



STATE OF INDIANA

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February 22, 2013

Ms. Erica Goodnow
8435 Hilltop Lane
Martinsville, Indiana 46151-7625

Re: Formal Complaint 13-FC-27; Alleged Violation of the Access to Public Records Act by the Office of the Indiana Secretary of State

Dear Ms. Goodnow:

This advisory opinion is in response to your formal complaint alleging the Office of the Indiana Secretary of State ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jerold A. Bonnet, General Counsel, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that you are a former employee of the Office. While employed, you compiled a contact list of personal and professional contacts in your Microsoft Outlook Email Account. Upon your termination, you requested in writing either a digital or hardcopy of your contact list. On December 19, 2012, Mr. Bonnet acknowledged in writing the receipt of your request, which occurred within twenty-four hours of your submission. On January 28, 2013, your request was denied in writing, to which Mr. Bonnet provided that it was the Office's view that the record may not be disclosed pursuant to one or more of the provisions of I.C. § 5-14-3-4.

In response to your formal complaint, Mr. Bonnet advised the Office received your request on December 18, 2012 to which Mr. Bonnet responded in writing on December 19, 2012. The records requested were described as "my address book from my Outlook contact list." The Office does not concede that an "Outlook contact list" is a record that must be maintained under the APRA, nor is individual contact information gathered by the Office pursuant to fulfilling a statutory or regulatory function, nor is the record required to be maintained under the APRA. Mr. Bonnet advised that if an individual's contact information is a record under the APRA, then the request that was submitted is not reasonably particular given that the contact list is not required to be maintained. However, the Office's IT staff was able to confirm the existence and approximate location of the information. On review of the record, Mr. Bonnet

determined that the entries are not a “record” that the Office was required to create or maintain pursuant to the applicable retention schedule.

In consultation with Office IT staff, Mr. Bonnet thereafter determined that your Microsoft Outlook entries are not maintained on Office computer systems, but may be recoverable from backup computer system files maintained by the State’s Office of Technology. Mr. Bonnet was advised that such “back-up meta-data” is not maintained in list form. However, for data that is reasonably specified, with appropriate computer programming operations it is generally technically possible to search for the matching data. If the information exists and can be extracted from the Office’s meta-data, it can be generally formatted into a list. Mr. Bonnet was advised by Office IT staff that an employee’s personal Microsoft Outlook contact entries would generally consist of names, addresses, phone numbers, email addresses, and notes. Mr. Bonnet advised that even though it was possible to retrieve the information, such records could be denied pursuant to I.C. § 5-14-3-4(b)(7). Further, the Office is not required to comply with a request to create a list of names in response to a request.

As to the Office’s denial of your request, Mr. Bonnet believes that it would have been better to have provided a more precise statement of the agency’s reasons and authority for not disclosing the information. Mr. Bonnet would have cited to I.C. § 5-14-3-3(f) and I.C. § 5-14-3-4(b)(7) in the denial of your request. However, without conceding that is the information that is requested is to be disclosed under APRA, the Office did recover the names and addresses from your Microsoft Outlook contacts entries. The names and addresses were reviewed and the Office determined that the list did not contain confidential or non-disclosable information. In keeping with the spirit of the APRA, you were informed on February 20, 2013 that in this instance the Office will make the list of names and addresses available for inspection.

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 Office 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 Office’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 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 information regarding how or when the agency intends to comply. Here, the Office acknowledged in writing the receipt of your request within twenty-four hours of its receipt. As such, it is my opinion that the Office complied with section 9(b) of the APRA in responding to your request.

Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Here, the Office denied your request without specifically identifying which provision of I.C. § 5-14-3-4 would allow the agency to withhold the record. As the APRA requires that the agency include a “specific exemption” authorizing the withholding, it is my opinion that the Office acted contrary to the requirements of section 9(c) of the APRA in response to your request.

Your request sought a copy of the contact list that you maintained in your Microsoft Outlook account while serving as an employee of the Office. The APRA specifies that “a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute.” *See* I.C. § 5-14-3-3(f). “However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law.” *Id.* The APRA would not require an employee of an agency to create a contact list for their email account. Such record, if created, would be required to be retained pursuant to the applicable retention schedule. Mr. Bonnet has advised that the Office’s retention schedule would not require the agency to maintain such information; however the Office was able to recover the information in working with IT staff. As noted *supra*, although not required under the APRA, the Office created a list that would be responsive to your request in order to keep with the spirit and intent of the public policy behind the APRA. Pursuant to section 3(f) of the APRA, the Office would not be required to provide you with a copy of the list; however it would be required to allow you to inspect the list and make memoranda abstracts. As the Office has provided that it has contacted you to set an appointment so that you can inspect the list that was created, it is my opinion that the Office has complied with the requirements of the APRA.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Office acted contrary to section 9(c) of the APRA in response to your request. As to all other issues, it is my opinion that the Office complied with the requirements of 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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Jerold A. Bonnet