



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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February 25, 2011

Mr. Cyril B. Huerter
8740 Carolina
Highland, IN 46332

Re: Formal Complaint 11-FC-41; Alleged Violation of the Access to Public Records Act by the Lake County Board of Elections/Registration

Dear Mr. Huerter:

This advisory opinion is in response to your formal complaint alleging the Lake County Board of Elections/Registration (the "Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 et seq.

BACKGROUND

In your complaint, you allege that on you requested records from the Board on January 4, 2011. Your request sought access to a "complete list of all Republican Clerks and Judges for the Nov [sic] 2010 Election [sic], including those working for the early voting sites. Also, the voting records for each of these Clerks and Judges." You state that as of January 21st, you had not received a "status report" from the Board regarding your request. The Board provided some responsive records on January 25th, but no "timetable for the rest [of the responsive records]."

In response to your complaint, the Board states that you initially requested a list of Republican clerks and judges, some Republican absentee voter board members, and other information regarding those persons such as their voting history. The Board does not maintain records in the form you requested. However, the Board claims that, "in the spirit of open government, the [Board] staff informed [you] that while no such record existed, the Board did have a list of appointees to Republican clerk and judge positions and a list of persons who actually served as poll workers. At an unspecified date thereafter, you orally amended your request and asked for the list of appointees. At that time, the Board informed you that, due to the large number of responsive records, Board staff would estimate the number of pages and advise you of the cost of copying the records. On or about January 12th, the Board provided you with an estimate of \$108.80. The 1180 pages is due to the fact that a large number of Republican clerks and judges are

appointed and the voting history for each person typically spanned at least one page. After you paid the fee on January 14th, the Board's staff began making copies that day. In the course of copying the records, Board staff contacted you to ask how many years' worth of records you wanted. You clarified that you sought records for the previous six years. On January 25th, the Board contacted you to inform you that approximately 24% of your request was ready. You picked up those records the same day. On February 8th, the Board advised you that the remaining copies were ready.

The Board adds that you were not provided with a "status report" because you never requested one, because staff resources were dedicated to normal duties and actually fulfilling the request, and because the Board could not provide an accurate estimate for producing the records. The Board does not have a staff member who works full-time on fulfilling records requests, and the Board received your request at a time when numerous individuals were filing Declarations of Candidacy for the May 2011 elections. The Board claims that it complied with your request as promptly as possible under the circumstances and considering the large number of records you requested.

ANALYSIS

The public policy of the APRA 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. The Board does not dispute that it is a "public agency" under the APRA. 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 public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Board responded to your requests, but you argue that the Board did not fulfill your request quickly enough and failed to provide you with a "status report" by January 21st. The APRA does not prescribe timeframes for the actual *production* of public records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. 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. 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. 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. 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. *Opinion of the Public Access Counselor 02-FC-45*. Nothing in the APRA requires a public agency to provide requesters with a "status report," although the public access counselor has repeatedly urged public agencies to do so when fulfilling voluminous requests.

In arguing that it acted reasonably, the Board cites to the fact that it responded to your request for records that do not exist by informing you of other records that provide the information you sought. The Board communicated with you in order to narrow your request and provide you with records during the years you desired. The Board also notes that you received a partial response on January 21st, and that the timeframe from the date you submitted your request until the day the Board provided you with the remaining records was reasonable due to the fact that 1180 records were responsive to it. Finally, the Board cites to the increased demands on its staff contemporaneous with your request. In my opinion, under such circumstances the Board acted reasonably by providing you with a partial response on January 21st and a complete response by February 8th.

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 that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Sally LaSota