

EXHIBIT A



October 11, 2024

Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, Maryland 20746

Dear Ms. Jaddou:

The Offices of the Indiana Attorney General and Secretary of State request the assistance of the United States Citizenship and Immigration Services ("USCIS") in verifying the citizenship status of certain individuals registered to vote in Indiana. As voters in our state cast their ballots in the coming weeks in important federal, state, and local races, it is essential that they do so with confidence in the integrity of our elections. It is beyond question that states have a compelling "interest in protecting the integrity and reliability of the electoral process." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008). "[P]reventing voter fraud" and thereby ensuring "public confidence in the integrity of the electoral process," are priorities that should be pursued vigorously at all levels of government in our country. *Id.* at 197. They are essential to the proper functioning of our constitutional Republic. One of the chief ways that we can pursue these goals is by confirming that every person registered to vote in Indiana is a U.S. citizen. Therefore, we ask, pursuant to 8 U.S.C. § 1373, that USCIS verify the citizenship status of the individuals registered to vote in Indiana who are identified in Attachments A, B, and C of this letter.

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 voter rolls. *See* 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 fulfil its obligations under 8 U.S.C. § 1373(c) and verify the citizenship of the individuals identified in the attachments to this letter. The attached lists of registered voters include all voters currently registered in Indiana who completed their registration without submitting a state-issued form of identification. *See* Ind. Code §§ 3-7-33-4.7. Although possession of a state-issued identification does not demonstrate that a person is a citizen, the fact that a person obtained such identification provides some assurance that their citizenship or immigration status may have been previously confirmed by a state official. *See* Ind. Code § 9-24-

11-5(c) (requiring the Indiana Bureau of Motor Vehicles to issue temporary identifications to an individual who has temporary lawful status.”).

For each individual for whom we seek verification, we have provided the name and date of birth. That information is sufficient to allow USCIS to verify these individuals’ citizenship status through use of USCIS’s Person Centric Query Service. In total, we seek citizenship verification for 585,774 individuals. We have separated the individuals who are the subject of our request into three categories: (1) registered Indiana voters who registered without providing a driver’s license number or social security number (Attachment A); (2) registered Indiana voters located overseas (Attachment B); and (3) registered Indiana voters who registered to vote without providing a driver’s license number (Attachment C). We request that USCIS provide us with verification of the citizenship statuses of these individuals in this order priority—first providing verification for the individuals in Attachment A, followed by verification of the statuses of the individuals’ listed in Attachments B and C.

The last day to register to vote in Indiana was October 7. Election Day is a little over three weeks away. We are thus at a critical juncture in this election cycle when verifying the integrity of Indiana’s voter rolls is of acute importance. Because “the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights,” Hoosiers deserve to know that only eligible voters will be participating in our elections, and that their votes will not be diluted or distorted by ballots cast by non-citizens. *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). We ask that you assist us, as you are required to do by law, in giving the citizens of our state that assurance.

Thank you for your prompt attention to this important request.

Sincerely,



Todd Rokita
Indiana Attorney General



Diego Morales
Indiana Secretary of State

EXHIBIT B

[citizenship-status-of-indiana-voters.ics](https://events.in.gov/event/secretary-of-state-diego-morales-asks-us-immigration-to-confirm-citizenship-status-of-indiana-voters.ics)) □ (<https://events.in.gov/event/secretary-of-state-diego-morales-asks-us-immigration-to-confirm-citizenship-status-of-indiana-voters.ics>)



Office of Indiana Secretary of State Diego Morales

200 W. Washington St. Indianapolis, IN 46204

FOR IMMEDIATE RELEASE

Thursday, October 17, 2024

Secretary of State Diego Morales Asks U.S. Immigration to Confirm Citizenship Status of Indiana Voters

INDIANAPOLIS - (October 17, 2024) – In response to concerns from voters and local election administrators, Indiana Secretary of State Diego Morales filed a request with the United States Citizenship and Immigration Services (USCIS) to verify the citizenship status of registered voters in Indiana who lack state issued identification. The request focuses on a limited number of individuals who registered to vote in the upcoming election without providing a state-issued form of identification.

The Indiana Secretary of State, with assistance from the Indiana Attorney General's office, aims to work with USCIS to determine if there are non-U.S. citizens on the state's voter registration rolls. Verification was also requested for citizenship status information on individuals who requested an absentee ballot to vote in Indiana from other countries locations. Indiana County Clerks voiced concerns about potential non-U.S. citizen voting after a significant increase in individuals located outside of the U.S. registering to vote and requesting absentee ballots.

County election officials will be notified if USCIS specifically identifies non-U.S. citizens on their voter registration lists. The Secretary of State does not have authority to challenge voters or update voter registration status or lists.

"A fair and secure election process begins with accurate voter information," said Secretary of State Morales. "As Indiana's Chief Election Officer, I am committed to ensuring that every registered voter in Indiana has met the legal requirements, including being a U.S. citizen. I'm proud to partner with Indiana's Attorney General in taking proactive steps to gather missing information for those who completed their registration without a state-issued ID. This is crucial to maintaining the integrity of our elections and increasing public confidence. Only U.S. Citizens can vote in Indiana. Period," said Diego Morales, Indiana Secretary of State.

"Hoosiers deserve to know that only eligible voters are participating in our elections and that legitimate ballots are not being diluted by non-citizens," Todd Rokita, Attorney General. "We are doing our part to provide this assurance."

The move reflects the state's commitment to maintaining accurate voter rolls and ensuring **only eligible U.S. citizens** participate in Indiana's elections. Here is a [link](https://content.govdelivery.com/attachments/INAG/2024/10/16/file_attachments/3035377/2024.10.%20Citizenship%20Verification%20Request.pdf) (https://content.govdelivery.com/attachments/INAG/2024/10/16/file_attachments/3035377/2024.10.%20Citizenship%20Verification%20Request.pdf) to the Citizenship Verification Request.

-30-

Media Contact – Lindsey Eaton 317.775.8909 or leaton1@sos.in.gov (<mailto:leaton1@sos.in.gov>)

Event Details

Event Type

[Press Releases \(/search/events?event_types%5B%5D=34006056633355\)](/search/events?event_types%5B%5D=34006056633355)

Calendar

[Agency \(/search/events?event_types%5B%5D=34731297000171\)](/search/events?event_types%5B%5D=34731297000171) [SOS \(/search/events?event_types%5B%5D=34733410537068\)](/search/events?event_types%5B%5D=34733410537068)

Group

[Indiana Secretary of State Diego Morales \(/group/sos\)](/group/sos)

Contact Name

Lindsey Eaton

Contact Phone

317.775.8909

general-todd-rokita-and-secretary-of-state-diego-morales-seek-verification-thatindianavoters-are-us-citizens.ics)

Attorney General Todd Rokita and Secretary of State Diego Morales seek verification that Indiana voters are U.S. citizens

Attorney General Todd Rokita and Secretary of State Diego Morales are asking the U.S. Citizenship and Immigration Services (USCIS) to verify the citizenship status of voters who registered in Indiana without providing state-issued forms of identification.

"Hoosiers deserve to know that only eligible voters are participating in our elections and that legitimate ballots are not being diluted by noncitizens," Attorney General Rokita said. "We are doing our part to provide this assurance."

Attorney General Rokita and Secretary Morales sent USCIS Director Ur M. Jaddou lists of certain voters who registered without state IDs — along with a joint letter formally requesting the agency's assistance in verifying those individuals' citizenship status.

"A fair and secure election process begins with accurate voter information," said Secretary Morales. "As Indiana's Chief Election Officer, I am committed to ensuring that every registered voter in Indiana has met the legal requirements, including being a U.S. citizen. I'm proud to partner with Indiana's Attorney General in taking proactive steps to gather missing information for those who completed their registration without a state-issued ID. This is crucial to maintaining the integrity of our elections and increasing public confidence. Only U.S. Citizens can vote in Indiana. Period."

Federal law requires USCIS to respond to inquiries from state government agencies "to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law."

The letter is attached.

As part of a multistate coalition, Attorney General Rokita is also pressing federal authorities in another letter to provide a plan for how they will verify voters' U.S. citizenship status in response to state requests. Ohio and South Carolina are leading that effort.

A headshot of Attorney General Rokita is available online (<https://links-2.govdelivery.com/CL0/https:%2F%2Fwww.in.gov%2Fattorneygeneral%2Fimages%2FTodd-Rokita.jpg/1/0101019299b60c41-8e77f87c-6a63-4b79-b39f-752498ff7136-000000/gnYKWLtEW5ZUp6nnCBIA1dnUyQH8EIU8YoRkgA2F4hs=375>).

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EXHIBIT C

From: Marilyn Odendahl <marilyn.odendahl@indianacitizen.org>

Date: Thu, Oct 17, 2024 at 2:46 PM

Subject: media inquiry - USCIS letter

To: Eaton, Lindsey <LEaton1@sos.in.gov>

Hello Lindsey

I have one question regarding the letter sent jointly by the Indiana Secretary of State and the Indiana Attorney General to the US Citizenship and Immigration Services. The letter requests the USCIS verify the citizenship of 585,774 individuals currently on Indiana's voter rolls.

My Question:

1) If USCIS does not respond (neither confirming nor denying citizenship status of any or all names on the list) will the 585,774 individuals be allowed to cast a ballot whether in early voting or on Nov. 5?

My deadline for reporting is 5 pm today. Any help you can provide will be appreciated.

Thank you

Marilyn

--



Marilyn Odendahl | interim editor

Phone: 317-771-7902

marilyn.odendahl@indianacitizen.org |

indianacitizen.org

From: **Marilyn Odendahl** <marilyn.odendahl@indianacitizen.org>
Date: Thu, Oct 17, 2024 at 3:03 PM
Subject: media inquiry - another question about USCIS letter
To: Eaton, Lindsey <L.Eaton1@sos.in.gov>

Hello Lindsey

I apologize; I hit send before I double checked my notes.

In addition to my question in the previous email (will the 585,74 voters be allowed to cast a ballot if the USCIS does not respond), I would like the list of 585,774 names.

Please pass along the list of names or let me know why they are not publicly available.

Thank you
Marilyn

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Marilyn Odendahl | interim editor
Phone: 317-771-7902
marilyn.odendahl@indianacitizen.org |
indianacitizen.org

From: Marilyn Odendahl <marilyn.odendahl@indianacitizen.org>
Date: Mon, Oct 21, 2024 at 11:57 AM
Subject: Re: media inquiry - USCIS citizenship verification
To: ATG Press <Press@atg.in.gov>

Thank you, Josh.

I appreciate your help and will file the APRA.

Marilyn

On Mon, Oct 21, 2024 at 11:51 AM ATG Press <Press@atg.in.gov> wrote:
Hello Marilyn,

If you could put this request the document in the form of an APRA, we could help.

Thanks,

Josh DeFonce
Media Director
Office of Attorney General Todd Rokita
p: 317-232-6288
joshua.defonce@atg.in.gov

From: Marilyn Odendahl <marilyn.odendahl@indianacitizen.org>
Sent: Monday, October 21, 2024 11:44 AM
To: Eaton, Lindsey <LEaton1@sos.IN.gov>; ATG Press <Press@atg.in.gov>
Subject: media inquiry - USCIS citizenship verification

EXTERNAL EMAIL: This email was sent from outside your organization. Exercise caution when clicking links, opening attachments or taking further action, before validating its authenticity.

Hello

I am writing in regards to the announcement last week from the Indiana Secretary of State and the Indiana Attorney General about asking the USCIS to verify the citizenship status of 585,774 Hoosier voters in advance of the Nov. 5 election.

The Indiana Citizen is requesting a copy of that list of 585,774 names. Can the SOS and AG provide a copy of that list or will the SOS and AG be publicly releasing that list this week?

Any help you can provide will be appreciated.

Thank you
Marilyn

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Marilyn Odendahl | interim editor
Phone: 317-771-7902
marilyn.odendahl@indianacitizen.org |
indianacitizen.org

EXHIBIT D

21 October 2024

**Office of the Indiana Attorney General
Indiana Government Center South
302 W. Washington St., 5th Floor
Indianapolis, IN 46204**

Dear General Rokita

Pursuant to the Access to Public Records Act (Ind. Code 5-14-3), I am requesting 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.

According to the letter sent to USCIS director, Ms. Ur M. Jaddou, you and Secretary Morales are asking the federal agency to verify the citizenship status of 585,774 Hoosier voters to protect the integrity of Indiana's elections and the reliability of the electoral process.

I understand I may be charged a copying fee. Please inform me of that cost prior to making the copy. I can be reached at marilyn.odendahl@indianacitizen.org.

According to the statute, you have seven days to respond to this request. If you choose to deny the request, you are required to respond in writing and state the statutory exception authorizing the withholding of all or part of the public record and the name and title or position of the person responsible for the denial.

Thank you for your assistance on this matter.

Respectfully,

**Marilyn Odendahl
Interim editor
The Indiana Citizen
Indianacitizen.org
marilyn.odendahl@indianacitizen.org**

EXHIBIT E



TODD ROKITA
ATTORNEY GENERAL

October 22, 2024

Marilyn Odendahl
marilyn.odendahl@indianacitizen.org

RE: Public Records Request received October 21, 2024

Dear Ms. Odendahl:

This letter formally acknowledges receipt of the above-referenced request, which was received by the Office of the Indiana Attorney General via email on October 21, 2024. You specifically requested the following:

"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."

This letter serves as the required response within seven (7) calendar days of receipt of your request pursuant to the Indiana Access to Public Records Act, Ind. Code § 5-14-3, *et seq.*, ("APRA"). We are in the process of reviewing our records and will make all responsive and disclosable records available to you within a reasonable time period. If there are any responsive records that are not disclosable, we will provide you with a written statement of the statutory grounds for any such denial as required under the APRA.

We will advise you as soon as possible of any copying fee for disclosable records. Pursuant to Indiana Code § 5-14-3-8(c), our office is permitted to charge a copying fee of ten cents (\$0.10) per page, as applicable. We will advise you further when our review of documents is completed. If you have any questions regarding this records request, please contact our office.

Sincerely,

A handwritten signature in black ink, reading "William H. Anthony". The signature is fluid and cursive, with the first and last names being more prominent.

William H. Anthony
Chief Counsel, Advisory Division

EXHIBIT F

From: Marilyn Odendahl <marilyn.odendahl@indianacitizen.org>
Sent: Tuesday, October 29, 2024 7:30 PM
To: Croft, Celeste <Celeste.Croft@atg.in.gov>; DeFonce, Joshua E <Joshua.DeFonce@atg.in.gov>
Subject: media inquiry - follow up on APRA request

EXTERNAL EMAIL: This email was sent from outside your organization. Exercise caution when clicking links, opening attachments or taking further action, before validating its authenticity.

Hello Celeste

I am writing to follow up on your communication of October 22, 2024, in which the Indiana Attorney General's office acknowledged receiving my October 21, 2024 APRA request for the voter registration records the Attorney General and Secretary of State sent to the United States Citizenship and Immigration Services (USCIS) on October 11, 2024. The AG and SOS sent 585,774 names to the federal government asking for verification of their citizenship. According to The Indiana Citizen's legal counsel, the records sent are clearly public records which the AG and SOS have obviously already prepared and could easily release since the three lists with all the names were attached to the USCIS letter.

I am requesting the Attorney General's office provide a date for when the lists of 585,774 names sent to the USCIS will be released or an explanation for why the lists will not be released.

With one week until Election Day, it is vital you release the lists immediately.

Thank you

Marilyn

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EXHIBIT G

----- Forwarded message -----

From: **Croft, Celeste** <Celeste.Croft@atg.in.gov>

Date: Wed, Oct 30, 2024 at 10:36 AM

Subject: RE: media inquiry - follow up on APRA request

To: Marilyn Odendahl <marilyn.odendahl@indianacitizen.org>, DeFonce, Joshua E
<Joshua.DeFonce@atg.in.gov>

Dear Ms. Odendahl:

Good morning.

The Indiana Access to Public Records Act requires a reasonable response time and considers a number of factors including, but 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 review process. Please see Opinion of the Public Access Counselor 18-FC-46. Our office processes these requests in the order that they are received.

We will email you any disclosable records when our search is complete and there is no charge associated with that type of production.

Thank you. Have a good day.

Celeste Croft, CP, MBA, JD Candidate (2028)

Executive Assistant/Operations Coordinator

Advisory Division

EXHIBIT H



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. 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.

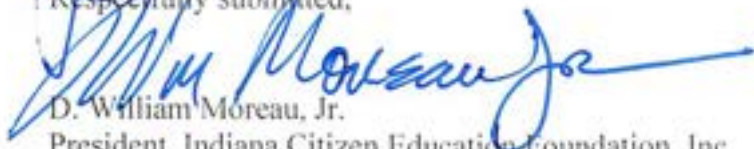
The Attorney General and Secretary of State have provided the people of Indiana no additional information beyond two news releases and the October 11 letter itself, thereby causing speculation about their motives. Is their goal to conceal the lists and wait to see how many and which noncitizens cast 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 blue 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

317.370.1505

EXHIBIT I

November 4, 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: Final, Desperate Effort to Coax the Attorney General and Secretary of State to Do the Right Thing

Dear Mr. Britt:

Invoking a maxim attributed to Hippocrates, “desperate times call for desperate measures,” I am writing to urge you respectfully to reconsider your October 31, 2024, ruling providing the Attorney General and Secretary of State until November 21, 2024, to respond to our APRA request to release the names of 585,774 Hoosiers whose right to vote in tomorrow’s election they called into question.

Our October 30, 2024, Public Access Complaint contains undisputed evidence that supports our request that **by noon today** you would issue a directive to the Attorney General and Secretary of State that states:

1. On October 11, 2024, you sent a letter to the United States Citizenship and Immigration Services (USCIS) (“the USCIS letter”) which attached three lists setting forth the names of 585,774 individuals on Indiana’s voter registration roll whose citizenship you questioned (“the lists”).
2. On October 17, 2024, you released the USCIS letter, which did not include the lists.
3. On that same day, *The Indiana Citizen* first requested the list.
4. On October 21, 2024, *The Indiana Citizen* was urged by the Office of the Attorney General (OAG) to file an APRA request. The receipt of its APRA request was acknowledged by the OAG.
5. On October 29, 2024, *The Indiana Citizen* repeated its request and on October 30, 2024, the OAG said it was still searching for the lists.
6. As of today, 24 days have passed since you sent the lists to USCIS and 18 days have passed since you released the letter but withheld the lists. At no time have you indicated whether you will release the lists or articulated any basis for withholding them except that the OAG cannot find them.
7. Under the special circumstances you created in advance of tomorrow’s election, you have effectively denied *The Indiana Citizen’s* APRA request.
8. Accordingly, I, as Public Counselor of the State of Indiana, urge you to release the lists **by 4 p.m. EST today**, November 4, 2024, so that those 585,774 individuals whose

names are contained thereon will know before in-person voting commences at 6 a.m.
EST tomorrow, November 5, 2024.

Thank you for considering this admittedly desperate request.

Respectfully submitted,

D. William Moreau, Jr.
President, Indiana Citizen Education Foundation, Inc.
Publisher, *The Indiana Citizen*
bill.moreau@indianacitizen.org
317.370.1505

EXHIBIT J



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

EXHIBIT K

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

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, reading "William H. Anthony". The signature is written in a cursive, flowing style with a large initial "W" and a stylized "H".

William H. Anthony
Chief Counsel, Advisory Division

EXHIBIT L



**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
Telephone: (317) 234-0906
E-mail: pac@opac.in.gov
www.IN.gov/pac

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)

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.)

☐ Open Door Law Violation

☐ Executive Session

☐ Notice

☐ Other: _____

☒ Access to Public Records Act Violation

☒ Denial of Access

☐ Denial of Electronic Access

☐ Other: _____

☐ Copy Fee

IMPORTANT

Date denied access to public record (month, day, year)

December 11, 2024

Date notified of denial of access to meeting (month, day, year)

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

Signature

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

Date (month, day, year)

January 10, 2025



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. 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.", with a stylized, cursive script.

D. William Moreau, Jr.
President, Indiana Citizen Education Foundation, Inc.
Publisher, *The Indiana Citizen*
bill.moreau@indianacitizen.org
317.370.1505



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. 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.

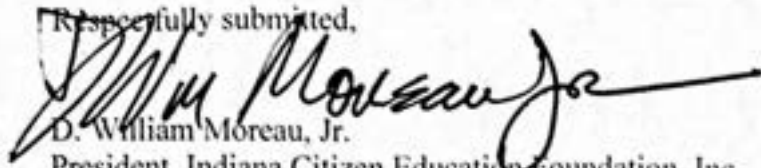
The Attorney General and Secretary of State have provided the people of Indiana no additional information beyond two news releases and the October 11 letter itself, thereby causing speculation about their motives. Is their goal to conceal the lists and wait to see how many and which noncitizens cast 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

317.370.1505



TODD ROKITA
ATTORNEY GENERAL

December 11, 2024

Marilyn Odendahl
Interim Editor
The Indiana Citizen
marilyn.odendahl@indianacitizen.org

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, reading "William H. Anthony". The signature is fluid and cursive, with the first name "William" and last name "Anthony" clearly legible, and "H." in the middle.

William H. Anthony
Chief Counsel, Advisory Division

EXHIBIT M



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 fluid and cursive, with the first name "William" and last name "Anthony" being clearly legible, and "H." as a small initial between them.

William H. Anthony
Chief Counsel, Advisory Division

EXHIBIT N

OPINION OF THE PUBLIC ACCESS COUNSELOR

INDIANA CITIZEN EDUCATION FOUNDATION,
INC.,
Complainant,

v.

THE OFFICES OF THE INDIANA ATTORNEY GEN-
ERAL 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 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 matter.

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 closer 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.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Issued: February 25, 2025

EXHIBIT O



TODD ROKITA
ATTORNEY GENERAL

March 14, 2025

D. William Moreau
Indiana Citizen Education Foundation
3544 Clearwater Circle
Indianapolis, Indiana 46240

RE: Renewed Request for Public Records

Dear Mr. Moreau:

This letter is a response from the Office of the Indiana Attorney General (the "OAG") on behalf of the Office of the Secretary of State (the "SOS") to the renewed public records request you submitted on behalf of the Indiana Citizen Education Foundation. It is our position that the Public Access Counselor's (the "PAC's") decision regarding access to the voter lists we sent to the USCIS is wrong. This is in part because the PAC interpreted Ind. Code § 5-14-4-10.5 to mean that he was strictly limited to a plain, narrow, and in our view illogical, reading of Ind. Code § 3-7-26.4-2. Actually, Ind. Code § 5-14-4-10.5 (by plain reading) authorizes advisory opinions to take into account the entire body of public access law and Indiana case law.

We see the Indiana election code as being exhaustive regarding when public access to any portion of the statewide voter list is permitted. The Indiana Election Division (the "Division") may not provide any part of the compilation of the voter registration information contained in the computerized list except in very limited circumstances. Ind. Code § 3-7-26.4-2. Additionally, counties can set a nondiscriminatory uniform policy to either permit or not permit the public to duplicate or obtain records maintained in the computerized list. *See* Ind. Code § 3-7-27-6(c). Indiana Code dictates that counties must provide records maintained in the computerized list to candidates, parties, and precinct inspectors. *See* Ind. Code chs. 3-7-28 and 3-7-29. Thus, the Indiana election code is clear regarding when records maintained in the computerized list can be requested by the public or shall be shared with groups or individuals. For practical purposes, a lack of reference to the SOS in Ind. Code § 3-7-26.4-2 regarding access to voter registration information contained in the computerized list cannot mean that voter records obtained by the SOS are thus open to the public. This would essentially nullify the restrictions put in place on the Division and counties discussed above.

Additionally, the PAC's opinion relies on an unidentified Division staff member as a basis for an incorrect conclusion about the relationship between the SOS and the Division, as well as ownership and responsibility for voter list records. The authority cited by the PAC ("Ind. Code § 3-6-4.2 et. al.") does not address ownership and administration of the statewide voter list. The PAC's conclusion that the Division "did not directly participate in the curation of the list..." was not substantiated and is in fact an inaccurate statement. The Indiana Code states multiple times in Ind. Code ch. 3-7-26.3 that the SOS *and* the Division are responsible for administration of the list.

Ind. Code ch. 3-7-26.3, regarding purposes, ownership and administration of the list—and which precedes Ind. Code ch. 3-7-26.4 regarding administration and access to voter list records—clearly uses the conjunction AND (“the Secretary of State **and** the election division”) as opposed to “OR” (i.e., the Secretary of State **or** the election division). *See* Ind. Code §§ 3-7-26.3-4 and 3-7-26.3-10. Both the SOS and the Division are tasked with administration of, and access to, voter list records.

