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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DAVID DEVINE,  
*Complainant,*

v.

PURDUE UNIVERSITY- FORT WAYNE,  
*Respondent.*

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Formal Complaint No.  
19-FC-61

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Purdue University- Fort Wayne violated the Access to Public Records Act.<sup>1</sup> The University responded via Christine M. Marcuccilli, Associate Director of Compliance. 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 August 1, 2019.

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<sup>1</sup> Ind. Code § 5-14-3-1 to 10

## **BACKGROUND**

This case involves a dispute over access to records relating to the university's ratings of classes and instructors.

On June 22, 2019, David Devine ("Complainant") filed a Request for Public Record with Purdue University Fort Wayne ("University"). Detailed in his request Mr. Devine asks for "Survey results/ Course evaluations/ student ratings & comments/ teacher-instructor ratings & comments (or similarly named documents) for the class CET 20600 from fall 2018 term."

According to Devine the documents he requested are created from survey data that is collected from students via an online survey, where they provide feedback about the classes they have just completed for that term.

In the complaint, Mr. Devine notes that students are informed, prior to taking the survey, that "All information disclosed in the evaluation is strictly confidential." However, the Complainant is of the opinion that the referenced confidentiality pertains only to information about the individual completing the survey, not the actual feedback provided.

Prior to the submission of the June 22, 2019 request for records, the Complainant had filed several requests with the University asking for these records. Regarding this specific request, the University's denial was made on the grounds that the records are confidential because they "were made for the purpose of employee evaluation and are considered to be part of the employee's personnel file..." They also cited, as grounds for denial, Ind. Code 5-14-3-4(b)(6), "ad-

vising material that are expressions of opinion or are speculative and are communicated for the purpose of decision making.”

The University, as a response, cites Indiana Code section 20-28-3-.05 which states: “Information containing teacher evaluation results that may be identified by teacher name, identification number, or other identifying criteria is confidential and exempt from disclosure.”

## **ANALYSIS**

### **1. The Access to Public Records Act (“APRA”)**

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. 5

Even still, there are categories of records which must be kept confidential by law. Indiana code section 5-14-3-4(a)(1) states that records declared confidential by state statute are excepted from disclosure. Notably, Indiana code section 20-28-3-0.5 does just that for the records the complainant is seeking.

Teacher evaluation results are considered confidential by that statute and are not to be disclosed. Clearly, the Complainant knows the identification of the teacher based upon his knowledge of the course and therefore the identifying criteria standard is met. This information is strictly exempt from disclosure.

As an aside, the University did not cite the Title 20 statute in the original denial. Pursuant to Indiana code section 5-14-3-9, the correct statute should have been cited in the denial. This Office does remain skeptical that the materials in question meet the definition of deliberative material. In any event, through this process, the University has met its burden to show that the information is non-disclosable.

### **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that Purdue University Fort Wayne did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the right.

Luke H. Britt  
Public Access Counselor