
OPINION OF THE PUBLIC ACCESS COUNSELOR

STEPHEN S. SANDERS
Complainant,

v.

INDIANA UNIVERSITY,
Respondent.

Formal Complaint No.
21-FC-91

Luke H. Britt
Public Access Counselor

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.¹ Assistant General Counsel Amelia Marvel filed an answer on behalf of IU. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 1, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over what constitutes a reasonable time for a public university to disclose public records in accordance with the Access to Public Records Act (APRA).

On May 27, 2021, Stephen Sanders (Complainant) filed a public records request with the Indiana University (IU) seeking the following:

1. The complete, currently in-force employment agreement/contract between Indiana University and President Michael A. McRobbie.

The record(s) produced should include but not be limited to:

- a) the dates during which the agreement is in force and during which its provisions are to be performed;
- b) all terms regarding all salary, fringe benefits, housing allowance, and any other privileges of employment or forms of compensation and remuneration, whether payable during his service as president or after;
- c) any terms addressing McRobbie's title and employment responsibilities, and the dates through which such title and employment responsibilities would remain in effect.

In particular, if the agreement or related documents include provisions addressing the possibility that McRobbie might, under certain conditions, have continued in office as President, Acting President, Interim President, or a similar capacity past the previously publicly announced date on which he would step down (June 30, 2021), that information should be included.

2. The complete employment agreement between Indiana University and President Michael McRobbie that was effective on July 1, 2020.

On that same day, IU acknowledged Sanders' request and provided a copy of President McRobbie's contract, which was effective through June 30, 2021. Sanders, however, was not satisfied with the response because the records IU provided did not include any records related to the contract extension signed by McRobbie and the chair of the Board of Trustees.

On June 2, 2021, IU informed Sanders that it was actively processing the updated request and hoped to get back to him soon. A week later, IU informed Sanders that the updated request was a novel request, and the university required more time to review and process.

On June 30, 2021, IU provided Sanders an estimated timeline for production of four to six weeks. As a result, Sanders filed a formal complaint with this office alleging IU violated the Access to Public Records Act (APRA).

Sanders argues that this office should conclude that Indiana University's failure to provide McRobbie's contract extension within a reasonable time demonstrates noncompliance with APRA. Specifically, Sanders contends the contract extension should be as easily produced as McRobbie's original contract

On July 16, 2021, IU filed a response denying Sanders' allegations. IU argues that the contract extension required more time to produce because the university never received a request for those records. Moreover, IU contends that

staff had to obtain the records from others within the university, which included the Office of the Trustees and from individual IU trustees. Additionally, IU attributes the delay in response to vacations, surgeries, and other unavoidable complications, as well as the extensive queue of pending requests for records waiting to be addressed. IU notes there were 75 pending records requests when Sanders filed his request. For all those reasons, IU argues that the time required to properly respond to Sanders' request is not unreasonable; and thus, the university has not violated the Access to Public Records Act.

ANALYSIS

1. The Access to Public Records Act

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 (IU) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy IU's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

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, Sanders and IU disagree about whether the university complied with APRA’s reasonable time standard by taking four to six weeks to compile and produce a record.

According to information provided, President McRobbie’s contract extension was executed on March 19, 2021.² It is unclear at what—if any—public meeting the contract was discussed, negotiated, deliberated or ratified by the Board of Trustees or its committees. Still, the extension was certainly in existence, if not in effect, at the time of Sanders’ original request.

Open Door Law issues notwithstanding, there is no dispute that part of that original request sought contract terms during McRobbie’s presidency or afterward in a reasonably explicit manner. Although Sanders clarified his request after the initial production of documents, he was arguably entitled to the contract extension document in accordance with the original batch of records. Therefore, in the opinion of this office, Sanders’ request should not have been pushed to the back of the line.

² See letter from Jim Morris, Chair of the Compensation Committee to the IU Board of Trustees.

That stated, IU released the extension contract and associated documents to Sanders in August. Even so, it is likely that IU had the document at the ready in May or June during what would be considered a reasonable timeframe under APRA. A July release during the pendency of this complaint would have even been somewhat acceptable.

A reasonable interpretation of Sanders' original request encompassed the extension as well as the president's effective contract. Simply put, Sanders had to wait too long before obtaining his copy.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana University did not provide the materials in a reasonable time as required by 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