



STATE OF INDIANA

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**PUBLIC ACCESS COUNSELOR
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July 26, 2013

Mr. Thomas E. Mason
108 Terrylyn Drive
Tipton, Indiana 46072

Re: Formal Complaint 13-FC-207; Alleged Violation of the Access to Public Records Act by the Tipton County Clerk

Dear Mr. Mason:

This advisory opinion is in response to your formal complaint alleging the Tipton County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Deborah Tragesser and Suzanne Alexander responded in writing to your formal complaint. Their responses are enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on May 14, 2013, you submitted a written request for records to the Clerk. As of July 17, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any records responsive to your request. You specifically sought campaign finance disclosures for Ms. Alexander from 2006 and 2010. You later requested the assistance of the County Election Board ("Board") to gain access to the records that were requested.

In response to your formal complaint, Ms. Tragesser advised that one of the areas where the records of the Clerk are maintained experienced water damage. As a result, the entire contents of the area had to be removed while repairs were being made. The Clerk diligently had been searching for the records which were ultimately found on or about July 23, 2013. Immediately upon finding the records, copies were forwarded to the Board's Chairman to deliver to you. Copies of the requested records have also been enclosed with the Clerk's response to your formal complaint.

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." *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* I.C. § 5-

14-3-2. Accordingly, any person has the right to inspect and copy the Clerk's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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 within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Under normal circumstances, there is no doubt that providing the minimal records responsive to your request approximately seventy days after the request's original receipt would not be considered reasonable and in violation of section 3(b) of the APRA. However, as noted by the Clerk in the response submitted to your formal complaint and communicated to you during the pendency of your request, the area in which records responsive to your request were located suffered water damage that required that all records be removed and temporarily stored while the necessary repairs were completed. During this time period, you had extensive written communication with the Election Board and periodic contact with the Clerk regarding the status of your request and it in no way can be said your request was being ignored or that either entity failed to update you on the status of its search. Based on the foregoing and that all records responsive to your request have now been located and produced, it is my opinion that the Clerk complied

with the requirements of section 3(b) in providing all records in response to your request in a reasonable period of time.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Deborah A. Tragesser