

May 20, 2008

Larry Anglin
DOC #141199
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 08-FC-108; Alleged Violation of the Access to Public Records Act by the Office of the Kosciusko County Prosecuting Attorney

Dear Mr. Anglin:

This advisory opinion is in response to your formal complaint alleging the Kosciusko County Prosecuting Attorney (“Prosecutor”) 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 Prosecutor’s response to your complaint for your reference. It is my opinion the Prosecutor has not violated the Access to Public Records Act.

BACKGROUND

In your complaint you allege that you requested records from the Prosecutor on February 14 and April 2, 2008. You specifically requested a copy of medical reports of a victim in a specific cause number. The Prosecutor denied you access to the records based on I.C. § 5-14-3-4(a)(9) and I.C. § 5-14-3-4(b)(1). You mailed this complaint on April 24, and I received it on April 30. You allege denial of access.

The Prosecutor responded to your complaint by letter dated May 16 from Deputy Prosecuting Attorney Christanne C.H. Hampton. The Prosecutor contends that the office does not maintain any medical records for the individual whose medical records you seek. Further, the Prosecutor contends that if the office did maintain medical records, it would withhold them from disclosure pursuant to I.C. § 5-14-3-4 (specific subsection not provided). The Prosecutor further contends that you make a vague request for a copy of any and all other documents related to a particular cause number. The Prosecutor contends that investigatory records and attorney work product are excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1) and (2). The Prosecutor contends that you have not requested any records which fall outside those exceptions.

Finally, the Prosecutor contends that the office previously provided discovery to you.

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. The Prosecutor is clearly a public agency 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 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 mandatory exception to disclosure exists for patient medical records and charts created by a provider, unless the patient gives written consent under I.C. 16-29. *See* I.C. § 5-14-3-4(a)(9). Provider has the meaning set out in I.C. § 16-18-2-295(b), which includes, among others, an employer of a certified emergency medical technician, a certified emergency medical technician-basic advanced, a certified emergency medical technician-intermediate, or a certified paramedic. *Id.* If an agency maintains a medical record that was not created by a provider or is not otherwise excepted from disclosure under state statute or federal law or other mechanism provided by I.C. § 5-14-3-4, such a record would be disclosable. Here, though, the Prosecutor contends it does not maintain any medical records for the individual whose medical records you requested. An agency cannot and is not required to produce records it does not maintain.

Regarding your request for any and all other documents pertaining to a certain cause number, the APRA requires a requester to identify with reasonable particular the records being requested. I.C. § 5-14-3-3(a). If the Prosecutor cannot ascertain which records you seek, the request may not be particular enough. Here, though, the Prosecutor has asserted that any records related to the cause number fall under one of two exceptions, the investigatory records exception (I.C. § 5-14-3-4(b)(1)) and the attorney work product exception (I.C. § 5-14-3-4(b)(2)). While the Prosecutor bears the burden of proof to sustain the denial in a court action (*See* I.C. § 5-14-3-9(f)), I see no evidence here that you have requested with reasonable particularity any records not excepted from disclosure under the two cited exceptions.

CONCLUSION

For the foregoing reasons, it is my opinion the Prosecutor has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Christanne C.H. Hampton