

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) ss:
COUNTY OF MARION) CAUSE NO.

CITIZENS ACTION COALITION OF)
INDIANA and)
JENNIFER WASHBURN,)

Plaintiffs,)

vs.)

OFFICE OF THE GOVERNOR)
OF THE STATE OF INDIANA,)

Defendant.)

COMPLAINT

Plaintiffs Citizens Action Coalition of Indiana and Jennifer Washburn, by counsel, for their Complaint against the Defendant, Office of the Governor of the State of Indiana, alleges as follows:

PARTIES

1. Plaintiff Citizens Action Coalition of Indiana (hereinafter "CAC") is a not-for-profit state-wide organization founded in 1974 dedicated to protecting utility ratepayers and advocating for transparency in government and a clean environment through canvassing, lobbying, community organizing, and litigation, so as to improve the quality of life of all citizens of Indiana. CAC has its principal office at 603 E. Washington Street, #502, Indianapolis, Indiana.

2. Plaintiff Jennifer Washburn is a staff attorney employed by CAC.

3. Defendant, Office of the Governor of the State of Indiana, is a “public agency” as defined at Ind. Code § 5-14-3-2(n). Its current occupant is Eric Holcomb, who is sued only in his official capacity.

FACTUAL ALLEGATIONS

4. On December 27, 2016, Ms. Washburn presented a written request to the General Counsel and Assistant General Counsel of the Governor’s Office pursuant to the Indiana Access to Public Records Act (“APRA”), § 5-14-3-1, *et seq.*, requesting: (1) certain documents reflecting communications (including meeting minutes or documents reflecting meetings) between the Office of Indiana Governor Michael Pence and its employees or agents, and Donald J. Trump for President (or any of its employees or agents), Donald J. Trump, The Trump Organization and related entities and persons, from November 14, 2016, through and including November 29, 2016, which are related to, or reference in any way, Carrier, UTC Climate, Controls & Security, Gregory Hayes, and/or United Technologies, or any of their related agents or employees; (2) documents reflecting communications between the Governor’s Office and any other Indiana governmental entity or employee referencing or relating to Trump or Carrier during the same time period; (3) documents reflecting communications between the Governor’s Office and Carrier which relate to or reference Trump during the same time period; and (4) documents reflecting communications with any Third Party not referenced above which references both Trump and Carrier during the same time period. (Ex. A).

5. On January 3, 2017, the Communications Director for the Office of

Governor Mike Pence responded to Ms. Washburn's APRA request, offering to "try to produce all records as quickly and completely as possible." (Ex. B).

6. After hearing nothing further for over a month, on February 6, 2017, Ms. Washburn requested that the Governor's Office provide a status update on her pending APRA request. (Ex. C).

7. On February 8, 2017, the Deputy General Counsel of the Office of the Governor replied, stating that she would "research the status of your request and be in touch with you as soon as is reasonably possible." (Ex. D).

8. Still not having received the documents or hearing anything further regarding her APRA request for another two months, which by that time was already more than three months after submitting her request, Ms. Washburn on April 3, 2017, asked the Office of the Governor for a status report regarding her December 27, 2016 APRA request. (Ex. E).

9. The Office of the Governor responded by letter dated April 13, 2017, demanding that Ms. Washburn provide "clarification" of her request, noting that the office of the Indiana Public Access Counselor ("PAC") had published numerous advisory opinions on the subject of the degree of "reasonable particularity" required under APRA, and requesting that her request "be amended to satisfy legal requirements under APRA." (Ex. F).

10. While Ms. Washburn's APRA request remained pending, the PAC on February 1, 2017, issued an advisory opinion in 16-FC-320 involving an APRA request

submitted on September 16, 2016, by *Indianapolis Star* reporter Tony Cook requesting email correspondence between Governor Mike Pence from his private email account. Therein, the PAC opined that the words “reasonable particularity” in Ind. Code § 5-14-3-3(a)(1) require that an APRA request for public documents include the following: a named sender; a named recipient; a date range of six (6) months or less; and a subject matter designation or a key word(s) search parameter. The PAC further opined that “a nine (9) week delay with no piecemeal production of documents would normally run contrary to any reasonable interpretation of timeliness.” However, the PAC refused to find that the Governor’s Office had violated APRA in view of “competing priorities in the last weeks of the Pence administration;” and indicated that his February 1, 2017, letter should be considered an “outlier” given the circumstances. (Ex. G).

