

August 16, 2004

Mr. Kim A. Sommer
718 Harvey Drive
Bloomington, IN 47403

Re: Formal Complaint #04-FC-116; Allegation of Violation of Access to Public Records Act by Indiana University and the Aikido Club

Dear Mr. Sommer:

This is in response to your formal complaint alleging that Indiana University and the Indiana University Aikido Club denied you records in violation of the Access to Public Records Act (APRA) at Ind.Code 5-14-3. Ms. Kiply Suzanne Drew, Associate University Counsel, responded to your complaint on behalf of Indiana University. I have enclosed a copy of the University's response for your reference. For the reasons set forth below, I decline to issue a formal advisory opinion regarding the IU Aikido Club's status as a public agency because it was untimely filed. With respect to your allegation that IU has delayed its production of your records, I find that IU's production of the records you request was unreasonably delayed.

BACKGROUND

On April 22, 2004, you submitted a request through your counsel to University Counsel Dorothy Frapwell for the following records:

Any and all documents produced by the IU Aikido Club, the officers of the IU Aikido Club, the staff of the IU Aikido Club or the Recreational Sports Department in regards to Kim Sommer dating to January 1, 2003 including but not limited to:..."

I summarize your specific requests as:

1) any written complaints regarding Mr. Sommer filed with IU or the Aikido Club by Mary Kozub or anyone else; 2) any written complaints filed by the IU Aikido Club regarding Mr. Sommer; 3) any e-mail communication between IU Aikido Club officers or IU Aikido club staff in regards to Mr. Sommer; 4) any written warning given to Mr. Sommer on behalf of the IU Aikido Club; 5) any correspondence sent to

Mr. Sommer by the IU Aikido Club since January 2003; and 6) minutes of any and all meetings of the IU Aikido Club officers in which Mr. Sommer was discussed.

You enclosed with your complaint a copy of the response of Indiana University to your April 22 request. The IU response is dated April 28, 2004. In that response, Ms. Drew acknowledges receipt of your request and states that she will produce records maintained by the Recreational Sports Department, a unit of Indiana University. She also states that the Aikido Club and its officers and staff are not subject to the Access to Public Records Act. You filed a complaint with the Office of Public Access Counselor on July 16, 2004.

ANALYSIS

IC 5-14-5-7 states that a person who has been denied the right to inspect or copy records under IC 5-14-3 has the right to file a formal complaint with the counselor. The formal complaint must be filed not later than thirty (30) days after the denial of the record. With respect to the question of denial of access to the records of the Aikido Club, the denial occurred with IU's response to you of April 28, 2004. This denial occurred more than 30 days after your complaint was filed on July 16, 2004. With respect to your complaint that IU has not responded, I take your complaint to be that IU has yet to produce any records as of the date of your complaint (since you supplied me with a copy of IU's April 28 response, which is within the seven (7) day deadline for response to mailed requests). Hence, your complaint regarding the status of the Aikido Club is not timely filed, and I decline to issue a formal advisory opinion on that issue. I will follow this formal advisory opinion with an informal response to that issue.

With respect to your second allegation that IU has not produced the records you seek, IU has responded that it had not anticipated the complexity of the production of the documents. Ms. Drew's response states that the production has been complicated by the fact that after retrieving the records, she is required to review and match students records for redaction required under federal law. However, Ms. Drew admitted that she had not kept your attorney informed regarding the status of the production of the documents. The APRA does not contain any specific deadline for production of documents. Past opinions of this office have stated that the agency must produce responsive documents within a reasonable time. The factors that must be evaluated when determining reasonableness of the timeliness of production include the number of documents in the request, whether the documents are stored offsite, and whether the documents contain partially disclosable and nondisclosable information. In any case, this office has held that the public agency has the burden for showing that the time for production was reasonable. *Opinion of the Public Access Counselor #00-FC-5.*

Ms. Drew's complaint response of August 2 is more than 15 weeks after your request. Given this lengthy timeframe for production, her admission that she had not otherwise kept you apprised of the status of the production of documents, and the fact that none of the documents have been produced, I find that the timeliness of IU's production of documents has not been reasonable. I must find this although Ms. Drew's complaint response indicates her intention to have all responsive documents to you by August 6.

CONCLUSION

For the foregoing reasons, I decline to issue a formal advisory opinion because of the untimeliness of the complaint regarding the IU Aikido Club's status as a public agency, but I find that IU's production of the documents that it maintains was unreasonably delayed. However, Ms. Drew states in her response to your complaint that she intends to give you the records by August 6.

Sincerely,

Karen Davis
Public Access Counselor

Cc: Kiply Suzanne Drew