

May 27, 2008

James Moulder
1701 Touby Pike
Kokomo, Indiana 46903-1373

Re: Formal Complaint 08-FC-114; Alleged Violation of the Access to Public Records Act by Purdue University

Dear Mr. Moulder:

This advisory opinion is in response to your formal complaint alleging Purdue University ("University") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the University's response to your complaint for your reference. It is my opinion the University has not violated the APRA.

BACKGROUND

In your complaint you allege that you requested records from the University. Specifically you requested a copy of the database the University maintains which includes the names and addresses of farmers in the area. You sought the records to use the names and addresses to inform the farmers of classes being offered by Ivy Tech Community College of Indiana ("Ivy Tech"). The first two classes are offered at no charge, and subsequent classes are offered for a fee. You do not indicate the date of the request, but you allege the date of denial is April 30.

The University responded to the complaint by letter dated May 20 from Cheryl Westlund, Public Records Administrator for the University. Ms. Westlund indicated that the University denied your request on April 30, based on I.C. § 5-14-3-3(f), which prohibits a public agency from disclosing a list of names and addresses to commercial entities for commercial purposes. Ms. Westlund further indicates that after discussions with the University's legal counsel, the University has provided the list to you on May 21.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The

University is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the University during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here you requested a list of names and addresses maintained by the University. You indicate you intend to use the list to promote to those on the list the classes offered by Ivy Tech. The first two classes offered will be free of charge, and there will be a charge for subsequent classes.

The APRA provides that a public agency is not required to create or provide copies of lists of names and addresses unless the public agency is required to publish such lists and disseminate them. But if a public agency has created such a list of names and addresses, it must permit a person to inspect and make memoranda abstracts of the list unless access is prohibited by law. I.C. § 5-14-3-3(f). Additionally, certain lists of names and addresses may not be disclosed to commercial entities for commercial purposes. Those lists include a list of public employees of a public agency, a list of persons attending a conference or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational institution, and a list of students who are enrolled in a public school corporation if the governing body of the public school corporation has adopted a policy as specified in the APRA. I.C. § 5-14-3-3(f).

Here, the University originally denied your request, claiming it could not disclose the list to a commercial entity for commercial purposes. The University does not assert, though, that the list is one of those three listed in I.C. § 5-14-3-3(f) which must be withheld from disclosure. If the list is one of those set forth in I.C. § 5-14-3-3(f), like a list of persons attending a conference or meetings at the University or involved in programs conducted or supervised by the University, the University may be required to withhold the list from disclosure pursuant to I.C. § 5-14-3-3(f), if Ivy Tech is a commercial entity intending to use the list for commercial purposes.

I addressed a similar issue in *Opinion of the Public Access Counselor 08-FC-15*. There, a charter school administrator sought a list of names and addresses of students from Indianapolis Public Schools.

You contend that as a nonprofit tax-exempt corporation, Lighthouse is not a commercial entity and as such may not be prohibited from receiving the requested information. The APRA does not provide a definition for “commercial.” “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). “Commercial” is defined as “[o]f or belonging to trade” or “[m]ade or put up for market.” *New Illustrated Webster’s Dictionary of the English Language*, Pamco Publishing Company, Inc. 1992, at 202.

Ms. Recker contends, and I believed it is a valid argument, that Lighthouse intends to use the list to contact or market to families the services and products Lighthouse offers, whether it be the charter school option or other products. The argument is bolstered by the fact that the person for Lighthouse who initially requested the list carries the title “Business Development Associate,” which is generally a title given to an employee charged with bringing in new business. Based on the definition “made or put up for market,” it is my opinion a nonprofit, tax-exempt entity that markets its products or services with the intent to encourage others to utilize or purchase its products or services is a commercial entity. And marketing those products or services would therefore be a commercial purpose. As such, it is my opinion IPS appropriately applied I.C. §5-14-3-3(f) to your request in denying you access to the list.

Opinion of the Public Access Counselor 08-FC-15.

It is my opinion the present matter is similar to that presented in *Opinion of the Public Access Counselor 08-FC-15*. Here, though, I do not have enough information to definitively say whether the University is prohibited from disclosing the list. I do not know how or why the list was developed (i.e. whether it is one of the three lists prohibited from disclosure to commercial entities). Further, I have no argument from either party regarding the premise that Ivy Tech is a commercial entity for the purposes of this provision. Because I do not have enough information, I cannot find that the University has violated the APRA by disclosing the record.

Further, the University has now disclosed the requested information to you. As such, I cannot find the University has denied you access to the records.

CONCLUSION

For the foregoing reasons, it is my opinion the University has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Cheryl Westlund, Purdue University