

October 13, 2005

Chester Wilms
#943-594
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 05-FC-188; Alleged Violation of the Access to Public Records Act by the Clerk of the Allen Circuit and Superior Courts

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the Clerk of the Allen Circuit and Superior Courts ("Clerk") violated the Access to Public Records Act by charging you an excessive fee for copies of records. I find that the Clerk did not charge you an excessive fee for copies.

BACKGROUND

You filed your formal complaint on September 14, 2005, after the Clerk charged you \$17 for the set of records you requested. The Clerk sent you a form letter on September 9, 2005 informing you that the number of copies you requested numbered sixteen. At \$1 per page for the records, and a \$1 certification fee because you requested certified copies, you were being assessed \$17. You complain that this fee exceeds the amount set in the Access to Public Records Act ("APRA").

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). The APRA provides that a public agency may charge a fee for copying a record, but sets certain limits on the amount of the copying fee, depending upon the type of public agency. IC 5-14-3-8. Normally, a charge of \$1

per page would be excessive for a public agency to charge an individual when the cost of copying cannot exceed the “actual cost of copying.”

However, the APRA states that notwithstanding other provisions within section 8 of the APRA, 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 5-14-3-8(f)(my emphasis).

Under IC 33-37-5-1, a court clerk shall collect a fee of one dollar (\$1) per page for legal size or letter size pages, including a page only partially covered with writing. IC 33-37-5-3 provides that the clerk collect a document fee of \$1 for each certificate under seal attached in authentication of a copy of any record, paper, or transcript. Hence, the Clerk has not violated the APRA by charging you the fee of \$17 for copies of the certified records that you requested.

However, I suggest that the Clerk revise the form letter she utilizes to inform requesters of the fee. The citation contained in the form letter, IC 33-19-6-1 has been superseded by IC 33-37-5-1.

CONCLUSION

The Clerk of the Allen Circuit and Superior Courts has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Therese M. Brown