



TODD ROKITA
ATTORNEY GENERAL

January 31, 2025

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

Sent via email – pac@opac.in.gov

RE: 24-FC-81 Supplement to New Complaint received January 31, 2025

Dear Mr. Britt:

This letter is a response from the Office of the Indiana Attorney General (“OAG”) and Indiana Secretary of State (“SOS”) to Formal Complaint 24-FC-81 submitted by D. William Moreau, Jr., on behalf of the Indiana Citizen Education Foundation (the “Foundation”). In its latest complaint, the Foundation alleges the OAG and SOS have violated Ind. Code ch. 5-14-3 (the Access to Public Records Act) by denying access to the requested records. The OAG and SOS believe we have complied with all requirements of the Access to Public Records Act (the “APRA”) in our denial of the request at issue.

The OAG denial letter speaks for itself. Because the responsive records at issue are a part of the voter registration information maintained by the SOS’s office, it may not be provided, except for certain specific uses. Ind. Code § 3-7-26.4-2. Thus, the responsive records are not being disclosed because they are declared confidential by state statute. Such records may not be disclosed by a public agency. Ind. Code § 5-14-3-4(a)(1). Additionally, because these confidential records were provided to the OAG by the SOS, the OAG is required by the APRA to maintain their confidentiality. Ind. Code § 5-14-3-6.5.

The Foundation asserts that Ind. Code ch. 3-7-26.3 does not mention the OAG or the U.S. Citizenship and Immigration Service (“USCIS”) as entities to which the SOS can provide partial voter information, and therefore the SOS should not have shared the responsive records with either entity. However, the USCIS letter issued on October 11, 2024 (attached) goes into some detail about the overlapping election integrity responsibilities of all three entities—the OAG, the SOS, and the USCIS—and the legal reasons for sharing the responsive records with the USCIS:

“As the Attorney General and Secretary of State of Indiana, we are tasked in various ways with safeguarding the lawful and orderly administration of Indiana elections. *See, e.g.*, Ind. Code § 3-6-4.1-22; Ind. Code § 3-6-3.7-1; Ind. Code § 3-7-26.3-10. Ensuring that our elections are conducted in accordance with state law means, among other things, keeping ineligible voters off our state’s rolls. Ind. Code § 3-14-2-10. We take that responsibility seriously.”

“Under federal law, it is ‘unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.’

18 U.S.C. § 611(a). Federal voter registration laws require the form for federal elections to state ‘each eligibility requirement (including citizenship).’ 52 U.S.C. § 20504(c)(2)(C)(i). Likewise, falsely claiming to be a citizen to register to vote or to vote in a federal, state, or local election constitutes a federal felony punishable by up to five years in prison. *See* 18 U.S.C. § 1015(f).”

“Similarly, Indiana law prohibits non-citizens from voting. Ind. Code § 3-7-13-1. Our State Constitution expressly reserves the franchise to citizens. *See, e.g.*, Ind. Const. Art. 2, § 2(a) (‘A *citizen* of the United States, who is at least eighteen (18) years of age and who has been a resident of a precinct thirty (30) days immediately preceding an election may vote in that precinct at the election) (emphasis added)). And Indiana statutes governing voter registration make clear that a person must be a ‘United States citizen’ to register to vote. Ind. Code § 3-7-13-1. Attempting to register or assisting someone else to register to vote when the registrant is not an eligible voter are crimes under Indiana law. *See* Ind. Code § 3-14-2-1 & 2.”

“In addition, Indiana is obligated by federal law to ‘perform list maintenance’ on its statewide voter registration list—including removing voters ‘who are not eligible to vote’ from the voting rolls. 52 U.S.C. § 21083(a)(2)(A) & (B). Indiana law also requires Indiana election officials to take steps to verify the residency and citizenship of registered voters. *See* Ind. Code § 3-7-38.2-16; Ind. Code § 3-7-38.2-7.3. State election officials are further directed to remove ineligible voters from the voter rolls under various circumstances. *See, e.g.*, Ind. Code § 3-7-46-1; Ind. Code § 3-7-45-1; Ind. Code § 3-7-38.2-1.”

“Under current law, there is no single method for verifying to a reasonable degree of certainty the citizenship of all Indiana voters. We therefore seek to utilize all tools at our disposal to verify voters’ citizenship and help ensure the integrity of our state’s voter registration system. One of those tools is provided by federal law, which requires USCIS to ‘respond to an inquiry by a . . . State . . . government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.’ 8 U.S.C. § 1373(c). Federal law also prohibits USCIS from ‘in any way restrict[ing], any government entity or official from . . . receiving from [USCIS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.’ *Id.* § 1373(a). That means USCIS cannot restrict its own officers and employees from responding to our request for citizenship verification. Information provided by USCIS in response to this inquiry can then be used by Indiana state and local officials to remove ineligible voters from our voter rolls. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 15 (2013) (explaining that states may ‘deny[] registration based on information in their possession establishing the applicant’s ineligibility’ (quotations omitted)).”

“Accordingly, we formally request that USCIS fulfill its obligations under 8 U.S.C. § 1373(c) and verify the citizenship of the individuals identified in the attachments to this letter.”

The list of voter registrations was sent to the USCIS from the SOS and the OAG as part of general election administration. Additionally, the SOS and the election division are the owners of all property comprising the statewide voter registration list and it must be used exclusively for voter registration and election administration. Ind. Code § 3-7-26.3-4. The voter information that was shared is part of an effort to confirm whether a subset of voters lacking certain information are non-citizens. This is a function of election administration in coordination with the OAG as the State’s chief legal officer. Thus, the lists were

shared under Ind. Code § 3-7-26.4-2(1) which allows the SOS to provide any part of the compilation of the voter registration information as provided in Ind. Code ch. 3-7-26.3.

Finally, the Foundation asserts that Ind. Code § 5-14-3-3(f) explicitly allows them the right to see the responsive records. To be clear, the list of names was created by the SOS and the list belongs to the SOS. The list was provided to the OAG in its role as attorney for the SOS. Generally, “if a public agency has created a list of names and addresses . . . it must permit a person to inspect and make memoranda abstracts from the list *unless access to the list is prohibited by law.*” Ind. Code § 5-14-3-3(f) (emphasis added). As discussed above, in this instance the responsive records are subject to Ind. Code § 3-7-26.4-2 which makes them confidential, thus their disclosure is prohibited by law. Finally, because these confidential records were provided to the OAG by the SOS, the OAG is required by the APRA to maintain their confidentiality. Ind. Code § 5-14-3-6.5.

Based on the above factors, the OAG and SOS believe we have complied with all requirements of the APRA in our denial of the request at issue. Thank you for your consideration in this regard. If you have any further questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "William H. Anthony". The signature is written in a cursive, flowing style.

William H. Anthony
Chief Counsel, Advisory Division