



STATE OF INDIANA

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December 17, 2010

Mr. Rosalio Hernandez
DOC # 890437
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

*Re: Formal Complaint 10-FC-288; Alleged Violation of the Access to
Public Records Act by the Marion County Clerk*

Dear Mr. Hernandez:

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. The Clerk's response is enclosed for your reference.

BACKGROUND

According to your complaint, you allege that the Clerk violated the APRA by charging you an excessive copy fee. The Clerk's chief of staff, Scott Hohl, responded to your records request and informed you that the applicable fee is one dollar per page. You replied to Mr. Hohl and claimed that the APRA limited the fee to ten cents per page. Mr. Hohl cited to I.C. § 33-37-5-1 for his position that the one dollar per page fee was appropriate.

My office forwarded a copy of your complaint to the Clerk. Mr. Hohl responded for the Clerk. He maintains that a copy fee of one dollar per page is appropriate for copies of the Clerk's records.

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." Ind. Code § 5-14-3-1. The Clerk 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 Clerk's public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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 one dollar 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. Under I.C. § 33-37-5-1, a court clerk shall collect a fee of one dollar per page for legal size or letter size pages, including a page only partially covered with writing. Thus, it is my opinion that the Clerk did not violate the APRA by charging you the fee of one dollar per page for copies of the requested records.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk has not violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Scott Hohl