



State of Indiana

Senate

Jennifer Mertz
Principal Secretary/Chief Legal Counsel
State House, Senate Chamber
200 West Washington Street
Indianapolis, Indiana 46204-2785

(317) 232-9421

October 27, 2021

VIA MAIL & EMAIL @ records@americanoversight.org

Mehreen Rasheed
American Oversight
1030 15th Street NW, Suite B255
Washington, D.C. 20005

Dear Ms. Rasheed,

I am writing in response to your email received by Senator Liz Brown, Senator Erin Houchin, and Senator Linda Rogers on October 25, 2021, requesting copies of "[a]ll calendar entries or invitations (and attachments thereto) indicating meetings or phone calls between (a) Senators Liz Brown, Erin Houchin, Linda Rogers, or anyone serving as their chiefs of staff, assistants, or schedulers, and (b) any of the following outside individuals and groups (including, but not limited to, at the specified domain names)..." (specified groups and individuals listed in the request).

Any records, if they exist, that are responsive to your requests are classified as "work product" of the Senate. The Indiana Supreme Court has held on three separate occasions that the legislative branch has the constitutional authority to decide its procedural rules. *In Masariu v. The Marion Superior Court No. 1*, the Indiana Supreme Court determined that it would not intervene in the internal affairs of the legislative branch of government, leaving it to the General Assembly to determine its own procedural rules relating to the release of records. Then in *Berry v. Crawford*, the Indiana Supreme Court held that "for courts to get involved in such a legislative function would amount to 'constitutionally impermissible judicial interference with the internal operations of the legislative branch.'" Finally, in *Citizens Action Coalition of Indiana v. Koch*, the Indiana Supreme Court confirmed that interfering with the legislature's internal decision-making process regarding records would "require invasion into a core function of the legislative branch," which the court declined to do, holding that Access to Public Records Act requests determined to fall within the legislative "work product" exemption are non-justiciable and subject only to the internal work product determination of the General Assembly.

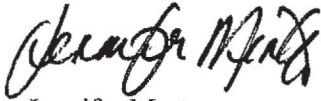
Furthermore, Indiana's Access to Public Records Act, IC 5-14-3 et al., excludes from disclosure the work product of the individual members and the partisan staffs of the General Assembly, as well as the work product of the legislative services agency (*see* IC 5-14-3-4(b)(13) and IC 5-14-3-4(b)(14)).

Member correspondence is classified as “work product” under Senate procedural rules, and therefore is not subject to disclosure under the Access to Public Records Act. Please note that individual communications between legislators and constituents, staff, other legislators, and anyone else are considered legislative work product under IC 5-14-3-4(b)(14) and our internal Senate procedural rules and are not subject to mandatory disclosure under Indiana law as recently confirmed in *Citizens Action Coalition of Indiana v. Koch*. As a result, although we release records when required by law, if the records requested are classified as “work product,” under Senate procedural rules, we are not required to release those records.

Finally, it is Senate tradition to treat all correspondence as confidential. This encourages constituents and anyone else to communicate all necessary information to their legislative representative without fearing that the information, which is often personal and private, could be released to an outside party.

Therefore, because Indiana Supreme Court precedent permits it, IC 5-14-3-4(b) and Senate procedural rules classify member correspondence as “work product” that is specifically excluded from mandatory disclosure, and Senate tradition protecting the confidentiality of correspondence supports it, I am unable to fulfill your request.

Sincerely,



Jennifer Mertz
Principal Secretary/Chief Legal Counsel
Indiana Senate