INDIANA UNIVERSITY
OFFICE OF THE VICE PRESIDENT
AND GENERAL COUNSEL

Via Email

October 9, 2026

Ms. Brittney Long, Esq.
Office of the Public Access Counselor
Indiana Government Center South
402 W. Washington St., Room W470
Indianapolis, IN 46204
pac@opac.in.gov

RE: Formal Complaint 26-FC-597

Dear Ms. Long:

Please accept this as Indiana University's ("IU" or "University") response to formal complaint 26-FC-597 filed with your office on or about September 8, 2026, by Mr. Scott Smith ("Mr. Smith"). In his complaint, Mr. Smith alleges that IU violated Indiana's Access to Public Records Act ("APRA") by not responding to his request within a reasonable time. Mr. Smith further makes allegations that the University is withholding records.

I. Background

Mr. Smith's first request came in December 2025, when he requested meeting minutes of the IUB Department of English for 2001-2002 and syllabi for a creative writing course from the 2001-2002 academic year. He indicated in that request that the records he sought "should be located in the English Department or the IU Archives." After review and consultation with both units, the University informed Mr. Smith that it did not maintain any responsive records.[1]

Mr. Smith's next request, which is the subject of this complaint, was submitted on June 19, 2026, requesting "[a]ny and all minutes, memorandum and agendas created by the IUB English Department between the January 1st 2000 and January 1st 2006 during any of its department meetings or faculty meetings." This request is broader than Mr. Smith's previous request but encompasses the records Mr. Smith previously requested and was informed did not exist.

On September 17, 2026, after consultation with both the English Department and University Archives, the University informed Mr. Smith that it was unable to locate any responsive records.[2] On September 18, 2026, Mr. Smith responded that "[t]he records do exist. If the English Dept is telling you they don't keep minutes, memoranda, agendas, meeting notes etc then they are not telling you the truth. I have spoken to several faculty and staff and all of them have told me the academic departments keep some type of records

[1] Exhibit A.
[2] During the University's consultation with these units (for both of Mr. Smith's requests), we were informed that Mr. Smith had already reached out to these units himself and had been told that they did not have responsive records.

from their meetings." Mr. Smith did not and has not named any of the faculty members that he has allegedly spoken with.

The University engaged further with Mr. Smith, responding on September 18, 2026, informing Mr. Smith that "[t]he English Department has not stated that they 'don't keep' records of meetings, but rather that they do not maintain records from meetings that took place over 20 years ago." Mr. Smith responded on September 20, 2026, requesting the University do "a more thorough search." Mr. Smith did not advise where else the University should search.[3] The University maintains that if there were records responsive to Mr. Smith's request, they would be housed with the English Department or University Archives. To the extent Mr. Smith believes the records may be maintained in another unit elsewhere in the University, he is welcome to provide that information to us, pursuant to the "particularly reasonable" standard.

II. Analysis

a. IU's Response Time Was Reasonable.

Under Ind. Code § 5-14-3-3(b)(1), a public agency is required to "provide the requested [records]" to a requestor "within a reasonable time after the request is received by the agency." The statute does not define the phrase "reasonable time." While the OPAC has provided several different benchmarks for what may constitute a "reasonable time" including thirty (30) days (See *Opinion of the Public Access Counselor 20-FC-87*) and ninety (90) days (See *Opinion of the Public Access Counselor 20-FC-19*), it has stopped short of providing a hardline rule for the standard. *See Opinion of the Public Access Counselor 25-FC-056*. The OPAC has opined that many requests may not be able to be responded to within a benchmark time for a variety of reasons and that the following factors should be considered in determining whether a public agency's response time is "reasonable":

(1) The size of the public agency;
(2) The size of the request:
(3) The number of pending requests;
(4) The complexity of the request; and
(5) Any other operational considerations or factors that may reasonably affect the public records process. *Id.*

When these factors are considered in determining the reasonableness of the University's response time to Mr. Smith's request, just under 3 months, the University did indeed respond within a reasonable time. *See Opinion of the Public Access Counselor 26-FC-035 & 26-FC-086* (finding that an over 3-month response time was reasonable, given the analysis of the foregoing factors).

