



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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April 30, 2009

Maceo Neal
DOC #881487
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 09-FC-89; Alleged Violation of the Access to Public Records Act by the St. Joseph County Prosecuting Attorney

Dear Mr. Neal:

This advisory opinion is in response to your formal complaint alleging the St. Joseph 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. A copy of the Prosecutor's response to the complaint is enclosed for your reference. It is my opinion the Prosecutor did not violate the APRA.

BACKGROUND

You allege that on March 5, 2009 you mailed a request to the Prosecutor for access to a number of records. You allege that as of the date you submitted the complaint you had received no response from the Prosecutor. The complaint was postmarked on March 30, and my office received it on April 2.

The Prosecutor responded to the complaint by letter dated April 3 from Catherine Wilson, Director of Special Projects for the Prosecutor. The Prosecutor contends the office did not receive your March 5 request. Further, the Prosecutor provided a copy of a response sent to you on April 8, after the Prosecutor received a copy of the complaint and request from my office.

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 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, the Prosecutor did not receive the March 5 request. If the Prosecutor had received the March 5 request, the office would have been required to issue a response to you within seven days of receipt. I.C. § 5-14-3-9(b). An agency cannot, though, respond to a request it has not received. The Prosecutor first received a copy of the request on April 2, when my office sent a copy of the complaint and request. The Prosecutor responded to you on April 8, complying with I.C. § 5-14-3-9(b).

CONCLUSION

For the foregoing reasons, it is my opinion the Prosecutor has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Catherine Wilson, St. Joseph County Prosecuting Attorney's Office