



STATE OF INDIANA

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January 11, 2016

Mr. Jeffrey Zbyrowski
New Castle Correctional Facility
P.O. Box A
New Castle, Indiana 46383

Re: Formal Complaint 15-FC-326; Alleged Violation of the Access to Public Records Act by the Porter County Prosecutor's Office

Dear Mr. Zbyrowski:

This advisory opinion is in response to your formal complaint alleging Porter County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Court has responded to your complaint via Mr. T. Matthew Frost, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 16, 2015.

BACKGROUND

Your complaint dated December 14, 2015 alleges Porter County Prosecutor's Office violated the Access to Public Records Act by failing to acknowledge your public records request.

On November 9, 2015 you requested a complete copy of a case file. The Prosecutor did not respond to your request.

On December 28, 2015 the Prosecutor's Office responded, noting its failure to respond was an oversight on its part. The Office was unaware the APRA applied to offenders seeking the type of information you requested.

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." See Ind. Code § 5-14-3-1. The Porter County Prosecutor's Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Prosecutor's disclosable public records

during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Prosecutor concedes it overlooked your request. This was because the Prosecutor's Office was unaware the APRA was not fulfilled by the discovery during your criminal litigation. Indeed the waters can be muddy when intertwining the production of documents in a criminal case versus public access. The Prosecutor is now aware of its responsibilities under the APRA when dealing with offenders and has taken the appropriate steps to remedy the issue. It is my sincere hope any delay you experienced from this oversight did not substantively prejudice you in any way.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. T. Matthew Frost, Esq.