
OPINION OF THE PUBLIC ACCESS COUNSELOR

MARISSA MEADOR,
Complainant,

v.

INDIANA UNIVERSITY,
Respondent.

Formal Complaint No.
24-FC-73

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging Indiana University violated the Access to Public Records Act.¹ Assistant General Counselor Myekeal Wynn filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on October 3, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records related to the calendar of a university president.

On September 16, 2024, Complainant Marissa Meador submitted a public records request to Indiana University (IU) for President Pamel Whitten’s public calendar for 2023-2024 as well as the current school year up to that date. Her request was denied on September 30, 2024. IU cited Indiana code section 5-14-3-4(b)(7) which gives discretion to an agency to withhold “[d]iaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.”

Meador contends the statute does not apply and that no individual was listed in the denial. She filed her complaint on October 2, 2024.

IU filed its response to Meador’s complaint on October 14. The University argues that prior public access counselor advisory opinions consider calendar entries to be part of the cited statute. It also cites safety concerns regarding the comings-and-goings revealed in the President’s schedule.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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.

Indiana University is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Department public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b). This opinion explores one of those discretionary exceptions regarding public officials' calendars.

2. Calendars of public officials

Indiana University cites Indiana code section 5-14-3-4(b)(7) as justification for its denial of the University president's calendar.

Previously, the public access counselor has opined upon the issue of calendars and its possible inclusion into the cited exception.

I have indeed weighed in on the issue in the past. Two notable cases involved the calendar of the Indiana Governor and another of a local mayor who was running for a major party candidacy for a presidential nomination. To wit:

Calendars are not merely a linear timeline of rote dates and appointments; they often contain memos, reminders, notes and internal tickler files. Much of this information can also be categorized as deliberative material, some of which may also be withheld.

Opinion of the Public Access Counselor 20-FC-39. This was largely based on a prior public access counselor opinion, 05-FC-152, which dealt with Purdue University's president.

While I still hold a similar position, I will clarify an important nuance that may not have come through in prior opinions. I do not believe that the *entirety* of a public employee's calendar would fit squarely within the cited exemption. Certainly the portions of a calendar that serve as the functional equivalent of a diary or journal, personal notes, etc., can be withheld pursuant to the statute. Nonetheless, the APRA does also state that disclosable material must be separated from that information that can be legally withheld.

If a public record contains disclosable and non-disclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying.

Ind. Code § 5-14-3-6(a). As noted above, those rote dates, meetings, and appointments that do not serve as the functional equivalent of a diary are not contemplated by subsection (b)(7). Therefore, the expectation of the law appears to be that some thought would need to go into curation of the record to excise the sensitive from the routine.

Otherwise, an employee could embed otherwise disclosable material into a calendar for the sake of hiding information that would normally be produced.

Therefore, I do not take exception with the denial generally, but I would encourage IU to disclose those entries that are

not the functional equivalent of a diary. Some of those logs are surely just factual dates and times.

What is more, the safety and security argument is well taken, but only as it might reveal routine schedules of entrance and egress or *prospective* scheduling. This was also an argument made in prior responses to complaints. To the degree that appointments were in the past and do not demonstrate regular comings-and-goings, that argument would not hold up well to scrutiny. The request was specifically for the University's *public* calendar. That is a fair request insofar as non-sensitive scheduling is concerned.

CONCLUSION

Based on the foregoing, it is the opinion of this office that IU can certainly withhold some – and possibly a substantial portion – of the president's calendar. But not the entirety thereof. I would encourage the University to revisit the request accordingly.



Luke H. Britt
Public Access Counselor

Issued: December 30, 2024