

August 29, 2005

Sent Via Facsimile

Mr. Steve L. Hinnefeld
Bloomington Herald-Times
1900 S. Walnut Street
Bloomington, IN 47401

Re: Formal Complaint 05-FC-152; Alleged Violation of the Access to Public Records Act by Purdue University

Dear Mr. Hinnefeld:

This is in response to your formal complaint alleging that Purdue University (“Purdue”) violated the Access to Public Records Act by failing to disclose University President Martin Jischke’s appointment calendar. I find that Purdue did not violate the Access to Public Records Act.

BACKGROUND

You faxed to Purdue a request for records on July 14, 2005. Specifically, you requested “any and all daily appointment calendar or calendars, in print or electronic form, for Martin C. Jischke as president of Purdue University, for the period from January 2005 through July 2005.” On July 19, 2005, Lucia M. Anderson, Public Records Officer for Purdue wrote you a letter denying your request. In her letter, Ms. Anderson cited IC 5-14-3-4(b)(7), which provides for the exemption of “diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.”

You filed your formal complaint with the Office of the Public Access Counselor on July 28, 2005. I sent a copy of your complaint to Purdue. Ms. Anderson cited the same exemption, explaining that President Jischke maintains his own appointment calendar, and that the calendar serves “the functional equivalent of a diary or journal.” She also stated that she had relied on a previous opinion of my office, *Opinion of the Public Access Counselor 01-FC-42* to deny your request. I have enclosed a copy of Purdue’s complaint response for your reference.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A timely written response to a faxed request for records is required within seven (7) days of an agency's receipt of the request. IC 5-14-3-9(b). Any denial of a record must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

Although you do not raise any technical issue with Purdue's response, I note that the response was timely, having been issued well within seven days of Purdue's receipt of your faxed request. Also, the denial meets the requirements of IC 5-14-3-9(c) because the denial cites to the specific exemption and supplies the name and title of the person responsible for the denial.

At its discretion, an agency may withhold diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal. IC 5-14-3-4(b)(7). In *Opinion of the Public Access Counselor 01-FC-42*, the public access counselor upheld the denial of the professional calendar of an employee of the Indiana Department of Environmental Management under the "diary or journal" exemption. Moreover, the complainant had maintained that the diary could have been redacted to remove only personal information. Ms. Anne O'Connor interpreted the exemption in section 4(b)(7) to apply to an entire record that meets the exemption in section 4(b)(7), in spite of the general requirement that an agency separate disclosable information from nondisclosable information. See IC 5-14-3-6(a).

You do not raise any issue with respect to redaction in your complaint, but anticipating such an argument, I do not find that Purdue was under any duty to offer a redacted version of the President's professional calendar. Purdue claims the appointment calendar is under Mr. Jischke's control and is the functional equivalent of a diary or journal. Purdue has sustained its burden to show that the record meets an exemption under the Access to Public Records Act. If you continue to dispute that the record is exempt, you may file an action in superior or circuit court to compel the agency to disclose the record. IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that Purdue University did not violate the Access to Public Records Act when it denied your request for the appointment calendar of Purdue President Martin C. Jischke.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Lucia M. Anderson