

February 22, 2006

Sent Via Facsimile

James A. Donato
c/o Capitol Publishing
5041 Lyda Lane
Colorado Springs, CO 80904

Re: Formal Complaint 06-FC-18; Alleged Violation of the Access to Public Records Act by the Hammond Police Department

Dear Mr. Donato:

This is in response to your formal complaint alleging that the Hammond Police Department (“Department”) violated the Access to Public Records Act (“APRA”) by charging you an excessive copying fee for a motor vehicle accident report. I find that the Department has violated the Access to Public Records Act by charging you an excessive fee that has not been adopted by the Hammond Common Council.

BACKGROUND

You alleged that on January 19, 2006, a representative of Capitol Publishing, Ms. Judi Beaver, submitted a record request for one copy of a traffic accident report in the custody of the Department. Because Ms. Beaver was not a resident of Hammond, she was assessed a fee of \$15.00 for the copy. The Department charges from \$3 to \$10 for residents. You contend that the City of Hammond has not fixed the fees for copies of accident reports by ordinance; therefore, the Department may not charge you a fee for the report. The City of Hammond advised you that the Department has assessed the copy fee since June 2005.

I sent a copy of the complaint to the Department. The City of Hammond Attorney Kristina Kantar responded by letter, a copy of which is attached for your reference. Ms. Kantar states that Indiana Code 9-29-11-1 exempts police reports from the flat fee requirement for public records. The statute sets a minimum of \$3 per report and sets no maximum. Hammond

has determined that tax paying citizens should pay less for these reports than non-residents. Many other Lake County municipalities charge more than \$15 for these reports. Further, the Hammond Board of Public Works and Safety is the governing body for the police department, and the rates are set by this body. There is no charge to merely inspect the reports.

ANALYSIS

A public agency may charge a fee for copies of public records. Generally, the law regarding the fees that a public agency may charge for a copy of its public records is in Ind. Code 5-14-3-8. A public agency may *not* charge a fee to inspect a public record, or to search for, examine, or review a record to determine whether the record may be disclosed. IC 5-14-3-8(b).

For a public agency that is not a state agency, the fiscal body (as defined in Indiana Code 36-1-2-6) of the public agency, or the governing body if there is no fiscal body, shall establish a fee schedule for the certification, copying, or facsimile machine transmission of documents. IC 5-14-3-8(d). The fee may not exceed the actual cost of certifying, copying, or facsimile transmission of the document. *Id.* The “actual cost” means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. *Id.*

Notwithstanding IC 5-14-3-8(d), 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). Under IC 9-29-11-1, a law enforcement agency may “charge a fee that is fixed by ordinance of the fiscal body in an amount not less than three dollars (\$3) for each report.” “Fiscal body” means common council for a city other than a consolidated city. IC 9-13-2-63; IC 9-13-1-1. This office has stated that the fee provision at IC 9-29-11-1 applies only to accident reports, and that the statute sets a minimum fee of \$3, but permits a local agency to set by ordinance a fee higher than \$3 for such accident reports. *Opinion of the Public Access Counselor 99-FC-2.*

The City of Hammond has stated that the fee of \$15 has been set by the Hammond Board of Public Works and Safety because that body is the Department’s governing body. The statute setting a \$3 fee specifically provides that a higher fee may be fixed by ordinance of the fiscal body in an amount not less than three dollars for each report. IC 9-29-11-1. Fiscal body has a meaning applicable to all provisions in title 9; in the case of a city police department such as Hammond’s, the fee must be fixed by ordinance of the Hammond Common Council, the fiscal body of the city police department. IC 9-13-2-63.

You contend in your formal complaint that the Department may not charge you *any* fee because the Hammond Common Council has not set a fee under IC 9-29-11-1. The City argues that the fee may be set by the Hammond Board of Public Works and Safety. It is my position that the Department may charge you only \$3 for a copy of the motor vehicle accident report. Any higher fee must have been fixed by ordinance of the Hammond Common Council. Any fee higher than \$3 for such reports set by the Hammond Board of Public Works and Safety is ineffective to allow the Department to charge more than \$3 for the accident report.

I express no opinion regarding whether the Hammond Common Council may set a different fee for city residents than for non-city residents. The fee would be authorized only under IC 9-29-11-1, which is silent with respect to disparate fees. I note, however, that if the fee were governed by the APRA, the disparate fee structure would be impermissible, since APRA states that for local agencies, the fee must be uniform throughout the public agency and uniform to all purchasers. IC 5-14-3-8(d).

CONCLUSION

The Hammond Police Department may charge you only \$3 for the accident report, because the Hammond Common Council had not, as of the date of your request, adopted an ordinance under IC 9-29-11-1 setting a fee higher than \$3.00. The Hammond Police Department should refund the excessive fee and refrain from charging a higher fee in the absence of an ordinance. The Hammond Police Department violated the Access to Public Records Act because it charged a fee higher than allowed under a state statute.

Sincerely,

Karen Davis
Public Access Counselor

cc: Kristina C. Kantar