



# STATE OF INDIANA

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September 8, 2010

Mr. Patrick J. Pfingsten  
WDWS Radio  
2301 S. Neil  
Champaign, IL 61820

*Re: Formal Complaint 10-FC-172; Alleged Violation of the Access to  
Public Records Act by Purdue University*

Dear Mr. Pfingsten:

This advisory opinion is in response to your formal complaint alleging that Purdue University ("Purdue") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of Purdue's response to your complaint is enclosed for your review.

## BACKGROUND

In your complaint, you allege that you submitted a public records request to Purdue on June 9, 2010. You sought access to "e-mails, memos, or written communication received or sent by France Cordova, Tim Sands, or Morgan Burke regarding Big Ten expansion since October 1, 2009." In response, Purdue partially approved your request and partially denied it. With respect to the material that Purdue withheld, Purdue cited to the so-called deliberative materials exception to the APRA, I.C. § 5-14-3-4(b)(6), in denying what you describe as "a portion of conversations regarding Big Ten expansion."<sup>1</sup> You seek an opinion regarding whether Purdue's denial of access to deliberative materials was appropriate.

My office forwarded a copy of your second complaint to Purdue. In response, Purdue's outside counsel, Lia M. Hanson, maintains that the materials that were either redacted or withheld by Purdue are deliberative materials subject to Ind. Code § 5-14-3-4(b)(6). Ms. Hanson states that the material consisted of opinions and/or was speculative in nature and was communicated within Purdue University for the purpose of decision making. Ms. Hanson claims that Purdue separated all disclosable material from the deliberative material and produced the disclosable records to you.

<sup>1</sup> Purdue also cited to I.C. § 5-14-3-4(b)(10) in denying other portions of your request, but you do not challenge that aspect of Purdue's response.

## ANALYSIS

The public policy of the APRA states, “[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” I.C. § 5-14-3-1. Purdue does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy Purdue’s public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Purdue denies you access to portions of the records you requested on the basis of the deliberative materials exception to the APRA. The deliberative materials exception is found at I.C. § 5-14-3-4(b)(6):

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

...

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Thus, the deliberative materials exception requires that the redacted or withheld material be expressions of opinion or speculative in nature *and* communicated for the purpose of decision making. To the extent the withheld material fits both criteria as Purdue maintains, it is deliberative material under the APRA, which means that pursuant to I.C. § 5-14-3-4(b)(6) Purdue acted within its discretion by refusing to release it to you.

## CONCLUSION

For the foregoing reasons, it is my opinion that Purdue did not violate the APRA by denying you access to deliberative materials.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Lia M. Hanson