

August 27, 2001

Ms. Monica K. Jamesen
c/o MB Inc.
Post Office Box 1210
Goshen, IN 46527-1210

Re: Advisory Opinion 01-FC-44; Alleged Denial of Access to Public Records by the Allen County Election Board.

Dear Ms. Jamesen:

This is in response to your formal complaint, which was received on August 15, 2001. You have alleged that the Allen County Election Board ("Election Board,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a request for a copy of a certain candidate's files and received nothing from the Election Board. Ms. Pam Finlayson, Director of the Election Board, responded in writing to your complaint and a copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Election Board did not violate the APRA with respect to your July public records requests.

BACKGROUND

According to your complaint, on July 23, 2001 you hand-delivered requests to the Election Board requesting copies of files of various election committees. Within those requests, you asked for copies of the files of the Citizens for Steve Sims Committee. You allege that you were advised verbally by the Election Board staff that these files had been purged two (2) years early. You claim that you received a packet of material from the Election Board in response to your requests but that there was no mention of what had been sent or not sent and you received nothing concerning the Citizens for Steve Sims Committee.

In response to your complaint, Ms. Finlayson stated that the Citizens for Steve Sims file was a campaign finance file for Judge Stephen Sims, who ran unopposed in 1996 for the office of Superior Court Judge. This campaign finance file was closed after that election and the Election Board disposed of the file four (4) years from the December 1st following that election under Indiana Code section 3-9-4-6. Ms. Finlayson also informed me by telephone that when you delivered your requests, the Election Board staff attempted to explain that some of the documents you requested no longer existed. She also stated that you were not denied access to any public records. The public records provided to you in response to your July 23rd requests were the only records that the Election Board has that satisfied your request and, as to any items not supplied, it was because no such records exist.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Election Board is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Election Board during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

You have alleged that the Election Board violated the APRA by failing to provide you with any explanation as to why certain items that you requested on July 23rd were not produced. Under the APRA, if a requestor makes her request in writing, the public agency does have the obligation to notify her in writing if they are denying her access to a public record. Ind. Code §5-14-3-9(c). The failure to produce public records that do not exist, however, is not a denial under the APRA. According to Ms. Finlayson, verbal efforts were made to notify you that they did not have all of the records you requested when you delivered the requests.¹ In your formal complaint, you acknowledge as well that you had conversations with Election Board staff about the fact that the campaign finance files for Committee to Elect Stephen Sims no longer existed. Based upon the facts provided, it is my opinion that the Election Board did not violate the APRA with respect to your July 23rd requests for access to public records.

CONCLUSION

It is my opinion that the Allen County Election Board did not violate the APRA with respect to your public records requests of July 23, 2001. If a public agency does not have a record, it is not a violation of the APRA to fail to provide it to a requestor.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Pamela Finlayson, Director of Elections
Allen County Election Board

1 - With respect to the destruction of the campaign finance reports in question, Ms. Finlayson cited to Indiana Code section 3-9-4-6. This Office can only interpret state public access laws, not election records retention

statutes. You may want to contact the Indiana Election Division for a determination of whether the Election Board complied with Indiana Code section 3-9-4-6 with respect to any of the files you requested, but did not receive, in your July 23rd requests. [html](#)>