



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

March 25, 2011

Mr. Jonathan Farley Washington  
DOC#: 174831  
5501 South 1100 West  
Westville, IN 46391

*Re: Formal Complaint 11-FC-57; Alleged Violation of the Access to Public Records Act by the Lake County Prosecutor's Office*

Dear Mr. Washington:

This advisory opinion is in response to your formal complaint alleging the Lake County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

You allege in your complaint that you sent a records request to the Lake County Prosecutor's Office on January 18, 2011. As of February 16, 2011, you had not received a response. Your request sought "1) incident reports, 2) findings of fact and conclusions, 3) county prosecutor's office-final disposition [sic] and police and arrest reports relating to two police shootings by Office Danny Schumann of East Chicago Police Department." My office forwarded your complaint to the Lake County Prosecutor's Office, but as of today we have not received a response.

## ANALYSIS

The public policy of the APRA states that "(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 a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Prosecutor's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for access to public 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 (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four (24) hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. If a request is made orally, either in person or by telephone, a public agency may deny the request orally. I.C. § 5-14-3-9(c). When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

Here, it is unclear to me why the Prosecutor failed to respond to your request. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Prosecutor has not explained why it denied your request, I cannot find that it has sustained its burden of proof to withhold the requested records.

I encourage the Prosecutor to either produce the requested records to you or cite to an applicable exception to the APRA that provides it with the legal authority to withhold the records.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor violated the APRA if it failed to respond to your request.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Bernard A. Carter