

June 23, 2005

Chester Wilms
DOC# 943-594
Location G 417
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 05-FC-103; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department.

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the Fort Wayne Police Department (“Department”) violated the Access to Public Records Act (“APRA”) by charging copying fees that are not in accordance with IC 5-14-3-8. I find that the Fort Wayne Police Department violated the Access to Public Records Act.

BACKGROUND

On May 24, 2005 you filed a formal complaint with the Office of the Public Access Counselor alleging that the Department is charging copying fees in excess of the statutory limitations.¹ Your complaint was assigned formal complaint # 05-FC-103.

Captain Rhoades responded on behalf of the Department by facsimile dated June 17, 2005. Copies of Captain Rhoades’ response and attachments are enclosed for your reference. Captain Rhoades stated,

“Here is the list of fees we use for police reports, etc. I was mistaken with my original fees to Mr. Wilms. Apparently, Records uses the following fee schedule supported by City Ordinance. So the question is, is every

¹ Your complaint included a June 26, 2000 court order requiring the Department to provide you copies of any notes made by Detective Rivera in the investigation of a specific matter, if such notes exist. I decline to address this exhibit because it does not appear to be applicable to the current request, which was for documents concerning the destruction of your pager.

different form considered a separate report? If so, 4 reports would be \$12.00. Tell Mr. Wilms I apologize for this mistake. Also, I believe he has all of these documents, but it is everything about his pager destruction.”

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." IC 5-14-3-1.

A public agency at the local level may charge a copying fee for photocopies under IC 5-14-3-8(d). This statute provides that the "fiscal body of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the . . . copying . . . of documents." In the case of the Department, this would be the Fort Wayne City Council. Further, the fee must not exceed the actual cost, which is defined as "the cost of paper and the per-page cost for use of [the] copying . . . equipment and does not include labor costs or overhead costs." *Id.* You have cited to IC 5-14-3-8(c) to support your contention that the fees charged by the Department are excessive. However, IC 5-14-3-8(c) applies to state agencies. It is IC 5-14-3-8(d), as stated above, that applies to local agencies.

The Fort Wayne City Council ("Council") has established a fee schedule for copies of police reports. *See Fort Wayne City Ordinance §37.03(enclosed)*. The established fee is \$3.00 per report. Captain Rhoades admits that he mistakenly applied fees from an old fee schedule in his initial response to you. It is the Department's position that according to the current fee schedule the documents requested by you would be available at a cost of \$3.00 per report. The Department considers each document, no matter the number of pages in length, to be a report. The documents requested by you would constitute four (4) reports.

The Department may not rely on the current fee schedule established by the Council. The fee schedule provided by the Department establishes a fee per report, regardless of the length of the report. Given that the fee is the same regardless of the length of the report, it does not appear that the fee is based upon the actual cost of making the copy.

The APRA recognizes that other fees have been set by statute for copies of various public records. Under IC 5-14-3-8(f), a public agency shall collect any copying fee that is specified by another statute. In the case of motor vehicle accident reports a minimum statutory copying fee of \$3.00 has been set at IC 9-29-11-1. The local unit may also, by ordinance, set a fee higher than \$3.00 for such accident reports.

The statutory fee set forth at Indiana Code section 9-29-11-1 does not apply to any report other than a motor vehicle accident report. The Department has not provided any other state

statute that sets a fee other than the "actual cost" of the photocopying of the police reports. For this reason, it is my opinion that the Department violated the copy fee provisions of the Access to Public Records Act. The Department may charge only a per-page copying fee adopted by the fiscal body that does not exceed the "actual cost" of copies as defined at Indiana Code section 5-14-3-8(d).

CONCLUSION

It is my opinion that the copying fee set by the Fort Wayne City Council is not valid and may not be charged by the Fort Wayne Police Department.

Sincerely,

Karen Davis
Public Access Counselor

cc: Captain Tom Rhoades