



**OFFICE OF THE PUBLIC ACCESS COUNSELOR**  
**FORMAL COMPLAINT**  
 State Form 49407 (R7 / 4-23)

**OFFICE OF THE PUBLIC ACCESS COUNSELOR**  
 Indiana Government Center South  
 402 West Washington Street, Ste. W470  
 Indianapolis, Indiana 46204-2745  
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**INSTRUCTIONS:** This form is to be used only when filing complaints under Indiana Code 5-14-5. All information provided is disclosable under the Access to Public Record Act. **PLEASE TYPE OR PRINT.**

**FOR OFFICE USE ONLY**

Date received (month, day, year)	Complaint number	Date due (month, day, year)
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**COMPLAINANT INFORMATION**

Name (last, first, middle initial) Indiana Citizen Education Foundation, Inc.				
Address (number and street) 3544 Clearwater Circle		City Indianapolis	State Indiana	ZIP code 46240
Telephone number (317) 370-1505	Fax number ( )	E-mail address bill.moreau@indianacitizen.org		

**INFORMATION ABOUT PUBLIC AGENCY DENYING ACCESS**

Name of public agency Office of the Attorney General				
Address (number and street) 302 W. Washington St, IGCS 5th Floor		City Indianapolis	State Indiana	ZIP code 46204-2770
Telephone number (866) 462.5246	Fax number ( )	E-mail address not provided by agency		

Name of elected / appointed official or presiding officer responsible for the denial  
**William H. Anthony**

**COMPLAINT (Check all that apply.)**

<input type="checkbox"/> <b>Open Door Law Violation</b>	<input checked="" type="checkbox"/> <b>Access to Public Records Act Violation</b>
<input type="checkbox"/> Executive Session	<input checked="" type="checkbox"/> Denial of Access
<input type="checkbox"/> Notice	<input type="checkbox"/> Denial of Electronic Access
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Copy Fee
	<input type="checkbox"/> Other: _____

**IMPORTANT**

Date denied access to public record (month, day, year) December 11, 2024	Date notified of denial of access to meeting (month, day, year)
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Please describe denial of access to meeting or public records below. Attach additional sheets if necessary. (Required)  
**Access to records created by the office of the Secretary of State and supplied to the Attorney General for transmittal to a federal agency improperly denied pursuant to IC 3-7-26.4-2 as discussed in attachment**

**PLEASE ATTACH COPIES OF ANY WRITTEN DENIAL OR DOCUMENTATION CONCERNING DENIAL.**

Signature 	Date (month, day, year) January 10, 2025
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January 10, 2025

Luke Britt, Public Access Counselor  
Office of Public Access Counselor  
Indiana Government Center South  
402 West Washington Street, Suite W470  
Indianapolis, IN 46204-2745

Dear Mr. Britt:

This Complaint is being filed by the Indiana Citizen Education Foundation, Inc., an Indiana nonprofit corporation, as the owner of *The Indiana Citizen*, an information platform found at [www.indianacitizen.org](http://www.indianacitizen.org). It arises out of the Office of the Attorney General's December 11, 2024 denial (the attached "12/11/2024 OAG Denial") of an APRA request filed October 21, 2024 by Editor Marilyn Odendahl. Her APRA request sought the attachments to an October 11, 2024 letter sent by Attorney General Todd Rokita and Secretary of State Diego Morales to the United States Citizenship and Immigration Services (USCIS) which they released to the public on October 17, 2024. The attachments contained the names of 585,774 Hoosiers whose citizenship status—and therefore eligibility to vote in the November 5, 2024 election—they questioned and asked the federal agency to verify.

Although you have yet to rule on our October 30, 2024 Complaint which dealt with the same subject matter and which you docketed as 24-FC-81, we assume this Complaint supersedes it. In order to obviate the need to repeat the history of this dispute, we have attached that Complaint but not its several attachments.

Pursuant to IC 5-14-5-6, we respectfully ask you to issue an Opinion concluding the offices of the Indiana Secretary of State and Attorney General should release the records we sought in our October 21, 2024 APRA request for the reasons set forth below.

The 12/11/2024 OAG Denial relies entirely on IC 3-7-26.4-2:

The election division [of the Office of the Secretary of State] may not provide any part of the compilation of the voter registration information contained in [its] computerized list [of registered voters]...

While succinct and controlling at first glance, that statute cannot possibly be as unambiguous as the OAG would have us believe. If it were so clear, why did it take the OAG and its client, the Indiana Secretary of State, 55 days—the time between October 17, 2024 and December 11, 2024—to find and cite it?

