
OPINION OF THE PUBLIC ACCESS COUNSELOR

JAMES A. O'BRIEN,
Complainant,

v.

ST. JOSEPH CNTY BD OF VOTER REGISTRATION,
Respondent.

Formal Complaint No.
19-FC-18

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the St. Joseph County Board of Voter Registration violated the Access to Public Records Act.¹ Attorney Jamie C. Woods filed an answer on behalf of the board. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 18, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This complaint concerns a dispute over access to the voting histories of two members of the St. Joseph County Parks Board.

On January 17, 2019, James A. O'Brien filed public records requests with both the St. Joseph County Board of Voter Registration and the St. Joseph County Clerk seeking the following:

A copy of vote histories identifying whether the following individuals voted in primary elections from 2008 through and including 2018 and reflecting whether said individuals voted in the Democrat or Republican primary for each respective year: Mr. Larry A. Catanzarite; Dr. Virginia Calvin.

Catanzarite and Calvin are both members of the St. Joseph County Parks Board. O'Brien says he is interested in reviewing these records because he believes, and intends to prove that Catanzarite and Calvin are both Democrats; and thus, their appointments to the parks board are at odds with a law that requires appointees to be from different political parties.² O'Brien says without these records there is no way for a member of the public to determine a board member's party affiliation.

In a letter dated February 8, 2019, the Board partially denied O'Brien's request. The Board relied on a resolution adopted by the St. Joseph County Election Board on May

² O'Brien does not cite any statutory authority for this claim. Presumptively he is referencing Ind. Code § 36-10-3-4(d).

22, 2017. According to the Board, the resolution—authorized and adopted in accordance with Indiana Code section 3-7-27-6(c)—allows it to withhold certain electronically stored poll book information. As a result, the Board withheld from disclosure the records responsive to O’Brien’s request for the years 2016 and 2018. The Board contends that it provided O’Brien the records requested for the two individuals for the years 2008 to 2014, which O’Brien does not dispute.

O’Brien filed a formal complaint with this office ten days later.

On March 4, 2019, the Board filed an answer disputing O’Brien’s claim that its denial violated the Access to Public Records Act. Essentially the Board’s answer mirrors the reasoning it used in the original, partial denial of O’Brien’s request: the local election board adopted a resolution in accordance with a state statute that authorizes the board to withhold the requested records.

ANALYSIS

1. The Access to Public Records Act

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.” Ind. Code § 5-14-3-1. The St. Joseph County Board of Voter Registration is a public agency for the purposes of the APRA; and thus, subject to the Act’s requirements. Ind. Code § 5-14-3-2(n). As a result, any person has the right to inspect

and copy the Board's disclosable 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).

2. Individual Voter History Records

This matter concerns access to individual voter history records. This office previously addressed this issue in *Opinion of the Public Access Counselor*, 14-FC-247 (2014).

Indiana Code section 3-7-27-6(c) allows a county voter registration office to pass a uniform non-discriminatory policy to allow or disallow a requester from seeking a duplicate copy or wholesale access to a voter registration list (see subsection (a)).

As noted in 14-FC-247, this subsection applies to a voter registration list, but not necessarily *individual* voter history by name. Presumably, the statute exists to protect the integrity of a system as a whole and defers to local government the discretion to allow access to a copy the list or not.

Contrast this with the prohibition on requests for voter history made to the Indiana Election Division. *See* Ind. Code § 3-7-26.4-8(c). This subsection, however, is SVRS-specific and only applies to the State Election Division and not individual counties. As evidenced by the release of paper voter history records to the requester in this case, voter histories are not confidential on the local level.

Therefore the policy passed by St. Joseph County is perfectly legitimate to deny access to lists of wholesale information extrapolated from the Voter Registration History. It does

not apply, however, to reasonably particular requests for individual entries.

Here, the requester asked for voter history information for two specific, named individuals. While the Board provided pre-2014 information, he was denied recent data. This Office agrees that there would be no other way to verify voting histories of individuals if the county policy is applied to individual entries. I have also verified that the Indiana Election Division does not consider county level voter history data to be confidential and the policies were intended to only apply to duplicate copy of lists or copies of systems.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the St. Joseph County Board of Voter Registration may deny copies of the voter registration list or access to wholesale system registration, but must receive and fulfill reasonably particular requests for individual entries.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor