



STATE OF INDIANA

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March 3, 2009

Donald Houser
DOC #923239
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 09-FC-37; Alleged Violation of the Access to Public Records Act by the Noble County Prosecuting Attorney

Dear Mr. Houser:

This advisory opinion is in response to your formal complaint alleging the Noble County Prosecuting Attorney ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. It is my opinion the Prosecutor violated the APRA by not responding to the request within seven days but did not otherwise violate the APRA.

BACKGROUND

You allege that on December 30, 2008 you sent to the Prosecutor a request for access to a number of records. You allege that as of the date of your complaint you had not received a response from the Prosecutor. Your complaint was postmarked January 30, 2009 and my office received it on February 3.

The Prosecutor responded to the complaint by letter dated February 16. The Prosecutor acknowledges he did receive your request on January 5 but did not see it until the following week because he was out of the office when it arrived. The Prosecutor indicates he also received a similar request from attorney Kevin Likes, whom he indicates represented you at trial in the county. The Prosecutor indicates he is unclear what you are requesting but indicates that if you request a record of proceedings, the Prosecutor does not maintain such. He indicates those records have been sent to the Indiana Supreme Court.

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(m). 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 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 or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you allege you mailed the request to the Prosecutor on December 30, and the Prosecutor acknowledges receiving it on January 5. If the Prosecutor received your mailed request on January 5, the Prosecutor had the duty to respond to the request within seven days of receipt, even if he was unsure exactly what you sought. I.C. § 5-14-3-9(b). If the Prosecutor was unclear as to which records you sought, he could indicate such in the response. If the office failed to do so, the agency violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Prosecutor violated the APRA by not responding to the request within seven days but did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Stephen Clouse, Noble County Prosecuting Attorney