



STATE OF INDIANA

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April 20, 2012

Joe Hero
P.O. Box 429
St. John, Indiana 46373
Via email: nrck.nwpt@att.net

Re: *Informal Inquiry 12-INF-20; I.C. § 3-9-4-5*

Dear Mr. Hero:

This is in response to your informal inquiry regarding I.C. § 3-9-4-5 and its affect on a county election board in responding to a request made for certain campaign finance reports pursuant to the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.* and I.C. § 3-9-4-5.

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. Accordingly, any person has the right to inspect and copy a public agency's 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 twenty-four 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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). 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.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. 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.*

I.C. § 3-9-4-5 provides the following timeframes regarding requests to inspect and copy reports and statements filed with the Indiana Election Division or each county election board:

- (a) The election division and each county election board shall make reports and statements filed with them available for public inspection and copying, commencing as soon as practicable but not later than the end of the second business day following the day during which they were received.

In response to your inquiry, a county election board would be required to comply with the requirements of I.C. § 3-9-4-5 in responding to a request to inspect or copy any reports or statements filed with the board. As opposed to the reasonable period of time period required by the APRA, section 5(a) requires in this instance that a county election board provide reports and statements filed with it to be made available not later than the end of the second business day following the day during which the request was received.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor