



STATE OF INDIANA

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November 14, 2014

Mr. Gary R. Welsh
320 N. Meridian, Suite 615
Indianapolis, IN 46204

Re: Formal Complaint 14-FC-247; Alleged Violation(s) of the Access to Public Records Act by the Marion County Board of Voter Registration

Dear Mr. Welsh,

This advisory opinion is in response to your formal complaint alleging the Marion County Board of Voter Registration ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Board has not responded to your complaint despite being invited to do so on October 18, 2014. 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 on September 22, 2014.

BACKGROUND

Your complaint dated October 17, 2014, alleges the Board violated the APRA by improperly denying you access to public records, specifically, a request to inspect and/or copy voter registration information and voting history records for an individual.

On September 30, 2014, you appeared in person at the Board's office and filled out a public records request to inspect and/or copy voter registration information and voting history records, if any, for a named individual pursuant to the APRA, Ind. Code § 5-14-3-1 *et. seq.*

On October 1, 2014, the Board acknowledged and subsequently denied your request via a letter signed by the Board's Democratic Director LaDonna Freeman and Republican Director Cindy Mowery. The letter indicated the Board was prohibited from releasing the information pursuant to a policy adopted by the Marion County Election Board. In a follow-up letter dated October 3, 2014, you requested the Board explain why the information was not being released pursuant to APRA.

On October 8, 2014, the Board responded by letter via counsel in response to your concerns. The Board's counsel indicated neither the Board nor the Marion County Election Board had possession or custody of the records you requested because voter registration records are maintained electronically on the Statewide Voter Registration System and that system is maintained by the Indiana Election Division through a third-party vendor.

Additionally, the Board's counsel claimed the Marion County Election Board's Resolution 05-12 applies to your request because it applies to any request for electronically stored voter registration information. Further, the resolution prohibits the Board from providing information from the Statewide Voter Registration System in response to your request. Counsel for the Board indicated that despite the issues regarding the Board's ability to provide Statewide Voter Registration System information, there is a document on file at the Board's office which would be responsive to your request, if you pay a copying fee of \$0.04 per page.

The Board did not respond to your formal complaint filed on October 17, 2014.

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 Marion County Board of Voter Registration is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Board's 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).

The Board has not alleged that any record you seek is confidential, but rather the resolution passed by the Marion County Election Board ("MCEB") prohibits the Board of Voter Registration from releasing the record pertaining to the individual. I agree with your interpretation of the law and find the Marion County Board of Voter Registration is misapplying the policy in regard to your request.

The statute allowing the MCEB to pass the resolution (Ind. Code § 3-7-27-6(c)) strictly applies to *lists* of names and addresses (See Ind. Code § 5-14-3-3(f)). You did not seek a list but rather an individual record. The Board has not stated any authority declaring an individual's voter registration record or voting history to be confidential.

If the Board maintains a copy of the record you seek (and apparently it does based upon the representations at the end of their letter dated October 8, 2014), then it must release the information to you upon request.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Marion County Board of Voter Registration has misapplied the resolution passed by the Marion County Election Board and Resolution 05-12 should not be considered to prohibit the release of individual records.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor