



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 12, 2015

Mr. Eric D. Grandberry
727 Moon Rd.
Plainfield, IN 46168

Re: Formal Complaint 14-FC-305; Alleged Violation of the Access to Public Records Act by the State of Indiana Election Division

Dear Mr. Grandberry,

This advisory opinion is in response to your formal complaint alleging the Indiana Election Division (“Division”), violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Division has responded to your complaint via Mr. Trent Deckard, Co-Director. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor December 9, 2014.

BACKGROUND

Your complaint dated December 2, 2014 alleges the Indiana Election Division violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to timely respond to your request.

On or about October 21, 2014, you submitted a public records request to the Division seeking a copy of the oaths of office for two named judges. The Division had not responded by the date of the filing of your request.

The Division responded to your complaint by forwarding a letter to this office addressed to you enclosing a copy of the oath for one of the judges and alleging the Division does not have an oath for the other named individual – a magistrate.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 Ind.

Code § 5-14-3-1. The Indiana Election Division is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Divisions public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Division has acknowledged that a clerical error led to the delay in the response. However, they have corrected the mistake by forwarding the documents in their possession which is responsive to your request. It is my sincere hope the records you have sought from the Division are satisfactory to your search. A public agency is not obligated to create or produce records they do not maintain. So it seems to be the case with the oath of the magistrate you seek. This is not a violation of the APRA.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana Election Division acted contrary to the Access to Public Records Act by not responding to your request within seven (7) days; however, the error has been corrected.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Trent Deckard