



STATE OF INDIANA

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September 22, 2016

Mr. Ryan P. Sink, Esq.
C/o Fox Williams & Sink
8465 Keystone Crossing, Suite 250
Indianapolis, Indiana 46240

Re: Formal Complaint 16-FC-213; Alleged Violation of the Access to Public Records Act by Indiana University

Dear Mr. Sink:

This advisory opinion is in response to your formal complaint alleging Indiana University (“IU”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. IU has not responded despite an invitation to do so on August 25, 2016. 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 August 24, 2016.

BACKGROUND

Your complaint dated August 24, 2016, alleges Indiana University denied your public records request.

On or about May 10, 2016, you submitted a public records request to IU seeking sets of emails for seven (7) different individuals using the following format:

All emails sent and received by _____ from November 1, 2015 until the present, wherein any of the following terms were used: [terms cited are names or derivatives of names and titles]

You also requested “[a]ll documents related to any allegations of research misconduct” against an individual and “all documents created during your investigation, all original signed allegations by any students” and “all documents received during your investigation”.

On August 10, 2016, IU denied your request for several reasons, the first of which is the lack of reasonable particularity in your request. It states the correct search parameters are too vague to be able to search. It also cites the deliberative materials exception, documentation related to research and student information as grounds for denial.

You take exception to not only the denial itself, but also to the lack of clarity as to which the University denied your request. You believe a more thorough explanation of the exemptions to disclosure is warranted. You also take exception to the amount of time it took to deny your records.

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 Indiana Code § 5-14-3-1*. Indiana University is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. 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 Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Without the benefit of a response from the University, I cannot state determinatively what their justification is for the denial beyond what was included in their correspondence to you. Based on the information provided, IU took an unreasonable amount of time to deny your public records request pursuant to Indiana Code § 5-14-3-3.

As to the question of reasonable particularity, it is clear the holding in *Anderson v. Huntington County Bd. of Com'rs.*, 983 N.E.2d 613 (Ind. Ct. App. 2013) sets an expectation that a requestor include a named sender AND a named recipient in a request for emails. This was not included in your request.

Furthermore, the APRA does not state that a public agency must develop a privilege log to satisfy the burden of denying a public record under a stated exemption. Nor would it have to go into a lengthy explanation of the exemption itself and how it may or may not apply to a record sought. While this would be the case in the response to a complaint before a court, a public agency only must cite the statutory exemption in a denial pursuant to Indiana Code § 5-14-3-9(2)(a). Of course, my expectation is that a public agency cooperate in my office’s investigations under Indiana Code § 5-14-5-5. By choosing to forego a response, IU has waived the opportunity to explain to me how the exemptions are justified pursuant to your complaint.

CONCLUSION

Based on the foregoing, it is the Opinion of The Public Access Counselor that Indiana University has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline that extends to the left and then curves back under the initials.

Luke H. Britt
Public Access Counselor