



Mr. Luke Britt
INDIANA PUBLIC ACCESS COUNSELOR
Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, IN 46204-2745

Sent via email – pac@opac.in.gov

RE: Formal Complaint 24-FC-81 received October 31, 2024

Dear Mr. Britt:

This letter is a joint response from the Office of the Indiana Attorney General (the “OAG”) and the Office of the Secretary of State (the “SOS) (collectively, the “Parties”) to Formal Complaint 24-FC-81 submitted by D. William Moreau, Jr., on behalf of the Indiana Citizen Education Foundation (the “Foundation”). In this complaint, the Foundation alleges the Parties have violated Ind. Code art. 5-14-3 (the Access to Public Records Act) by denying access to the requested records. The Parties believe they have complied with all requirements of the Access to Public Records Act (the “APRA”) in its ongoing fulfillment of the request at issue, and the Parties have not denied the requested records.

The OAG Timeline and Response

On October 21, 2024, the OAG received a request for documents from Marilyn Odendahl who is the interim editor of The Indiana Citizen. She specifically requested:

“the list of 585,774 names the Indiana Attorney General’s office and the Indiana Secretary of State’s office sent to the U.S. Citizenship and Immigration Services on Oct. 11, 2024.”

On October 22, 2024, the OAG acknowledged Ms. Odendahl’s request by emailing a letter to her.

On October 29, 2024, Ms. Odendahl emailed the OAG inquiring about the status of her request.

On October 30, 2024, the OAG responded to Ms. Odendahl’s status request via email outlining the factors that can be considered under the APRA when determining a reasonable

response time and reassuring her that any disclosable records would be emailed to her at no charge when our search was complete.

The OAG has not denied Ms. Odendahl's request. Only eight (8) business days elapsed between Ms. Odendahl's request and the OAG's receipt of the Foundation's complaint—not an unreasonable amount of time by any estimation. The OAG is actively reviewing the legal requirements of releasing the requested information.

The OAG is familiar with 18-FC-46, which outlines the factors affecting the reasonableness of timely production of documents. These factors include but are not limited to: the size of the public agency; the size of the request; the number of pending requests; the complexity of the request; and any other operational considerations that may reasonably affect the public records process.

The OAG is a mid-size agency. The Advisory Division—a small group of twelve (12) staff members within the OAG—responds to all public records requests received by the OAG. At the time we received Ms. Odendahl's request, we had fifty (50) pending requests ahead of hers. The staff is specifically assigned to work on public records requests in addition to discharging their regularly assigned duties and responsibilities. These duties include reviewing state agency contracts, reviewing state administrative rulemaking, advising professional and medical licensing boards, preparing and giving presentations at continuing legal education events and other training seminars, and researching and drafting advisory opinions. (In Opinion of the Public Access Counselor 12-FC-312, the OAG provided a more in-depth discussion of the various duties of the Advisory Division and the APRA review process.) Most final responses require review and approval from the OAG Executive Office. Finally, in the interest of fairness and practicality, the OAG processes APRA requests in the order they are received. There are no “exigent circumstances” or “emergency need” requirement in the statute.

The SOS Timeline and Response

On October 17 and 18, 2024, in response to a press release about a joint correspondence from the SOS and OAG to the United States Citizenship and Immigration Service, the SOS Communications office received approximately 10 media inquiries and 4 potential public record access requests.

On October 17, 2024, the SOS Communications office received 2 correspondences from Marilyn Odendahl and acknowledged them that day.

On October 18, 2024, the SOS initiated a consultation with the OAG about the requests and public access to the information contained in the records at issue.

On October 21, 2024, a record request from Marilyn Odendahl addressed to the SOS and OAG was received by the SOS Communications office. That request was forwarded to the SOS General Counsel, who confirmed that the OAG would provide counsel to the SOS in responding to the request.

The SOS has not denied Ms. Odendahl's request and is working with the OAG and owner/administrator of the database and from which the records were extracted to determine if the requested records are available for public access.

Notwithstanding an exceptional agency workload associated with administration of the 2024 General Election on November 5th and time-sensitive duties associated with post-election administration leading to certification of national, state and local election contests by the November 19, 2024 deadline, the SOS has been working to determine if the data contained in the records is available for public access under restrictions in the Indiana Election Code and state data privacy laws. While individual registered voters may access their individual voter registration information, bulk data and data extracts and reports from the Indiana Statewide Voter Registration System database, compiled for official use, may be subject to data access and use restrictions.¹ For example, pursuant to IC 3-7-26.4-9 & 10, persons authorized to receive a compilation of voter registration information from the state's computerized list are required to execute an agreement with the Indiana Election Division, agreeing that the data will not be used for commercial purposes, transferred to unauthorized users, or used for unauthorized purposes.

Conclusion

In the present instance, there has been an added level of complexity to the fulfillment of the records request because of the collaboration between the OAG and the SOS. The records request prompted several team meetings between the Parties, as well as ongoing legal analysis regarding the potential confidentiality of statewide voter registration information.

Based on the above factors, because the OAG was responsive to Ms. Odendahl's status inquiry during her pending request, and because only eight (8) business days elapsed between the date of Ms. Odendahl's request and our receipt of the Foundation's complaint, the OAG believes it is compliant with Ind. Code art. 5-14-3.

The Parties have not denied Ms. Odendahl's request and are still actively working to respond to Ms. Odendahl's request.

Thank you for your consideration in this regard. If you have any further questions regarding this matter, please feel free to contact us.

Sincerely,



William H. Anthony
Chief Counsel, Advisory Division
Office of the Indiana Attorney General



Jerold A. Bonnet
General Counsel
Office of the Indiana Secretary of State

¹ See IC 3-7-26.4 et. al, Statewide Voter Registration Information