



STATE OF INDIANA

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November 5, 2015

Mr. Theotis Tolliver #910476
Wabash Valley Correctional Facility
Post Office Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 15-FC-257; Alleged Violation of the Access to Public Records Act by the State of Indiana, Secretary of State Election Division

Dear Mr. Tolliver,

This advisory opinion is in response to your formal complaint alleging the State of Indiana, Secretary of State Election Division (“Division”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Division has responded via Mr. Matthew Kochevar, Esq., Co-General Counsel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 23, 2014.

BACKGROUND

Your complaint dated September 17, 2015, alleges the State of Indiana, Secretary of State Election Division violated the Access to Public Records Act by failing to respond to your request in violation of Ind. Code § 5-14-3-3(b).

You requested oaths of service from the Election Division. You also stated you were indigent and requested a fee waiver.

In its response on October 5, 2015, the Division notes your request was misplaced by the Division. Your request was located and sent for processing.

On October 9, 2015 this Office received a communication from you, stating you had received one of the requested oaths, but did not receive the oaths of other officials. It could very well be the production of documents crossed in the mail.

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 Ind. Code § 5-14-3-1. The State of Indiana, Secretary of State Election Division is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Division’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The Division has stated it misplaced your request. That is why the Division failed to acknowledge your request. While this does not appear to be an intentional violation of the APRA, a failure to acknowledge due to error is a violation regardless of intent. It appears as if the Division has rectified the problem and provided you with the records you seek.

As for the matter of fees, you have included an affidavit of indigency. The Access to Public Records Act does not have a provision for indigence. Therefore, the Division can request copy fees before providing records to you, regardless of your status as a current or former criminal litigant. Trial rules regarding indigency would not apply to public records requests. Therefore, if you wish to receive your records, you may have to provide payment. In this instance, however, it appears as if the Division has waived the payment in this circumstance.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Matthew Kochevar, Esq.