

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
)SS:
COUNTY OF MARION) CAUSE NO.

BARBARA TULLY,)
)
Plaintiff,)
)
-vs-)
)
THEODORE (“TODD”) ROKITA,)
in his official capacity as Indiana)
Attorney General,)
)
Defendant.)

COMPLAINT

Comes now the Plaintiff, Barbara Tully, by her undersigned counsel, and for her Complaint against the Defendant under the Indiana Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*, states as follows:

Introduction

1. This is a suit over Defendant’s denial of access to public records and to compel the production thereof pursuant to Section 9(e) of the APRA, I.C. § 5-14-3-9 (e).
2. Plaintiff is a citizen of Indiana who resides in Marion County, Indiana.
3. Defendant Theodore (“Todd”) Rokita (“Rokita”) is the Attorney General of the State of Indiana. He is sued in his official capacity.

4. Defendant is a public officeholder subject to the APRA.
5. Venue is proper in Marion County pursuant to Ind. Trial Rule 75.

Factual Allegations

6. In an article dated February 16, 2021, by Indianapolis Business Journal (“IBJ”) reporter Lindsey Erdody, “*AG Rokita keeping private sector job while in elected office,*” a person identified as Defendant’s spokesperson, Lauren Houck, is quoted as having stated that Defendant had “sought and received an opinion from the Indiana Inspector General’s Office that indicated ‘his interests and outside employment are all squarely within the boundaries of the law and do not conflict with his official duties.’” The article goes on to report that Defendant received this opinion on January 15, 2021, after he was sworn in as Indiana Attorney General. A copy of the February 16, 2021, IBJ article is attached as Exhibit A.

7. On or about February 25, 2021, Plaintiff submitted a written request to Defendant under the APRA for the Inspector General (“IG”) advisory opinion. A copy of that request is attached as Exhibit B.

8. Although Defendant on March 1, 2021, acknowledged receiving Plaintiff’s request, Defendant did not respond “within a reasonable time” as required by the APRA, I.C. § 5-14-3-3(b), by either providing the requested document or claiming that the requested document was excepted from disclosure.

9. Plaintiff thereafter filed a formal complaint with the Indiana Public Access Counselor (“PAC”), and on April 29, 2021, the PAC responded in writing.

10. Citing I.C. § 5-14-3-4(b)(6), the PAC opined that the IG report was deliberative material that contained expressions of opinion, the release of which was discretionary to the recipient pursuant to I.C. § 5-14-3-4(b)(6). A copy of the PAC’s April 29, 2021, informal advisory opinion is attached as Exhibit C.

11. The PAC opined that he did not consider Defendant’s withholding the opinion to be an abuse of discretion because the opinion “could very well contain other recommendations, suggestions, and conclusions that were not disclosed and are intended to be between a public official and the state ethics chief.”

12. The PAC further opined that the “reasonable time” for Defendant’s response had elapsed.

13. Defendant did not respond to Plaintiff’s APRA request until Defendant sent Plaintiff a letter dated July 26, 2021, approximately five months after Plaintiff’s request. A copy of Defendant’s response is attached as Exhibit D.

Legal Allegations

14. Defendant’s spokesperson voluntarily disclosed the salient portion of the alleged IG report, *i.e.*, that it allegedly indicated his outside employment is “squarely within the boundaries of the law” and does not conflict with his official

duties. By voluntarily disclosing the essence of this alleged report, Defendant waived any privilege to refuse to disclose it.

15. Even if the alleged IG report were to contain some speculative material or expressions of opinion, I.C. § 5-14-3-6(a) required Defendant to separate disclosable factual material from non-disclosable information and to disclose any factual matters the document may contain.

16. Defendant's failure to timely respond to Plaintiff's request, refusal to make available to her the alleged IG report she has requested, and refusal to confirm whether the record exists, each constitutes a denial of disclosure within the meaning of I.C. § 5-14-3-9.

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Expedite this matter as required by Section 9(l) of the APRA, I.C. § 5-14-3-9(l);
- b. Review the IG opinion *in camera* pursuant to I.C. § 5-14-3-6(a) and -9(h) to the extent needed to determine whether any portions should be redacted as "deliberative materials" before disclosure;
- c. Declare that Defendant violated the APRA by failing to timely respond to Tully's request, confirm or deny the existence of the report her request identified, and/or by failing to disclose the IG report;

d. Order Defendant to permit Plaintiff to inspect and copy the IG report;

e. Award Plaintiff her reasonable attorneys' fees and costs of bringing this action, assess the civil penalties against the Defendant as permitted by I.C. §§ 5-14-3-9(j) and -9.5(e), and grant her any other just and appropriate relief.

Respectfully submitted:

/s/ William R. Groth

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