Despite stating in his opinion that “the public access counselor cannot ascribe legislative intent,” the PAC clearly took the complainant’s theory of legislative intent into account in reaching his conclusion that Ind. Code § 3-7-26.4-2 was inapplicable to the SOS. Based on a supposition of legislative intent about the purpose of Ind. Code § 3-7-27-6(c) (i.e., that Ind. Code § 3-7-27-6(c) “largely shields the election division from having to field public record requests... [which instead] can be accomplished at the county level”) the PAC appears to have concluded that the Division was not intended to have to be burdened with public record requests, and thus it was **logical** that Ind. Code § 3-7-26.4-2 would not apply to the SOS. Absent factoring in legislative intent, which would have been proper, it’s not more logical to say that the legislature would have specifically included the SOS, than to say that the legislature would have specifically excluded the SOS, if the statute was meant to be interpreted on its face and without reference to topically related preceding statutes.

The PAC is the state’s designated expert on understanding and interpreting public access laws. In this case, instead of seriously applying and expounding on his experience and expert knowledge, the PAC summarily disposed of the complaint by reviewing and discarding just one statute—Ind. Code § 3-7-26.4-2. The PAC’s analysis of the facts, and weak effort to apply public access law to the records at issue, and possibly relevant case law, suffers from oversimplification, reliance on unsupported evidence and conclusions, and incorrect application of statutes. A trier of fact, looking at the entirety of circumstances and applicable authority, could reach a different conclusion.

Nevertheless, in consideration of the decision of the PAC, the SOS has authorized the OAG to offer you limited public access to the lists of registered voters. Under the APRA, “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). “‘Inspect’ includes the right to . . . manually transcribe and make notes, abstracts, or memoranda.” Ind. Code § 5-14-3-2(h). Although not required to do so by APRA, the SOS is willing to permit in-person access to the lists. The lists will not be permitted to be duplicated, but you may make a handwritten transcription of the lists, or you may make notes, abstracts, or memoranda of the lists. The lists will not contain information protected under state statute. *See* Ind. Code § 3-7-26.3-29(b). Only the names and addresses of registered voters will be produced, not the date of birth, gender, phone number, email address, voting history, voter identification number, or voter registration date. The redacted materials can be available for inspection upon appointment, during ordinary business hours, with two (2) business days’ notice. Please contact Jerry Bonnett, General Counsel for the Office of the Indiana Secretary of State, via email at jbonnet@sos.in.gov to arrange an appointment.

Sincerely,

A handwritten signature in dark ink, reading "Christopher M. Anderson". The signature is fluid and cursive, with a prominent "C" and a checkmark-like flourish at the end.

Christopher M. Anderson
Assistant Chief Counsel, Advisory Division

EXHIBIT P

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NPR

Affiliations appear only for purposes of identification.

April 3, 2025

Office of the Indiana Attorney General

Christopher M. Anderson, Assistant Chief Counsel, Advisory Division

Indiana Government Center South

302 W. Washington St., 5th Floor

Indianapolis, IN 46204

Phone: (317) 232-6201

Email: Christopher.Anderson@atg.in.gov

VIA E-MAIL

Dear Mr. Anderson,

I am writing on behalf of my client Indiana Citizen Education Foundation, Inc. d/b/a *The Indiana Citizen* (“The Indiana Citizen”). This letter is a response to your correspondence dated March 14, 2025 offering “limited public access” consisting of in-person inspection and the ability to make only “a handwritten transcription” of the lists of registered voters requested.

The Secretary of State’s offer of limited public access falls short of what is required under the Indiana Access to Public Records Act (“APRA”), Indiana Code § 5-14-3, *et seq.* As the Indiana Supreme Court recently observed, “[t]he core principle behind APRA is that ‘all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.’” *Nardi v. King*, No. 25S-PL-64, 2025 WL 841407 (Ind. 2025). Central to APRA’s statutory command is the ability for the public to both inspect and copy disclosable public records. Ind. Code § 5-14-3-3(a).

The OAG relies on Indiana Code section 5-14-3-3(f) as authority for limiting *The Indiana Citizen*’s access to only in-person viewing and the ability to make hand-written notes. OAG Letter at 2. (“Under the APRA, ‘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.’”). The OAG’s position is inconsistent with applicable law.

First, the records created and maintained by the state here are distinguishable from a list of names and addresses covered by Indiana Code § 5-14-3-3(f) and, therefore, the provision is inapplicable in this case. As the OAG acknowledged in its letter, the records at issue include at least nine data points for each voter including name, address, date of birth, gender, phone number, email address, voting history, voter identification number,

and voter registration date. Redacting or withholding everything except names and addresses does not transform the requested records into a list of names and addresses for purposes of 3(f). As a result, APRA's general provision securing the right to inspect *and* copy public records during regular business hours, Indiana Code § 5-14-3-3(a), applies to the requested lists and must be applied accordingly.

Second, even if *arguendo* the requested records at issue are within the meaning of Ind. Code § 5-14-3-3(f), APRA's statutory text explicitly states: "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." Ind. Code § 5-14-3-3(f). Although "inspect" includes the right to "[m]anually transcribe and make notes, abstracts, or memoranda," it also explicitly includes the right "in the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda *or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.*" Ind. Code § 5-14-3-2(h)(4) (emphasis added). On information and belief that the requested records exist in and are stored in electronic form, APRA requires the Secretary of State to provide my client access to duplicate the lists.

My client would, at this point, be satisfied with the Secretary of State's offer to disclose the names and addresses included in the records at issue. We take exception with the offer to only view the records and make handwritten notes because it does not comply with APRA.

