



STATE OF INDIANA

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November 13, 2019

Virginia A. Black
Purdue Exponent
460 Northwestern Ave.
West Lafayette, IN 47906

Re: Formal Complaint against Purdue University; 19-FC-91.

Dear Ms. Black:

This letter is in response to your formal complaint received by this office on September 25, 2019. As I sometimes do, I am issuing an advisory opinion on this matter in the form of a letter. I forwarded your complaint to Purdue and provided you the university's response. Ms. Monica Bloom, Assistant Legal Counsel for the University, is copied on this as well.

If I interpreted your complaint correctly, you sought scrutiny by this office of Purdue University Police Department's ("PUPD") activity logs, both from a federal requirement perspective and that of the Indiana Access to Public Records Act ("APRA"). While you provide isolated instances of alleged non-compliance, the issue you assert, is systemic in nature. Specifically, you contend both logs fall short of the required information in terms of detail.

For its part, the PUPD responded to the complaint by explaining it uses two logs – one which they argue comports to Federal requirements, and one which purportedly complies with the APRA. It defends the level of detail contained in the logs generally, but does concede some identified deficiencies in the APRA log which it states it will rectify effective October 21, 2019.

First, The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act")¹ is the Federal statute which regulates which and how crimes are reported on colleges and university campuses. The United States Department of Education ("DOE") is the regulatory authority authorized to monitor campus crime reporting. Colleges and Universities are required to submit annual reports with crime statistics to the DOE to ensure compliance.

To the extent the complaint seeks guidance on Clery Act requirements, those obligations are largely outside the scope of this office. While the Clery Act informs college campus reporting, I will reserve comment on alleged deficiencies, if any, and will focus on state requirements vis-à-vis the APRA crime reporting statute.

¹ 20 U.S.C. § 1092(f) & 34 C.F.R. 668.46.

The APRA daily log statute, found at Indiana Code 5-14-3-5, is ostensibly rooted in the same policy and governance considerations as the Clery Act: public accountability and transparency for law enforcement agencies and protection of victims both actual and potential. Historically, constituents who take note of the APRA daily logs of police are concerned with efficacy of response times and documentation of law enforcement activity. In other words, the public has the right to know if police are appropriately carrying out their charge of safeguarding public safety – no small thing.

A recent informal audit performed by this office indicates that there is no one single way that public universities in Indiana handle daily logs. In fact, the US DOE recognizes the multiple ways to comply:

Many institutions are also required by state law to maintain a log. If your institution maintains such a log, you may use it for your daily crime log as well, if it meets all Clery Act requirements. However, if the state crime log requires the victims' names to be listed, the log would not meet the requirements of the Clery Act, which provides that a crime log entry may not jeopardize the confidentiality of the victim².

The requirements of a Clery Log are fairly cursory: the nature, date, time, and general location of each crime; and the disposition of the complaint, if known.³ The APRA daily log is more significant. In terms of alleged or suspected crimes, a law enforcement agency must document:

- (A) the time, date, and location of occurrence;
- (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;
- (C) the factual circumstances surrounding the incident; and
- (D) a general description of any injuries, property, or weapons involved.⁴

Therefore PUPD's point is well taken that there is language in the APRA which would be incompatible with Clery Act requirements. Namely, the APRA log requirements specifically require victim's names save for those victims of crimes of a sexual nature. In contrast, the Clery Act requires victim's identification to be withheld from disclosure.⁵

This dissonance is consequential in that someone who would compare the APRA log with the Clery log would be able to extrapolate the victim identification of a Clery entry, thus defeating the purpose and requirements of Clery. In my interpretation, Clery would preempt APRA and apply to *any* log developed by a campus police department for those crimes enumerated by Clery. For those crimes of which are not required to be logged by Clery – but are required under Indiana law - victim names are fair game.

By virtue of Indiana Code section 5-14-3-4(a)(3), the APRA victim information would become non-disclosable. ("The following public records are excepted from [disclosure] and may not be disclosed by a public agency: Those required to be kept confidential by federal law). Whether it is APRA

² <https://ifap.ed.gov/eannouncements/attachments/HandbookforCampusSafetyandSecurityReporting.pdf>

³ 20 U.S.C. § 1092 (f)(4)(A)

⁴ Ind. Code § 5-14-3-5(c)

⁵ 20 U.S.C. § 1092 (f)(4)(B)(I)

or Clery, victim's names are confidential. APRA still requires the name to be documented, but disclosure is prohibited. Therefore even the APRA log must be redacted by campus police in regard to victim identification.

Identification of a victim is the *only* element of an APRA log that is prohibited from being included on a Clery Log. The Clery Act is the minimum amount of information required and, other than victim identification, can very well include the remainder of the APRA detail.

Moreover, it is important to note that the trigger for a daily log entry under APRA is simply "all complaints or requests for assistance received by the agency"⁶ regardless of its source. If the complaints or requests are modified by an alleged crime or infraction, the additional requirements apply.⁷ Therefore while the Clery log only documents crimes, APRA includes the remainder of law enforcement activity.

In any case, the logs are required to document law enforcement activity – those incidents directly reported to law enforcement. PUPD argues that it also logs incidents reported to Campus Security Authorities ("CSA") who may not be in the PUPD (such as resident assistants) but still have an obligation to report an alleged crime. So whether a crime is reported to a CSA or PUPD, the information is still documented – and rightfully so.

The complaint seems to take exception to this. However, to the extent that law enforcement involvement is short-circuited by internal campus reporting bureaucracy, – a matter seemingly governed by Clery - that is not a matter which can be resolved by this office.

In regard to the level of detail required for any element, the determination is largely made on a case-by-case basis. My general guidance is consistent with what I stated in *Informal Opinion of the Public Access Counselor 16-INF-09*:

For daily logs, Indiana Code § 5-14-3-5(c) contemplates disclosure that is enough to explain the substance of the incident, but must give the reader an idea of what happened. Indiana Code 5-14-3-4(b)(1) provides discretionary release of records to protect the integrity of the investigation. Reading these two provisions together, a daily log should contain enough information to provide the public information about the general substance of the incident, but not so much as to impair law enforcement's ability to investigate. The information disclosed would be situation-specific, but the APRA generally contemplates as much information as possible.

Please do not hesitate to contact me with any questions.

Best regards,



Luke H. Britt
Public Access Counselor

Cc: Monica Bloom

⁶ Ind. Code § 5-14-3-4(c)

⁷ Private university police departments have lesser requirements pursuant to Ind. Code § 5-14-3-4(d)