



STATE OF INDIANA

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August 10, 2012

Philip Gregory Yeary
DOC#: 169399
1946 W. U.S. 40
Greencastle, Indiana 46135

Re: Informal Inquiry 12-INF-35; Voter Registration Records

Dear Mr. Yeary:

This is in response to your informal inquiries regarding voter registration records. Pursuant to Ind. Code § 5-14-3-9(e), I issue the following informal opinion in response to your inquiries. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

You inquire whether voter registration records are public records that are disclosable pursuant to the APRA. The Indiana Election Division provides the following guidance regarding access to voter registrations records in its 2012 Voter Registration Guidebook:

In general, voter registration records are public records and are subject to examination and copying by the public pursuant to IC 5-14-3. Documents that are confidential and not subject to examination and/or copying by the public include: 1) records concerning declinations to register; 2) records that indicate the identity of a voter registration agency where a person registered; and 3) voter registration records of participants in the attorney general's confidentiality program for abused persons. (IC 3-7-27-6)

A county voter registration office shall, with regard to voter registration information concerning voters of the county in SVRS, act in accordance with a non-discriminatory uniform policy adopted by the county election board regarding providing duplicate copies of a computer tape, computer disc, microfilm or other similar record that contains voter registration information. The policy must either permit a person to obtain a duplicate copy in electronic form or not. If the policy does allow duplicate copies then it must do so according to the non-discriminatory uniform policy. (IC 3-7-27-6(c); 5-14-3-3(g)) **The policy should be in written form in the minutes of the county election board.**

A person requesting this information must submit that request on State Form VRG-24. This form requires the requesting person to agree that the information will not be used to solicit merchandise, goods, services or subscriptions. The person must also agree not to sell, loan, give away or otherwise deliver the information to any other person for a purpose other than political activities or political fund-raising activities. In addition, if there is a cost for providing copies for records, the charge must be uniform to all purchasers IC 5-14-3-8(d).

A county voter registration office does not have to create and provide a list or record that has not otherwise been created unless state statute imposes a duty on the county voter registration office to create the list or record. However, if a list has been created, whether required by statute or not, it is a public record and must be provided unless it is subject to some exception under the Public Records Act. (IC 5-14-3-4)

The statewide voter registration system laws (IC 3-7-26.3; 3-7-26.4) contain several provisions regarding requests made to the county or to the state for records or reports from the system. Certain persons (state major political party committees, for example), may purchase an annual subscription for the unrestricted voter registration file from the Indiana Election Division for all the information contained in the statewide voter registration system. All other persons may obtain a restricted copy of the list, after certain information such as date of birth and gender, have been redacted by the Division. All persons (except the Chief Justice of Indiana, who is entitled to purchase the list without charge for jury management) are required to pay a fee of \$5,000 to the Indiana Election Division for the annual subscription to the unrestricted voter registration file.

The Indiana Election Division is permitted to provide parts and reports from the voter registration information maintained on the statewide voter registration system to confirm a voter's registration status, and for certain purposes listed in IC 3-7-26.3-29.

However, these reports may not include the date of birth, gender, telephone number, voting history, or registration date of individual voters, except when the part or report is to be provided to a person who has already paid for an annual subscription for this data. The Election Division can also provide reports which include this restricted information, but do not permit the identification of any individual voter as the result of providing the compilation. (IC 3-7-26.4-4; 3-7-26.4-8)

Public Records Retention

A county voter registration office receives many documents in the performance of its duties. These records must be retained for a period of time specified by the NVRA and Indiana statute. Also, a county commission on public records may have adopted a retention schedule pursuant to IC 5-15-6 that may apply to the retention and destruction of public records. However, this retention schedule could not provide for the destruction of records earlier than dates specified by federal or state statute applicable to the records in question.

It is critically important to always keep the voter registration application for any voter who is “active”, and for an “inactive voter” until the registration of the inactive voter is either cancelled or reclassified as “active”. Once cancelled for any reason (death, request for cancellation, voter list maintenance programs, imprisonment following conviction), the cancelled registration must be kept for 2 years.

Other documents that must be kept for 2 years are: (1) rejected registration applications; (2) declinations; (3) reports regarding persons who have been imprisoned following conviction from the county sheriff, Department of Correction or any court; (4) reports regarding the death of any person used to cancel that person’s registration received from the State Department of Health or any local health official; (5) any postcard, list or other information received or created during the course of a voter list maintenance program; (6) any affidavit used to cancel or transfer a registration, including the VRG 4/12 and 15; (7) certificates of error; and (8) any report from the Indiana Election Division or other source from out of state regarding the cancellation of a registration due to a voter moving out of state. (IC 3-7-27-6)

County voter registration offices must keep the poll lists after Election Day once they are used to update voter registrations based upon activities occurring on Election Day. Poll lists must be retained at least 22 months after the election before they are destroyed. However, for convenience sake, these records may be batched with the records that may be destroyed after 24 months. Further, it may be easier to batch records for destruction according to the year to which they pertain. For example, all documents that pertain to 2008 may be destroyed on January 1, 2011.

Indiana Election Division’s contact information is 302 West Washington Street, Indianapolis, Indiana, 46204; (317) 232.3939, should you have any further questions. For your reference, the complete text of I.C. § 3-7-27-6 is as follows:

Sec. 6. (a) As required under 42 U.S.C. 1973gg-6(i), a county voter registration office shall retain records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of the voter registration list. These records include the following:

(1) Lists of names and addresses of voters who were sent notices under the voter list maintenance program.

(2) Information concerning whether a voter has responded to a notice described by subdivision (1) as of the date the inspection of the record is made.

(b) The county voter registration office shall retain the records described by this section for at least two (2) years. Except for records concerning declinations to register to vote or that indicate the identity of a voter registration agency where a person registered, the county voter registration office shall make the records available for public inspection and photocopying at a reasonable cost as provided in IC 5-14-3.

(c) In accordance with IC 5-14-3-3(h) and notwithstanding any other statute, a county voter registration office shall, with regard to voter registration information concerning voters of the county on a computerized system, act in accordance with a nondiscriminatory uniform policy adopted by the county election board. The policy must either permit a person to duplicate or obtain a duplicate copy of a computer tape, computer disc, microfilm, or other similar record system that contains this voter registration information or not permit the person to duplicate or obtain a duplicate copy of the information.

(d) A person who requests computerized voter registration information under subsection (c) must provide a written statement that the person will not:

(1) use the information to solicit merchandise, goods, services, or subscriptions; or

(2) sell, loan, give away, or otherwise deliver the information obtained by the request to any other person; for a purpose other than political activities or political fundraising activities.

(e) Publication of information obtained under subsection (d) in a news broadcast or newspaper is not prohibited.

If I can be of additional assistance, please do not hesitate to contact me.

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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor