



STATE OF INDIANA

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April 4, 2014

Mr. Suran Mishra
editor@purdueexponent.org

Re: Formal Complaint 14-FC-41; Alleged Violation of the Access to Public Records Act by Purdue University

Dear Mr. Mishra,

This advisory opinion is in response to your formal complaint alleging Purdue University ("University") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The University has provided a response to your complaint via Ms. Abby K. Daniels, Esq. her response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 5, 2014.

BACKGROUND

Your complaint dated March 5, 2014 alleges Purdue University violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On February 4, 2014, you served upon the University a public records request for copies of security camera footage related to a campus shooting. Specifically, you are seeking:

1. The video and audio from cameras inside, and in the hallways adjacent to, the skywalk connecting the Materials and Engineering building to the Electrical Engineering building for the period at approximately 12:25 p.m. on Tuesday, Jan. 21, when an Exponent photographer, Michael Takeda, was detained by police. This should include video and audio from the time Takeda was confronted, detained and/or removed from the site.
2. We seek video and audio of the same location described in Number 1, from noon to 1 p.m. on Tuesday, January 21, 2014.

3. We seek the video and audio from the police car that Michael Takeda was detained in from Northwestern Avenue to Police headquarters on Tuesday, Jan. 21, 2014.
4. All audio and video of Michael Takeda and accompanying Purdue authorized personnel who sat with, communicated with and or questioned Takeda while he was at the Purdue police headquarters on Tuesday Jan. 21. This includes but is not limited to his interaction with police officers, non-police officers or any other party that interacted with him at headquarters.
5. All video and audio recordings of inspection and/or handling of the camera equipment seized from Takeda on Jan. 21, 2014.
6. All written police inventory of evidence related to camera equipment seized from Takeda and the list of personnel, who accessed, handled or review electronic files and/or the camera itself while in possession of Purdue Police or police authorized personnel on Jan. 21, 2014.

On February 5, 2014, the University denied your request stating the investigatory records exemption under the APRA. You argue the video from the security system is not created for the purpose of a criminal investigation and therefore should not be considered part of the investigation exempting it from disclosure under Ind. Code § 5-14-3-4(b)(1).

In its response, the University contends the security camera video has been collected by campus police and the Tippecanoe County Prosecutor as evidentiary elements of a criminal investigation.

ANALYSIS

The public policy of the APRA states that “(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.” See Ind. Code § 5-14-3-1. Purdue University is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the University’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

There can be no doubt the records you seek are public records. The APRA defines “Public record” as 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 and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. Ind. Code § 5-14-3-2(o).

The question becomes whether the public record is disclosable to the public. The APRA sets forth several exceptions to disclosure. One of the instances when the release of records is discretionary is when information is compiled in the course of a criminal investigation. See Ind. Code § 5-14-3-4(b)(1). Ind. Code § 5-14-3-2 (i) defines investigatory records as information compiled in the course of the investigation of a crime.

The investigatory records exception captures material collected or compiled during the course of a criminal investigation. It is important to note this applies to pre-existing public records which would normally be subject to disclosure *but for* the criminal investigation. The records you describe are clearly related to the criminal investigation. I would, however, set forth the notion the materials must have a reasonable nexus to the crime. An agency cannot claim an investigatory record and not truly be part of the investigation. While the University is correct it is a broad category and relatively straightforward, it is not a catch-all for any and all material which could possibly have a remote association with an investigation. It must have a direct correlation with an investigation.

In this case, the materials you describe are all records relating to the arrest and investigation of the January 21, 2014 shooting. As this incident is clearly a crime, the release of all materials compiled which are associated with the subsequent investigation is at the discretion of the University. The public policy considerations are clear – the exception protects in the integrity of the ongoing investigation.

Finally, consider the following language from former Public Access Counselor, Joseph B. Hoage, who has addressed this very issue many times:

The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. See I.C. § 5-14-3-4(b)(1). An investigatory record is “information *compiled in the course* of the investigation of a crime.” I.C. § 5-14-3-2(h) (emphasis added). Because the statutory language is clear that the exception does not only apply to those records created by law enforcement agencies, but also to those records compiled by law enforcement agencies during an investigation, it is my opinion that any records obtained by the Department during the investigation of a crime can be construed as “investigatory records” within the meaning of section 2(h).

Informal Opinion of the Public Access Counselor 12-INF-27.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor Purdue University has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Abby K. Daniels, Esq.