



STATE OF INDIANA

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August 26, 2008

Derek Morris
DOC #104145
Miami Correctional Facility
PO Box 900
Bunker Hill, Indiana 46914

Re: Formal Complaint 08-FC-193; 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 ("Prosecutor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by taking an unreasonable amount of time to provide 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 has not violated the APRA.

BACKGROUND

You allege that the Prosecutor violated the APRA by taking an unreasonable amount of time to provide you copies of records. You submitted the complaint on August 8, 2008, and I received it on August 12, 2008.

The Prosecutor responded to the complaint by letter dated August 23 from Chief of Staff Helen Marchal. The Prosecutor indicates the office received your request for copies of records dated June 24 and responded to the request by letter dated June 27. In the letter, Ms. Marchal indicated the request would be carefully reviewed and considered. Ms. Marchal indicates that after she sent the response to you, the case file was ordered from storage. Ms. Marchal indicates that on August 23 she finalized her review of your file and prepared an additional response to you, dated August 23.

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). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Prosecutor received your request on or about June 24 and sent you a response dated June 27, well within the time for response prescribed by I.C. § 5-14-3-9(b). Based on Ms. Marchal's response, I understand the Prosecutor had to await delivery of the requested file from storage and then needed to review the records to determine whether any exceptions to disclosure applied. While I do not have information regarding the time period it generally takes to retrieve files from storage, it is my opinion that the time the Prosecutor took to retrieve the file and review the records to determine which records were disclosable was not unreasonable. It is my understanding the Prosecutor has now provided you with any disclosable records responsive to your request.

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, Chief of Staff, Marion County Prosecutor's Office