



STATE OF INDIANA

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April 16, 2009

Jessica Krammes
PO Box 50022
Austin, Texas 78763

Re: Formal Complaints 09-FC-79; Alleged Violation of the Access to Public Records Act by Indiana State University

Dear Ms. Krammes:

This advisory opinion is in response to your formal complaint alleging Indiana State University ("University") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by charging you an excessive fee for a copy of electronically stored records. A copy of the University's response to the complaint is enclosed for your reference. It is my opinion the University has not violated the APRA by charging you the direct costs associated with providing the electronically stored information in the format you have requested.

BACKGROUND

You filed a complaint on March 17, 2009, alleging that Pick-A-Prof requested from the University "spring 2008 grade distribution information." The University replied to the request with a cost estimate of \$4,000, which was based on an estimate of twenty hours at \$200 per hour. Pick-A-Prof responded to the estimate, asking the University to reconsider the charges. You contend the University utilizes the Banner ERP system and the report can be produced at minimal cost. You have filed this complaint because you allege the University has not responded to your follow-up correspondence.

The University responded to the complaint by letter dated March 30, 2009 from General Counsel Melony Sacopulos. The University indicates that after the University received your response, Registrar Sharon Gick responded to your request within the timeline set forth by the APRA. Upon review of the request, the University discovered that the data you requested was not in a form commonly used by the University and as such would require significant additional programming. The University argues that it has not been unresponsive. The University contends Ms. Gick has had ongoing conversations with Pick-A-Prof over several months, explaining that the request would require significant additional programming. The University contends that while your argument might be valid if the Banner system were configured in the way you imagine, you do not

understand how it is configured or that your request would require additional programming.

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. The University is clearly 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 the public records of the University 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).

A request for access to records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, the University responded to your initial request within the prescribed timeframe. You contend the University has been unresponsive since that initial request and response. The University contends Ms. Gick has continued ongoing discussions with you. Further, the University provides a copy of an electronic mail message exchange between Ms. Gick and Pick-A-Prof dated March 5 through March 12. Based upon this evidence, I cannot find the University has been unresponsive to your request. The University initially responded to your request within the required timeframe. Nothing in the APRA provides when an agency must respond to follow-up correspondence regarding a request to which it has already replied. Here, though, the University has demonstrated a good faith effort to continue correspondence and explain its position.

Regarding the cost issue, the APRA provides that an agency must make reasonable efforts to provide records in the requested format:

Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.
I.C. § 5-14-3-3(d).

The APRA provides that when a record contains disclosable and nondisclosable information, the agency must separate the disclosable information and make it available for inspection and copying. I.C. § 5-14-3-6. Regarding costs to reprogram when the record contains disclosable and nondisclosable information, the APRA provides the following:

A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if:

(1) The disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and

(2) The public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information. I.C. § 5-14-3-6(c).

Here, you have requested grade distribution information. To the extent the University's Banner system contains disclosable and nondisclosable information, the University may charge you the direct cost of reprogramming the computer system to provide you the requested information.

If the Banner system does not contain nondisclosable data and only contains disclosable data, the following fee provision would apply:

Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following:

(1) The agency's direct cost of supplying the information in that form.

(2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

(3) In the case of the legislative services agency, a reasonable percentage of the agency's direct cost of maintaining the system in which the information is stored. However, the amount charged by the legislative services agency under this subdivision may not exceed the sum of the amounts it may charge under subdivisions (1) and (2).

I.C. § 5-14-3-8(g).

Direct cost is defined in the APRA:

"Direct cost" means one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

I.C. § 5-14-3-2(c).

Based on the foregoing provisions, it is my opinion that under I.C. § 5-14-3-6 the University may charge you the direct cost of reprogramming the Banner system if reprogramming is necessary to separate disclosable from nondisclosable information so the University may provide you with the disclosable information. If all the information contained in the system is disclosable, the University may charge you the direct cost of supplying the requested information. The direct cost would include any labor necessary to supply the information in the format requested. I.C. § 5-14-3-2(c).

CONCLUSION

For the foregoing reasons, it is my opinion the University has not violated the APRA by charging you the direct costs associated with providing the electronically stored information in the format you have requested.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Melony Sacopulos, Indiana State University