

July 25, 2005

Robert C. Welches
#952552
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 05-FC-139; Alleged Violation of the Access to Public Records Act by the Lake Superior Court Clerk

Dear Mr. Welches:

This is in response to your formal complaint alleging that the Lake Superior Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA") by charging an excessive fee for copies of court records. I find that the Lake Superior Court Clerk did not violate the Access to Public Records Act.

BACKGROUND

You mailed a request under criminal cause no. 45G01-9407-CF-00206 for "all paperwork in the above-mentioned criminal action." You also requested that the Clerk file a notice of completion verifying that all documents are contained therein. You received a written response from the Clerk dated July 11, 2005. The Clerk stated that there were approximately 120 pages that were responsive to your request, and the Clerk would send you copies at the rate of \$1.00 per page. Your formal complaint followed this notification. You complain of the \$1 per page copying fee. You allege that you are indigent; therefore, the request of \$120 is "ridiculous." I sent a copy of your complaint to the Clerk, who responded in writing. I have enclosed a copy of her response for your reference. She explained that you had filed a *pro se* request for the record of proceedings in this same matter prior to your APRA request, and that the record had been sent to you at no charge because the court found you are indigent for purposes of your appeal. Her documentation showed that the record of proceedings included "all papers, pleadings, and orders from May 24, 2005" to the date of the order, June 7, 2005.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency may charge a fee for copies of public records, in accordance with IC 5-14-3-9. Usually a local agency may charge only the “actual cost of copying” a record. IC 5-14-3-9(d). However, notwithstanding this provision, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.

IC 33-37-5-1(b) provides that the clerk of a court shall collect a fee of one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing. This is a statute that specifies a different copying fee than a fee that the APRA would allow. The Clerk has statutory authority to charge \$1 per page for its records. Your record request seems broader than the record of proceedings, and may contain additional records that are *not* included in the record of proceedings. If you are requesting records in addition to those sent to you in the record of proceedings, you would be properly charged \$1 per page for those records.

If you believe that you should receive records at no cost from your criminal proceeding that are in addition to those included in the record of proceedings, you would have to petition the court for an order establishing your indigency for this purpose. Until you receive such an order, the Clerk may charge you \$1 per page.

CONCLUSION

For the foregoing reasons, I find that the Lake Superior Court Clerk did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Sylvia Brown