



# STATE OF INDIANA

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September 27, 2010

Ms. Devon A. Smith  
1723 E. Calvert St.  
South Bend, IN 46613

*Re: Formal Complaint 10-FC-193; Alleged Violation of the Access to  
Public Records Act by the South Bend Police Department*

Dear Ms. Smith:

This is in response to your formal complaint alleging the South Bend Police Department ("SBPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the SBPD's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, your home was burglarized on August 25, 2010. You requested a copy of the police report related to the burglary, which your renter's insurance required to file a claim. In response, the SBPD provided you with a Public Summary Report, which was a one-page document for which the SBPD charged you five dollars (\$5.00). You claim that when you asked about the fee the next day, the city attorney's office informed you that only case reports -- and not summary reports -- are available to the public. You ask why the SBPD released the summary report but did not offer you any other documents, and allege that the fee is excessive.

In response to your complaint, Assistant City Attorney Thomas Bodnar states that the SBPD will refund the five dollar (\$5.00) fee and provide you with a complete police report. Mr. Bodnar states that the City of South Bend handled approximately 170 public records requests during the month of August, and 90 of them were from the SBPD. Each of those requests must be forwarded to the city attorney's office for review. If a request for a police report is denied based on the investigatory records exception to the APRA, typically the city attorney informs the requester of the denial and invites them to obtain log book material or a summary report instead. The SBPD typically denies access to case records if the case is open, but occasionally exercises its discretion to release the report if the requester is the victim and the report consists almost entirely of what the victim told the police. After examining the report, Mr. Bodnar determined that it could be released

to you. Finally, Mr. Bodnar states that the five dollar (\$5.00) fee is a fee that is sent by a South Bend Common Council ordinance.

## 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. The SBPD 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 the SBPD’s public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

With regard to the South Bend Common Council’s enacting an ordinance that prescribed the \$5 fee assessed here, the APRA permits a public agency to charge a fee for copying a record, but it sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. For public agencies that are not state agencies (i.e., the SBPD and the City of South Bend), the fee for non-color copies may not exceed the greater of either ten cents (\$.10) per page or the agency’s actual cost for copying the document, and the cost calculation cannot include labor or overhead costs. I.C. § 5-14-3-8(d). The fee for certifying documents may not exceed five dollars (\$5) per document. 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. It is unclear here whether the five dollar (\$5.00) fee pertains to certification or copying of the record you requested, but unless a specific statute provides the SBPD with the authority to charge five dollars (\$5.00) per page for a copy of a summary report or the actual cost to the agency is equal to that amount, the SBPD charged an excessive fee under section 8 of the APRA.

Mr. Bodnar acknowledges that the City’s normal procedure for reviewing public records requests was not followed due to a misunderstanding. He apologized for the inconvenience, and it is my understanding that he has made your requested record available to you and refunded the five dollar (\$5.00) fee. I trust this resolves your complaint.

## CONCLUSION

For the foregoing reasons, the SBPD violated the APRA if it charged you a copy fee that was not permitted by statute. However, the SBPD did not otherwise violate the APRA.

Best regards,

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

Andrew J. Kossack  
Public Access Counselor

cc: Thomas L. Bodnar