
OPINION OF THE PUBLIC ACCESS COUNSELOR

WILLIAM R. GROTH,
Complainant,

v.

HOWARD COUNTY ELECTION BOARD,
Respondent.

Formal Complaint No.
19-FC-36

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Howard County Election Board violated the Access to Public Records Act.¹ Howard County Attorney Alan D. Wilson filed an answer on behalf of the election 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 May 6, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

On February 25, 2019, William R. Groth (“Complainant”) submitted a public records request to the Howard County Election Board through the Clerk of the Circuit Court Debbie Stewart.

Groth requested to inspect or receive copies of the following:

...all absentee ballot envelopes in the 2018 general election in which are contained absentee ballots that were rejected and not counted pursuant to Ind. Code § 3-11.5-4-13(a)(2), because of a determination that the signature on the voter’s application did not correspond to the signature upon the ballot envelope or transmitted affidavit. This request also includes copies of any logs or other records maintained by the Board containing the name and address of all voters whose absentee ballot was rejected under the above statute because of a signature-matching issue.

Groth contends that he received no response, so he resubmitted the request on April 4, 2019, by certified mail. Groth included a return receipt signed by Clerk Debbie Stewart, which he says shows that Stewart received the second request four days later.²

Groth asserts that he received neither a response nor the requested records. As a result, he filed a formal complaint alleging on May 6, 2019. In sum, Groth argues the Howard

² The Howard County Election Board does not dispute this fact, but the included receipt does not include date of delivery.

County Election Board (“Board”) violated the Access to Public Records Act by failing to respond to his requests for records and for failing to produce the requested records for inspection or copying.

The Board contends that it responded to Groth’s request via email on April 10, 2019, agreeing to make the absentee envelopes available for inspection at a mutually agreeable time. The Board invited Groth to contact the Clerk to arrange the inspection. The Board says it never heard back from Groth.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.* There is no dispute that the Howard County Election Board (“Board”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Thus, unless otherwise provided by statute, any person may inspect and copy the Board’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Still, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. *See generally* Ind. Code § 5-14-3-4.

2. Groth's Complaint

APRA provides a public agency seven days from the date of receiving a request for records to respond to the requester or the request is denied. *See* Ind. Code § 5-14-3-9(c).

Groth's complaint features two identical requests filed on different dates (February 25; April 4) in different ways (standard mail; certified) with the same agency.

Groth asserts that he received no response to his February request, so he refiled the same request on April 4. The Board does not deny or otherwise dispute this claim.

After receiving the request, the Board had seven days to issue response or the request is considered denied as a matter of law. Thus, if the Board received the original request and simply failed to respond to it, that constitutes a violation of APRA.

Even so, Groth did not file a complaint at the time of the denial. Instead, he voluntarily refiled the request through certified mail about a month later.

The Board provided this office with a copy of an email from April 10, 2019, acknowledging Groth's request and inviting him to arrange a time for inspection. Although this office cannot say for sure if Groth received this acknowledgement, the email address is identical to the one on file with this office for Groth. Thus, this office will presume Groth received the Board's response to his second request.

In sum, there can be little doubt that Groth was on solid ground for an APRA violation based on his request in February, but he did not file a complaint. Instead, Groth refiled

his request and sent it through certified mail at the beginning of April. This office is persuaded that the Board timely responded to Groth via email on April 10; and thus, did not violate APRA by failing to respond, at least, to the second request.

At the same time, this office would be remiss not to remind the Board to be mindful about failing to respond entirely to a request for public records. That constitutes a denial under the law.

Under APRA, a person who has been denied the right to inspect or copy a public record by an agency may file an action in circuit or superior court to compel the agency to permit the person to inspect and copy the public record. Ind. Code § 5-14-3-9(e).

Since Groth refiled his request through certified mail, it stands to reason that he wanted to be certain that the agency received the request the second time around, which it did and it responded appropriately.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Howard County Election Board has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor