



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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November 28, 2011

Robert A. Pastore
231-173rd Street
Hammond, Indiana 46324

Re: Formal Complaint 11-FC-271; Alleged Violation of the Access to Public Records Act by the Lake County Board of Elections

Dear Mr. Pastore:

This advisory opinion is in response to your formal complaint alleging the Lake County Board of Elections ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jeffrey Gunning, Attorney, responded on behalf of the Board. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on October 21, 2011, you hand-delivered a written records request to the Board for a copy of the CFA-4 Pre-Election Report ("report"). In response to your request, you further allege that an employee of the Board refused to provide you with a copy, providing that the Board was "too busy" to respond to your request. You were informed that you would receive a phone call when a copy of the report was available. As of October 25, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any communication from the Board or a copy of the report.

In response to your formal complaint, Mr. Gunning advised that the Board did receive your hand-delivered written records request on October 21, 2011. At the time of your request, the Board was engaged in "walk-in voting" or "early voting" along with the administration and processing of absentee ballot application for the upcoming general election. The report that you had requested had only been filed with the Board approximately eight minutes before the Board received your request. Upon receiving the report, the Board is required to time-stamp and confirm its receipt, cross-check the beginning balances provided with the prior report on file, scan the report for record keeping, and docket the report so as to satisfy preservation requirements before the original is filed. This process for the report that you had requested had yet to be commenced upon the Board receiving your records request.

Upon receiving your request, an employee of the Board informed you that due to the high level of business in the office (i.e. receiving CGA-1 reports, processing walk-in and absentee application, and other pre-election preparations), the Board would not be able to provide you with a copy that day, but would call you when the report was available for pick-up. On October 27, 2011, the Board contacted you by phone and informed you that a copy of the report was now available. On November 16, 2011, after having not heard back from you, the Board contacted you again and informed you that the report was available.

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* I.C. § 5-14-3-1. The Board is a public agency for the purposes of the APRA. *See* I.C. § 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 nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

Nothing in the APRA indicates that an agency’s failure to provide a requester with “instant access” to requested records constitutes a denial of access. “It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request.” *See Opinion of the Public Access Counselor* 02-FC-09; 09-FC-224; 10-FC-121. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires the Board to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor* 02-FC-45.

The Board has indicated that it contacted you by telephone on October 27, 2011 and informed you that a copy of the record was available. You filed your formal complaint with the Public Access Counselor’s Office on October 25, 2011, after making your original request to the Board on October 21, 2011. The Board has provided that you were contacted again on November 16, 2011 regarding the availability of the report.

Your request was made while the Board was engaged in the administration and processing of absentee ballot applications and conducting early voting for the November elections, as well as maintaining the normal duties of the office. As the Board provided all records responsive to your request within six days of its receipt, it is my opinion that it responded to your request within a reasonable period of time.

CONCLUSION

For the foregoing reasons, it is my opinion that the Board did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Jeffrey Gunning