



STATE OF INDIANA

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June 30, 2016

Citizens Information Center
P.O. Box 961216
Boston, Massachusetts 02196

Re: Formal Opinion 16-FC-122; Alleged Violation of Access to Public Records Act by Indiana University

This advisory opinion is in response to your formal complaint alleging Indiana University (“University” or “IU”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The University has responded via counsel, Mr. James Nussbaum, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 31, 2016.

BACKGROUND

Your complaint dated May 31, 2016, alleges Indiana University violated the Access to Public Records Act by failing to respond to your records request.

On May 7, 2016, you requested records from IU for all contracts and purchase orders made by the University for fetal parts from January 1, 2012 to the present. Your request included a list of potential corporations from whom the University could have made its purchases.

On May 25, 2016, you received a denial from the University. This denial stated any records matching your request are nondisclosable pursuant to Indiana Code § 5-14-3-4(a)(6) as information concerning research.

On June 16, 2016, the University responded to the formal complaint, reasserting its right to invoke the information concerning research exemption found at Indiana Code § 5-14-3-4(a)(6).

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 Indiana Code § 5-14-3-1*. Indiana University is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*.

Accordingly, any person has the right to inspect and copy the University's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

There are multiple categories of public records that are exempt from disclosure under the APRA. These records may not be disclosed by a public agency unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. *See Indiana Code § 5-14-3-4(a)*. This section exempts:

Information concerning research, including actual research documents, conducted under the auspices of a state educational institution, including information: (A) concerning any negotiations made with respect to the research; and (B) received from another party involved in the research.

Indiana Code § 5-14-3-4(a)(6).

In *Robinson v. Indiana University*, 659 N.E.2d 153 (Ind. Ct. App. 1995), the Indiana Court of Appeals acknowledged the APRA requires a liberal construction in favor of disclosure of public records and the exemptions to disclosure should generally be construed narrowly. However, the court noted the Indiana General Assembly's inclusion of the "concerning research exception ... indicat[ed] the legislature's intent to extend nondisclosure to a large number of records." *Id.* at 156. With regard to applications concerning research, the court said the records were of a scientific or experimental nature so as to concern research and fell squarely within the exemption and were thus subject to nondisclosure. *Id.* at 157.

The Robinson Court called construction of the "concerning research" exception, there is a limit to the materials which can be classified as research. Research is defined by Merriam-Webster as "careful study that is done to find and report new knowledge about something." In *Robinson*, the court declared that an application which "seeks information about the researcher, the nature of the proposed or ongoing research project and procedures to be employed throughout the project" did fall within the exception. The court's interpretation of research materials appears to permit the use of the exception where a request regarding details into a specific project is made.

In regards to your request, the University contends all contracts and purchase orders for fetal parts are records which contain information concerning research. Although these contracts were made in furtherance of the University's research, the documents themselves would not contain the detailed information as to how and why the materials are to be used by the University.

The University has not stated that the disclosure of the procurement of materials would reveal the methodology, actual use, techniques, procedures, the results of a study or even the nature of research. You do not seek to discover what new knowledge is being sought or how the materials are used from reviewing a purchase order, but merely uncovers the expenditures made by the University.

Based on the reasoning of the Court of Appeals and previous opinions issued by this office, it is my opinion Indiana Code § 5-14-3-4(a)(6) of the APRA does not prohibit IU from releasing the records you

requested for public inspection. While procurement for research materials may be *tangentially* related to research, the invoices themselves are not inherently of an experimental or scientific nature.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. James Nussbaum, Esq.