



STATE OF INDIANA

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December 7, 2009

Mr. Joseph J. Wardenski
Davis Polk & Wardwell LLP
450 Lexington Ave.
New York, NY 10017

Re: Formal Complaint 09-FC-259; Alleged Violation of the Access to Public Records Act by the Vigo County Board of Voter Registration

Dear Mr. Wardenski:

This advisory opinion is in response to your formal complaint alleging the Vigo County Board of Registration ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, it is my opinion that the Board violated the APRA.

BACKGROUND

In your complaint, you allege that you submitted a request for access to public records to the Board on May 27, 2009. In that request, you sought documents related to Vigo County's compliance with federal election laws. On April 2, 2009, Board Director Janice Morris called you to acknowledge receipt of the request, ask for clarifications, and inform you that some or all of the records might be maintained by the Vigo County clerk's office.

On April 21, 2009, you contacted Ms. Morris after receiving no other communications from her. At that time, Ms. Morris informed you that she had contacted the county clerk's office, which advised her that it did not maintain the relevant records. Ms. Morris also stated that she ran several voter registration reports but that she did not believe that information would be helpful to you. Nevertheless, you requested that Ms. Morris send those reports and any other documents she deemed responsive to your request. You also sent a written request to the Board via facsimile and U.S. Mail on October 12, 2009. As of the date of your complaint, you had received neither any communications nor any records from the Board.

My office forwarded a copy of your complaint to the Board. As of the date of this opinion, we have not received a response.

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.” 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 exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The Board does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board during regular business hours unless the records fall within one of the APRA’s exceptions to disclosure. I.C. § 5-14-3-3(a).

Under the APRA, an agency’s failure to respond to a written request within seven (7) days constitutes a denial of access. I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Here, it appears the Board failed to respond to your written request within seven (7) days. Under the APRA, the Board denied your request. I.C. § 5-14-3-9(b). Because the Board has failed to deny your request in accordance with Section 9(c) of the APRA, it is my opinion that the Board violated the APRA.

I encourage the Board to either produce the requested records to you or issue you a denial that complies with the requirements of the APRA. If the Board fails to comply, I leave you to your remedies in Section 9(e) of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Board violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Janice Morris, Vigo County Board of Registration