



STATE OF INDIANA

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June 16, 2016

Mr. Kenneth Davidson
7404 Montana Avenue
Hammond, Indiana 46323

Re: Formal Complaint 16-FC-108; Alleged Violation of the Access to Public Records Act by the Lake County Board of Elections and Voter Registration

Dear Mr. Davidson:

This advisory opinion is in response to your formal complaint alleging the Lake County Board of Elections and Voter Registration (“Board”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The Treasurer has responded via Mr. James Wieser, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 11, 2016.

BACKGROUND

Your complaint dated May 10, 2016, alleges the Lake County Board of Elections and Voter Registration violated the Access to Public Records Act by failing to respond to your records request.

On April 19, 2016, you submitted a request for all “2016 pre-primary reports of candidates and committees. As of the filing of your complaint you had not received a response.

On May 25, 2016 the Board responded, stating any delays in providing records was due to delays related to primary elections. Regardless, the Board has signaled an intent to comply with your request.

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 Indiana Code § 5-14-3-1*. The Lake County Board of Elections and Voter Registration is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, 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 Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 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 (7) days of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Your request was acknowledged by the Board. You admit to delivering your request to the Board and your request was marked as received. With regard to in-person delivery of records requests, this Office has held on numerous occasions an in-person delivery which is accepted in-person by agency staff could be considered an acknowledgment simultaneous with your request. There is not necessarily a statutory need for a follow-up acknowledgement, as you insist, because you are already aware your request was received.

Regardless, it appears the Board failed to provide records to you within a reasonable time. Reasonableness depends on the circumstances and is a case-by-case determination. The Board has stated the delay was due to the request not being brought to the attention of the Director, likely due to a result of the then-pending primary elections. Oversights of office staff and other administrative errors are not reasonable justifications for failing to respond to a records request. It may have been reasonable for staff to send you a letter informing you of anticipated delays because of the election, but this did not happen. The lack of communication is the operative issue in this situation. In any case, it is my sincere hope you have already received the records you sought.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Lake County Board of Elections and Voter Registration have violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. James Wieser, Esq.