



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 27, 2010

Mr. Robert Chesnut
2350 Mission College Blvd., Suite 1400
Santa Clara, CA 95054

*Re: Formal Complaints 10-FC-300; Alleged Violation of the Access to
Public Records Act by Vincennes University*

Dear Mr. Chesnut:

This advisory opinion is in response to your formal complaint alleging Vincennes University ("University") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the University's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you filed a records request with the University on September 30, 2010. Your request sought "an electronic copy of the university's anonymized records of the grades awarded in all courses from Fall 2007 to the present." In response, the University informed you that it would charge you over \$17,000 to provide the information. You argue that the cost figure is excessive and the University's response is "tantamount to a denial." You note that you have requested similar information from over 300 public colleges and universities nationwide and over 120 colleges have supplied it for an average cost of \$152. After you filed your complaint, you supplemented your complaint with a communication stating that Purdue University provided similar records for no cost.

The University's attorney, L. Edward Cummings, responded to your complaint. Mr. Cummings states that your request was not for documents that the University has, but for an electronic copy of redacted grade reports that do not exist. He notes that University Provost Ronald Davis responded to you on October 7th and informed you that the University's computer system did not maintain such reports and there was no plan to develop a program to create them. Mr. Cummings argues that the request was to create new documents, and for that the University expects its direct costs to be reimbursed. Mr. Cummings adds that he requested that you or someone at your company provide him with the contact person of a public college in Indiana that provided the records to you at a

nominal cost, because the University would be pleased to speak with that person and determine if the University could simplify its process for creating the records. He claims that he never received a response from you.

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. The University 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 the University’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).

Regarding the cost issue, the APRA provides that an agency must make reasonable efforts to provide records in the requested format:

Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

I.C. § 5-14-3-3(d).

Generally, when a record contains disclosable and nondisclosable information, the APRA requires agencies to separate the disclosable information and make it available for inspection and copying. I.C. § 5-14-3-6. However, when an agency must incur costs to reprogram a computer system before releasing a record containing disclosable and nondisclosable information, the APRA provides the following:

A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if:

- (1) The disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and
- (2) The public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information.

I.C. § 5-14-3-6(c).

Here, you have requested electronically stored grade reports, which must be redacted to ensure that no personally identifiable student information is released.¹ If the University does not already maintain redacted versions of the reports and reprogramming its computers is necessary to provide them, the University may charge you the direct cost of providing the data. Direct cost is defined in the APRA:

"Direct cost" means one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

I.C. § 5-14-3-2(c). Under subsection 2(c)(2), direct cost includes any labor necessary to supply the information in the format requested. Thus, if the University's cost calculations were based on its direct costs for providing a redacted version of the electronically stored data, the University did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that if the University charged you its direct costs for providing a copy of electronic data under subsection 6(c), the University did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: L. Edward Cummings

¹ The Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232(g) *et seq.*, operates to classify all "education record[s]" as confidential: "No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records or personally identifiable information contained therein...." 20 U.S.C. §1232g(b)(1). "Education record" is defined as those records that are directly related to a student; and maintained by an educational agency or institution or by a person acting for such agency or institution. 34 C.F.R. §99.3. "Record" means any information recorded in any way, including but not limited to video tape. *Id.* "Personally identifiable information" includes, but is not limited to, a list of personal characteristics that would make the student's identity easily traceable, or other information that would make the student's identity easily traceable. *Id.*; see also *Op. of the Public Access Counselor 06-FC-191*.