

September 5, 2007

Maurice Eisenstein  
11 Beverly Place  
Munster, Indiana 46321

*Re: Formal Complaint 07-FC-235 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

### *Part 1*

You filed a complaint on August 3, 2007 alleging the University denied you access to records you requested on June 22, 2007. Specifically, you requested notes and other information provided by Associate Professor Richard Rupp to Dean Dunn in August and/or September 2006. On July 17, the University responded to you indicating it had no documents responsive to your request. You claim this is untrue.

The University responded to your complaint by letter from attorney Deborah Trice dated August 17. The University asserts that in its response to your June 22 complaint, it indicated the request was not particular enough to allow the University to locate the records you sought and invited you to provide further information. When you did not respond to the University, James Johnston sent you another letter dated July 17 denying your request because the University was unable to locate documents responsive to your request. After you filed your complaint with this office, which provided further information regarding the request, the University was able to locate a responsive document and provided it to you on August 15.

The University contends that when a public agency responds that a request for access to records has not identified with reasonable particularity the records sought, the requester has the

duty to identify the record with reasonable particularity rather than filing a complaint with this office.

*Part 2*

You filed another complaint on August 20, 2007, alleging the University denied you access to recordings of video surveillance from April 12, which you requested on June 22.

The University, by letter from Ms. Trice dated August 31, responded to your complaint, indicating “the last date for which digital footage from the cameras is available is May 7, 2007.” By the denial, I understand this to mean the earliest date for which footage is available is May 7, and nothing is available prior to that date. The University explains its camera system and indicates that because of the design of the cameras, they could each record footage from different views and an onlooker cannot ascertain in which direction the camera is recording. The cameras are connected to digital equipment located in the University Police Building which records on a continuous basis the images received by each camera. The recording device has a fixed amount of storage capacity for each camera, and when full, begins to record over the oldest data. The retention period is different for each camera based on how much movement each camera records. The University indicates the normal retention time for the cameras at issue is 64 days.

The University asserts that public records subject to Ind. Code §5-15 may be destroyed only in accordance with record retention schedules. Public records not subject to I.C. §5-15 may be destroyed in the ordinary course of business. I.C. §5-14-3-4(e). Because the video surveillance tapes do not fall under I.C. §5-15, they are destroyed in the ordinary course of business.

## 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. I.C. §5-14-3-3(a).

Public records subject to I.C. §5-15 may be destroyed online in accordance with record retention schedules under I.C. §5-15. Public records not subject to §5-15 may be destroyed in the ordinary course of business. I.C. §5-14-3-4(e).

*Part 1*

Here you requested records from the University and received a response indicating that you did not identify with reasonable particularity the records being requested. Upon receipt of such a response, the requester should follow up with the public agency to identify with more particularity the item being requested, as required by I.C. §5-14-3-3(a). Here you do not argue that the request was made with reasonable particularity. You simply filed a complaint with this office alleging you had been denied access to records. If you had provided to the University further information regarding the request, I believe the University would have responded with the document it provided to you on August 15. It is my opinion you had a duty to follow up with the University to identify the document you were seeking. As such, the University did not violate the APRA when it indicated it could not locate records responsive to your request.

*Part 2*

Here you requested video surveillance footage from cameras located on the University campus. To the extent any footage does not exist even though you believe it does, the University does not have an obligation to provide records that do not exist. Regarding the University's assertion that no footage is available prior to May 7, I agree with the University's interpretation of I.C. §5-14-3-4(e), which addresses retention schedules for public records. The University's retention schedule does not address video footage, and the footage is not subject to I.C. §5-15. As such, the University may destroy the footage in the ordinary course of business. I.C. §5-14-3-4(e).

The University has explained that the recording system in place has a fixed amount of storage space, and when it is full, it begins recording over old data. It is my opinion this is an appropriate destruction of records in the ordinary course of business.

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