1. The Size of the Public Agency

Indiana University is a massive public agency consisting of nine (9) campuses across the state, employing over 41,000 people in thousands of units, departments, and offices.[4] The University Office of the Vice President and General Counsel ("OVPGC") is the unit responsible for receiving and responding to all public records requests made pursuant to APRA. As a decentralized University, each campus, unit, department,

[3] See Exhibit B for the full email thread with Mr. Smith.
[4] https://www.iu.edu/about/glance.html; https://hr.iu.edu/

and office are responsible for maintaining their own records and documents, meaning that responding to requests for public records requires sometimes extensive and time-consuming coordination by OVPGC with various stakeholders across the University system to locate and collect the requested records.

2. The Size and Complexity of the Request

Considering the size of the University, it is no surprise that IU receives an average of 118 public records requests per month. Some requests are simple and require little analysis and review to locate and disclose the record, such as requests for a coaching contract or an Indiana University Police Department ("IUPD") report. However, many requests seek sometimes hundreds of documents requiring extensive coordination to locate the records in addition to careful review of each document to determine responsiveness and whether any required or discretionary exception to disclosure applies.

While Mr. Smith's request is not as complex as some received by the University, Mr. Smith's historical requests and engagements with the University complicate the search for the records. Mr. Smith's request sought 20-year plus old records that would have been made long before routine digitization of records. Over the course of the last year, Mr. Smith has communicated with University personnel in both the English Department and University Archives, as well as several APRA requests to the Office of the Vice President and General Counsel, in search of these records. Mr. Smith also visited the University Archives in person and was given the opportunity to review all records maintained from the English Department during the given time period. Despite his extensive search, none of records maintained by the University appeared to be the records for which he was seeking. Because of this protracted search history, the University conducted a detailed search and engaged in conversations with both the English Department and University Archives about what records exist and where they might be maintained.

3. *The Number of Pending Requests and Other Operational Considerations*

As noted above, Indiana University receives an average of 118 public records request per month. Between June and July 2026, the University received 211 requests. Since Fall 2025, the University has consistently receive a large number of requests monthly, many of which are complex, some seeking hundreds of documents and communications requiring extensive coordination and review before providing responses. In fact, the University has received approximately 1,040 requests in 2026 already.

At the same time the University began receiving a previously unprecedented number of requests in late 2025, the unit responsible for receiving and responding to APRA requests underwent several staffing changes that directly affected the APRA response team, and in turn, the standard response time. At the end of September 2025, one of the attorneys responsible for APRA departed the University. At that time, one trained APRA attorney remained, and another attorney began processing requests after a period of training. At the end of February 2026, the longest standing APRA attorney left the office. Since her departure, one attorney was solely responsible for processing requests from February until another attorney was hired at the end of May, who then had to be trained. Therefore, at the time Mr. Smith's request was submitted, all requests received were being processed by a single, fully trained attorney, and one attorney in the middle of training. This staffing situation materially affected the University's response time for records requests and resulted in a significant backlog that the University has been working diligently to address.

The University processes most requests in the order that they are received with exceptions made for simple, routine requests. Mr. Smith's request required background information, given his frequent contacts with

the University, and coordination among multiple units. While unknown how many requests were in the queue for processing when Mr. Smith submitted his request, the University has actively maintained a queue of over 400 requests over the past several months. At the time of the submission of this response, the University maintains a queue of approximately 450 requests. Given the foregoing, providing Mr. Smith with a response within 3 months of his request was reasonable.

b. The University Cannot Produce Records It Does Not Have.

The University, both formally through Mr. Smith's APRA request and informally through Mr. Smith's direct communications with the relevant units, have informed Mr. Smith that no records responsive to his request are maintained by the University. "A public agency is not required to create a record that does not exist and is not required to produce a record it does not have." *See Opinion of the Public Access Counselor 03-FC-146, 05-FC-25, 10-FC-086, 12-FC-328, 26-FC-035, and 26-FC-086; see also Opinion of the Public Access Counselor 25-FC-112*.

The Chair of the English Department informed the University's Office of the Vice President and General Counsel that the English Department did not start taking minutes of meetings until the 2017-2018 academic year. As such, to the best of the University's knowledge, the records sought by Mr. Smith never existed.

III. Conclusion

The University did not violate APRA, as it responded to Mr. Smith within a reasonable time considering the relevant factors and it does not maintain the records Mr. Smith seeks. The University, further, did not violate APRA because the requested records do not exist.

Sincerely,

Kelsey Harper
Assistant General Counsel
Office of the Vice President and General Counsel
Indiana University