

October 10, 2003

Mr. Martin L. Hensley  
15 Wood Street  
Greenfield, IN 46146

RE: Formal Complaint 03-FC-82(a)<sup>1</sup>: *Alleged Denial of Access by Indiana University  
Purdue University Indianapolis*

Dear Mr. Hensley,

This is in response to your formal complaint, which was received on September 11, 2003. In it, you allege that Indiana University - Purdue University Indianapolis (the "University") has violated the Indiana Access to Public Records Act (the "APRA"). Specifically, you allege that the University would not release e-mails and computer documents. Mr. Thomas P. Gannon, Associate University Counsel, responded to your complaint. A copy of his response is attached for your reference.

It is my opinion that the University violated the APRA when it issued a written denial of your written request for access to public records without stating the specific exemption authorizing the withholding of all or part of the public record. Although it does not change my opinion, it should be noted that the University has subsequently disclosed all material to you.

#### BACKGROUND

Your complaint alleges that the University "will not release e-mails and computer documents." You enclosed with your complaint an undated memo entitled "Access to Public Records Act Written Request," requesting certain specified records. Also enclosed is a September 5, 2003, letter addressed to you from Joseph M. Scodro, Associate University Counsel. The letter is a response to your undated memo of the same title, which Mr. Scodro received September 4, 2003. Mr. Scodro wrote, "Please be advised that I do not regard e-mails sent or received pursuant to the University's incidental use policy as public records. Therefore, I must respectfully decline your request." Finally, you enclosed a letter dated October 9, 2001,

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<sup>1</sup> Due to a clerical error, two (2) formal complaints were filed with the designation 03-FC-82. Therefore, the designation of this formal complaint is hereby changed to 03-FC-82(a).

addressed to you by Mr. Scodro, referencing your previous request for messages, and disclosing those e-mails.

On October 1, 2003, Mr. Gannon responded to your complaint, and wrote, "While there is a question whether e-mails sent or received as a result of the University's incidental use policy qualify as public records, Ms. Wolford agreed to make the requested documents available, and, therefore, I am providing copies with this letter."

## ANALYSIS

The public policy of the 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 University is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the University during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). A public record is defined to include:

any *writing*, paper, report, study, map, photograph, book, card, tape recording, or *other material* that is *created, received*, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, *electronically stored data*, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2 (emphasis added). The burden for any nondisclosure lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1. Moreover,

If a request initially is made in writing, by facsimile or through enhanced access, . . . , a public agency may deny the request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) *a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record*; and (B) the name and the title or position of the person responsible for the denial.

Ind. Code § 5-14-3-9(c) (emphasis added).

There is no exception that generally excludes e-mails from disclosure. Therefore, a public agency must determine based upon the content of the e-mail whether a statutory exception exists for its nondisclosure. In their letters to you, Mr. Scodro and Mr. Gannon indicate that they do not consider e-mails received as a result of the University's incidental use policy to be public records. However, there is no exception excluding e-mails received as a result of the University's incidental use policy from disclosure.

## CONCLUSION

It is my opinion that the University violated the APRA when it failed to provide a statement of the specific exemption authorizing the withholding of the public records you requested. Although it does not change my opinion, it should be noted that the University has subsequently disclosed the records you requested.

Sincerely,

Sandra K. Bowman  
Acting Public Access Counselor

Cc: Thomas P. Gannon, Associate University Counsel