



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 3, 2015

Mr. Nicholas Moore
1130 W Kirkwood Avenue
Apt. 20
Bloomington, IN 47404

Re: Formal Complaint 15-FC-201; Alleged Violation of the Access to Public Records Act by the Indiana University; Office of the Vice President and General Counsel

Dear Mr. Moore,

This advisory opinion is in response to your formal complaint, which alleges Indiana University ("University"); Office of the Vice President and General Counsel, violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The University has responded via Mr. Kiply Drew, Esq., Senior Associate General Counsel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 26, 2015.

BACKGROUND

Your complaint dated June 29, 2015 alleges the University denied your request for "a list of names, current addresses, and phone numbers, for all Indiana University Bloomington students, who were at any time, attending Indiana University Bloomington, from 2010 to present."

On May 29, 2015, you contacted the University stating you were making a public records request under the APRA for the information stated above. You have also included with your complaint an affidavit of noncommercial and nonpolitical use dated May 29, 2015, which has also been sent to the University.

You received a response from the University the same day (May 29, 2015) stating they would conduct a review to identify any responsive records which are not exempt from disclosure under APRA. Based upon the information provided, your request had not been explicitly denied at the time of the filing of your complaint.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

The University responded to your complaint by arguing it had not yet determined whether your access request would be granted, but was being reviewed by the Office of the Vice President and General Counsel in order to make said determination. The response indicates, however, there is a directory available to you for inspection which is compliant with Ind. Code § 5-14-3-3(f) as is discussed below.

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.” See Ind. Code § 5-14-3-1. Indiana University is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the University’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a). An agency is not required to create or provide lists upon request unless it is required to publish such lists and disseminate them to the public under a statute. See Ind. Code § 5-14-3-3(f).

Ind. Code § 5-14-3-3(f) states that if a public agency has created a list, it must allow public access to inspect and make an abstract of the list unless the information is confidential. The University has extended this information for you to inspect the current year’s directory and make an abstract from it. Any other years are being reviewed for FERPA compliance.

Potential disclosure of records must also comply with federal law. Pursuant to Family Educational and Public Rights Act, 20 U.S.C. § 1232g; 34 CFR Part 99 (“FERPA”):

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

This means you are not automatically entitled to view directory information for all students. Availability of this information depends on whether the students have provided consent. To the extent a list exists with directory information, you may inspect it. It appears as if the University was not denying your request, but ensuring FERPA compliance before allowing you to view the directory.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that Indiana University has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Kiply Drew, Esq.