

November 20, 2001

Mr. Michael J. Mullen
3690 Hogans Run Road
Columbus, OH 43221

Re: *Advisory Opinion 01-FC-70*;
Alleged Denial of Access to Public Records by Ball State University.

Dear Mr. Mullen:

This is written in response to your formal complaint, which was received on November 5, 2001. You have alleged that Ball State University Employee Relations Department ("University") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the University denied you access to public records in response to your October 14th and October 26th requests for copies of public records. Ms. Melissa Rubrecht, Assistant Director for Employee Relations for the University responded in writing to your complaint. A copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the University did not deny you access in violation of the APRA with respect to your October 14th request for access to personnel file information because you did not specify your request by the names of the employees. It is my opinion, however, that the University is obligated to provide you with copies of original public records from these personnel files upon request, but that nondisclosable information in these public records may be redacted from these copies under Indiana Code section 5-14-3-6(a). Finally, it is my opinion that the University did not deny you access in violation of the APRA with respect to your request for copies of various telephone listings for the years 1980 through 2001.

BACKGROUND

According to your complaint, your first request to the University was sent via facsimile on October 14, 2001. You asked for copies of documents from each and every personnel file for persons who during the time period January 1, 1980 through October 15, 2001 had police powers under the name and authority of the University. In particular, for each such employee you wanted copies of the documents, or redacted documents from their personnel files that contained the information required to be disclosed under Indiana Code sections 5-14-3-4(b)(8)(A) and (B). In a letter dated October 24, 2001, Ms. Rubrecht responded to your request on behalf of the University. Ms. Rubrecht informed you that your request had been denied because the University was not required to keep a list of such employees under Indiana Code section 5-14-3-4(c) and that under Indiana Code section 5-14-3-4(b)(8), a requestor must specify

with reasonable particularity the names of the employees.

Consequently, on October 26, 2001, you again sent via facsimile another public records request listing the names and titles of the persons for whom you wanted information under Indiana Code section 5-14-3-4(b)(8). You also requested copies of the University telephone directories for academic years 1980 through 2001, and in particular the portions of those books that list the " 'Office of Traffic and Safety,' 'Police' or the like." In a letter dated November 2nd, Ms. Rubrecht responded to your October 26th letter and notified you that your request for information from the personnel files had been granted and that with the receipt of a check for the estimated copying fees, the University would produce that information to you. As for your request that the University compile listings from telephone books for the years 1980 through 2001, Ms. Rubrecht informed you that while these books may be kept in the University Library, you were welcome to personally obtain the information at that location. The implication of her response was that her office would not search for and compile listings for you.

After you received Ms. Rubrecht's November 2nd letter, you filed your formal complaint with this Office. You have alleged that the University denied you access under the APRA because you were required to produce a list of employees and the University has such a list on its website and that they refused to make the copies you requested from the University telephone books.

In her response, Ms. Rubrecht stated that you are entitled to receive certain information about University employees under Indiana Code section 5-14-3-4(b)(8) and that this does not mean that you are entitled to obtain copies from these files-only the particular information. Your request, once particularized by name, has now been granted and the University is in the process of compiling the information for you. With respect to the telephone listings you requested, Ms. Rubrecht stated that the University is not required to perform research for you. Since the Library maintains these telephone books and is open to the public, you could access them for inspection and copying whenever that facility is open.

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." Ind. Code § 5-14-3-1. The University is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the University during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1.

Under Indiana Code section 5-14-3-4(b)(8), a public agency generally has discretion over the disclosure of the information maintained in their employees' personnel files. However, the General Assembly provided exceptions to this provision that permit any person to obtain the following information from these files:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

Indiana Code §5-14-3-4(b)(8). With respect to your formal complaint, it is important to note that the University was not obligated to disclose information on a generalized group of employees, such as that described in your October 14th request. Once you did provide names of the University employees in question, the University did notify you that you would receive the information available to you under Indiana Code section 5-14-3-4(b)(8). Therefore, it is my opinion that because you had not particularized your October 14th request by the names of the employees, the University did not deny you access to public records in violation of the APRA when they denied this request.

In response to your formal complaint, Ms. Rubrecht also stated that you were only entitled to the information listed at Indiana Code section 5-14-3-4(b)(8) and not copies of the documents, redacted or not, from these files. Under Indiana Code section 5-14-3-3(a), the public has a right to inspect and or copy public records of a public agency and Indiana Code section 5-14-3-6(a) states that

(i) if a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request... *separate the material that may be disclosed and make it available for inspection and copying.*

(Emphasis added). Many public agencies do prepare summaries of disclosable information from personnel files and this is acceptable to some requestors. It is my opinion, however, that you are entitled to request and receive copies of the original public records from the personnel files in question, but that from those public records information that the public agency is not required to disclose may be redacted. Given your specific request for these copies as opposed to summary information, the University should provide whole or redacted copies of any appropriate public records from those personnel files to you.

You further complained that the University wrongfully denied you access to listings in telephone directories for the university from 1980 to present for " 'Office of Traffic & Safety' or 'Police' or the like." Ms. Rubrecht's response to your request was that these telephone listings were maintained in the University library and that you could access them at that location. She also stated that her Office was not required to perform research of these telephone books for you.

Under the APRA, a public agency is required to respond to requests for public records that are maintained or filed by or with those agencies. Public records requests are also supposed to be stated with "reasonable particularity" so that the public agency can locate the public records in question. Ind. Code §5-14-3-3(a)(1). Your request for listings from these telephone books, in my opinion, was particular to a certain extent, but left it up to the public agency as to what other listings might qualify as "the like." Certainly, in the hands of the University as a whole, the telephone books you sought copies from are maintained, just not in the Office of Employee Relations. For this reason, Ms. Rubrecht directed you to the University's Bracken Library for these public records.

While I agree with Ms. Rubrecht that she was not obligated to search the telephone directories in question for you and that she did not deny you access to public records under the APRA, she should have instead directed your request to the appropriate University office for response. You could then work with the Bracken Library directly to make your request more particular and to arrange for copies to be produced to you, rather than to visit the Library in person if that is workable.

CONCLUSION

It is my opinion that Ball State University's Employee Relations Department did not deny you access in violation of the APRA with respect to your October 14th request for access to personnel file information because you did not specify your request by the names of the employees. It is my opinion, however, that the University is obligated to provide you with copies of original public records from these personnel files upon request, even if nondisclosable information in these public records is redacted under Indiana Code section 5-14-3-6(a). Finally, it is my opinion that the University Employee Relations Department did not deny you access in violation of the APRA with respect to your request for copies of various telephone listings for the years 1980 through 2001.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Melissa Rubrecht, Assistant Director
Employee Relations, BSU
