

February 12, 2002

Mr. Michael Mullen
3690 Hogans Run Road
Columbus, OH 43221-4547

Re: *Advisory Opinion 02-FC-06*;

Alleged Denial of Access to Public Records by the Ball State University Board of Trustees.

Dear Mr. Mullen:

This is in response to your formal complaint, which was received on January 14, 2002. You have alleged that the Ball State University Board of Trustees ("Board of Trustees") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3, by denying you access to public records.¹ Ms. Anita Kelsey, Recording Secretary for the Board of Trustees and Coordinator of Senior Administrative Affairs, provided a copy of her response to your December 28th request in response to this complaint.

For the reasons set forth below, it is my opinion that the Board of Trustees did respond to you within the time period required under Indiana code section 5-14-3-9(a) and that there was no denial under the APRA.

BACKGROUND

According to your complaint, in a letter dated December 28, 2001 you restated your request for all letters in which the author expressed an opinion concerning the Ball State University Police Department. You also requested the following records:

1. copies of letters written by former Ball State University Police Officer Eric Moore;
2. any complaints against Ball State University Police Officer Michael Melbourn alleging that he displayed a handgun at Mr. Moore's criminal trial; and
3. any letters received by Ball State University alleging misconduct by Ball State University Police Officer Joe Pauley during a rape investigation.

On January 9, 2002, after receiving no response from the Board of Trustees you faxed a follow up letter in which you requested the date your public records requests would be granted. After receiving no response to your January 9th letter you filed your complaint in this Office.

In response to your complaint, Ms. Kelsey provided a copy of her January 9, 2002 written response to

your request. Ms. Kelsey also explained in a conversation that I had with her on February 12, 2002 that she was out of the Office on December 28, 2001 and that the Office was closed on December 31, 2001 and January 1, 2002. Ms. Kelsey further stated that because she is the only person in her office no one received the letter as required under the APRA until she returned to work on January 2, 2002.

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." Ind. code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1. The Board of Trustees of Ball State University is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board of Trustees during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county in which the denial took place to compel the agency to disclose the public records request. Ind. Code § 5-14-3-9(d).

According to your complaint, you mailed and faxed your public records request to the Board of Trustees on December 28, 2001 and did not receive a response within seven (7) days after the Board of Trustees received your request. It is my opinion that the Board of Trustees did respond within the seven (7) days of receiving your request as required under the APRA.

Although you may have received confirmation that the Board of Trustees received the facsimile on December 28, 2001 that does not guarantee that someone actually received the request. Here, Ms. Kelsey, who is the sole employee in her office, did not receive your request until January 2, 2002 because she was out of the office on December 28th and the office was closed on December 31st and January 1st. Therefore, under the APRA the seven (7) days for response did not begin until January 2, 2002. Since Ms. Kelsey mailed her response on January 9th it is my opinion that she responded to your request within the seven (7) days as is required under the APRA.

Although a response letter sent by U.S. Mail is a valid way for an agency to respond to a public records request, when it appears as though the public agency's response to a public records will not arrive within the seven (7) days I would advise a public agency to fax the response if that option is available or telephone the requester and advise them verbally of the response and then send the response

by U.S. Mail.

CONCLUSION

It is my opinion that the Board of Trustees of Ball State University did not violate the Access to Public Records Act. It is my opinion that Ms. Kelsey did respond to your request within the seven (7) days as is required under the Access to Public Records Act.

Sincerely,

Sandra K. Barger
Staff Attorney

cc: Ms. Anita Kelsey, Recording Secretary
Board of Trustees and Coordinator of Senior
Administrative Affairs

¹ You also provided information concerning a request made on October 22, 2001. However, Indiana Code section 5-14-5-7 provides that formal complaints must be filed with this Office within thirty (30) days of the denial of access to public records. Therefore, this Opinion will only address those issues related to your December 28, 2001 request.