Accordingly, my client requests the Secretary of State's office to comply with the full scope of access secured by APRA as promptly as possible. Please let me know if you would like to discuss this matter further. You can reach me at kcundiff@rcfp.org or by phone at (463) 271-4676.

Sincerely,



Kristopher L. Cundiff
Local Legal Initiative Attorney
Atty. No. 35193-49
(463) 271-4676
kcundiff@rcfp.org

EXHIBIT Q

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The New York Times

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NPR

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June 4, 2025

Office of the Indiana Attorney General
Christopher M. Anderson, Assistant Chief Counsel, Advisory Division
Indiana Government Center South
302 W. Washington St., 5th Floor
Indianapolis, IN 46204
Phone: (317) 232-6201
Email: Christopher.Anderson@atg.in.gov

VIA E-MAIL

Dear Mr. Anderson,

I am following up on behalf of my client Indiana Citizen Education Foundation, Inc. d/b/a The Indiana Citizen (“The Indiana Citizen”). As of today, we have not received a substantive response to our letter dated April 3, 2025 requesting the Secretary of State’s office to comply with the full scope of access secured by the Access to Public Records Act (“APRA”), Ind. Code 5-14-3 *et seq.*, as promptly as possible.

We reiterate our request for access to inspect and copy these records in accordance with APRA. If we do not receive a satisfactory response by June 13, we plan to file a lawsuit under APRA. To clarify, my client would be satisfied with the disclosure of the names and addresses included in these records as offered. We take exception with the offer to only view the records and make handwritten notes, which does not comply with the government’s statutory obligations under APRA. However, if the government permits inspection and copying—with a mobile device or office equipment—of the agreed upon disclosable information, we would consider this matter resolved. Please let me know if you would like to discuss this matter further. You can reach me at kcundiff@rcfp.org or by phone at (463) 271-4676.

Sincerely,



Kristopher L. Cundiff
Local Legal Initiative Attorney
Atty. No. 35193-49
(463) 271-4676
kcundiff@rcfp.org

EXHIBIT R

Ms. Jennifer Ruby
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 .

June 4, 2025

RE: 24-FC-81 Request to Reconsider

Dear Ms. Ruby:

This letter is a request from the Office of the Indiana Attorney General (“OAG”) and Indiana Secretary of State (“SOS”) regarding Formal Advisory Opinion 24-FC-81, issued on February 25, 2025, by Mr. Luke Britt, the former Public Access Counselor (PAC). In his opinion, Mr. Britt concluded that the OAG and SOS improperly withheld a list of voter information from inspection and failed to allow inspection within a reasonable time.

OAG and SOS recognize there is no formal appeal process from a PAC decision; however, under rare circumstances, the PAC may reconsider its opinions. *See* Formal Complaint Guide, Office of the Indiana Public Access Counselor (*available at*: <https://www.in.gov/pac/files/Formal-Complaint-Guide-ver.-1.1.pdf>) (*last visited* May 23, 2025). The same discretion to reconsider an opinion based on new evidence should also apply where the PAC failed to address the parties’ arguments or where the opinion results in an incorrect statement of the law.

OAG and SOS respectfully request the PAC to reconsider its opinion because: (1) the opinion failed to address the arguments of the OAG and SOS regarding co-ownership of the Voter Registration List (VRL); (2) the PAC focused on the authorities of the respective parties, not the records; (3) the PAC failed to address APRA’s confidentiality requirements.

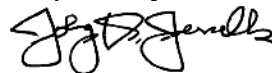
1. The PAC stated that Ind. Code § 3-7-26.4-2 prohibited only the Election Division from disclosing the VRL or any part thereof. Slip Op. at 4. The PAC failed to recognize that the Election Division and the SOS are statutory co-owners of the VRL. IC 3-7-26.3-4(b). The PAC ignored Respondents’ argument in its opinion. Additionally, the VRL “and each of its components must be exclusively for voter registration and election administration and for no other purpose.” IC 3-7-26.3-4(b). The PAC’s plain reading of one statute and not another is too literal of an application of its mandate to apply the plain meaning rule. IC 5-14-4-10.5. Reading the plain text of both statutes shows the Legislature wanted to treat ownership of the list the same.¹ The PAC’s opinion yields an illogical result allowing anyone to request a list from the SOS instead of the Election Division, simply because the SOS itself is not prohibited from disclosing the list by IC 3-7-26.4-2. *See ESPN, Inc. v. Univ. of Notre Dame Police Dept.*, 62 N.E.3d 1192, 1195-96 (Ind. 2016) (reasoning the plain meaning rule will not lead to irrational, disharmonizing results in a case involving three competing opinions of multiple PACs). If the Election Division cannot disclose the VRL records as requested, neither can the SOS.

¹ *See Schrenker v. Clifford*, 270 Ind. 525, 387 N.E.2d 59 (1979) (applying the plain meaning rule and harmonizing two statutes on the same subject in *pari materia*).

