



STATE OF INDIANA

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October 26, 2009

Mr. Mikel S. Livingston
460 Northwestern Ave.
P.O. Box 2506
West Lafayette, IN 47996-2506

*Re: Formal Complaint 09-FC-218; Alleged Violation of the Access to
Public Records Act by Purdue University*

Dear Mr. Livingston:

This advisory opinion is in response to your formal complaint alleging that Purdue University ("Purdue") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, it is my opinion that Purdue did not violate the APRA.

BACKGROUND

In your complaint, you allege that Purdue violated the APRA when it refused to provide you with access to "any written documentation of procedures or policy for Purdue's text message and e-mail alert systems." You further allege that on August 25, 2009, Purdue cited I.C. § 5-14-3-4(b)(18) (exempting from disclosure "school safety plans and security measures) as its reason for denying you access to these records. You argue that Purdue cannot rely upon that exemption because it is "not a 'school' by state statute."

My office forwarded a copy of your complaint to Purdue for response. Attorney Deborah B. Trice's response on behalf of Purdue is enclosed for your review. Ms. Trice states that your request pertains to Purdue's ALERT system, which is the university's emergency warning system. The ALERT system is designed to provide a multi-layered mass communication system to notify the Purdue University community of threats from emergency events. According to Ms. Trice, Purdue does not have a formal policy for the ALERT system. The guidelines for the ALERT system are contained within a document entitled, "Purdue ALERT Guidelines," but that document is not a formal policy or procedure.

Ms. Trice states that the ALERT Guidelines contain specific information for emergency responders and other personnel regarding the actions that should be taken in

response to varying levels of threats to the campus community. Such information includes information regarding the location of communication stations and procedures for specific threat levels. The Guidelines are not made public because knowledge of their contents could be used to jeopardize public safety or manipulate the response of the ALERT system.

Ms. Trice cites I.C. § 5-14-3-4(b)(19), which exempts from disclosure records that are “assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism.” She argues that because the Guidelines are prepared and maintained to mitigate and respond to acts of terrorism impacting the campus community, Purdue properly withheld them from disclosure.

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.” I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). Purdue does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2.

Based on Purdue’s description of the records you seek, I agree with Ms. Trice’s argument that they are exempt from disclosure pursuant to I.C. § 5-14-3-4(b)(19), which exempts from disclosure records that are “assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism.” Although Purdue initially cited to I.C. § 5-14-3-4(b)(18), which exempts school safety plans developed pursuant to 511 Ind. Admin. Code 6.1-2-2.5, it is not necessary to address whether that exception to the APRA applies because it is my opinion that the records are exempt from disclosure under I.C. § 5-14-3-4(b)(19). Thus, I do not believe that Purdue violated the APRA when it denied your request.

CONCLUSION

For the foregoing reasons, it is my opinion that Purdue did not violate the APRA when it denied your request.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Deborah B. Trice, Stuart & Branigin LLP