11. On April 12, 2017, the PAC issued an opinion (17-FC-52) on a Complaint filed by Michael Petrelis, an AIDS and LGBTQ rights activist and blogger from San Francisco. Petrelis had submitted an APRA request in February 2017 for emails sent or received by First Lady Karen Pence from January 1, 2013 through January 20, 2017. On February 14, 2017, the Deputy General Counsel for the Office of Governor responded by demanding that Petrelis amend his request to comply with the “reasonable particularity” requirement of APRA. Petrelis filed a Complaint with the PAC on February 21, 2017. In his Opinion, the PAC concluded that the Office of Governor had not violated APRA because Petrelis, even after narrowing the scope of his request to six (6) months, had failed to provide or identify a subject matter or key word search terms. (Ex. H).

12. The Office of the Governor's April 13, 2017 letter (Ex. F) contending that Ms. Washburn's original request lacked "reasonable particularity" failed to identify the manner in which her December 27, 2016, APRA request allegedly lacked reasonable particularity.

13. Notably, Ms. Washburn's APRA request identified specific senders and recipients of communications (the Office of Governor, Trump, Carrier), the subject matter (the negotiations between Carrier and then-Governor Pence), in a narrow and specific (November 14-29, 2016) two (2) week time frame.

14. The Carrier negotiations were widely publicized in the national news media. *See*, e.g., <http://thehill.com/business-a-lobbying/307517-pence-handling-carrier-negotiations-that-trump-bragged-about-on-twitter> https://www.washingtonpost.com/news/wonk/wp/2016/12/01/trumps-deal-to-keep-carrier-jobs-in-indiana-includes-7-million-in-state-subsidies/?utm_term=.67189bed46bb <https://www.nytimes.com/2016/12/01/business/economy/trump-carrier-pence-jobs.html?mcubz=0>

15. On June 1, 2017, Ms. Washburn filed a Complaint with the PAC over what she alleged was the Office of the Governor's denial of disclosure given its lengthy delay in producing documents and its unwarranted and imprecise demand for additional

“reasonable particularity.” (Ex. I).

16. On June 16, 2017, the PAC responded to Ms. Washburn’s Complaint by way of an informal inquiry response rather than an advisory opinion (Ex. J), opining that he did not consider the matter “ripe for the adversarial process” because Ms. Washburn had failed to accede to the Governor’s demand that her APRA request “be amended to satisfy legal requirements under APRA.”

17. Ms. Washburn declined to amend her APRA request, not because she disagrees with the PAC’s general definition of “reasonable particularity,” but rather because, given the specificity and temporal scope of her request, she in good faith reasonably believed that her December 27, 2016, request satisfied the reasonably particularity requirement of I.C. § 5-14-3-3(a)(1).

18. The Office of the Governor made no claim in its April 13, 2017, response to Ms. Washburn’s APRA request either that her request was too vague or ambiguous to enable it to respond, or that it was unable to search its records using the parameters she provided. Neither has the Office of the Governor stated the specific reasons it was unable to comply with the request as constituted, nor has it suggested ways in which Ms. Washburn might modify her request.

LEGAL ALLEGATIONS

19. Under APRA, Plaintiffs were not required to identify the records they were seeking with pinpoint accuracy, only to give the Governor’s Office a reasonable foothold for it to begin its search so that its records custodian knows what records are being sought

without undertaking a subjective analysis to understand the nature of the request. The high specificity level of Ms. Washburn's request easily meets APRA's threshold requirement of reasonable particularity in I.C. § 5-14-3-3(a) (1).

20. The public policy of 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." I.C. § 5-14-3-1.

21. The reasonable particularity requirement of APRA, a remedial statute, must be construed liberally consistent with APRA's stated policy of governmental transparency and of placing the burden of nondisclosure of a public record on the public agency rather than on a requestor.

22. By failing to respond to her request in a reasonable period of time, demanding that she amend her already reasonably particular request, and failing to produce the documents responsive to Ms. Washburn's request in a timely fashion, the Office of the Governor has improperly and contrary to APRA denied Plaintiffs' request for public documents.

23. Ind. Code § 5-14-3-9(e) provides that a person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record.

WHEREFORE Plaintiffs respectfully request that this Court:

(a) declare that Plaintiffs' APRA request of the Office of the Governor complied with the reasonable particularity within the meaning of I.C. § 5-14-3-3(a)(1);

(b) declare that the Office of the Governor failed to respond to that request and to produce the requested records for inspection and copying within a reasonable time;

(c) declare that the Office of the Governor failed to issue a written denial of the request as required by I.C. § 5-14-3-9(d);

(d) enter judgment against the Office of the Governor ordering that office to make available to Ms. Washburn the records she has sought the right to inspect and/or copy under APRA;

(e) order the Office of the Governor to pay her reasonable attorney's fees pursuant to I.C. § 5-14-3-9(i);

(f) expedite this case pursuant to I.C. § 5-14-3-9(k); and

(g) grant Plaintiffs all other appropriate relief as the Court may deem necessary or appropriate to fully vindicate the governmental transparency policies as expressly stated in APRA's preamble.

Respectfully submitted,

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