

December 5, 2007

Michael Stephens  
128 Pinto Way  
Bloomington, Georgia 31302

*Re: Formal Complaint 07-FC-346; Alleged Violation of the Access to Public Records Act by the Indiana Secretary of State*

Dear Mr. Stephens:

This advisory opinion is in response to your formal complaint alleging the Indiana Secretary of State ("Secretary") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Secretary's response to your complaint is enclosed. In my opinion the Secretary has not violated the APRA.

#### BACKGROUND

You allege that you mailed a request for a copy of a judge's bond to the Secretary on October 23, 2007. Hearing no response, you filed this complaint on November 14.

The Secretary responded to your complaint by letter dated November 19 from Jerry Bonnet. Mr. Bonnet indicated that the Secretary has no record of having received your request. He further speculated that because of the volume of facsimile transmissions the office receives, it could have been misfiled. Mr. Bonnet indicated the Secretary does not maintain the record you request and referred you to the office of the Kosciusko County Recorder.

#### ANALYSIS

The public policy of the APRA states, "(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." I.C. §5-14-3-1. The Secretary's office 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 Secretary's office 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 “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. I.C. §5-14-3-2.

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 by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

If the Secretary’s office received your request, it would have a duty under the APRA to respond within seven days of receipt. I.C. §5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Secretary’s office did not receive your request, it did not violate the APRA by not responding.

It is my understanding the Secretary has now provided you with information regarding where you might obtain the record you request.

I will again note that you have filed several complaints with this office. Your pattern is to request records and then wait until seven days after the agency should have received the request. At that point you file a complaint with this office. Since obtaining the records is your goal and in light of the thirty days you must wait for my opinion, I would strongly encourage you to contact the agency after seven days have passed to inquire about the status of the request. While you are under no obligation to do this under the APRA, it might be a much more efficient and effective way to get the records you seek than filing complaint after complaint with this office. Furthermore, I find that many of your requests are directed to the incorrect public agency. When conducting your research, I encourage you to verify you are requesting information from the appropriate agency. I trust this will expedite your research as well as help prevent public agencies, many of which are running on limited budgets and limited personnel resources, from responding to misdirected requests for records.

#### CONCLUSION

For the foregoing reasons, it is my opinion that while the Indiana Secretary of State did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Jerry Bonnet, Indiana Secretary of State’s office