

May 14, 2008

John McGauley  
2205 White Plains Court  
Fort Wayne, Indiana 46815

*Re: Formal Complaint 08-FC-105; Alleged Violation of the Access to Public Records Act by Adult Protective Services*

Dear Mr. McGauley:

This advisory opinion is in response to your formal complaint alleging Adult Protective Services (“The Agency”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Agency’s response to your complaint for your reference. It is my opinion the Agency violated the Access to Public Records Act if it did not respond to the request within time allowed by the APRA.

#### BACKGROUND

In your complaint you allege that you requested records from the Agency on March 21, 2008. You allege that by March 29 you had received no response to your request. You mailed this complaint on April 21, and I received it on April 24.

The Agency responded to the complaint by electronic mail from Patrick Calkins dated April 28. Mr. Calkins indicated the appropriate agency from which to request the records is the Prosecutor for Indiana’s 38<sup>th</sup> Judicial Circuit (“Prosecutor”). Further, the Agency contends the files are criminal justice records discoverable only by subpoena, pursuant to the 1974 Federal Right to Privacy Statute.

The Prosecutor responded to the complaint by letter dated April 28 from Chief Deputy Prosecuting Attorney Michael McAlexander. Mr. McAlexander contends the records are excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1). Notwithstanding the exception, the Prosecutor has provided you access to the file because you were appointed the guardian of the individual with whom the file was associated. The Prosecutor redacted names of individuals to protect their privacy. The Prosecutor indicates that you believe additional information exists, but the Prosecutor contends no additional records exist.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. Both the Agency and the Prosecutor are clearly public agencies for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Agency or the Prosecutor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail, facsimile, or electronic mail and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered verbally or in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a).

Here you allege you submitted the request to the Agency on March 21. You have not indicated whether you submitted the request verbally or in writing. If you submitted the request, the Agency had a duty to respond to the request, even if the Agency does not maintain the requested records. The Agency's response could have been an indication that the agency does not maintain the records and an indication that you should contact the Prosecutor for the records. If the Agency did not respond to the request, it violated the APRA.

Regarding the Prosecutor's response to the request, the Prosecutor contends the records are investigatory records and therefore excepted from disclosure. I.C. § 5-14-3-4(b)(1) excepts from disclosure investigatory records of law enforcement agencies. The Prosecutor is a law enforcement agency. I.C. § 5-14-3-2(1)(6). An investigatory record is information compiled in the course of the investigation of a crime. I.C. § 5-14-3-2(h). So long as the Prosecutor can sustain the burden to show the records were compiled during the course of the investigation of a crime, the Prosecutor may exercise the discretion to withhold all or part of the records. *See* I.C. § 5-14-3-9(f), placing burden of proof on public agency.

## CONCLUSION

For the foregoing reasons, it is my opinion the Agency violated the Access to Public Records Act if it did not respond to the request within time allowed by the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Patrick Calkins, Director, Adult Protective Services  
Michael McAlexander, Chief Deputy Prosecuting Attorney