

August 8, 2007

Maurice Eisenstein
11 Beverly Place
Munster, Indiana 46321

Re: Formal Complaint 07-FC-199 Parts 1 and 2; Alleged Violation of the Access to Public Records Act by Purdue University Calumet

Dear Mr. Eisenstein:

This is in response to your formal complaint alleging Purdue University Calumet (“University”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying access to public records. A copy of the University’s responses is included for your reference. I find that Purdue University Calumet did not violate the Access to Public Records Act.

BACKGROUND

You filed a complaint on July 9, 2007 and another complaint on July 23, 2007, alleging the University violated the APRA by denying one item in your June 22 request for records. Because both complaints regard the same request, they have been consolidated into one opinion. In that June 22 request, you sought several items. You have only complained with regard to your request #2:

“Any and all records, written or recorded, in any format that has originated from Dean Dan Dunn regarding me to anyone inside or outside of the University from August 1, 2004 until the present. I also specifically request a copy of an attendance log kept by Mr. Gabriel Yocum a student of mine during the calendar year 2006. Specifically, I want the notes and information provided by Associate Professor Richard Rupp to Dean Dunn August and/or September 2006.”

On July 7, the University indicated it was unable to search for the requested documents because the request was extremely broad. The University further indicated that if you narrowed your request to identify with reasonable particularity the record begin requested, the University would reconsider your requests.

The University sent an additional response to you on July 17. In that response, the University indicated your request for the attendance log kept by a student was denied because it is confidential under the Family Educational Rights and Privacy Act, 20 U.S.C.A. 1232g *et seq.* Further, the University indicated it did not have any records responsive to your request for notes and information provided by Associate Professor Richard Rupp to Dean Dunn August and/or September 2006.

In its responses to your complaint, received by this office on July 19 and July 31, the University asserted your requests in item #2 were not made with reasonable particularity. The University further asserts the attendance log is confidential under the Family Educational Rights and Privacy Act. Finally, the University indicates it did respond to your request regarding notes provided by Richard Rupp to Dean Dunn by indicating it did not possess any responsive records.

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.

The University 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 the University 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). Records required to be kept confidential by federal law are excepted from disclosure under I.C. §5-14-3-4(a)(3).

A request for access to public records must identify with reasonable particularity the record being requested. §5-14-3-3(a).

In your complaint you assert that two of the items requested in Item #2 were requested with reasonable particularity: the attendance log and notes and information provided by Richard Rupp to Dean Dunn in August and/or September 2006. You do not answer the University’s claim that the first sentence of Item #2 is reasonably particular. As such, it is my understanding that the last sentence of that item, which begins “Specifically . . .” was meant to narrow the scope of the first sentence, which you do not dispute was broad. Here I will address your request for and complaint regarding the attendance log and the notes and information provided by Richard Rupp to Dean Dunn in August and/or September 2006.

Regarding the attendance log kept by a student of yours, the University has denied access to this record, indicating it is confidential under the Family Educational Rights and Privacy Act, 20 U.S.C.A. 1232g *et seq.* (“FERPA”). The APRA excepts from disclosure records required to be kept confidential under federal law. The Court of Appeals of Indiana has stated that “for the purposes of I.C. §5-14-3-4(a)(3), FERPA is a federal law which requires education records to be kept confidential. *An Unincorporated Operating Division of Indiana Newspapers, Inc. v. Trustees of Indiana University*, 787 N.E.2d 893 (Ind. Ct. App. 2003).

Counselor Karen Davis in *Opinion of the Public Access Counselor 06-FC-191*, opined that education records and personally identifiable information contained therein are records (meaning any information recorded in any way) directly related to a student, maintained by an educational agency and including, but not limited to, a list of personal characteristics that would make the student's identify easily traceable, or other information that would make the student's identity easily traceable. Neither FERPA nor the APRA carve out an exception for the release of education records because they pertain to the attendance of an instructor. As the University points out in its response, because you have identified the student who created the attendance log, no amount of information could be redacted to remove personally identifiable information. As such, the University was correct in denying access to the record under I.C. §5-14-3-4(a)(3) and FERPA.

Regarding your request for notes and information provided by Associate Professor Richard Rupp to Dean Dunn August and/or September 2006, I find this request does identify with reasonable particularity the records being requested.

“Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007.

Here you have identified the records you have requested by type (notes and information), sender and receiver, and narrow date range. I find this to be a reasonably particular request. The University has indicated it does not find any records responsive to your request. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. As such, the University did not violate the APRA by indicating it does not find any records responsive to this request.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

cc: James K. Johnston, Vice Chancellor for Administrative Services