

June 21, 2007

Maurice M. Eisenstein
11 Beverly Place
Munster, IN 46321

Re: Formal Complaint 07-FC-139; Alleged Violation of the Access to Public Records Act by Purdue University

Dear Dr. Eisenstein:

This is in response to your formal complaint alleging that Purdue University (“Purdue”) violated the Access to Public Records Act because Purdue had not provided requested records within a reasonable time.

BACKGROUND

You complain that Purdue had not provided any of the documents you requested as of the date of the filing of your complaint, May 22. You mailed your request to Purdue on March 22. You received a letter from Lucia Anderson dated March 27 acknowledging receipt of your request and indicating that Purdue would review its files and would respond again at the university’s earliest convenience.

You requested:

- “[C]opies of any and all records, e.g., any written or recorded correspondence, in any format, that has been sent to the University’s Board of Trustees related to me, Maurice M. Eisenstein;
- [C]opies of any and all records, e.g., any written or recorded correspondence, in any format, that has originated from any member of the Board of Trustees relating to me, Maurice M. Eisenstein;
- [C]opies of any and all written or recorded correspondence, in any format, that has been sent to the President of Purdue University as well as copies of any and all written or recorded correspondence, in any format, that has been sent to the Chancellor, Purdue University Calumet concerning me, Maurice M. Eisenstein;

- [C]opies of any and all written or recorded communications, in any format, that has been sent by the President of Purdue University as well as copies of any and all written or recorded communications, in any format, that has been sent by the Chancellor of Purdue University Calumet concerning myself that has been sent to the Board of Trustees.”

When you filed your formal complaint, you had received no official response from Purdue to your request. You contend that the law requires Purdue to give you the records within a reasonable time, and you believe that two months is not reasonable.

I sent a copy of your complaint to Purdue. Deborah Trice responded as counsel to Purdue. Her response is enclosed. Ms. Anderson contacted your attorney as directed to do in your request letter, seeking clarification concerning the dates of the correspondence. This request to narrow the timeframe of the records was the result of your fourteen-year tenure at the university. After receiving no response from your attorney, Ms. Anderson called your attorney on April 4. In that conversation, your attorney agreed that the timeframe for searching the records was August 1, 2004 to the present.

Your request entailed an extensive search of various offices of the university, including contact with each of the ten Purdue Trustees. You checked the status of your request only once, on April 30. Ms. Anderson updated you and advised you that the university had not yet received responses from all of the members of the Board of Trustees. Purdue has now sent you all disclosable documents that are responsive to your request. Purdue contends that your complaint is without merit.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). Although the APRA contains timeframes for agency response to a request, a response does not necessarily require production of the records. *See* IC 5-14-3-9(a) and (b). The APRA does not set a time certain for producing a public record. This office has stated that records should be produced within a reasonable time. What is reasonable depends upon the scope of the requests, how many responsive records are included in the request, and whether the records must be reviewed for information that is required to be withheld or may be withheld in the agency’s discretion. *See* IC 5-14-3-4.

This office has also offered guidance suggesting that the public agency fulfilling a voluminous request for records provide periodic updates to the requester, disclose records as they become available instead of waiting to produce all records at once, and regulating any material interference with the other functions and duties of the office. IC 5-14-3-7(a).

Your requests are broad in nature in that you request “any and all written or recorded correspondence” sent by or to the Trustees, President, and Chancellor. Narrowing the timeframe of the records would make the records easier to identify and perhaps result in fewer records, but

no baseline exists from which to judge whether the actual time to produce the delimited record set was reasonable or not.

Purdue should have provided periodic updates without your having to contact the university. Your call on April 30 aside, you still had not received any records or any further word from Purdue three weeks after that call. I do not know how many records were identified as responsive, and whether Purdue had to review and redact part of the records, although from the nature of your requests Purdue may well have reviewed the records prior to disclosing them. Also, because Purdue sought timely clarification with respect to your request, the time within which the records were being compiled was six weeks, not two months.

I find that Purdue should have kept you informed at reasonable intervals regarding the status of your request, particularly after you called the university on April 30 to inquire about the status. You filed your complaint after waiting with no word from Purdue for three weeks. Also, it may have been appropriate for Purdue to disclose some of the records when they were ready rather than waiting until all the records were compiled. Fortunately Purdue has now complied.

Sincerely,

Karen Davis
Public Access Counselor

cc: Deborah Trice