

## OPINION OF THE PUBLIC ACCESS COUNSELOR

---

TATYANA SIZYUK,  
*Complainant,*

v.

PURDUE UNIVERSITY,  
*Respondent.*

---

Formal Complaint No.  
20-FC-19

---

Luke H. Britt  
Public Access Counselor

---

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging that Purdue University violated the Access to Public Records Act.<sup>1</sup> Legal Services Coordinator Kaitlyn Heide filed an answer to the formal complaint on behalf of Purdue. 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 February 13, 2020.

<sup>1</sup> Ind. Code §§ 5-14-3-1-10

## **BACKGROUND**

This case involves a dispute over what constitutes a reasonable time under the Access to Public Records Act (“APRA”) as it relates to the production of records.

On November 12, 2019, Tatyana Sizyuk, through attorney Ryan P. Sink, filed a public records request with Purdue University (“Purdue”) requesting the following:

- a) The personnel file of, merit file, tenure file, and all employment files of Tatyana Sizyuk, including all employment contracts, performance evaluations, and applications for tenure;
- b) All faculty handbooks and personnel manuals in effect in the last 2 years;
- c) All policies and documents outlining the terms and conditions of obtaining tenure for Ms. Sizyuk, including all documents showing the factors considered of applicants for tenure;
- d) All documents showing the decision and rationale behind denying tenure to Ms. Sizyuk, including all relevant agendas and any minutes wherein a vote was taken;
- e) All documents, emails, and text messages relied upon when making the decision to deny tenure to Ms. Sizyuk;
- f) All documents wherein the decision to deny tenure was communicated to Ms. Sizyuk;
- g) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email accounts) and text messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Ishii wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure;
- h) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email

accounts) and test messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Revenkar wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure;

- i) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email accounts) and test messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Bertodano wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure;
- j) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email accounts) and test messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Tsoukalas wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure;
- k) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email accounts) and test messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Hany Abdel-Khalik wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure;
- l) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email accounts) and test messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Choi wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure;

- m) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email accounts) and text messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Teleyarkhan wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure;
- n) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email accounts) and text messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Peter Hollenbeck wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure;
- o) From July 1, 2019, through November 1, 2019, produce all emails (from work and personal email accounts) and text messages (from work and personal cell phones) sent and/or received between (including CCs) Dr. Kim and Dr. Arvind Raman wherein any of the following terms were used: Tatyana, Sizyuk, Dr. Sizyuk, Ms. Sizyuk, and/or tenure; Indiana's Public Access law should be "liberally construed" and the burden of proof for the non-disclosure of certain documents is on the public agency, not the requesting party.

Purdue responded by email within an hour of receiving the request informing Sink that the request had been received and would be processed accordingly.

Sizyuk followed up with Purdue on January 15, 2020. The university indicated that it still had 26 requests pending ahead of Sizyuk's request and it would work to process those requests as quickly as possible.

On February 13, 2020, Sizyuk filed a formal complaint alleging Purdue's unreasonable delay in producing the requested records amounts to a denial under the Access to Public Records Act ("APRA"). Sizyuk contends that Purdue produced no records in the 90 days between the request and the complaint.

Two weeks later, Purdue filed an answer with this office disputing Sizyuk's complaint of an APRA violation.

In essence, Purdue argues that it did not deny Sizyuk's request. Instead, the university contends that it processed the request in accordance with APRA and Purdue's internal processing procedure. Purdue asserts that prior to disclosure, it reviews all records and makes redactions if necessary to comply with APRA and other applicable laws.

Purdue contends that the complexity of Sizyuk's request and the number of pending requests it had at the time it received the request affected the timeline. Specifically, Purdue notes that it had 45 pending records requests when it received Sizyuk's request, which contains 15 separate, multi-faceted requests. Purdue maintains that requests that require significant review, like Sizyuk's, are processed in the order received.

Purdue contends that its procedure for processing requests for records includes reviewing the request, determining which department and records custodian maintains the requested records. Purdue contends that Sizyuk's request involved gathering records from several departments and individuals. The university then reviews the records for responsiveness prior to disclosure.

Moreover, Purdue asserts that it updated attorney Sink in mid-January that 26 requests were still ahead of Sizyuk's request and the university was working to process them as quickly as possible. As of February 27, 2020, Purdue indicated there were nine open requests in line ahead of Sizyuk's request.

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act ("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." Ind. Code § 5-14-3-1. Purdue University ("Purdue") is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the University's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

### 2. Sizyuk's request

The crux of Sizyuk's complaint is that Purdue improperly denied the request by failing to provide the requested records within a reasonable time in accordance with APRA. In response, Purdue argues it did not deny the request and notes that Sizyuk's request is complex enough to justify the delay while acknowledging other pending requests in front of Sizyuk's.

### **2.1 Reasonable time**

Sizyuk argues that Purdue's failure to produce any responsive records within 90 days of receiving the request is not reasonable for purposes of APRA.

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency's disclosable public records. Ind. Code § 5-14-3-3(a). Toward that end, the law requires an agency within a reasonable time after the request is received to either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
  - (A) on the agency's equipment; or
  - (B) on the person's own equipment.

Ind. Code § 5-14-3-3(b)(1)-(2). The term "reasonable time" is not defined by APRA; and thus, it falls to this office to make a determination on a case by case basis when a complaint is filed challenging timeliness. In doing so, this office considers the following factors: (1) the size of the public agency; (2) the size of the request; (3) the number of pending requests; (4) the complexity of the request; and (5)

any other operational considerations or factor that may reasonably affect the public records process. At the same time, if specificity has been established as a predicate, reasonable timeliness is simply defined by this office as practical efficiency.

Here, Sizyuk's request is indeed voluminous and relatively complex but not unreasonably so. An informal benchmark this office observes as a typical reasonable timeframe is approximately 30 days from receipt of a request.

Some requests certainly should be turned around quicker, but for a request seeking multiple items, it may take longer. As of the filing of the complaint, the request had been pending for approximately 90 days. The question becomes whether Sizyuk's request exceeds what normally could be processed within 90 days.

Although Sizyuk's request is particular enough, it is sufficiently complex and sizable to at least begin the conversation of timeliness. Ninety days, however, is a significant time to wait for many requests.

This office cannot dictate to an agency what public records response infrastructure or method to use. Even so, based on the information provided, Purdue has one point person for public records requests. Like other state universities, Purdue undoubtedly receives a significant number of public records requests. Unlike other state universities, however, Purdue is the subject of a disproportionate amount of complaints filed with the public access counselor. Many of these complaints involve the timeliness issue.

There is no reason to doubt Purdue's factual arguments but there may be reason to doubt its processes.



Outlying circumstances notwithstanding, when an agency is regularly double digits deep in the number of pending public records requests perhaps that indicates a need for more resources devoted to the production of records, or alternatively, a change in processes.

In any case, in those cases where an agency accepts a cumbersome or voluminous request, a sensible approach to the search and production is to disseminate the materials in a piecemeal manner as they become available. This certainly alleviates anxiety on the part of requester that they may have been ignored.

## CONCLUSION

Simply put, unless extraordinary circumstances are involved, 90 days is much too long to wait on a public records request without receiving any information. Based on the foregoing, it is the opinion of this office that Purdue University violated the Access to Public Records Act by taking an unreasonable time to produce records in accordance with Sizyuk's request.



Luke H. Britt  
Public Access Counselor