



STATE OF INDIANA

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April 22, 2014

Mr. Greg Bowes
C/o Greg Bowes Legal Services, P.C.
445 N. Pennsylvania St., Ste. 817
Indianapolis, IN 46204

Re: Informal Inquiry 14-INF-12; Reasonable Particularity and Voter Registration Cards

Dear Mr. Bowes:

This is in response to your informal inquiry regarding a records request which yielded a voluminous amount of documentation. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

On March 13, 2014, one of your clients hand-delivered to the Marion County Board of Voter Registration ("Board") a request for public records seeking the following information:

"copies of the voter registration form, or VRG-7, relating to any active Marion County voter who registered to vote, or changed his registration, after November 24, 2009"

On March 19, 2014, the Marion County Board of Voter Registration denied your request on the basis of the query not being reasonably particular. They state a preliminary search yielded nearly 87,000 documents, some of which may possibly require redaction.

In your formal complaint, you identify several reasons as to why your client's request was proper. You cite *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012) which states:

Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides

the agency with information that enables the agency to search for, locate, and retrieve the records.

You also indicate any confidential information can be redacted with relative ease using common Adobe software. Moreover, you suggest the records will rarely contain confidential information such as social security numbers, nullifying the need for redaction. Additionally, you argue a 2012 request for “the most recent 250 VRG-7 forms” was fulfilled within three weeks. Therefore, you surmise, the Board should be able to meet the request.

You conclude the reasonable particularity standard should not apply in this scenario due to Ind. Code § 3-7-27-12, which states:

Except for information declared confidential under this article, the affidavits or forms must be available at reasonable times during regular office hours for inspection, transcription, and duplication, including photocopy duplication and microfilming, as provided in IC 5-14-3.

Your client stated a preference for receiving the records electronically. The Board has indicated in the past the forms are scanned and uploaded electronically and therefore are maintained in that format. You argue this would presumably ease the retrieval and production of the forms, despite the Board’s contention they are unable to do so. You take exception to their assertion the forms would need to be printed and delivered and consequently your client would be assessed the \$.04 Marion County charges for copies.

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* Ind. Code § 5-14-3-1. The Marion County Board of Voters Registration is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Board’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a). Under the APRA, all requests must be reasonably particular in order for the public agency to locate, retrieve and produce records responsive to the request. *See* Ind. Code § 5-14-3-3(a).

You cite *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012) which involves a request for email communication. Again, the Court reasoned:

Whether a request identifies with reasonable particularity the record being requested turns, *in part*, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records.

Emphasis added.

I emphasize the Courts use of the phrase “*in part*” as I do not believe the Court intended reasonable particularity to rest solely on the ability of an agency merely to identify the set of records. I addressed this issue in regard to the *Jent* ruling in *Informal Opinion 13-INF-68*. In that Opinion, I opined:

Reasonably particular and reasonably practical are two different standards, but they do have a nexus rooted in common sense. Strictly following the *Jent* ruling, a request stating “I want all records in Room 204 of the County Courthouse” would also meet the reasonable particularity standard because the County Clerk knows exactly where to search for and locate those requested records. While I do not find the argument compelling that a request is “burdensome”, I do give credence to the notion that a request can be untenable.

I do not give any significant weight to a contention by an agency that documentation sought is voluminous to the point of being burdensome. Inconvenience to an agency is not an exception under the APRA despite Ind. Code § 5-14-3-7 stating a public agency shall regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.

Clearly the Board can identify the records your client seeks. Eventually, they could go through them and redact them. Obviously, they were able to do so in your 2012 request in a matter of weeks. But, the production of 250 documents is a much different animal than the production of 87,000 documents. While there is no bright-line indicating whether a request is reasonably particular or not, I do consider your client’s request to be unspecific to the point of unreasonable. It does not have to be a pinpoint description or even a precise distinctive record, but it cannot be so all-encompassing that it captures an ambiguous swath of documentation.

Former Public Access Counselor’s have used universality to describe an unreasonable request (*See Opinion of the Public Access Counselor 09-FC-24*). I do not disagree nor do I believe it conflicts with the plain language of Ind. Code § 3-7-27-12 and would not trigger Ind. Code § 5-14-3-3(h) (*If this section conflicts with IC 3-7, the provisions of IC 3-7 apply*). My interpretation of the statute is that your client would be entitled to the inspection and copying of any disclosable public record maintained by the Board, however, the request for inspection still has to meet the reasonable particularity standard in order that the Board can provide the records responsive to the request.

Again, from *Informal Opinion 13-INF-68*:

Consider the definition of particularity in The New International Webster’s Dictionary and Thesaurus, Encyclopedic Ed., 200: “exactitude in description; circumstantiality; strict or careful attention to detail; fastidiousness.” I do believe that voluminous records requests can meet

that standard and agencies are required to satisfy voluminous requests, but to meet the reasonable particularity standard, they cannot be blanket requests...

Reasonable particularity is a case-by-case standard. I do not believe that one definition can apply to all circumstances. It is a subjective determination.

In the current scenario, I cannot speculate on what a narrower search would look like. Perhaps it may entail reducing the number of years or containing it to the past 12-months. The burden to make that determination is on the Board, with the understanding they may not excessively restrict search terms to the extent it prohibits access. It works both ways. Public agencies must be flexible to the point where they do not throw up roadblocks to transparency by requiring search parameters to be unreasonably limited. If I do see a shortcoming on the part of the Board in its response, it is the failure to extend an invitation to your client to narrow his search or taper it down to what would be a satisfactory timeframe. Public agencies should be mindful the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally Ind. Code § 5-14-3-1; Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88.*

In terms of the ease of redaction, (if necessary) I am not familiar with the computer-based capabilities of the Board. I am not aware if they have the technical prowess or savvy to redact in a manner you describe in your complaint. It would appear to be a feasible solution if you were to work with them to conduct a tutorial should you narrow your search parameters. My expectation would be that an agency works with a requester, if possible, to resolve these conflicts amicably.

From the materials provided, it does not appear the current system requires a field filled out for Social Security numbers. Older VRG forms may, so there is a possibility some of the forms contain confidential data. The Indiana Driver's Privacy Protection Act (Ind. Code § 5-14-3.5 et. seq.) also exempts from disclosure driver's license numbers from the Bureau of Motor Vehicles.¹ The Board must be mindful of information declared Confidential by state statute or Federal law. See Ind. Code § 5-14-3-4(a),(b).

On the topic of fees, a public agency which maintains public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. *See Ind. Code § 5-14-3-3(d).* This also appears to be

¹ Whether this exemption would apply to the Board or just to the BMV would be a question of law, however, the agency bears the burden of proof to sustain the denial. Ind. Code § 5-14-3-9(f).

consistent with Marion County, Indiana Election Board Resolution No 05-12, which is attached for your reference. In the case of electronic production, only the direct cost of the production is permitted to be charged under Ind. Code § 5-14-3-8(g)(1). Unless an ordinance or policy reflects otherwise, if you provide a compatible disk to the Board, they would incur no actual cost and should not charge for the cost of production.

Please do not hesitate to contact me with any further questions.

Best regards,

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

Luke H. Britt
Public Access Counselor