



# STATE OF INDIANA

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January 23, 2014

Dr. Mark Alexander Fox  
815 S. 25<sup>th</sup> St.  
South Bend, IN 46634

*Re: Formal Complaint 13-FC-353; Alleged Violation of the Access to Public Records Act by Indiana University South Bend*

Dear Dr. Fox,

This advisory opinion is in response to your formal complaint alleging Indiana University South Bend ("IUSB") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* IUSB has responded via Mr. Michael D. Mullin. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 23, 2013

## BACKGROUND

Your complaint dated December 23, 2013, alleges Indiana University South Bend violated the Access to Public Records Act by failing to provide a timely response in violation of Ind. Code § 5-14-3-3(b).

You allege that on or about November 21, 2013, you hand-delivered seven Public Records requests to the Office of the Chancellor at IUSB. The next day, on November 22, 2013, IUSB acknowledged your requests. The Chancellor's representative also directed you to fill out IUSB's prescribed records request form. You seem to take exception with IUSB's preferred method of receiving records requests as well as with their timeliness in responding to your request.

In its response, IUSB argues that the APRA allows a public agency to develop a specific form for public records requests. Furthermore, they contend that all acknowledgements of your requests were timely.

## 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.” See Ind. Code § 5-14-3-1. Indiana University South Bend is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy IUSB’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

You claim that IUSB failed to provide a response within the 24 hour timeline as dictated by the APRA for an in-person request, yet you have submitted evidence contrary to that claim. You have included an email from Mr. Kenneth Baierl, Jr. of the Chancellor’s office acknowledging your request the day after your in-person submission. Please note that the response to a complaint and production of records are mutually exclusive. IUSB clearly met their burden of a timely response.

You were asked by Mr. Baierl to use IUSB’s formal request form for your request. As such, you then submitted your requests on IUSB’s preferred format on November 22, 2014. In a letter dated November 27, 2013, the Office of the General Counsel acknowledged receipt of your request. You have submitted the envelope indicating that this letter was not postmarked until December 4, 2013. This would fall outside the seven day timeframe for acknowledging your request. It should be noted, however, that the State’s legal holiday schedule denotes the celebration of the Thanksgiving Day holiday on November 28, 2013. Moreover, the State also recognizes Lincoln’s birthday on November 29, 2013 when offices are closed. Generally, holidays and weekends are not considered tolling days for legal timeline purposes. Therefore IU’s response, even if postmarked on December 4, is appropriate given that only four business days elapsed from the time of your request to the time of the acknowledgement.

Finally, your complaint indicates that IUSB requires that the format is illegal because it requires requesters to fill out an online form and submit via mail, fax or email. Under Ind. Code § 5-14-3-3(a)(2) a public records request may be, at the discretion of the agency, in writing on or in a form provided by the agency. Indiana University’s website does indeed state that a records request must be submitted via mail, fax or email. Per its policy:

Any IU faculty or staff member who receives an open records request should direct the requesting party to the OVPGC website to complete and submit the Request for Public Record Form following the instructions below.

I interpret your complaint to take exception with that fact that an in-person request cannot be made by the public and therefore the University would be subverting the APRA which states “any person may inspect and copy the public records of any public agency during the regular business hours of the agency.” I do not find that IU’s requirement of a centralized repository for requests violates the APRA. In fact, the public may be better served by an agency of IU’s size to have a consistent system for receiving requests. This prevents requests from “slipping through the cracks” if they are made in various forms. I also do not believe that this precludes in-person requests. In fact, the policy explicitly provides that personnel receiving requests should direct the requesting party to the appropriate form. That assistance, in and of itself, is an acknowledgment of the request. I do not think the public is prejudiced in any way by this system.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor Indiana University South Bend has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Michael D. Mullins