

April 4, 2007

Sent Via Facsimile

John Emry
62 W. Jefferson Street
Franklin, IN 46131

Re: Formal Complaint 07-FC-55; Alleged Violation of the Access to Public Records Act by the Franklin County Community School Corporation

Dear Mr. Emry:

This is in response to your formal complaint alleging that the Franklin County Community School Corporation (“School”) violated the Access to Public Records Act by charging an excessive copying fee. I find that the School violated the Access to Public Records Act by billing you for secretarial time to copy, collate and staple records and a copying fee of \$.20 per page when the School has not formally adopted a fee schedule for copies of records.

BACKGROUND

You had requested the public records of the School relating to Lucas B. Clark. You filed a formal complaint after receiving a bill from the law firm of Mullin, McMillin & Rychener for \$85.80. The itemized bill showed a charge of \$30.00 for secretarial time to copy, collate and staple the records. The bill also showed cash advanced for postage cost of \$5.00, and 254 pages of records at \$.20 per page for copying costs. You enclosed a copy of a letter you wrote to Lowell McMillin dated February 9 challenging the charges for copies as not based on the actual cost of copies. In addition, you argued that if the school board had not adopted a fee schedule for copies, the school could not charge any per-page copy fee. You requested that the school provide a copy of any such fee schedule if one has been adopted. You filed a formal complaint with the Office of the Public Access Counselor on March 5, 2007.

On March 5 I sent a copy of your complaint to Mr. McMillin. He advised my office in a letter dated March 9 that the School had not adopted a formal fee schedule for the copying of records. That oversight will be addressed, and the invoice sent to you is withdrawn.

ANALYSIS

Under the Access to Public Records Act ("APRA") a public agency may charge a fee for providing copies of public records. *See generally* IC 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 certifying, copying, or facsimile transmission of the document by the agency and the fee must be uniform throughout the public agency and uniform to all purchasers. *Id.* "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.*

In accordance with the APRA, the School violated the Access to Public Records Act when it included a \$30 charge for secretarial time to copy, collate and staple the records. This was a labor cost which is expressly prohibited in the APRA. In addition, the School has conceded that the school board had not adopted any fee schedule for copying of its public records. Accordingly, the School could not charge a fee for copying without an established fee schedule. The fee schedule may not exceed the actual cost of copying, which is limited to the cost of the paper and the per-page cost for use of copying equipment.

The cost to the School of mailing the records, if the requester asks that the public records be mailed, is not a fee that is covered or prohibited by the Access to Public Records Act, and a public agency is not required to mail its public records, only make them available during the agency's regular hours of business. Hence, it was not a violation of the APRA to charge the School's actual cost to mail the records if you requested that the School mail the records to you.

The School has withdrawn the copying fee invoice, but I still find that in charging you the cost of labor and a copying fee for which no fee schedule had been adopted, the School violated the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the Franklin County Community School Corporation violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Lowell C. McMillin