



STATE OF INDIANA

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March 4, 2009

Derek Morris
DOC #104145
3038 West 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 09-FC-43; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office ("Office") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for copies of records. The Office's response to the complaint is enclosed for your reference. It is my opinion the Office did not violate the APRA by not responding to a request it did not receive.

BACKGROUND

You allege that on January 9, 2009 you submitted a request to the Office for copies of seventeen different records. You filed the present complaint on February 10 (postmarked February 6), alleging the Office failed to respond to the request.

The Office responded to the complaint by undated letter received by my office on February 23. The Office contends that although it has received many requests from you over the years, it did not receive your present request. Chief of Staff Helen Marchal indicates that now that she has received a copy of the request, she will have the file pulled from storage and will review and consider the request and send you an appropriate response.

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 Office 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 Office 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).

Here the Office asserts it did not receive your request. If the Office did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Office did not receive your request, it did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, it is my opinion the Office did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Helen Marchal, Marion County Prosecutor's Office