



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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March 10, 2015

Mr. Gary R. Welsh, Esq.
320 N. Meridian, Suite #615
Indianapolis, IN 46204

Re: Formal Complaint 15-FC-38; *Alleged Violation of the Access to Public Records Act by the Marion County Board of Voter Registration*

Dear Mr. Welsh,

This advisory opinion is in response to your formal complaint alleging the Marion County Board of Voter Registration ("BVR"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* On February 20, 2015, BVR responded via Counsel, Joseph W. Smith, Esq. 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 February 5, 2015.

BACKGROUND

Your complaint dated February 5, 2015 against the Marion County Board of Voter Registration, alleges the BVR violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to produce records responsive to your request.

On or about January 26, 2015, you sent a public records request to the BVR seeking a copy of voter registration forms for two named individuals. On January 27, 2015, the BVR produced some of the records you requested. You claim the records you were provided were improperly redacted. Additionally, you contend the BVR improperly withheld as confidential information which is public record.

BVR responded to your complaint on February 20, 2015. Counsel contends the forms were properly redacted as confidential, pursuant to MCEB Resolution 05-12.

Similar to *Opinion of the Public Access Counselor 14-FC-247*, BVR claims the Marion County Election Board Resolution 05-12 ("Resolution") prohibits voting history information from being released. The information you requested would be part of the



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statewide voter registration system (“SVRS”) and 05-12 prevents all SVRS information from being released.

BVR contends the Public Access Counselor has previously opined that Ind. Code § 3-7-27-6(c) supersedes APRA, citing *Informal Opinion of the Public Access Counselor 12-INF-15*. BVR also contends that under 3-7-27-6(c), unless the election board provides otherwise, the BVR is “prohibited from disclosing any SVRS information.” Finally, it argues that *Advisory Opinion of the Public Access Counselor 14-FC-247* should not control, because BVR did not respond to that particular complaint and the “finding was based solely upon the misrepresented scope of the resolution proffered.”

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 Marion County Board of Voter Registration is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the BVR’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).

Ind. Code § 3-7-27-6(c) states in part:

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 disc 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.

The Resolution passed by the Election Board does not permit a request to duplicate or obtain a duplicate copy of the information in the computerized system. It is an opt-out provision to providing interested members of the public information in the system. I opined in *14-C-247* that Ind. Code § 3-7-27-6(c) allows the policy to cover lists of names and addresses and individual voter registrations were public record. After reviewing the law yet again, I see no reason to depart from my analysis.



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Voter history, however, is a different animal. Ind. Code § 3-27-26.4-8 excludes from disclosable information, among other things, voting history of an individual, in effect, rendering the voting history confidential. While that particular statute applies exclusively to the Indiana Election Division, the APRA states what is confidential to one public agency is confidential to any other agency receiving that information. See Ind. Code § 5-14-3-6.5. Therefore, voting history is non-disclosable. It appears as if all of the other information you requested from the BVR has been released to you, including voter registration.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Marion County Board of Voter Registration has not violated the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Joseph W. Smith, Esq.