While acknowledging that as a member of the media we could have requested a “complete compilation” of the voter registration information contained in the Statewide Voter Registration System, the OAG argues that because the lists the SOS created are a subset, they cannot be provided for public inspection. The OAG further acknowledges, however, that the SOS may create and share a “part” of the compilation “in certain limited situations” it incorrectly says do not apply in this case.

The “certain limited situations” are set forth in IC 3-7-26.4-2:

“(1) as provided in IC 3-7-26.3 or this chapter;

(2) to perform voter list maintenance duties required by 52 U.S.C. 21083; or

(3) to redact voter registration information declared confidential under a court order or IC 5-26.5-2.”

Of those “certain limited situations,” the first one, IC 3-7-26.3, does apply here. That provision lists various federal, state and county agencies to which the SOS can “provide” partial voter information: the federal Social Security Commissioner, the Indiana Bureau of Motor Vehicles, the Indiana Department of Health, the Indiana Department of Correction and county clerks and voter registration offices. The Indiana General Assembly did not list the Attorney General or U.S. Citizenship and Immigration Services. Under the doctrine of *expressio unius est exclusio alterius*, *A.A. v. Eskenazi Health/Midtown CMHC*, 97 N.E.3d 606, 614 (Ind. 2018) (when certain items or words are specified in a statute, by implication other terms or words not so specified are excluded) and, applying the OAG’s logic, the SOS was barred from providing the three lists—inarguably three “parts” of the compilation—to the AG and USCIS.

The OAG’s belated and post facto excuse for withholding the names of 585,774 registered voters whose citizenship was questioned is that if the SOS creates a list that is just one name fewer than the entire compilation, publicizes the creation of that list, and sends it to a federal agency, the SOS is statutorily barred from releasing it. The Indiana General Assembly could not have intended such an absurd result, especially not one that is so clearly antithetical to the strong public policy favoring governmental transparency. *ESPN, Inc. v. Univ. of Notre Dame Police Dep’t.*, 62 N.E.3d 1192, 1196 (Ind. 2016) (“[W]e do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result.”); *Shepherd Props. Co. v. Int’l Union of Painters & Allied Trades*, 972 N.E.2d 845, 852 (Ind. 2012) (APRA must be “liberally construed to implement” the policy of full access to public records and transparency of government affairs. I.C. § 5-14-3-1).

The General Assembly enacted IC 3-7-26.4-2 for one obvious salutary purpose only: to shield the SOS from countless, time-consuming data-sorting requests. This provision wisely compels the SOS to reject the predictable, myriad requests for lists of voters from a certain zip code, or county, or age group, or virtually thousands of other subsets of the Indiana voter registration file. But it is inconceivable that the General Assembly would have

envisioned this provision to permit the SOS to *create* three subsets of registered voters, *hand them* to the AG, *send them* to a federal agency, *hold a news conference* announcing their existence, but thereafter claim it is “statutorily prohibited” from releasing these records.

IC 5-14-3-1 provides that the burden for nondisclosure of a public record is on the agency that would deny access to that record. Given APRA’s liberal construction mandate, APRA’s exceptions to disclosure must be narrowly construed and applied. *Sullivan v. Nat’l Election Def. Coalition*, 182 N.E.3d 859, 872 (Ind. Ct. App. 2022). This narrow construction would seem to apply with special force when, as here, the alleged exemption relied on by the government is not contained in APRA but in a different and unrelated statute.

Lastly, APRA *explicitly* allows us the right to see the three lists. IC 5-14-3-3(f) says in pertinent part:

(f) ...[A]public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, *if a public agency has created a list of names and addresses (excluding electronic mail account addresses), it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law...* (emphasis added)

In our situation, though the SOS was not required to create the three lists of 585,774 names, now that he has done so, APRA requires him to make them available to us for inspection and abstracting, and the OAG has pointed to nothing that would expressly prohibit the disclosure.

To summarize:

1. The AG and SOS participated in a concerted effort to insinuate, without any evidence whatsoever, that some number of non-citizens had criminally registered to vote in Indiana, an effort which if not designed to, at the very least had the effect of deterring otherwise legitimate voters from voting;

2. In furtherance of that concerted effort, the SOS caused three subsets of the voter registration file—each a “part” thereof--to be created;

3. No one from outside government asked the SOS to create those three “parts” and the SOS would have been statutorily barred from providing them;

4. The SOS unlawfully provided those “parts” to the AG and USCIS;

5. But even if the SOS could lawfully provide those “parts” to the AG and USCIS, they were records (lists) created by a state agency itself; and

6. Though the SOS wasn't required to create those three "lists," now that he has, APRA expressly requires that those lists be made available to a public records requester for inspection and abstracting. IC 5-14-3-3(f).

