a result of the formal complaint process.

## CONCLUSION

It is my opinion that the Lake County Prosecuting Attorney's Office did not violate the Access to Public Records Act with respect to your September 30, 2002 request for access to public records because that Office never received your request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Kate O'Halloran

Lake County Prosecuting Attorney's Office

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<sup>1</sup> Based on your numerous contacts to this Office, it appears that many Lake County public agencies are not receiving the requests you are sending. You may want to ensure that you are sending these requests to the proper address with room number or send these by certified mail to verify delivery.