

April 16, 2007

Kristina H. Nelson
10731 Timber Oak Circle
Indianapolis, IN 46236

Re: Formal Complaint 07-FC-68; Alleged Violation of the Access to Public Records Act by the Marion County Board of Voters Registration

Dear Ms. Nelson:

This is in response to your formal complaint alleging that the Marion County Board of Voters Registration ("Board") violated the Access to Public Records Act by failing to provide records in a reasonable timeframe. I find that the Board did not provide the information in a reasonable timeframe.

BACKGROUND

You allege that on February 15 you submitted a written request for a copy on disk of "all the Republican voters in the City of Lawrence or Lawrence Township, which ever would be easier for the office to provide." You were told that the disk would be ready in about two days. The Board called you the next day to inform you that your request had been given to Board member Cindy Mowery and you could call back in a few days to find out if the disk was ready.

You telephoned Ms. Mowery on February 21 to state that you were coming to get the disk, but Ms. Mowery asked you to clarify what election you wanted. You stated you sought the last general election of November 2006. She suggested that you check back at the end of the week. You went to the Board office on February 23. Ms. Mowery told you it would be awhile and you decided to check in one week.

On March 1 you again visited the Board office. Ms. Mowery told you to check with Marion County Republican headquarters if you needed the list. Ms. Mowery also informed you that she was very busy and you would just have to wait. On March 7 you again went to the Board office, and Ms. Mowery told you that "she had a lot to do and wouldn't be able to get the disk." You promised to check back in another week. As promised, you went on March 13 to try one last time to get the information. You filed this complaint when Ms. Mowery stated that she was busy.

Ms. Mowery responded to your complaint, a copy of which is attached for your reference. She stated that your request for the voter list coincided with a very busy time of year for her office, the ninety days prior to the close of registration. Her office was required this year to record over 200,000 votes due to the statewide recount.

In an effort to fulfill your public records request, more definitive information must be ascertained, which has been attempted in written form and during your various visits to the office. Party affiliations are not identified in a general election. Therefore, it is impossible for her to provide the requested data. Further review of your request reveals that even more clarification is needed. City of Lawrence Republican voters must be narrowed, to the extent that you can explain whether you are requesting anyone who has ever voted in a Republican primary, the 2006 Republican Primary and General, or some other metric.

Ms. Mowery hopes that you will revisit your request and provide the Board with information necessary to provide the records.

ANALYSIS

[G]overnment is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the 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. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.

Ind.Code 5-14-3-1.

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 (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

A request for a record must identify the record requested with reasonable particularity. IC 5-14-3-3(a). A public agency may not deny a record request without seeking clarification from the requester for a record that is *not* stated with reasonable particularity. In addition, a public agency, once responding to a record request within the above timeframes, is required to produce the record, deny it, or seek clarification within a reasonable timeframe.

A public agency may regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a). However, this does not operate to deny to any person the rights secured under the Access to Public Records Act. IC 5-14-3-7(c).

This office has stated on many occasions that a public agency should communicate periodically with a requester concerning the progress of the agency in compiling records, if the

public agency is balancing its other duties with the compilation of records responsive to a request.

Ms. Mowery does not deny any of your specific allegations. Rather, she states that the office has been very busy with other duties. Although I do not doubt that the Board has had to attend to all the duties specified by Ms. Mowery, it was still incumbent on the Board to provide some estimate of when it could produce the records. It is now apparent to the Board, more than six weeks after you requested the record and more than two weeks after you filed your complaint that your request cannot be fulfilled because more clarification is needed. It was unreasonable for the Board to not inform you more timely that it could not fulfill your request without clarification, beyond the clarification it originally sought and received from you. In addition, the Board should contact *you* to explain what specificity is needed in order to compile the information you seek. It is not reasonable to expect that a requester will understand the type of records maintained by a public agency; therefore, it makes sense that the public agency should contact the requester to seek clarification rather than to expect the requester to discern how his request must be refined.

CONCLUSION

For the foregoing reasons, I find that the Marion County Board of Voters Registration has not provided the records in a reasonable time. You may contact the agency to clarify your request, and I urge the Board to helpfully provide any information explaining how you may make your request more specific. I also urge the Board to provide the information quickly once it understands what records are responsive to your request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Cindy Mowery