

February 1, 2005

Chester A. Wilms
WVCF/P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 05-FC-3; 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 ("APRA") by failing to give you a record and by charging you an excessive fee. I find that the Clerk has not violated the Access to Public Records Act.

BACKGROUND

You are seeking a probable cause affidavit of a police officer in cause no. 02D04-9709-CF-527. You are apparently challenging the December 21, 2004 notification of the Clerk, in response to your request, that there would be a copy fee of \$5.00 for the record, for 5 pages at the rate of \$1 per page. The pre-printed notification to you from Clerk Therese M. Brown, which you supplied me a copy of, states that the record will be made available to you once advance payment is received. The Clerk cited Ind.Code 33-19-6-1(b) for the \$1 per page copy charge for court records.

You filed your formal complaint with this office on January 3, 2005. I sent a copy of your complaint to the Clerk, and her written response is enclosed for your reference. The Clerk stated that she is authorized by IC 33-19-6-1 to charge you \$1 per page for the record.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless a record is excepted from disclosure under applicable law. IC 5-14-3-3(a). Under the Access to Public Records Act, a public agency may charge a fee

to copy a record. IC 5-14-3-8. Generally, a public agency may charge only for the actual cost of copying a record, which is defined in the APRA as the cost of paper and the per-page cost for use of the copying equipment. IC 5-14-3-8(d). However, the APRA states that a public agency shall collect any copying fee that is specified by statute or is ordered by a court. IC 5-14-3-8(f). Also, the APRA provides that an agency may require that the payment for copies be made in advance of the agency providing the copies. IC 5-14-3-8(d).

Ind.Code 33-37-5-1(b) provides that a court clerk shall collect a fee of one dollar (\$1) per legal size or letter size page for preparing a copy of any record. The Clerk has stated that the record that she believes you are seeking is five pages. Hence, the Clerk is required by statute to charge you \$1 per page, or \$5 for the record. Also, she is permitted to request payment in advance for this record.

In her letter to you of December 21, 2004, the Clerk cited a statute that contained the same provision of law regarding copy fees as the statute that I cited in the previous paragraph. The Clerk's citation, IC 33-19-6-1(b) has been replaced by Ind.Code 33-37-5-1(b).

It is my opinion that the Clerk must charge you \$1 per page for the copy of the record that you are seeking, and did not violate the Access to Public Records Act by charging this fee or by requiring that you pay it in advance of receiving the record.

CONCLUSION

For the foregoing reasons, I find that the Clerk of the Allen Circuit and Superior Courts did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Therese M. Brown