7. The SOS and AG have not sustained their burdens of proof for their refusal to disclose these lists.

We urge your office to issue forthwith a formal opinion so concluding and recommending those lists be made available to us for inspection and abstracting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. William Moreau, Jr.", written in a cursive style.

D. William Moreau, Jr.  
President, Indiana Citizen Education Foundation, Inc.  
Publisher, *The Indiana Citizen*  
[bill.moreau@indianacitizen.org](mailto:bill.moreau@indianacitizen.org)  
317.370.1505

OFFICE OF THE ATTORNEY GENERAL  
STATE OF INDIANA



302 W. WASHINGTON ST. IGCS 5TH FLOOR  
INDIANAPOLIS, IN 46204-2770

**TODD ROKITA**  
ATTORNEY GENERAL

December 11, 2024

Marilyn Odendahl  
Interim Editor  
The Indiana Citizen  
[marilyn.odendahl@indianacitizen.org](mailto:marilyn.odendahl@indianacitizen.org)

*William H. Anthony*

William H. Anthony  
Chief Counsel, Advisory Division

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*u*

**RE: Public Records Request received October 21, 2024**

Dear Ms. Odendahl:

This letter is in response to your public records request received by our Office via email on October 21, 2024. You specifically requested the following:

**“... 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.”**

Please be advised that after searching our records, we have found three (3) that are responsive to your request. However, we are required by the APRA to except these records from disclosure.

The election division of the office of the Secretary of State “may not provide any **part** of the compilation of the voter registration information contained in [its] computerized list,” except in certain limited situations that do not apply in this case. Ind. Code § 3-7-26.4-2 (emphasis added).

To be sure, a member of the media may request a “**complete compilation** of the voter registration information contained in the computerized list” from the election division. Ind. Code § 3-7-26.4-6(4) (emphasis added). Even then, certain information must be redacted from the computerized list. Ind. Code § 3-7-26.4-8. Additionally, “a person who files a request for a compilation of the information contained in the computerized list must execute an agreement with the election division.” Ind. Code §§ 3-7-26.4-9 and -10.

As discussed above, the requested records are merely a **part** of the compilation of the voter registration information contained in the election division’s computerized list. As such, the election division is prohibited from providing the records under Ind. Code § 3-7-26.4-2. Thus, the responsive records are not being disclosed because they are declared confidential by state statute as explained above. Such records may not be disclosed by a public agency under Ind. Code § 5-14-3-4(a)(1).

Finally, the Office received the records from the office of the Secretary of State. The APRA states that what is confidential to one public agency is confidential to any other agency receiving that information. Ind. Code § 5-14-3-6.5; *see also* Opinion of the Public Access Counselor 15-FC-38. Because the records are not disclosable by the office of the Secretary of State, they are also not disclosable by this Office.

Sincerely,

A handwritten signature in black ink that reads "William H. Anthony". The signature is written in a cursive style with a large, stylized initial "W".

William H. Anthony  
Chief Counsel, Advisory Division



# THE INDIANA CITIZEN

THE CROSSROADS OF CIVIC ENGAGEMENT

October 30, 2024

Luke Britt, Public Access Counselor  
Office of the Public Access Counselor  
Indiana Government Center South  
402 West Washington Street, Suite W470  
Indianapolis, IN 46204-2745

Re: Public Access Complaint

Dear Mr. Britt:

This Complaint is being filed by the Indiana Citizen Education Foundation, Inc., an Indiana nonprofit corporation, as the owner of *The Indiana Citizen*, an information platform found at [www.indianacitizen.org](http://www.indianacitizen.org). Since our public launch in 2020, we have been "dedicated to increasing the number of informed, engaged Hoosier citizens." We pursue this important goal through two principal initiatives: accountability journalism and an online voter guide we call a "virtual ballot." Our accountability journalism mission is led by a career journalist, Marilyn Odendahl.

This Complaint addresses a matter of utmost urgency and public concern. Indeed, the withheld public records at issue question the citizenship—and therefore the eligibility to vote—of almost 600,000 Indiana residents with early voting already underway and mere days before the November 5, 2024 general election. The two involved public agencies have already exceeded the "reasonable amount of time [to respond]" contemplated under APRA and the records must be released immediately.

All of the items referred to below are included and attached in the order they are referenced.

The Complaint arises out of a letter sent by Indiana Attorney General Todd Rokita and Secretary of State Diego Morales on October 11, 2024, a Friday, to the United States Citizenship and Immigration Services (USCIS) which attached three lists setting forth the names of 585,774 individuals on Indiana's voter registration roll whose citizenship they questioned. According to the transmittal letter, the three proffered lists contain merely the names and dates of birth of: (1) registered Indiana voters who registered without providing a driver's license number or social security number; (2) registered Indiana voters located overseas; and (3) registered Indiana voters who registered to vote without providing a driver's license number [sic]." It is not clear how Category 3 is not subsumed within Category 1.

For reasons they have not divulged, the Attorney General and Secretary of State waited until October 17, 2024, the following Thursday, to reveal their October 11 letter through separate news releases that included the letter but omitted the three lists.





That same day, October 17, Ms. Odendahl immediately requested the lists via email to the Secretary of State's office, but she received no response. Thus, on October 21, 2024, Ms. Odendahl was urged to and did submit an APRA request to the Office of Attorney General (OAG) seeking the three lists. On October 22, 2024, the receipt of Ms. Odendahl's request was acknowledged by the OAG, as a way to satisfy APRA's seven-day response requirement. In the seven days that followed, Ms. Odendahl received nothing further from the OAG. Accordingly, late yesterday, October 29, Ms. Odendahl submitted by email a follow-up request to the OAG for the records and either a commitment for when the records will be produced or an explanation why they are not being produced. Earlier today, the OAG responded perfunctorily without producing the documents or providing any meaningful explanation, asserting that they are *still searching* for the lists. The Secretary of State today issued a news release defending the October 11 letter, but did not release the lists.

Even the most charitable reading of the timeline shows unequivocally that at least 19 days have passed since the creation of the requested records, and common sense would say they were created long before October 11. As of this filing, hundreds of thousands of Hoosiers have voted. It is now six days until the final day for voting, November 5. Meanwhile, the Attorney General and Secretary of State have arbitrarily created a cloud hanging over 585,774 Hoosiers, alleging--without proof--that some people on the lists are not citizens, and therefore criminals.

Every person on those lists has the right to know whether they are on one. Those who are not on the lists will breathe a sigh of relief and vote without concern. Citizens who are on one of the lists may choose to take steps to prove their citizenship. Non-citizens who are on one of those lists may make the rational choice to remove their names from the voter rolls and not vote.

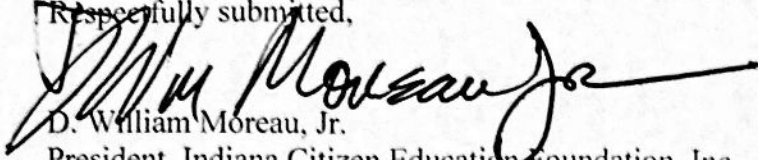
The Attorney General and Secretary of State have provided the people of Indiana no additional information beyond two news releases and the October 11 letter itself, thereby causing speculation about their motives. Is their goal to conceal the lists and wait to see how many and which noncitizens cast an unlawful ballot? Are they trying to frighten naturalized citizens who may be first-time voters from casting a ballot? Are they setting a predicate for asserting a claim that the November 5 election outcomes are not to be trusted? The release of the lists will obviate any such concerns.

This Complaint also exposes a serious defect in APRA, the absence of a deadline for the public agency to respond substantively to an open records request. Thus, Complainant's only recourse is to file this Complaint in the fervent hope the Public Access Counselor deems the delaying tactics of the Attorney General and Secretary of State to have caused an unreasonable amount of time to pass under the unique circumstances they alone created. It is ludicrous and offensive to suggest they cannot yet *locate* the lists.

We respectfully request the Public Access Counselor order the Attorney General and Secretary of State to release the three lists immediately so that almost 600,000 of us will know if we are on one of them.

The undersigned has sent a courtesy copy of this Complaint to the Office of the Attorney General.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. William Moreau, Jr.", with a long horizontal flourish extending to the right.

D. William Moreau, Jr.

President, Indiana Citizen Education Foundation, Inc.

Publisher, *The Indiana Citizen*

[bill.moreau@indianacitizen.org](mailto:bill.moreau@indianacitizen.org)

317.370.1505