



STATE OF INDIANA

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June 24, 2016

Dr. Rachel Hile, Ph.D.
3802 Stanton Hall Parkway
Fort Wayne, Indiana 46815

Ms. Charlotte Stefanski
919 Prairie Lane
Ossian, Indiana 46777

Re: Formal Complaint 16-FC-134; Alleged Violation of the Open Door Law and the Access to Public Records Act by Indiana University-Purdue University Fort Wayne

Dear Dr. Hile and Ms. Stefanski:

This advisory opinion is in response to your formal complaint(s) alleging Indiana University-Purdue University Fort Wayne violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 *et. seq.*, and the Open Door Law, Indiana Code § 5-14-1.5-1 *et. seq.* The University has responded via Counsel, Ms. Christine M. Marcuccilli, Esq. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 15, 2016.

BACKGROUND

Your complaint dated June 16, 2016, alleges the Indiana University-Purdue University Fort Wayne ("IPFW") violated the Access to Public Records Act when it denied your records request.

On May 17, 2016, you submitted a request for all meeting memoranda from the University Strategic Alignment Process (USAP) steering committee, facilitation team and task force. Your request sought records from April 28, 2014 to May 6, 2016.

On May 18, 2016, IPFW confirmed it had received your records request. On June 10, 2016 you received notification your request was denied in full. The university stated as its reason for denial the records requested are not subject to the Open Door Law and the records are withheld as intra-agency advisory or deliberative material pursuant to Indiana Code § 5-14-3-4(b)(6). You contend the USAP committees are acting as a governing body and are subject to the Open Door Law, because its members were appointed by Chancellor Vicky Carwein to take official action.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Indiana Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Indiana Code § 5-14-1.5-3(a).

The ODL defines a governing body as: two (2) or more individuals who are: any committee *appointed directly by the governing body or its presiding officer* to which authority to take official action upon public business has been delegated. See *Indiana Code § 5-14-1.5-2(b)*.

You allege the USAP is a governing body which is subject to the ODL. The USAP committee is not considered a governing body under the ODL, because the committee was not appointed by the Purdue Board of Trustees (who is the governing body of IPFW) or the Board's presiding officer. Chancellor Carwein is not the presiding officer of the Purdue Board of Trustees. The Chairman is Michael R. Berghoff.¹ It does not appear as the USAP is ratified or authorized in any way by the Purdue Board of Trustees or Chairman Berghoff. Likewise based on the information provided, it does not appear as if any of the members of USAP are Board members or sitting members of any other governing body. They are faculty and staff only with no authority to bind the university to any initiative or action.

Nor was any official executive function regarding public business outsourced. The task force's charter is clear it is only to provide data and information to the Chancellor. As it is not a sub-set or delegation of a governing body authorized by the Board of Trustees, it cannot take official action on public business.

You also allege IPFW improperly denied your records requests for records generated as a result of these meetings. 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 *Indiana Code § 5-14-3-1*. IPFW is a public agency for the purposes of the APRA. See *Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy IPFW's disclosable public records during regular business hours unless the records are protected from disclosure or are confidential or otherwise exempt under the APRA. See *Indiana Code § 5-14-3-3(a)*.

The General Assembly has provided that records which qualify as deliberative materials may be disclosed at the discretion of the public agency. See *Indiana Code § 5-14-3-4(b)(6)*.

This subdivision provides:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

¹ <http://www.purdue.edu/bot/trustees/index.html>

IPFW properly responded to your public records request, invoking the deliberative materials exception in its denial. If a public agency claims an exemption under Indiana Code § 5-14-3-4(b), the agency must justify the record falls within any one of the exemptions listed in that provision and establish the content of the record with adequate specificity. The deliberative materials exception requires the redacted or withheld material be expressions of opinion or speculative in nature *and* communicated for the purpose of decision making. To the extent the withheld material fits both criteria, it is deliberative material under the APRA, which means that pursuant to Indiana Code § 5-14-3-4(b)(6) IPFW acted within its discretion by declining to release it to you.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor that Indiana University-Purdue University Fort Wayne has not violated the Open Door Law or the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish extending from the bottom left.

Luke H. Britt
Public Access Counselor