

December 4, 2001

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

Re: *Advisory Opinion 01-FC-72*;
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 8, 2001. You have alleged that Ball State University ("University") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the University responded to certain of your requests for access to public records claiming that your requests were not particular enough and that this constituted a denial under the APRA. Ms. Anita Kelsey, Recording Secretary for the University Board of Trustees 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, based on the information provided to this Office, the University did not deny you access to public records under the APRA.

BACKGROUND

According to your complaint, you made public records requests to the University on October 22, 2001 and on other dates. You did submit copies of two of these requests with your formal complaint. One request, dated October 22, 2001, was directed to the Associate Vice President for Student Services and requested copies of various documents concerning the University Police Department, its officers and particular incidents. Another October 22nd request was directed to the University Board of Trustees requesting copies of notices of tort claims related to the University Police Department. In a letter dated October 25th, Ms. Kelsey advised you that your October 22nd request for copies of tort claim notices would be granted, but that the remainder of your request, which she listed as dated October 24th, was denied "because it does not identify the records requested with reasonable particularity, as required by IC 5-14-3-3(a)(1)." Ms. Kelsey stated further that if you were to identify these unspecified records, they would make a determination on whether or not they were disclosable under the APRA. You then filed your formal complaint with this Office.

In her response, Ms. Kelsey stated that your formal complaint was confusing because her letter of October 25th was directed to your letters of October 22nd and October 24th, not to the additional October 22nd request to the Vice President for Student Services. Ms. Kelsey indicated that the

University did grant your request for copies of the notices of tort claim requested in your October 22nd letter to the University Board of Trustees, and that this did not violate the APRA. As to your other request, presumably the October 24th request, Ms. Kelsey stated that you asked for a copy of a list of all persons who have had police powers under the authority of the University from January 1, 1980 to October 25, 2001. This request was denied because the University does not maintain such a list, and therefore, you needed to provide more specific information to identify the records requested.

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 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).

As Ms. Kelsey pointed out, your formal complaint is peculiar in that it appears that the response you received from the University was not related to your request to the Vice-President of Student Services, but to two requests you made to the Board of Trustees. For the purposes of this Opinion, I will attempt to address the issues that appear to have been raised by your requests to the Board of Trustees and the University's response to them.

First with respect to your October 22nd request for copies of tort claim notices, the University responded stating that your request was granted and that, while it would take some time to sort through their files, they would produce them to you. Obviously, this is not a denial under the APRA.

Second, with respect to your October 24th request, which appears to have been for a list of persons who have had law enforcement authority at the University, Ms. Kelsey denied this request because no such list exists. 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. A public agency is generally not required to create a public record that does not currently exist in order to respond to a public records request. Since the University does not maintain the list you requested, the failure to produce it in response to your October 24th request was not a denial under the APRA.

CONCLUSION

It is my opinion that, based upon the information provided to this office, Ball State University did not deny you access to public records under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure
cc: Ms. Anita Kelsey, Recording Secretary
BSU Board of Trustees