2. The PAC focused on the Legislature's treatment of the respective parties, not the requested VRL records themselves. The Legislature unambiguously stated that the Election Division can provide the complete list to an enumerated list of requestors, including a member of the media. IC 3-7-26.4-6. The Legislature also established the conditions and terms for partial lists. *See* IC 3-7-26.4-2 & 4. Clearly the Legislature wanted to protect the VRL data and only authorize disclosure under certain circumstances. Here, the partial list was established to perform VRL maintenance and should be protected from disclosure. The PAC's isolated reading of IC 3-7-26.4-2, applying only to the Election Division, frustrates the legislative purpose of protecting voter data. Instead, the PAC focused on the parties, not the protected records, thereby frustrating the Legislative intent of limited disclosure of the VRL.
3. The PAC failed to consider the confidentiality of the VRL disclosed by one agency to another. IC 5-14-3-6.5 provides that: "A public agency that receives a confidential public record from another public agency shall maintain the confidentiality of the public record." OAG, as receiver of the VRL, has a statutory duty under APRA to maintain the confidentiality of the VRL. Moreover, the OAG has an ethical duty to maintain the confidences of its client, SOS. Ind. Prof. Conduct R. 1.6 (confidentiality of information). The opinion failed to address APRA's confidentiality exception to disclosure as well as OAG's professional responsibility to its client.

The foregoing issues have also resulted in a lack of clarity, confusion, and disagreement between the parties regarding the PAC's directive on the inspection of the records. Accordingly, the OAG and SOS respectfully request the PAC reconsider its opinion. If you have any further questions regarding this matter, please contact me at your convenience.

Respectfully submitted,



Joby D. Jerrells
Deputy Attorney General and
Chief Counsel, Advisory Division

cc: Kristopher Cundiff (kcundiff@rcfp.org)

EXHIBIT S

Re: Ind. Citizen Education Foundation, Inc.; (APRA matter)

9 messages

Kris Cundiff <kcundiff@rcfp.org>

Thu, Jul 3, 2025 at 3:36 PM

To: "Jerrells, Joby" <Joby.Jerrells@atg.in.gov>

Cc: Beth Soja <esoja@rcfp.org>, Eric Feder <efeder@rcfp.org>, Lisa Zycherman <lzycherman@rcfp.org>, jbonnet@sos.in.gov

Dear Joby,

Thanks for your patience, my client's chief decision maker has been out of town. Per Christopher Anderson's offer on behalf of the Attorney General and Secretary of State for The Indiana Citizen to inspect "the redacted [public record] materials... upon appointment, during ordinary business hours, with two (2) business days' notice," my client's representative Bill Moreau and one or more of his associates would like to schedule this session **during the week of July 7, 2025, any day, preferably at 9:00 a.m.**

Per Mr. Anderson's letter, I am copying Jerry Bonnett (jbonnet@sos.in.gov), General Counsel for the Office of the Indiana Secretary of State to arrange this appointment.

Mr. Bonnett, please let me know if this is agreeable to you.

While we still maintain that APRA authorizes our client to make or receive copies of the public records at issue, our client will agree, for purposes of this appointment only, to equip the personnel with only a pen and paper to take notes.

Mr. Bonnett, my client looks forward to seeing you the week of July 7.

Please feel free to contact me with any questions.

Thank you,

-Kris



Kristopher L. Cundiff

Local Legal Initiative Attorney - Indiana

kcundiff@rcfp.org | (463) 271-4676

PO Box 150

Fishers, IN 46038

Need legal help? Contact the [RCFP Legal Hotline](#).

Kris Cundiff <kcundiff@rcfp.org>

Mon, Jul 7, 2025 at 9:56 AM

To: Bill Moreau <bill.moreau@indianacitizen.org>



Kristopher L. Cundiff

Local Legal Initiative Attorney - Indiana

kcundiff@rcfp.org | (463) 271-4676

PO Box 150


Fishers, IN 46038

Need legal help? Contact the [RCFP Legal Hotline](#).

EXHIBIT T

Jerrells, Joby <Joby.Jerrells@atg.in.gov>

Wed, Jul 9, 2025

to Beth, Eric, Lisa, Jerry, me 

Kris,

Thank you for your note. I have discussed with my client and we will hold until the PAC makes a decision on whether to reconsider our request. Accordingly, Mr. Anderson's previous offer to inspect as outlined his letter should be considered withdrawn. We respect your position; however, the issue is a matter of importance to my client.

Respectfully,
Joby

Joby D. Jerrells

Chief Counsel, Advisory Division
Office of Attorney General Todd Rokita
IGCS 5th Floor
302 W. Washington Street
Indianapolis, IN 46204
joby.jerrells@atg.in.gov

From: Kris Cundiff <kcundiff@rcfp.org>

Sent: Thursday, July 3, 2025 3:36 PM

To: Jerrells, Joby <Joby.Jerrells@atg.in.gov>

Cc: Beth Soja <esoja@rcfp.org>; Eric Feder <efeder@rcfp.org>; Lisa Zycherman <lzycherman@rcfp.org>; Bonnet, Jerry (SOS) <jbonnet@sos.IN.gov>

Subject: Re: Ind. Citizen Education Foundation, Inc.; (APRA matter)

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Mr. Bonnett, my client looks forward to seeing you the week of July 7. Please feel free to contact me with any questions.

Thank you,
-Kris

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