

May 16, 2006

Richard Volbrecht
9221 Parkway Drive
Highland, IN 46322

Re: Formal Complaint 06-FC-77; Alleged Violation of the Access to Public Records Act by the Lake County Board of Election and Registration

Dear Mr. Volbrecht:

This is in response to your formal complaint alleging that the Lake County Board of Election and Registration ("Board") violated the Access to Public Records Act by failing to respond to your request for records. I find that if the Board failed to respond to your request, the Board violated the Access to Public Records Act.

BACKGROUND

You requested from the Board machine tally sheets for specified precincts relating to the May 2, 2006 election. You requested the records in person on May 4, 2006 at 4:00 p.m. You allege in your complaint that you have not received any response. You filed a complaint with the Office of the Public Access Counselor on May 9, 2006. You requested priority status because you needed the records to present before the Lake County Board of Election and Registration in a proceeding to be conducted by that agency. I granted your request for priority status, but upon review, I determined that the request for priority status was granted improvidently.¹ Nevertheless, I am issuing this opinion within seven days because I told you that I would do so.

I sent a copy of the complaint to the Board on May 9. I have not received a response to the complaint. I was unable to reach the Board by telephone.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). A public agency is required to respond to a request within 24 hours of receipt if the person who requests the record hand-delivers his request to the public agency. Failure to timely respond means the request is deemed denied. Ind. Code 5-14-3-9(a). Accordingly, assuming that you hand-

¹ Under 62 IAC 1-1-3(3), a formal complaint has priority if the complainant has filed a complaint concerning denial of access to public records and at least one (1) of the public records requested was sought for the purpose of presenting the public record in a proceeding to be conducted by *another* public agency. (Emphasis supplied). You allege that you sought the record from the same public agency that you intended to present it before. Therefore, it would not have been necessary for me to issue the opinion within seven days because you do not allege the circumstances of 62 IAC 1-1-3(3).

delivered your request to the Board on May 4 at 4:00 p.m., the Board was required to issue a response within 24 hours, or by Friday, May 5, 2006. The time for response is the date that the public agency issues a response, not when the requester receives it.

You state that you received no response by the time you filed your complaint, which was early on Tuesday, May 9. If the Board had mailed a response letter late on Friday to your home in Highland, it is possible that the letter might not reach you until at least Tuesday, May 9. Hence, I cannot regard the evidence you bring forth of the Board's inaction as incontrovertible evidence that the Board failed to timely respond. I find only that *if* the Board failed to issue a response within 24 hours, it violated the Access to Public Records Act.

CONCLUSION

If the Lake County Board of Election and Registration failed to timely respond to your request for records, it violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Tom Philpot