University Counsel, Dorothy J. Frapwell, asked me to send you this memorandum. All university employees, and any others who use university computing resources, should be aware that electronic mail, including personal email sent or received by such individuals, may be subject to public disclosure under the Indiana Access to Public Records Act (“APRA”). According to a recent advisory opinion issued by the Indiana Public Access Counselor, “there is no exception that generally excludes e-mails from disclosure.” Formal Complaint 03-FC-82(a). While this opinion is not legally binding, the Public Access Counselor is charged with issuing advisory opinions interpreting public access laws. Therefore, users should expect and assume that all records created and maintained in any format, including email (whether personal or business related), are subject to public disclosure pursuant to APRA, unless such records clearly fall within an exception to the law.

As a public institution, Indiana University is subject to APRA. Ind. Code § 5-14-3-1, et seq. The purpose of APRA is to provide the public with information about government operations. The law defines a “public record” broadly as:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2. Because public policy requires APRA to be liberally construed in favor of disclosure, any public record is subject to disclosure, unless the public agency can demonstrate that it falls under at least one of a specific
number of statutory exceptions contained in Ind. Code § 5-14-3-4. By way of illustration only, such exceptions may include patient medical records, information concerning research, intra-agency or interagency advisory or deliberative material, information required to be kept confidential pursuant to other laws, e.g., the Family Education Rights and Privacy Act (“FERPA”), etc. Ibid.

At this time, there is no statutory exception for personal email sent or received. Thus, unless a specific exception applies, all individual users should expect that email, including what they may regard as personal email, is subject to public disclosure. Every individual should use common sense and should expect that any records created in any format may be subject to disclosure. Although university policy does not prohibit the use of university email for personal use, individuals may wish to obtain private email accounts to send and receive personal email messages, thereby avoiding APRA disclosures.

Please relay this information to all individuals who may have a need to know. For questions about this memo, please contact Thomas P. Gannon at (317)274-7460.

TPG/cm

c: Dorothy J. Frapwell