



# STATE OF INDIANA

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January 22, 2016

Mr. David Cox  
New Castle Correctional Facility  
P.O. Box A  
New Castle, Indiana 47362

*Re: Formal Complaint 15-FC-333; Alleged Violation of the Access to Public Records Act by the Office of the Lake County Prosecuting Attorney*

Dear Mr. Cox:

This advisory opinion is in response to your formal complaint alleging Office of the Lake County Prosecuting Attorney ("Prosecutor's Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Prosecutor's Office has responded via Ms. Kathleen O'Halloran, Deputy Prosecutor. Her 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 29, 2015.

## BACKGROUND

Your complaint dated December 20, 2015, alleges the Office of the Prosecuting Attorney violated the Access to Public Records Act by improperly denying your records request.

On December 8, 2015 you requested a complete copy of files maintained by the Office of the Prosecuting Attorney. Your request was denied under the investigatory records exemption, Ind. Code § 5-14-3-4(b)(1). The Prosecutor's Office responded to your complaint reasserting its denial and maintaining it was proper.

## 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 Office of the Prosecuting Attorney 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).

The Prosecutor's Office has cited the investigatory exemption under Ind. Code § 5-14-3-4(b)(1). This exemption can apply to *all* records related to an investigation, such as law enforcement notes, witness statements and other materials. This exemption can apply to specific documents within a record or it can apply to the entire record if indeed the entire record is investigatory in nature. In this case, the Prosecutor's Office has exercised its discretion to apply the exemption to the entire record. It is likely there are other materials which have been introduced to the Court's file. To the extent this is the case, you may request said file from the judiciary. They would be provided to you as they would no longer be law enforcement records and the judiciary cannot claim the investigatory records exception to disclosure.

### CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the Office of the Lake County Prosecuting Attorney has not violated the Access to Public Records Act.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Ms. Kathleen O'Halloran, Deputy Prosecutor