



STATE OF INDIANA

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September 30, 2026

Re: Complaint 26-FC-067
Scott B. Smith (Complainant) v.
Indiana University (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed February 1, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on March 6, 2026, requesting a formal response by April 3, 2026. However, Respondent asked for and was granted an extension of time for filing its response to May 3, 2026. A formal response, submitted by Attorney Emily Stultz, Assistant General Counsel on behalf of Respondent, was received in this office on May 1, 2026.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide copies of the requested records.

ANALYSIS

The public policy of 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.” Indiana Code (IC) 5-14-3-1. Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(s). As a result, unless an exception applies, any person has the right to inspect and copy Respondent’s public records during regular business hours. IC 5-14-3-3(a).

The complaint states that Complainant filed a request for records on November 27, 2025. The requested records were:

The personnel files of a certain employee of the English Department including:

- 1) dates of employment,

- 2) work history,
- 3) previous employers,
- 4) employment and termination agreements,
- 5) any disciplinary records that resulted in termination, demotion, suspension, etc., and
- 6) job application.

The APRA request also stated that if the records are no longer maintained, please check Respondent's archives. Complainant amended his request to correct the name of the individual on January 6, 2026.

Respondent replied on January 23, 2026, with both a record production of the responsive records and a denial of other personnel records pursuant to IC 5-14-3-4(b)(8). Respondent supplied records included a .zip file containing numerous documents.

Complainant, on January 24, 2026, notified Respondent that the records which had been provided to him had failed to include the prior work history of the former employee. Complainant stated that the work history records were "vita records" under Respondent's approved retention schedule and should be retained permanently.

Respondent had requested a search of archives to determine if the record could be found. Archives responded to the legal department of Respondent that it did not have the record.

This office has long held that a public agency is not required to create or produce records that it does not have. *Opinions of the Public Access Counselor 03-FC-146, 05-FC-25, 10-FC-086, and 12-FC-328* support Respondent's position that Respondent is not required to produce records that do not exist or create records to fulfill an APRA request. If Respondent provided all the records responsive to Complainant's request, then the records request has been fulfilled. *Opinion of the Public Access Counselor 25-FC-112*.

However, we then review why Respondent does not have the record. An application for employment would generally include an employment history. The application is a public record. The definition of a "public record" under IC 5-14-3-2(t) is as follows:

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Complainant relies on what appears to be a record retention schedule taken from Respondent's website and which states it was "Approved by the Academic Officers Committee (AOC) on January 31, 2003. It states the disposition of certain records, which differentiates between originals and copies. Items such as "vita" or curriculum vita, which non-academics refer to as resumes or work histories, should be held permanently as are "Disciplinary Letters and Email", "Personal and Professional History Form", "Personnel Action Forms", "Appointment and Offer Letters", etc. Record Retention Schedules should be followed as approved and can be key in determining whether or not APRA was violated. *Opinion of the Public Access Counselor 25-FC-249.*

Although Complainant asserted that the employee taught English in 2001, the employee's employment history as provided by Respondent starts in August of 2003 and only goes until July of 2009. The titles range from Part Time Student Employee to Associate Instructor to Part Time Employee, and the compensation rates provided could indicate student hourly or student stipend position(s). It is unclear whether the employee was considered faculty or adjunct or other, as it relates to the retention schedule. It is also unclear whether the information is complete because it is unclear whether an application or employment history was collected.

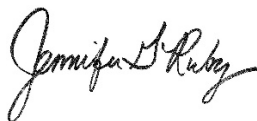
APRA requires that such a public record be retained for access by the public. A public agency shall protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public agency or employees. IC 5-14-3-7(a).

APRA does not require a public agency to abandon routine job responsibilities to address APRA requests but does acknowledge that those requests are part of the routine job responsibilities. Respondent should follow its retention schedule related to public records, and it is unclear whether it has.

CONCLUSION

This office finds that the Respondent did not violate APRA by failing to produce copies of records that may not exist and that could not be located.

However, Respondent may have violated APRA by failing to protect and maintain public records in accordance with its own retention schedule.



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