

May 1, 2006

Sent Via Facsimile

Mr. Travis Mallen
Notre Dame Legal Aid Clinic
725 Howard Street
South Bend, IN 46617

Re: Formal Complaint 06-FC-60; Alleged Violation of the Access to Public Records Act by the Noble County Prosecutor's Office

Dear Mr. Mallen:

This is in response to your formal complaint alleging that the Noble County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act by charging an excessive copy fee for records. I find that the Prosecutor violated the Access to Public Records Act.

BACKGROUND

You filed your formal complaint against the Prosecutor on behalf of the Notre Dame Legal Aid Clinic ("Clinic"). The Clinic had requested records of the Prosecutor in March, 2006. Mr. Steven Clouse, the Prosecuting Attorney, charged the Clinic at the rate of \$1.00 per copy, which he claimed was the prevailing rate for copies for Noble County established by ordinance. Based on the number of copies requested, the charge, payable in advance, would be \$1595.00.

You state that you informed Mr. Clouse that the copy fee seemed excessive, since the Clinic had been able to obtain similar records from other counties at \$.10 per page. Mr. Clouse responded that other counties must be losing money when one factors in labor costs.

I sent a copy of your complaint to the Prosecutor. Mr. Clouse responded by letter, a copy of which is enclosed for your reference. Mr. Clouse stated that he referred you to the county attorney, Mr. James Mowery, to discuss the validity of the copy ordinance. Mr. Mowery is the attorney for the County Commissioners. Mr. Clouse further explained that requests for inspection of the records of the Prosecutor are infrequent. Therefore, when the Clinic made the

request, Mr. Clouse's office asked the County Clerk's Office how much the copy fee was. The County Clerk informed the Prosecutor's Office that the charge was \$1.00 per page. Mr. Clouse based his charge of \$1595 on the report from the Clerk's office and nothing more. Mr. Clouse admitted that he cannot argue whether the fee is valid or not or whether the ordinance is in compliance with Indiana law.

ANALYSIS

A public agency is permitted to charge a fee for copies of public records under the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-8. For a public agency that is not a state agency, the fiscal body 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 copying and the fee must be uniform throughout the public agency and uniform to all purchasers. *Id.* As used in the APRA, "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). A public agency may require that the payment for copying costs be made in advance. IC 5-14-3-8(e). The fiscal body for a county not having a consolidated city is the county council. IC 36-1-2-6(1). The Clerk of Noble County may charge \$1 per page for the Clerk's records because a specific statute provides for a higher fee. *See* IC 33-37-5-1.

The charge for copies to the Clinic of \$1595, at one dollar per page, is an excessive copying fee. Mr. Clouse did not provide me a copy of the ordinance that he relies on to charge the Clinic the copying fee. Even if the \$1 per page cost is set by ordinance of the County, \$1 per page exceeds the actual cost of copying as that term is defined in the APRA. Therefore, the charge of \$1595 to the Clinic was a violation of the Access to Public Records Act by the Prosecutor. If the Noble County Council has adopted a fee schedule for cost of copies that does not exceed the actual cost of copying, which is the cost of paper and the per-page cost for use of the copying equipment, then the Prosecutor may charge that copying fee to the Clinic. The Prosecutor may also require advance payment for the copies. However, in the absence of a fee schedule set by the Noble County Council that limits the cost of copies to the "actual cost of copying," the Prosecutor may not charge a copy fee to the Clinic or anyone else.

CONCLUSION

The Noble County Prosecutor's Office violated the Access to Public Records Act when it charged the Notre Dame Legal Aid Clinic a copying fee that exceeded the limits established by the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Steven T. Clouse