



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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July 18, 2012

Paul –A: Graber
117 4B Road
Nappanee, Indiana 46550

Re: Formal Complaint 12-FC-182; Alleged Violation of the Access to Public Records Act by Indiana Election Division

Dear Mr. Graber:

This advisory opinion is in response to your formal complaint alleging Indiana Election Division (“Division”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Trent Deckard, Co-Director, responded on behalf of the Division. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you have made a series of requests to the Division to obtain copies of the bond and oath information for certain police officers, deputy prosecutors, and federal agents. In response to your request, the Division has provided you with copies of the records that are maintained by the agency, but has noted that it is not required to maintain bonds or oaths of police officers, deputy prosecutors, and federal agents.

In response to your formal complaint, Mr. Deckard advised that the Division cannot provide a record that is not in its custody. Further, the statute does not require that the records you are seeking be kept on file with the Division.

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 Division 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 Division’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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy...”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. As applicable here, the Division has advised that it has provided to you all records that are responsive to your request. The additional records that you are seeking are not maintained by the Division, nor are they required by law to be maintained by the Division. As such, it is my opinion that the Division did not violate the APRA by failing to produce a record that it does not maintain or required by law to maintain.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Trent A. Deckard