

June 1, 2004

Mr. Patrick Kuhnle
The Purdue Exponent
460 Northwestern Avenue
P.O. Box 2506
West Lafayette, Indiana 47906

Re: Formal Complaint 04-FC-74; Alleged Violation of the Access to Public Records Act by Purdue University

Dear Mr. Kuhnle:

This is in response to your formal complaint alleging that Purdue University violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3), when it responded to your request for records. Specifically, you allege that the University violated the APRA by withholding production of records of various student organizations. The University responds that it produced all of the records it has that are responsive to your request. A copy of the University's response is enclosed for your review. For the reasons set forth below, I decline to find a violation of the APRA.

BACKGROUND

On March 8, 2004, you submitted your request for public records to the University by electronic mail. That request, as paraphrased by your complaint, sought all records "related to disciplinary cases initiated by the University and affiliate organizations against student organizations." Your complaint states that the University responded in writing and within seven days of receiving the request. According to your complaint, the University indicated its intent to compile and produce responsive documents within 30 days. On April 2, 2004, the University produced 126 pages of documents responsive to your request. That production exempted by redaction the names of students required by federal law to be kept confidential.¹ On April 5, 2004, you contacted the University and noted the absence of any documents regarding several specific organizations. You alleged that the production was incomplete and requested an explanation for why documents relating to those certain organizations were not included. The University responded on April 9, 2004, stating that "[t]here [were] no documents responsive to

¹ No complaint is made that this redaction violated the APRA.

your request.” This complaint followed. In your complaint you assert your belief that the University is in possession of documents relating to other organizations and which are responsive to your request. The University denies this allegation, and affirmatively states that it has produced all documents that are responsive to your request.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the APRA. IC 5-14-3-3(a). A “public record” means any writing, paper, report, study, map, photograph, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2. A public agency is not required to create a record in response to a request, and it is not required to produce a record it does not have. If an agency does not have a responsive record, it should say so, but its failure to produce a record it does not have and is not required to have is not a denial under the APRA.

The University acknowledges that each of the organizations you identify in your complaint is a “recognized student organization” of the University, but asserts that they each operates autonomously and subject only to *University Regulations* and Indiana Law. The University asserts that the student organizations are not themselves, by virtue of University oversight of those organizations, public agencies subject to the APRA. I agree, but with that statement I do not understand the University to be suggesting that records regarding those organizations and in the possession of the University are not the public records *of the University*. Your complaint is directed against the University, and there is no dispute that the University is a public agency subject to the APRA. Accordingly, every record of the University is subject to disclosure under the terms of the statute, wherever and however maintained by the University. If the University through any of its offices is withholding any responsive records relating to any student organization at issue here, the University’s nondisclosure would violate the APRA.

That said, based on the allegations and evidence presented in this matter, I cannot find the University in violation of the APRA. The University states that it keeps student organization financial accounts in the University’s Business Office for Student Organizations, but that the University does not nor is it required to otherwise receive, retain, or maintain other records of these organizations. More particularly, the University asserts as follows:

ODOS [Office of the Dean of Students] employees do not maintain files of student organizations unless there is a business need to do so. ODOS maintains constitutions, officer report forms, event planning forms, official correspondence from the ODOS to the student organization, and newspaper clippings. Copies of internal judicial board letters or email summaries from recognized “governing bodies/student organizations” are generally not maintained in ODOS files. Such documents may be retained if ODOS staff need them for investigating possible violations of *University Regulations*. As often is the case, the internal policies and rules for the student governing boards are more strict than *University Regulations*. The Governing councils may from time to time inform their advisor,

who happens to be an ODOS employee, of final judicial decisions. However, it bears emphasis that there is no rule or regulation which requires the Governing Councils to provide documentation of their decisions to ODOS.²

Your complaint that the University is withholding records responsive to your request is founded on your understanding that additional responsive records exist. In support, you allege and provide documentation to show that the University has previously held and produced records of student organizations of the sort you are now seeking. The University agrees that it has in the past received and maintained some records of student organizations of the sort that you are requesting, but that on each of those occasions as well as in response to the current request it has produced all of the responsive records it maintains. Your supporting documents do not contradict this assertion, and neither have you established that the University is required to maintain records that it now avers it does not have. Your allegation that the University maintains but has not produced responsive records, in light of the University's production and statement that it has produced all records that it has that are responsive to your request, creates a factual and evidentiary dispute that cannot be resolved in an advisory opinion in this forum. If you have evidence to dispute the University's assertion, you are, of course, free to pursue your civil remedies under the statute. *See* IC 5-14-3-9, 9(i). Based on the evidence before me, I decline to find a violation of the APRA where the University failed to tender records it claims it does not have.

CONCLUSION

For the foregoing reasons, I find that the University did not violate the APRA by failing to produce records it claims it does not have and where there is no evidence to suggest that the University is required to maintain those records.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Lucia M. Anderson

² While the University specifically references the Office of the Dean of Students, in the broad context of your record request and complaint as well as its entire response to your complaint, I understand its assertion that it does not maintain any responsive records other than those produced to apply to any office of the University.