

PUBLIC ACCESS TO ELECTION RECORDS

General rules

Generally, the Access to Public Records Act (“APRA”) (*Ind. Code § 5-14-3*) provides that all records maintained by a public agency are public records, but some may be confidential or disclosable at the discretion of the agency. All public records that do not fall into the statutory exceptions must be made available for public inspection and copying. (*See I.C. § 5-14-3-3*)

The APRA is a general statute; any specific statutes regarding access to specific records supersede the APRA. Title 3 contains provisions related specifically to election materials and voter registration records.

An agency cannot declare records confidential absent statutory authority or rule-making authority specifically allowing the agency to classify records confidential. (*See I.C. § 5-14-3-4(a)(2)*)

The agency may not deny access because the person refuses to state the purpose of the request. The agency may ask the purpose of the request but may not demand to know unless the agency can deny access on the basis of a statutory limitation on to whom or for what purpose the record may be disclosed. (*See I.C. § 5-14-3-3(a)*)

If a public record is partially disclosable, the public agency must separate or redact the nondisclosable material and disclose the rest of the record. (*See I.C. § 5-14-3-6(a)*)

An agency may not disclose a social security number contained in the records of a public agency. (*See I.C. § 5-14-3-4(a)(12)*) The last four digits do not constitute a social security number.

Election materials (*applies to elections held after December 31, 2003)

The general rule for retention of election materials is that they must be retained for 22 months from the date of the election. (*See I.C. § 3-10-1-31.1(c)*) Any record concerning an issue in litigation must be retained until the controversy is resolved, subject to court orders.

The general rule for election materials is that they are available for public inspection and copying after the period for filing and recount and contest has expired. (*See I.C. § 3-10-1-31.1(c)*) This includes poll lists, applications for absentee ballots, ballot envelopes, tally sheets, and the computer programs used to tabulate votes.

Exceptions to public inspection and copying:

- Unused ballots may be disposed of after the time for filing a petition for recount or contest has expired. One ballot and one provisional ballot must be preserved. (*See I.C. § 3-11-3-31*)
- Affidavits challenging a voter as an illegal voter must be opened and copied. The copy must be sent to the secretary of state. The original must be resealed and delivered to the foreman of the grand jury. (*See I.C. § 3-14-5-2*) This includes provisional ballot affidavits. (*See I.C. § 3-14-5-2*)
- Provisional ballot materials indicating whether a voter’s ballot was counted and if not, the reason why not, must be maintained as confidential. (*See I.C. § 3-11.7-6-3*)
- If an order is issued under *I.C. § 3-12-6-19*, *I.C. § 3-12-11-16*, or *42 U.S.C. 1973*, continued preservation of the confidentiality of the records is required.
- If a petition for a recount or contest is filed, the election material remains confidential until completion of the recount or contest. (*See I.C. § 3-10-1-31.1(d)*)

Ballots remain confidential even after the period for filing a petition for recount or contest has expired. (*See I.C. § 3-10-1-31.1(c)*)

If a county voter registration office determines that the inspection and copying of precinct election material would reveal the political parties, candidates, and public questions for which an individual cast an absentee ballot, the county voter registration office shall keep confidential only the part of the election material necessary to protect the secrecy of the voter's ballot. (*See I.C. § 3-10-1-31.1(f)*)

Upon delivery of the poll lists, the voter registration office may unseal the envelopes containing the poll lists for the purposes of cancellation, transfer, name change, or addition of a registration. Upon completion of inspection, the poll list shall be preserved with the ballots and other election materials. (*See I.C. § 3-10-1-31.1(e)*)

Voter registration records

Generally, voter registration affidavits or forms must be available at reasonable times for public inspection, transcription, and copying. (*See I.C. § 3-7-27-12*)

If a county conducts a voter list maintenance program, the county must retain the related records for two years. The records must be available for inspection and copying. (*See I.C. § 3-7-27-6*)

Exceptions to public inspection and copying of voter registration records:

- Records concerning declinations to register to vote
- Records that indicate the identity of a voter registration agency where a person registered
- Registration records of participants in the attorney general's confidentiality program for abused persons

A county voter registration office shall act in accordance with a nondiscriminatory uniform policy adopted by the county election board with regard to voter registration information concerning voters of the county maintained on a computerized system. The policy must either permit a person to obtain a copy of the electronic voter registration information or not permit a person to obtain a copy of the information. (*See I.C. § 3-7-27-6(c)*)

A person who requests computerized voter information under this subsection must provide a written statement the person will not use the information to solicit merchandise, goods, services, or subscriptions or sell, loan, give away, or otherwise deliver the information to any other person for a purpose other than political activities or political fundraising activities. State Form VRG-24 must be used.

A county voter registration office is not required to create and provide a list or record that has not otherwise been created unless state statute imposes a duty on the agency to create the list or record. But if a list has been created, even if not required by statute, it is a public record and access to it must be provided unless it is exempted from disclosure under the APRA. (*See I.C. § 5-14-3-3*)

If section 3 of the APRA (the right to inspect and copy records) conflicts with Ind. Code 3-7 (voter registration laws), I.C. 3-7 applies. (*See I.C. § 5-14-3-3(h)*)

Original voter registration records (e.g. paper applications) must be retained as long as that voter is a registered voter, whether active or inactive. Upon cancellation of the registration, the 22-month retention begins.