

January 24, 2008

Dale Simmons  
Co-General Counsel  
Indiana Election Division  
302 West Washington Street, Room E204  
Indianapolis, Indiana 46204

*Re: Your informal inquiry regarding public access to election materials*

Dear Mr. Simmons:

This is in response to your informal inquiry dated September 6, 2007. I apologize for the delay in my response. Upon taking office July 1, 2007, I found a backlog of informal inquiries. I am currently endeavoring to address the backlog and issue opinions in response to those inquiries as well as new inquiries, pursuant to Ind. Code §5-14-4-10(5).

#### BACKGROUND

Your inquiry concerns legacy voter registration records maintain on paper. You indicate that since 2001, voter registration applicants in Indiana have been required to provide a voter identification number on their voter registration application in order to register to vote. The number is the applicant's Indiana driver's license number if the applicant has been issued a driver's license. If the applicant has no driver's license, the number is the last four digits of the applicant's social security number. As a result, county voter registration offices currently maintain paper and electronic records containing the last four digits of the social security numbers of many registered voters.

Prior to 2001, Indiana's voter registration application indicated that the applicant could provide the full social security number voluntarily. Many voters provided this information, which is maintained on the voter's original paper registration card. The full social security numbers are not maintained electronically.

Your inquiry relates specifically to Ind. Code §5-14-3-4(a)(12), which prohibits a public agency from disclosing the social security number contained in the records of a public agency, unless access is specifically required by state or federal statute or ordered by a court under the rules of discovery. *Id.* You ask the following questions:

1. Given that full social security numbers still exist on legacy paper registration records does the current version of IC 5-14-3-4 require that the full social security number be redacted from these paper records or would the redaction of all but the last four digits of the social security number be sufficient?
2. How should these records be redacted? In other words, should a black marker be stricken through the whole or part of the social security number that must be redacted on the original record or should these original records remain intact and redacted copies provided in response to public records requests?

### ANALYSIS

The public policy of the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3) states, "(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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

There is no question that the records at issue are public records and are disclosable under the APRA. If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying. I.C. §5-14-3-6(a).

Your first question is whether the entire social security number must be redacted from voter registration records upon a request for access to the records or whether the agency may redact all but the last four digits of the social security number.

You cite two statutes applicable to this issue. First, you cite I.C. §4-1-10-3(a), which prohibits certain governmental and quasi-governmental entities from disclosing social security information; it does not apply to counties. “For the purposes of this section, disclosure of the last four (4) digits of an individual’s social security number is not a disclosure of the individual’s social security number.” *Id.*

Further, you cite a similar provision in the federal Help America Vote Act of 2002, 42 U.S.C. 15483(c):

Permitted Use of Last 4 Digits of Social Security Number. – The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for the purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

For the records about which you inquire, no state statute specifically addresses the issue of social security numbers. As such, the APRA provision prohibiting disclosure of social security numbers would apply. See I.C. §5-14-3-4(a)(12). For the purposes of the APRA, social security number is not defined. I do not find Indiana case law where the issue of what constitutes a social security number is addressed. Certainly the intent to protect the privacy of individuals' social security numbers cannot be affected by defining social security number only as the entire set of nine digits. For instance, if an agency were allowed to disclose eight of the nine digits, it would not be difficult to ascertain an individual's social security number.

Here, though, the question is whether the last four digits of a social security number may be disclosed. As you have indicated, the last four digits of an individual's social security number constitute a number used by election administrators to identify voters. It is my understanding you pose the question because you envision a time when a local office might permanently redact the social security numbers from its records, but preserving the last four digits continues to serve an election administration purpose. As you have also indicated, both the federal Help America Vote Act and at least one provision in state law indicate that the last four digits of a social security number do not constitute a social security number. For these reasons, it is my opinion that a county voter registration office may redact either the entire social security number or just the first five digits of the social security number upon request for access to inspect and copy voter registration records. It is my opinion that disclosure of the last four digits of an individual's social security number by a county voter registration office does not constitute disclosure of an individual's social security number for the purposes of the APRA.

You also inquire how the records should be redacted. You ask whether the social security number should be redacted from the original record or whether the original should remain intact and a copy should be made and redacted. I know you have directed this inquiry to the Director of the Indiana Commission on Public Records, as this question falls within the Commission's purview. I will leave that question for the Director.

I would note, though, that the APRA requires an agency to provide access for inspection and copying. I.C. §5-14-3-3. If a person requests access to inspect the voter registration records and the records contain social security numbers, the agency should develop a procedure for allowing inspection without disclosing the social security numbers. I often suggest to agencies that they make copies of the records, redact the nondisclosable information, and set a mutually convenient time for the requester to inspect those records and/or indicate which, if any, pages the requester wishes to purchase for the established copy fee allowed pursuant to I.C. §5-14-3-8.

Best regards,



Heather Willis Neal  
Public Access Counselor