

February 28, 2007

Dr. Kenneth Brandt
8829 Rexford Road
Indianapolis, IN 46260

Re: Formal Complaint 07-FC-25; Alleged Violation of the Access to Public Records Act by Indiana University

Dear Dr. Brandt:

This is in response to your formal complaint alleging that Indiana University ("I.U.") violated the Access to Public Records Act by failing to make its records available within a reasonable time.

BACKGROUND

Your complaint concerns the time in which it has taken I.U. to provide records that you requested on December 20, 2006. Sending your request via e-mail to Joe Scodro, I.U. counsel, you requested copies of all reports submitted to NIH [National Institutes of Health] by I.U. reflecting your effort on grants from 2000-2005, inclusive. You requested copies of the original effort reports, and any amended reports, submitted to NIH for each of those years. On December 20, 2006, Mr. Scodro wrote you to state that he would take steps to process your request, and would provide an update after the holiday, reserving any exemptions that may apply to the records once they are located and reviewed.

On January 18, 2007 you sent an e-mail to Mr. Scodro asking him for an update on the status of his request. In response, on January 19, Mr. Scodro wrote that he was still working on the request and hoped to be in a position to respond further within the next two weeks. He sent this update to you by mail. You filed your formal complaint on January 25, stating that you believed that the records should be readily available to Mr. Scodro and that it should not take two more weeks to respond further, particularly if the response was not necessarily production of the records.

I sent a copy of your complaint to Mr. Scodro. He sent a letter in response to your complaint, which I enclose. He took issue that the reports are readily available for disclosure. The circumstances under which a university would send an effort report for a grant are limited. Departmental personnel have to sift through boxes and files of documents covering the five year period to determine if such reports were submitted to NIH. This effort has consumed several hours already. His initial response indicated that the holidays would delay further response, but in retrospect, Mr. Scodro should have made it clear that because of the thin staffing over the holiday, the effort would not even commence until after the holiday's end.

Rather than objecting or otherwise telephoning to discuss the two week deadline, you filed this formal complaint. Now that the two weeks have elapsed, Mr. Scodro reports that he has received information confirming that neither the I.U. central office for grants nor the Department of Medicine possesses records responsive to your request. Nevertheless, this lack of records makes moot, but does not waive, any objection to the records' disclosure under section 4 of the Access to Public Records Act. Mr. Scodro then wrote to state that I.U. has been reasonably prompt in responding to your approximately 15 discrete requests over the last 10 months.

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). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). We have said that e-mailed requests should be responded to within seven (7) days.

You do not complain that I.U. has failed to respond timely under these timeframes. Rather, you object to the time within which I.U. has made the records available to you. As of the date of your complaint, no records have been produced, and you had just received word that I.U. would provide an update regarding progress in two weeks.

Where no specific timeframe for producing records is set forth in the Access to Public Records Act, this office has stated that records should be produced within a reasonable period of time. What is reasonable depends upon the facts and circumstances. I have often recommended that a public agency keep the requester apprised at regular intervals of the public agency's progress in locating and assembling the records.

Under the facts of this matter, it is my opinion that I.U. should have provided an update soon after January 1, and certainly no later than January 8, when classes resumed. The administrative offices may not have been closed until January 8, but in any event, administrative matters do not keep the same schedule as student class times at a university. You stated that you had to contact I.U. on January 18 to inquire about your request; Mr. Scodro does not dispute that account of matters. At a minimum, Mr. Scodro should have contacted you by January 8, after

the holidays, to give you an update on the progress of the search for records. Instead, you had to contact I.U. 10 days after the time that classes resumed. A public agency may believe that where there is no concrete progress to report, no update is expected or useful, but it is evident to me that even if a public agency can state only that a search continues, that is information that may forestall a complaint; it also assures the requester that the request is being pursued by the public agency.

Mr. Scodro describes the recordkeeping issue with respect to your request, and I am in no position to doubt or dispute that the records regarding progress reports to NIH are not centrally filed or easily retrieved. Hence, having a report from Mr. Scodro in early February that no records were located that are responsive to your request may not be dilatory.

Nevertheless, it is my opinion that I.U. should have contacted you shortly after January 1 to let you know that I.U. was still researching your request, and in failing to do so, did not follow this Office's guidance.

Sincerely,

Karen Davis
Public Access Counselor

cc: Joseph Scodro