



STATE OF INDIANA

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February 18, 2010

Dr. William P. Campbell
6 E. Woodsdale Dr.
Terre Haute, IN 47802

*Re: Formal Complaint 10-FC-21; Alleged Violation of the Access to
Public Records Act by Indiana State University*

Dear Dr. Campbell:

This advisory opinion is in response to your formal complaint alleging that Indiana State University ("ISU") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of ISU's response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that ISU denied you access to a report prepared by ISU's Affirmative Affairs Office related to an investigation of discrimination. The investigation was conducted by that office's affirmative affairs office, Sheila Johnson. The report was later used as a basis for letters of reprimand against you and Associate Professor Ernest J. Sheldon. ISU Provost C. Jack Maynard and Dean Richard "Biff" Williams created letters of reprimand based on information contained in the affirmative action report (the "Report").

My office forwarded a copy of your second complaint to ISU. In response, ISU's general counsel, Melony A. Sacopulos, claims that the Report is exempt from disclosure under I.C. § 5-14-3-4(b)(6), which is the exception for intra-agency or interagency advisory or deliberative material. Ms. Sacolulos maintains that the Report is generated by the affirmative action officer as a deliberative document for the purpose of making a decision about what, if anything, should be done in response to the complainant's allegations.

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. ISU does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy ISU’s public records 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).

ISU denies you access to the Record on the basis of the so-called deliberative materials exception to the APRA. The deliberative materials exception is found at I.C. § 5-14-3-4(b)(6):

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

...

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Thus, the deliberative materials exception requires that the records be expressions of opinion or speculative in nature *and* communicated for the purpose of decision making. To the extent the Record you requested fits both criteria as ISU maintains, it is deliberative material under the APRA, which means that pursuant to I.C. § 5-14-3-4(b)(6) ISU has discretion to withhold it from disclosure.

CONCLUSION

For the foregoing reasons, it is my opinion that ISU did not violate the APRA by denying you access to deliberative materials.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Melony A. Sacopulos