

July 23, 2007

Maurice M. Eisenstein
11 Beverly Place
Munster, Indiana 46324

Re: Formal Complaint 07-FC-176; Alleged Violation of the Access to Public Records Act by Purdue University

Dear Mr. Eisenstein:

This is in response to your formal complaint alleging Purdue University ("Purdue") violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3) by redacting a portion of one email in its response to your request for records. A copy of Purdue's response to your complaint is enclosed for your reference. I find that Purdue's response to your request did not violate the APRA.

BACKGROUND

Your complaint, received by the Public Access Counselor's Office on June 22, 2007, alleges that in April 2007 by letter you requested access to the following records or information from Purdue:

1. Copies of any records in any format sent to Purdue's Board of Trustees related to you
2. Copies of any records originating from any member of the Board of Trustees relating to you
3. Copies of any correspondence sent to the President of Purdue or Chancellor of Purdue University Calumet concerning you
4. Copies of any communications sent by the President of Purdue or Chancellor of Purdue University Calumet to the Board of Trustees concerning you

In response to your complaint, Purdue provided a copy of its June 7, 2007 response to you. In the response, Purdue indicated it had been in contact with your attorney to narrow the

request. In the response, Purdue further indicated it had no records responsive to items 1, 2, or 4 listed above. In response to your request #3, Purdue provided copies of certain records responsive to this request and denied certain records or parts of records, citing certain exceptions to disclosure listed in IC 5-14-3-4(b).

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means 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. IC 5-14-3-2.

Purdue is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of Purdue during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

Certain records are excepted from disclosure at the discretion of the public agency. Among those are the work product of an attorney representing a public agency, the state, or an individual (IC 5-14-3-4(b)(2)); records that are intra-agency or interagency advisory or deliberative material, that are expressions of opinion or are of a speculative nature, and that are communicated for the purposes of decision making (IC 5-14-3-4(b)(6)); and certain personnel file information (IC 5-14-3-4(b)(8)). Purdue relies on these three exceptions in denying access to certain records responsive to your request #3. You do not allege any misuse of these exceptions in your complaint except relating to one particular document, a copy of an electronic mail message from Wes Lukoshus to Howard Cohen dated March 22, 2007.

Your complaint alleges Purdue inappropriately redacted the first and last paragraph of this email message citing the above-listed exceptions to disclosure. In its response Purdue explains the redacted material was not redacted pursuant to any of the exceptions listed in IC 5-14-3-4. Instead, the materials redacted were not disclosed because the information contained therein was non-responsive to your request. Your request was for copies of any correspondence concerning you. Purdue asserts the first and last paragraphs of this email message contained no information about you and that the paragraph disclosed to you was the only part of the message responsive to your request.

A request for inspection and copying must identify with reasonable particularity the record being requested. IC 5-14-3-3(a). If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying. IC 5-14-3-6. Here Purdue disclosed to you the part of the public record responsive to your request.

The remaining content of the document was withheld as non-responsive. Nothing in the APRA requires production of records non-responsive to a request.

I cannot provide an opinion at this time whether you should be granted access to the entirety of the email if you specifically request a copy of the entire email in a new request because I do not know what is contained in the email message or what exception to disclosure Purdue might assert regarding that particular information. And because you have not yet requested the email message in its entirety, Purdue has not provided the grounds on which it would deny access to the remainder of the message if indeed it would do so.

CONCLUSION

For the foregoing reasons, I find that Purdue University did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Lucia Anderson, Purdue University