



STATE OF INDIANA

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April 30, 2009

Catherine Davis
6633 Frankenberger Drive
Indianapolis, Indiana 46237

Re: Formal Complaint 09-FC-91; Alleged Violation of the Access to Public Records Act by the Marion County Prosecutor's Office

Dear Ms. Davis:

This advisory opinion is in response to your formal complaint alleging the Marion County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you 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 27, 2009 you requested a list of information related to child support owed. You allege that on April 3 you were notified the information would not be provided because the agency tries to keep the information confidential. You filed the present complaint on April 3, alleging you have been denied access to public records.

The Prosecutor responded to the complaint by an undated letter my office received on April 13 from Helen Marchal, Chief of Staff for the Prosecutor. The Prosecutor indicates there is no staff member named Alicia Comber, which is the person you indicate was responsible for the denial of access. The Prosecutor indicates there is on staff an Elisha Comer, a deputy prosecutor in the Child Support Division. Ms. Comer confirms she spoke with you but does not recall receiving a request from you for access to records. The Prosecutor has in place a policy requiring requests to be submitted in writing. Ms. Marchal asks that you make your request in writing, providing as much specificity as possible.

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). If the request is made by telephone or in person and the agency does not respond within twenty-four hours of the request, the request is deemed denied. I.C. § 5-14-3-9(a).

Here, the Prosecutor contends Ms. Comer does not recall you making a request for access to records pursuant to the APRA. While an agency is required to respond to requests within timeframes specified in I.C. § 5-14-3-9, an agency cannot respond to a request it does not receive. As such, if the Prosecutor did not understand your communication to be a request for access to records, the agency was not required to respond.

The Prosecutor asks that you submit your request for access to records in writing. An agency may require a request for access to records to be made in writing, in or on a form prescribed by the agency. *See* I.C. § 5-14-3-3(a). Here, the Prosecutor has not required you to complete a specific form but has asked that you submit the request to the office in writing. This is acceptable pursuant to I.C. § 5-14-3-3(a).

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: Helen Marchal, Marion County Prosecutor's Office