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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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PAYNE A. CHESTNUT,  
*Complainant,*

v.

INDIANA UNIVERSITY,  
*Respondent.*

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Formal Complaint No.  
19-FC-133

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Indiana University violated the Access to Public Records Act.<sup>1</sup> Assistant General Counsel Abby Daniels filed a response on behalf of the university. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on December 6, 2019.

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<sup>1</sup> Ind. Code § 5-14-3-1, to -10.

## **BACKGROUND**

This case involves a dispute over what constitutes a reasonable time as it relates to a public agency's production of documents requested under the Access to Public Records Act ("APRA").

On October 7, 2019, Payne Chestnut ("Complainant") filed a public records request with Indiana University through the university's online request portal seeking the following records:

Any and all documents submitted to the AACSB during review/ accreditation process for the Kelley School of Business undergraduate program at Indianapolis and Bloomington from 2006 to present.

Any and all surveys submitted to the AACSB, including the BSQ (Business School Questionnaire) from 2006 to present for the Kelley School of Business undergraduate program at Indianapolis and Bloomington.

A list of Kelley accreditation committee members (faculty & staff) responsible for the submission of Kelley Undergraduate data to the AACSB from 2006 to present.

Any and all monies paid to the AACSB by the Kelley School of Business from 2006 to present.

The university acknowledged Chestnut's request by email on the same day.

Within two weeks of submitting the request, Chestnut says he called IU "numerous times" to find out when he could expect the request to be fulfilled. Chestnut contends his calls

went unanswered, so he started emailing IU requesting updates on the request.

Chestnut sent emails on October 21 and October 23, 2019, requesting updates.

On October 23, 2019, IU emailed Chestnut indicating the university had a significant queue of public records requests and explained the request process. IU cautioned that requests of this nature can take some time to review and process. Chestnut followed up within an hour asking how long the process would take.

Seven days later IU emailed Chestnut to inform him that the unit that maintains the records he requested had been notified, but it was not clear how long it would take to gather the responsive records. IU invited Chestnut to check back if the records had not been released by November 15.

On November 18, 2019, Chestnut emailed IU to follow up on the request as instructed. He again asked for a timeline for completion of his request.

Chestnut contends that he heard nothing further from IU about his request. As a result, he filed a complaint with this office on December 6, 2019, alleging IU violated the Access to Public Records Act by failing to provide responsive records within a reasonable time.

On December 30, 2019, Indiana University filed an answer to Chestnut's complaint with this office. In essence, IU argues that it has neither violated APRA, nor taken an unreasonable amount of time to produce responsive records.

Specifically, IU contends that it is still within APRA’s reasonable time standard based on the circumstances surrounding the subject matter, the limited set of employees tasked to work on the request, and the relatively short period of time that passed since receiving the request.

IU also notes that Chestnut and his friend have threatened several lawsuits against the university and both submitted public records requests related to the subject matter of the potential litigation. IU also asserts that these requests appear to more about harassing high level officials than good faith discovery of information, which could be accomplished during litigation. Even so, IU says it will respond to Chestnut’s request in due course.

## ANALYSIS

### 1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“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.” Ind. Code § 5-14-3-1.

Indiana University is a public agency for the purposes of APRA; and thus, is subject to the Act’s requirements. *See* Ind. Code § 5-14-3-2(q). As a result, any person has the right to inspect and copy the university’s disclosable public records during regular business hours unless the records are exempt from disclosure as confidential or otherwise exempt from disclosure under APRA. *See* Ind. Code § 5-14-3-3(a).

## **2. Reasonable time**

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. Ind. Code § 5-14-3-3(b). Notably, APRA does not define the term “reasonable time.”

Here, Chestnut and IU disagree about whether the university complied with APRA’s reasonable time standard.

The determination of what is a reasonable time for production of records depends on the public records requested and circumstances surrounding the request. Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case.

As set forth above, Chestnut requested a set of records related to the IU Kelley School of Business. Specifically, records concerning the school’s international accreditation with the Association to Advance Collegiate Schools of Business (“AACSB”). Notably, Chestnut’s request covers approximately a 14 year time frame (2006 to 2020).

Chestnut submitted his request on October 7, 2019, which means IU received the request around 60 calendar days before Chestnut filed his complaint on December 5, 2019. So, the issue is whether taking two months to produce these records fails to keep with APRA’s reasonable time standard.

This office has long recognized that certain factors are relevant in evaluating whether an agency is in compliance with APRA’s reasonable time standard.

These factors include but are not limited to the following:

- The size of the public agency;
- The size of the request;
- The number of pending requests;
- The complexity of the request; and
- Any other operational considerations that may reasonably affect the public records process.

Indiana University is undoubtedly among the largest public agencies that are subject to APRA. IU, like its counterparts, has an internal system to receive and process requests for public records.

IU informed Chestnut before he filed a complaint that the university had large volume of pending public records requests, which would impact the production timeline. Granted, IU did not say how many requests were in the queue ahead of Chestnut. Even so, there is little reason to dispute that assertion because it is a common occurrence.

The size and complexity of the request in this case is less clear. Indeed, the relevant time frame (2006 to 2014) is wide-ranging in scope.

Notably, Chestnut argues that the records he requested are “regularly recorded, maintained, and submitted by Indiana University’s Kelley School of Business” and are “readily available to [IU].” IU did not expressly dispute this claim.

If these are records that are readily available in the ordinary course of business, then it follows that the production of these records should not be a cause for undue delay. But that is not the only consideration.

Even if it would benefit the university, APRA does not require IU to move Chestnut's request to the front of the line based on the records being readily available to the university.

In the end, IU pledged to provide the records to Chestnut consistent with the law.

Based on the information provided, this office cannot conclude that IU failed to comply with APRA's reasonable time standard, at least, at the time of filing. If a requester is eager to get ahold of the requested records, two months would be a long time to wait. This office applies APRA's reasonable time standard objectively.

IU is one of the biggest public agencies subject to APRA, which can bring with it a large queue of requests to manage. Even if the request is simple (despite spanning a 14 year time frame), IU does not necessarily need to break its protocol of responding to records requests in the order received.

At the same time, this office recommends IU dispose of this request—if it has not already done so—as soon as practicable. The formal complaint process with this office takes approximately 30 days, so that would add an additional month to the two months that had already elapsed at the time of filing.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that Indiana University did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor