
OPINION OF THE PUBLIC ACCESS COUNSELOR

ASHOK K. LALWANI,
Complainant,

v.

INDIANA UNIVERSITY,
Respondent.

Formal Complaint No.
23-FC-87

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 Attorney Zachary R. Griffin filed an answer on behalf of the agency. 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 September 1, 2023.

¹ Ind. Code § 5-14-3-1 to -10.

BACKGROUND

In this case we consider whether Indiana University appropriately denied a public records request for aggregate performance evaluations.

On August 11, 2023, Ashok (Complainant) submitted a public records request to IU for aggregated individual performance evaluation scores for a two-year period. IU denied the request in accordance with the Access to Public Records Act's (APRA) personnel file exception.²

Eleven days later, Lalwani revised the request for de-identified aggregate scores, but this time asked for tiered layers of data. IU denied the revised request on the same grounds. Lalwani filed a formal complaint with this office on August 28, 2023.

On September 22, 2023, IU filed a response to Lalwani's complaint arguing that personnel evaluations are not among the mandatory disclosures from a personnel file under APRA. Moreover, it contends that the small sample size of even aggregated data could be reverse engineered to identify individuals within the department in question.

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.

² Ind. Code § 5-14-3-4(b)(8).

Indiana University 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 the city'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) to -(b).

This case involves the applicability of APRA's personnel file exception to employee evaluations.

2. Employee evaluations

This case involves the applicability of APRA's personnel file exception to personnel evaluations within the marketing department at IU's Kelley School of Business.

Under APRA, a public agency has discretion to withhold from public disclosure most of an employee's personnel file. *See* Ind. Code 5-14-3-4(b)(8). At the same time, an agency must publicly disclose certain personnel file information. Ind. Code § 5-14-3-4(b)(8)(A) to -(C).

Here, Indiana University argues that personnel evaluations are not part of the list of mandatory disclosures. Performance evaluations are typically housed in a personnel file and would fall into the remainder of the types of documents an agency has the discretion to withhold or release.

The law does not directly speak to public agency employee evaluations as disclosable. In fact, this office has consistently recommended that these documents remain in-house as

even public employees have an expectation of privacy. Routine performance evaluations are, to a large degree, between an employee and supervisor.

Likewise, IU's point is well-taken that even in the aggregate, smaller sample sizes can disclose employee performance in a similar manner as individual evaluations.

This office sees no compelling reason or public interest in advising an agency to disclose employee performance evaluations to anyone other than the employee who received it.

CONCLUSION

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

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt
Public Access Counselor

Issued: December 5, 2023