

February 4, 2008

Anita Katti
9555 Fran-Lin Pkwy
Munster, Indiana 46321

Re: Formal Complaint 08-FC-25; Alleged Violation of the Access to Public Records Act by Purdue University Calumet

Dear Ms. Katti:

This opinion is written in response to your formal complaint alleging Purdue University Calumet ("Purdue") 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 Purdue's response to your complaint for your reference. It is my opinion Purdue University Calumet has not violated the Access to Public Records Act.

BACKGROUND

You allege that you submitted to Purdue a letter dated November 25, 2007, whereby you requested access to records maintained by Purdue related to a complaint you filed against Purdue. Specifically, you requested copies of the following records:

1. Notes of interviews, depositions, conversations or discussions including but not limited to those with Dr. Hal Pinnick and all witnesses including but not limited to those labeled A-T in Dr. Pinnick's letter of 27 Aug 07 and those given to you
2. Notes of other conversation including phone calls by Mr. Holden in the investigation of your formal complaint of 02 Aug 07 including but not limited to calls to Virginia State University and Dr. Cathy Harper of West Virginia State University
3. Records, correspondence, e-mails or notes of conversations by Mr. Victor Holden with administrative officials . . . related to your formal complaint
4. Records, including but not limited to, meeting minutes, correspondence, notes, e-mails of the Strategic Leadership Team at PUC and PUWL regarding your formal complaint

Further, you requested specific salary and funding information relating to a number of individuals employed by Purdue. Purdue denied you access to items 1 through 4 based on the exception to disclosure found in the APRA for “diaries, journals, or other personal notes.” I.C. §5-14-3-4(b)(7). Your request for salary and funding information was granted in part and denied in part. The denial was based upon the Family Educational Rights and Privacy Act (“FERP”), 20 U.S.C.A. §1232g *et. seq.* and on the personnel records exception to disclosure found in I.C. §5-14-3-4(b)(8). You filed this complaint on January 3, 3008, alleging the records were inappropriately denied.

Purdue responded to your complaint by letter dated January 22 from attorney Deborah Trice. Purdue contends the records listed in numbers 1 through 4 of your request are notes, which are excepted from disclosure pursuant to I.C. §5-14-3-4(b)(7) and *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826 (Ind. Ct. App. 1998). Further, Purdue contends it is not relevant that the records you are seeking may be evidence in the event of an EEOC filing. Purdue also contends that your allegation the records are not deliberative material is not relevant since Purdue did not claim the deliberative materials exception.

Regarding your request for records related to the employment of student workers who are students in biology and chemistry, Purdue cites FERPA as well as *An Unincorporated Operating Division of Indiana Newspapers, Inc. v. The Trustees of Indiana University*, 787 N.E.2d 893 (Ind. Ct. App. 2003) and *Opinion of the Public Access Counselor 06-FC-191*.

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." Ind. Code §5-14-3-1. Purdue 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 Purdue 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).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is made by mail, electronic mail, or facsimile transmission and the agency does not respond within seven days, the request is deemed denied. I.C. §5-14-3-9.

Regarding your request for notes taken by various individuals who I assume are employed by Purdue, this issue was addressed by Counselor Karen Davis in *Opinion of the Public Access Counselor 06-FC-72*. A “public record” is any material that is created, received, retained, maintained, or filed by or with a public agency. See I.C. §5-14-3-2(m). Mere creation of handwritten notes by a public official, without more, does not demonstrate that a record is a “public record.” Only “public records” are required to be available for inspection and copying. *Id.* If the handwritten notes were not filed with or are not maintained by Purdue office, they are not public records.

Since it seems the notes were filed with or are maintained by Purdue, Purdue argues they constitute personal notes serving as the equivalent of a diary or journal, which are excepted from

disclosure at the discretion of the public agency under I.C. §5-14-3-4(b)(7). This issue has been addressed by the Indiana Court of Appeals in *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826 (Ind. Ct. App. 1998), which involved Purdue's denial of access to and NCAA compliance log maintained by Mr. Blalock, a Purdue employee. The court said that the APRA allows the exception of

'diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal' from the disclosure requirement of the Act. Blalock described the compliance log as notes that he has made concerning information provided to him on activities related to NCAA or Big Ten rules and regulations. He testified that it is an ongoing log with the entries referring to various matters. He also testified that the log is a place for his personal notes and that no one else makes entries in the log. He specifically referred to it as his notebook or diary, and shares it with select others only on occasion. The compliance log kept by Blalock clearly falls under the diary, journal, or personal notes exception in the Act. *Id.* at 829.

I agree with Purdue that most of the records you seek (items 1 through 4) are similar records to those in the *Journal Gazette* case, and as such are excepted from disclosure pursuant to I.C. §5-14-3-4(b)(7). To the extent Purdue maintains correspondence, e-mails or other records you request in items 3 or 4 that do not fall under the diary, journal or personal notes exception or another exception found in the APRA, those records should be produced. Because I do not have any information regarding the existence of any correspondence or other records, I cannot say whether Purdue has violated the APRA by denying access to records other than the personal notes.

You further allege Purdue has violated the APRA by denying you access to information you requested related to Purdue's employment of certain individuals. When a state statute or federal law declares information confidential, those records may not be disclosed by the agency. I.C. §5-14-3-4(a). Here, Purdue claims that FERPA prevents disclosure of the employment records of students. The Court of Appeals of Indiana has stated that "for the purposes of I.C. §5-14-3-4(a)(3), FERPA is a federal law which requires education records to be kept confidential. *An Unincorporated Operating Division of Indiana Newspapers, Inc. v. Trustees of Indiana University*, 787 N.E.2d 893 (Ind. Ct. App. 2003). Counselor Karen Davis, in *Opinion of the Public Access Counselor 06-FC-191*, opined that education records and personally identifiable information contained therein are records directly related to a student, maintained by an educational agency and including, but not limited to, a list of personal characteristics that would make the student's identify easily traceable, or other information that would make the student's identity easily traceable. *Id.*

It is my opinion that the employment records of students at Purdue fall squarely into the exception for confidential information found in I.C. §5-14-3-4(a). As such, Purdue appropriately denied you access to the records containing student information.

CONCLUSION

For the foregoing reasons, it is my opinion Purdue has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: James K. Johnston, Purdue University Calumet