



STATE OF INDIANA

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June 13, 2016

Ms. Andrea Widener
1155 16th Street
Washington, DC 20036

Re: Formal Complaint 16-FC-107; Alleged Violation of the Access to Public Records Act by Indiana University

Dear Ms. Widener:

This advisory opinion is in response to your formal complaint alleging Indiana University (“IU”) and Assistant General Counsel James Nussbaum, Esq., violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. IU has responded via Counselor Nussbaum. His response is enclosed for your review. 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 May 10, 2016.

BACKGROUND

Your complaint alleges Indiana University violated the Access to Public Records Act by improperly denying your records request.

On April 16, 2016, you submitted a records request seeking a count of sexual harassment claims against IU employees and for investigation reports of those claims. Your request was denied on May 5, 2016 under the personnel records exemption.

On May 31, 2016 IU responded. IU notes your first request was for information and therefore not subject to the APRA as a request for actual documents. IU also reasserts its use of the personnel records exemption and notes it does not need to redact any information because the exemption allows the university the discretion to withhold all personnel 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)(1)*. Accordingly, any person has the right to inspect and copy IU’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)*.

Indiana Code § 5-14-3-3(a) reads “Any person may inspect and copy the public **records** of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter.” (Emphasis added). As I noted in Informal Opinion 15-INF-23, there is a distinction between requests for information and requests for records. I noted the following:

When a request is for a public record, there should be a tangible document to give to the requester, i.e. an individual’s driving record or any other type of actual document with information. In contrast, a request for information is not asking for a specific document; instead the request requires the BMV to extrapolate information - such as an address - from an existing document.

Your request for the number of sexual harassment claims against IU employees is an information request and not a records request. It is an information request because you are asking IU to extrapolate data from the actual records and provide you with pieces of information in a form which does not already exist. The APRA does not extend to requests for information and therefore the university’s denial was proper.

Your second request for investigation records related to sexual harassment claims against IU employees was denied under the personnel records exemption. Under Indiana Code § 5-14-3-4(b)(8) personnel files of public employees and files of applicants for public employment are subject to disclosure at the discretion of the public agency. Therefore, IU is not required to separate records under Indiana Code § 5-14-3-6(a).

However, the personnel records exemption is not an absolute exemption and IU must disclose certain information. According to Indiana Code § 5-14-3-4(b)(8)(c), a public agency must disclose “the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.” If such records exist, IU must release those records upon request, however, you must first identify with reasonable particularity the employee who was suspended, demoted or discharged.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor that Indiana University properly denied your records request.

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. James Nussbaum, Esq.