OPINION OF THE PUBLIC ACCESS COUNSELOR

INDIANA CITIZEN EDUCATION FOUNDATION, INC.,
Complainant,

v.

THE OFFICES OF THE INDIANA ATTORNEY GENERAL AND INDIANA SECRETARY OF STATE
Respondent.

Formal Complaint No.
24-FC-81

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaints alleging the Offices of the Indiana Attorney General and the Indiana Secretary of State violated the Access to Public Records Act.[1] Chief Counsel of the Advisory Division of the Indiana Attorney General, William Anthony, filed an

[1] Ind. Code § 5-14-3-1–10.

answer on behalf of both agencies. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints received by the Office of the Public Access Counselor on December 11, 2024 and January 10, 2025.

BACKGROUND

This case involves a dispute over access to a list curated by the Offices of the Indiana Attorney General (OAG) and the Indiana Secretary of State (SOS).

On October 21, 2024, the Complainant, Indiana Citizen Education Foundation, Inc. (Indiana Citizen), submitted a public records request vis-à-vis the Interim Editor of the Indiana Citizen. It sought:

> [T]he 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.

Her request was properly acknowledged on October 22. After requesting a status update, the OAG responded to the request, stating that any disclosable records would be provided after review.

The Complainant's first complaint to this office is focused on the timeliness of the response of the agency. While it had not been denied as of the complaint submission on October 30, the Indiana Citizen argues the list is a tangible document that could have been easily provided. Time was of the essence due to the elections held on November 5. Indiana Citizen argues that the public has the right to know if they were

on that list and its mere existence could be considered a barrier to vote.

The OAG responded to that complaint on January 13, 2025 on behalf of its own office and the Secretary of State. It argues that the response remained a work in progress and the request had not yet been denied.

While that complaint was pending, on December 11, 2024, the request was denied. The OAG and SOS contend that Indiana Code 3-7-26.4-2 prohibits the election division of the Secretary of State's Office from disclosing any part of the compilation of the voter registration information contained in its computerized list.

The Indiana Citizen disputes that allegation, first by expressing dismay that it took 55 days to deny the request, and then contending that the statute has applicable exceptions. It argues that the statute exists to prevent the election division from having to curate lists of voters from the computerize lists, an exercise of which would overwhelm the office with public records requests. Nonetheless, when the list has already been created, announced, and publicized, the Complainant argues that the list should be made available for inspection under APRA.

The OAG and SOS responded to that complaint on January 31, 2025 by reiterating that the statute still prohibits the Secretary of State's office from disclosing the list.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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." Ind. Code § 5-14-3-1. The Indiana Attorney General and the Indiana Secretary of State are is a public agencies for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy those agency's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Election records

This opinion contemplates a specific Title 3 consideration regarding disclosure of information in the statewide voter registration system.

The state's election code prohibits disclosure of "any part of the compilation of the voter registration information contained in the computerized list" by the election division of the Secretary of State. See Ind. Code § 3-7-26.4-2.

To the Complainant's point, this largely shields the election division from having to field public records requests curating portions of the list and disclosing them upon request. This can be accomplished at the county level – and largely is – pursuant to Indiana code 3-7-27-6(c).

This is why, upon receipt of the complaint, it was immediately forwarded to the election division for a response. Nonetheless, the election division deferred to the Secretary of State proper as they were not involved in the exercise. It stated that the election division and the Secretary of State's office are "separate offices". Indeed, the OAG and the SOS's legal counsel submitted joint responses, but the election division or its attorneys did not.

Indeed, while the bipartisan election division is created within the Secretary of State's office by statute, its directors are appointed by the Governor and its staff is mutually exclusive from the SOS's staff. See generally Ind. Code § 3-6-4.2 et.al.

Therefore, if the election division did not directly participate in the curation of the list in question, the statute used for denial does not apply.

While the Complainant's point is well taken in regard to the purpose of the statute, the public access counselor cannot ascribe legislative intent to these advisory opinions and is strictly limited to the rote, plain reading of the law. See Ind. Code § 5-14-4-10.5.

By that same token, the public access counselor cannot transmute a statute expressly addressed to the election division to the SOS generally or to the OAG.

Therefore, it is the opinion of this office that the denial was improper based on the law as plainly written.

2.1 Reasonable timeliness

The crux of the initial dispute is the timeliness for responding to a public records request with the responsive documents.

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency's disclosable public records. Ind. Code § 5-14-3-3(a). Toward that end, the law requires an agency within a reasonable time after the request is received to either:

> (1) provide the requested copies to the person making the request; or
>
> (2) allow the person to make copies:
>
> (A) on the agency's equipment; or
>
> (B) on the person's own equipment.

Ind. Code § 5-14-3-3(b)(1)–(2). The term "reasonable time" is not defined by APRA; and thus, it falls to this office to decide on a case-by-case basis whether an agency responded within a reasonable time. In doing so, this office considers the following factors: (1) the size of the public agency; (2) the size of the request; (3) the number of pending requests; (4) the complexity of the request; and (5) any other operational considerations or factors that may reasonably affect the public records process.

Moreover, the APRA also contemplates lists. Indiana code section 5-14-3-3(f) is clear that agencies do not need to create lists of names and addresses upon request, however, if they are created, they must permit a person to inspect the list and make abstracts.

The list in question was created on or before October 11, 2024, when the SOS and OAG sent a letter to the U.S. Citizenship and Immigration Services seeking assistance in scrutinizes that list.

The motivation behind the creation of the list is not for the public access counselor to consider. But timing and circumstances do.

By issuing the letter three weeks prior to an election, it stands to reason that the announcement of the list would generate significant public interest and public records requests would be invited by those agencies' actions. Moreover, strategies could have, and should have, been given forethought as to how those requests were handled.

Instead, the complainant had to wait 55 days before a denial that was, for all intents and purposes, a foregone conclusion. So too was the value of the list diminished by denying access after the election.

As noted above, it is unlikely that the list could have been shielded from disclosure. As such, the Complainant should have been granted access by inspection close to the time of the request. An appointment to inspect the list in-office, while allowing the Complainant to make an abstract thereof, would not have been an unreasonable burden at the time of the request.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Offices of the Indiana Attorney General and the Indiana Secretary of State improperly withheld a list from inspection and failed to allow inspection within a reasonable time.

Luke H. Britt
Public Access Counselor

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