



STATE OF INDIANA

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March 6, 2013

Jackie Lee Lawrence
DOC 995645
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 13-FC-67; Alleged Violation of the Access to Public Records Act by the Howard County Sheriff's Department

Dear Mr. Lawrence:

This advisory opinion is in response to your formal complaint alleging the Howard County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sheriff Steven R. Rogers responded in writing on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that the Department is attempting to charge you a copying and mailing fee greater than allowed under the APRA before it will produce any records responsive to your request. The total fee submitted to you by the Department was \$45.00

In response to your formal complaint, Sheriff Rogers advised that there were 216 pages of records that were responsive to your request. The fee reflects reports copied by the Department, rather than charging you for each individual page. The Department did not follow the established county ordinance in regards to copying fees, which would have allowed the Department to charge an even greater fee.

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).

For public agencies that are not state agencies, 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 or copying of documents. *See* I.C. § 5-14-3-8(d). The fee for copying documents may not exceed the greater of ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) for color copies or the actual cost of to the agency of copying the document. *See* I.C. § 5-14-3-8(d). 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.* A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers. *Id.* A public agency may require that payment for copying costs be made in advance. *See* I.C. § 5-14-3-8(e). An agency may only charge a fee greater than what is provided in section 8 of the APRA pursuant to a specific state statute (e.g. I.C. § 9-29-11-1 provides that a law enforcement agency may charge a fee not less than \$5.00 for an accident report). This office has stated that it is reasonable for public agencies to mail copies of records to the requestor when the requestor has paid for the applicable postage costs in advance. *See Opinions of the Public Access Counselor 09-FC-13; 09-FC-221; 10-FC-59; 12-FC-36.*

As applicable here, the Department has charged a fee of \$45.00 for providing 216 pages of records. Assuming that the Department's fee for mailing the records to you equaled \$1.80, the Department's "actual cost" for copying the records was \$.20 per page. As long as the \$.20 per page fee reflects the Department's "actual cost", then the Department has not violated section 8 of the APRA in response to your request. As noted *supra*, the Department would not violate the APRA by requiring that all copying and postage fees be paid in advance.

CONCLUSION

Based on the foregoing, it is my opinion that the Department did not violate section 8 of the APRA if its "actual cost" for providing the records equaled \$.20 per page. Further, the Department did not violate the APRA by requiring that all copying and postage fees be paid in advance.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Sheriff Steven R. Rodgers