

July 30, 2007

Michael Jack Stephens
128 Pinto Way
Bloomington, Georgia 31302

Re: Formal Complaint 07-FC-186; Alleged Violation of the Access to Public Records Act by the Indiana Election Division

Dear Mr. Stephens:

This is in response to your formal complaint alleging the Indiana Election Division (“IED”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by failing to respond to your request for records. A copy of IED’s response to your complaint is enclosed for your reference. I find that the Indiana Election Division did not violate the APRA.

BACKGROUND

Your complaint alleges you sought records from IED by the form prescribed by IED. You indicate you faxed the form on June 27, 2007 but do not provide fax confirmation. You requested records related the oath of an Elkhart County judge.

In response to your complaint, IED indicated it did not have a record of having received your request. On July 11, after receiving a copy of your complaint from this office, IED responded to your request by providing a copy of the requested document.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2.

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

IED is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of IED during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

Your complaint alleges IED did not respond to your request. IED indicated it does not have a record of having received your request. While the response time allowed by IC 5-14-3-9 for a request received by facsimile is seven days from the date of receipt, IED could not respond to a request it did not receive. IED has since granted your request and provided you a copy of the record you sought.

CONCLUSION

For the foregoing reasons, I find that the Indiana Election Division did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: J. Bradley King and Pamela Potesta, Co-Directors of the Indiana Election Division