



STATE OF INDIANA

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December 1, 2008

John Price
9000 Keystone Crossing; Suite 150
Indianapolis, Indiana 46240

Re: Formal Complaint 08-FC-231; Alleged Violation of the Access to Public Records Act by the Indiana Secretary of State

Dear Mr. Price:

This advisory opinion is in response to your formal complaint alleging the Indiana Secretary of State ("Secretary") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Secretary's response to the complaint is enclosed for your reference. It is my opinion the Secretary has not violated the APRA.

BACKGROUND

You allege that the Secretary violated the APRA by denying you access to records. You submitted a request for access to records on October 10, 2008 and received a response letter dated October 14 from Jerry Bonnet of the Secretary's office. Mr. Bonnet indicated the office was locating the records. Further, Mr. Bonnet indicated the Secretary does not maintain the records of the Indiana Election Division, and as such Mr. Bonnet had forwarded your request to the IED for response to the portion of the request regarding the IED's records. You submitted the complaint on October 29, 2008.

The Secretary responded to the complaint by letter dated November 6 from Mr. Bonnet, who indicated the office received the request on October 14 and sent you a response on the same day. Mr. Bonnet indicates that approximately one hundred pages of records were located, reviewed, copied, and sent to you on October 29. Mr. Bonnet again asserts that the Secretary does not have control over the records of the IED.

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 Secretary is clearly a public agency for the purposes of the APRA. I.C. § 5-

14-3-2(m). As such, any person has the right to inspect and copy the public records of the Secretary during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required 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). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of 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 are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Secretary received your request on October 14 and sent you a response on the same day, well within the time for response prescribed by I.C. § 5-14-3-9(b). Further, the Secretary provided you approximately one hundred pages of records on October 29. You have indicated you received those records on November 3. In my opinion fifteen days to retrieve, review, and copy the records was not unreasonable.

To the extent your complaint relates to Mr. Bonnet's indication the office does not maintain control of the IED's records, it is my recommendation that you submit a request for those records directly to the IED. While the IED is established by Ind. Code 3-6-4.2 as a division of the Secretary's office, the unique make-up of the IED provides that most administrative tasks are handled directly the IED without oversight or assistance by the Secretary's office. Whether the Secretary should have control over these functions is a question for the General Assembly and is outside the purview of this office.

CONCLUSION

For the foregoing reasons, it is my opinion the Secretary has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Jerry Bonnet, Indiana Secretary of State's Office