



STATE OF INDIANA

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August 5, 2010

Mr. Michael J. Shepard
P.O. Box 488
Boonville, IN 47601

Re: Formal Complaint 10-FC-157; Alleged Violation of the Access to Public Records Act by the Evansville-Vanderburgh County Joint Central Dispatch

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Evansville-Vanderburgh County Joint Central Dispatch ("Central Dispatch") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your complaint, you allege that you sent multiple requests to Central Dispatch from April 13, 2010, until June 12, 2010. You claim that you did not receive a response from Central Dispatch until June 8, 2010. In that response, Central Dispatch requested that you complete a records request form and return it to the agency. You returned that form and enclosed an affidavit of indigency. Subsequently, you received a response from City Attorney Joshua Mastison informing you that you "would be charged \$1.00 per page" for copies. You allege that this is an excessive fee under the APRA.

In response to your complaint, Mr. Mastison states that Central Dispatch received a request from you on June 2, 2010. On June 8th, Central Dispatch replied to your request and enclosed its public records request form. On or about June 12th, Mr. Mastison states that you sent a letter to Central Dispatch in which you enclosed three requests for information. You also made an additional 34 requests for Central Dispatch Run Cards. In that letter, you requested a waiver of fees due to your indigent status. However, Mr. Mastison notes that you included a copy of your Offender Trust System Transaction History from March of 2010, which shows available funds. Consequently, Mr. Mastison sent you another letter requesting reimbursement for copying costs in advance of producing the run cards to you. After you sent two more letters to Mr. Mastison and Central Dispatch, respectively, Leslie Buckman of Central Dispatch replied

to you via letter on June 28th in which she listed the specific reproduction costs associated with your requests.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” I.C. § 5-14-3-1. Central Dispatch does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy Central Dispatch’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, you allege that Central Dispatch failed to respond to several written requests that you submitted between April and June of this year. If Central Dispatch failed to respond to your written requests within the required seven (7) days, it violated the APRA. However, with respect to your request received June 2, 2010, it appears Central Dispatch responded as required by the APRA.

You also allege that Central Dispatch violated the APRA by attempting to charge you an excessive fee of \$1.00 per page for copies of its run cards. The APRA permits a public agency to 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. *See* I.C. § 5-14-3-8. Normally, a charge of \$1.00 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.” *Id.* However, the APRA also provides 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. I.C. § 5-14-3-8(f). Thus, where a specific statute other than the APRA provides a public agency with the authority to charge a fee that exceeds the “actual cost,” the public agency may charge the statutory fee without violating the APRA. The burden is on Central Dispatch to identify a statute that permits it to charge \$1.00 per page for copies. At this time, Central Dispatch has not sustained its burden as I see no statutory basis for charging the \$1.00 fee. Unless Central Dispatch can cite to such authority, Central Dispatch’s \$1.00 fee for run records is contrary to the APRA.

With respect to your affidavit of indigency, the APRA permits a public agency to charge a fee for copies of public records. I.C. § 5-14-3-8. Additionally, a public agency

may require a person to pay the copying fee in advance. IC 5-14-3-8(e). Finally, nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. Thus, Central Dispatch did not violate the APRA by refusing to provide the copies to you at no charge.

CONCLUSION

For the foregoing reasons, it is my opinion that if Central Dispatch cannot cite to statutory authority for its \$1.00 per page copy fee for run records, Central Dispatch has charged you an excessive fee under the APRA. However, Central Dispatch did not violate the APRA by refusing to provide you with copies at no charge.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Joshua M. Mastison