



# STATE OF INDIANA

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September 30, 2011

Mr. Eric D. Smith  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 11-FC-228; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the Department. Her response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you submitted a written request to the Department on August 10, 2011 for public records. On August 15, 2011, the Department responded and provided that the cost of an incident report that you had requested was \$5.00. You alleged that the Department violated APRA by attempting to charge you \$5.00 for the record.

In response to your formal complaint, Ms. Newsom advised that the Indianapolis City-County Council has established pursuant to Sec. 131-101(1) of the Revised Code of the Consolidated City and County, a fee schedule that provides that the fees for standardized photocopies shall be four cents (\$.04) per page. In regards to certified copies, I.C. § 5-14-3-8(d) allows a public agency to charge a fee not to exceed \$5.00 for certified copies. It is the routine practice of the Department to provide certified copies of incident reports in responding to public record requests. In each instance, the \$.04 per page cost is calculated into the \$5.00 certification cost; thus the maximum fee for an incident report would be \$5.00.

In regards to your claim on indigency, the Department provided that you offered no further support to your claim beyond your assertion that you were unable to find

employment. As such, the Department advised that you have not met the required showing necessary to IMPD to waive the fees associated with the records that you requested.

## 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.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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 the Department responded to your request with the timelines provided by the APRA.

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. If a fee is “specified by statute or ordered by a court,” the APRA states that “a public agency shall collect” such fee. *See* I.C. § 5-14-3-8(f). I.C. § 5-14-3-8(d) permits a public agency that is not a state agency to collect no more than five dollars (\$5.00) for the certification of a document. The Department has provided that it charges a fee of four cents (\$.04) per page copied and \$5.00 for certification of the record. The Department has advised that all incident reports disclosed in response to a public records request are certified. The total charge per report is \$5.00, which includes any applicable copying fees.

Here, the cost of the twenty-six (26) page incident report that you requested was \$5.00. You did not indicate in your request to the Department that the incident report did not require certification. As the Department has complied with all aspects of the APRA in regards to the allowable fees, it is my opinion that it did not violate the APRA. In the future, if you do not require that the record be certified, you should indicate that in your request. Under that scenario, the only fee associated with your request would be a charge of four cents (\$.04) per page copied.

I note that public agencies may require a person to pay a copying fee in advance. *See* I.C. § 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee, *Op. of the Public Access Counselor 07-FC-124*, or to mail records to you at its expense. *Op. of the Public Access Counselor 10-FC-59*. As such, the Department did not violate the APRA in requesting that you pay in advance prior to providing you with any records responsive to your request.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor

Cc: Andrea Brandes Newsom