



STATE OF INDIANA

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October 8, 2014

Ms. Margaret M. Fosmoe
225 W. Colfax Avenue
South Bend, IN 46635

Re: Formal Complaint 14-FC-200; Alleged Violation of the Access to Public Records Act by Indiana University, Office of the Vice President and General Counsel

Dear Ms. Fosmoe,

This advisory opinion is in response to your formal complaint alleging Indiana University ("University") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.*. The University has responded via Mr. Stephen M. Harper, Assistant General Counsel. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 17, 2014.

BACKGROUND

Your complaint dated September 5, 2014, alleges the University violated the Access to Public Records Act ("APRA") by improperly denying you access to public records, specifically, the names, job titles, and departments of employees which recently had their employment terminated.

On June 6, 2014, you filed an informal request with the University requesting the names, job titles, and departments of the employees whose jobs were being eliminated. Additionally, you wanted to know if whether the positions in question were full-time or part-time and how many of the positions would be filled. Further, you wanted to know how much money would be saved by the University because of the reduction in force.

On July 16, 2014, the University responded to your informal request, via spokesperson Ken Baierl. The response excluded the names and job titles of the affected employees and did not include the positions eliminated in the Child Development Center on June 30, 2014. On the same day, you filed a formal public records request with the University requesting the full name, job title, and department of each employee on the list of eliminated positions you received from the University. Additionally, you requested the

effective date of each job elimination or addition. On August 6, 2014, Mr. Stephen Harper, the University's Assistant General Counsel, issued a response denying your request. On August 19, 2014, you filed another request for public documents to Mr. Harper.

On September 3, 2014, the University denied your request via Mr. Harper because your request was too broad and the University had no letters, lists, recordings, minutes, or documents stating which employee positions were eliminated and which employees were notified their jobs would be lost.

The University responded to your formal complaint on September 22, 2014, via Stephen M. Harper, Assistant General Counsel. The University claims it did not violate the APRA because employee personnel files are not subject to mandatory disclosure under APRA and are instead left to the discretion of the public agency.

ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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. The 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 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).

Personnel files of public employees are generally excepted from disclosure at the discretion of the agency, except for the items specifically required by the APRA to be disclosed. Ind. Code §5-14-3-4(b)(8). The University's arguments are sound and their analysis complete when it comes to personnel files. I agree the release of separation letters is likely discretionary due to their nature of being intended to be part of the personnel file. Conversely, I also agree the funding of positions with taxpayer money is public information which should be disclosed upon request.

As an aside issue, I do find it curious the University does not maintain some kind of staffing report reflecting separations, terminations and status changes. While I am not familiar with University human resources, it stands to reason there may be this kind of document in existence, which would satisfy your request. The same would be true of a payroll report or a salary manifest. If the University does maintain such a list, I encourage them to make it available to you as soon as possible. If they do not maintain such a list, then they are correct they do not have to create one to fulfill the inquiry.

CONCLUSION

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

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Stephen M. Harper, Esq.