

October 17, 2007

Rebecca Crumes
3044 Nichol
Anderson, Indiana 46011

Re: Formal Complaint 07-FC-284; Alleged Violation of the Access to Public Records Act by the Madison County Board of Voter Registration

Dear Ms. Crumes:

This is in response to your formal complaint alleging the Madison County Board of Voter Registration (“Board”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to a record, namely a copy of the “county registration disk.” A copy of the Board’s response is enclosed for your reference. I find that the Board did not violate the APRA.

BACKGROUND

In your complaint you allege you requested on September 7, 2007 a copy of the county voter registration disk. You delivered the request in person on September 7. You allege that the Board indicated to you it would respond to you by September 21, after consulting with my office, the Indiana Election Division, and the county attorney, to let you know whether and when you may access the records you requested. You filed your complaint on September 18, alleging denial of access.

The Board responded to your complaint by letter dated September 25. The Board indicated it received your request at 3:30pm on Friday, September 7 and responded to you by phone and in writing at 3:20pm on Monday, September 10. The Board indicated it would need to obtain some guidance to determine whether your request could be granted. The Board then consulted with the Indiana Election Division regarding the request. After speaking with J. Bradley King of the Indiana Election Division, the Board sent you a letter indicating the record could not yet be released to you because the Madison County Election Board (“MCEB”) had not yet adopted a policy concerning access to electronic records. As such, the Board would not provide the requested records to you until the MCEB had adopted a policy. The Board indicated in its September 25 letter that the MCEB was scheduled to meet on October 2. I have not heard

from either you or the Board since then whether the MCEB adopted a policy and whether you have received the records 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." Ind. Code §5-14-3-1. The Board is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered in person and the agency does not respond to the request within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9.

(c) In accordance with I.C. §5-14-3-3(g) and notwithstanding any other statute, a county voter registration office shall, with regard to voter registration information concerning voters of the county on a computerized system, act in accordance with a nondiscriminatory uniform policy adopted by the county election board. The policy must either permit a person to duplicate or obtain a duplicate copy of a computer tape, computer disc, microfilm, or other similar record system that contains this voter registration information or not permit the person to duplicate or obtain a duplicate copy of the information.

I.C. §3-7-27-6.

Here, the Board has indicated the MCEB has not yet adopted a policy either permitting or not permitting a person to duplicate or obtain a duplicate copy of the disk you have requested. While the general presumption of the APRA is that records are disclosable unless an exception to disclosure is applicable (I.C. §5-14-3-3), this more specific statute (I.C. §3-7-27-6(c)) regarding the adoption of a policy applies to the voter registration disk you request. As such, the MCEB would need to adopt a policy regarding a requester's ability to obtain a copy of the disk. It is my opinion that the county election board may not refuse to adopt a policy as a way to avoid addressing a request for a copy of the information. But as I understand it here, the MCEB may not have realized the need to adopt a policy under I.C. §3-7-27-6(c), as the county and all counties in Indiana are still adjusting to the new statewide voter registration system. Further, it is my understanding the Board has now notified the MCEB of the need to adopt a policy so the Board may address your request and other similar requests. Pursuant to I.C. §3-7-27-6(c), the MCEB may adopt a policy granting access to a copy of the disk or denying access to a copy of the disk.

Regarding the time for responding to your request, the Board received your request when you appeared in person at the office at 3:30pm on Friday, September 7. Under the APRA, an agency has 24 hours to respond to a request delivered in person. The public access counselor has said this means 24 business hours. *Opinion of the Public Access Counselor 07-FC-230*. A

response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. In this case, the Board responded at 3:20pm on Monday, September 10, which is within the 24 business hours allowed by the APRA.

CONCLUSION

For the foregoing reasons, I find that the Board did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Pam Jones and Dena Willis, Madison County Board of Voter Registration