



STATE OF INDIANA

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September 23, 2021

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RE: Informal opinion 21-INF-5; Disclosure of Address Belonging to a Public Official

This informal opinion examines whether, under the Access to Public Records Act, local government officials have the authority to request that their personal address not be displayed publicly on GIS systems managed by entities of state and local government.

As such, you seek to know what constitutes an “office” and whether the law is to cover only elected officials or if it extends to appointed officials.

1. Access to Public Records Act

It is the public policy of the State of Indiana 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. Ind. Code § 5-14-3-1. The Access to Public Records Act (APRA) says “(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.” *Id.*

2. Restricted addresses

Under Indiana Code chapter 36-1-8.5, a “covered person” may submit request to the relevant unit of government to restrict access to the person’s home address contained in a public property database website. The statutory definition of “covered person” includes, in relevant part, a public official. Ind. Code § 36-1-8.5-2(4). Notably, “public official” means:

an individual who holds or formerly held office at any time during the preceding four (4) years in the executive or legislative branch of the state or federal government or a political subdivision of the state or federal government.

Ind. Code § 36-1-8.5-4.5. If this condition precedent is met, a qualifying individual can opt out of a public property database after making a written request in accordance with Indiana Code section 36-1-8.5-7. Discretion is seemingly afforded to the government unit to decide who qualifies and how they can opt out.

The question before this office is whether a non-elected public official can qualify to opt out of a public address database. Put another way, does an appointed official constitute a public official for purposes of restricting access to their address? For this we turn in part to the Indiana Attorney General's Dual Office Holding Guide,¹ which states the following:

An employee is one who is "in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed." *Common Council of the City of Peru v. Peru Daily Tribune, Inc.*, 440 N.E.2d 726, 729 (Ind. Ct. App. 1982) (citations omitted).

An office "is a position for which the duties include the performance of some sovereign power for the public's benefit, are continuing, and are created by law instead of contract." *Gaskin v. Beier*, 622 N.E.2d 524, 528 (Ind. Ct. App. 1993) (citations omitted). More specifically, holders of public offices are described as being "charged with duties delegated to them under the state government, with duties imposed upon them by statute, and are subject to legislative control." *Wells v. State ex rel. Peden*, 94 N.E. 321, 322 (Ind. 1911) (citations omitted). An officer is also distinguished by his or her power of supervision and control, and liability as a public offender in cases of malfeasance in office. *Gaskin*, 622 N.E.2d at 528. An officer maintains "greater importance, dignity and independence of his position" and is usually required to take an official oath and give an official bond. *Common Council of Peru*, 440 N.E.2d at 730. Additionally, the duration of the officer's position is usually defined by statute. *Id.* at 731.

For the purpose of this discussion, the question hinges on whether the powers and duties of a position are articulated or expressly granted by statute. Elected and constitutional offices are for sure, but some officials such as school superintendents, fire chiefs, and fiscal officers are both appointed and have enumerated statutory duties. Most department heads, deputies, and attorneys, while all providing important services, are positions created by municipalities and not a function of any specific state law.²

Therefore, to qualify for an opt out privilege for an otherwise publicly available address database like GIS, the public official would need to be one of elevated status and not a rank-and-file public employee or middle management. Beyond

¹ <https://www.in.gov/attorneygeneral/files/DOH-Guide-2019-Update.pdf>

² Local ordinances or policies would not sufficiently elevate positions.

that cursory analysis, the law would appear to defer to the political subdivision to make a case-by-case argument of those of whom the statute applies.

Please do not hesitate to contact me with any questions.

Best regards,

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

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