



STATE OF INDIANA

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May 15, 2014

Mr. Christopher C. Lee
240 Greer Lane
Springville, IN 47462

Re: Formal Complaint 14-FC-80; Alleged Violation of the Access to Public Records Act by the Adams County Clerk

Dear Mr. Lee,

This advisory opinion is in response to your formal complaint alleging the Adams County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk has provided a response to your complaint. Her response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 11, 2014.

BACKGROUND

Your complaint dated April 2, 2014 alleges the Adams County Clerk violated the Access to Public Records Act by charging copy fees in excess of what is permitted by Ind. Code § 5-14-3-8.

On or about February 26, 2014, you stated you called the Adams County Clerk's office inquiring about obtaining copies of transcripts of two child support hearings concerning your child. You identified the dates and they stated you would have to appear in person and pay cash. On April 2, 2014 you drove to Adams County to obtain the transcripts. When you arrived, you were informed they had not been ordered. You placed an order for the transcripts after which you were told you would receive an estimate of the transcript charge. On April 4, 2014, you received an estimate from the Adams County Court Reporter stating the charges for the transcripts were \$250.00 and \$350.00 for each transcript respectively.

DISCUSSION

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 Ind. Code § 5-14-3-1. The Adam’s County Clerk is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Ind. Code § 5-14-3-8 sets fees for most public records – the majority of which would be limited to \$.10 per page. Fees charged by county clerks fall under another statute found at Ind. Code § 33-37-5-1 and are generally \$1.00 per page. According to Ind. Code § 33-41-1-5, a court reporter must prepare a transcript for either party in a cause number, but also may require payment before preparation.

For the judiciary, however, the Indiana Supreme Court has the authority to adopt rules under Ind. Code § 33-24-3-1 to govern court proceedings and operations. The administrative rules also allow counties to adopt local rules for the administration of jurisprudence. These rules are subject to Supreme Court approval. Indiana Administrative Trial Rules 15(c)(1)(e) states each county must designate a maximum per page fee that the court reporter may charge for a private transcript. Included in the Clerk’s response is the Adam’s County Local Rule 15 setting the per page fee schedule for court reporters at \$5.00 for private individuals. This schedule is also published by the Indiana Division of State Court Administration found here: <http://www.in.gov/judiciary/admin/files/court-reporter-county-crfees.pdf>. Please note there is an additional cost for expedited transcripts, should you require them.

The two hearings you requested totaled \$600.00 indicating the transcripts contained approximately 120 pages of text. If this is the case, then it appears the Clerk and the Court Reporters are charging you appropriately. Oftentimes, court reporters are private contractors and not public employees. I am unaware of the structure of Adams County arrangements.

There is a difference, however, between preparation of transcripts by court reporters and copy fees for transcripts already in existence. Typically, transcripts are not prepared and placed in the court or clerk’s file. Therefore, I would not expect the transcripts to be prepared for another purpose. If it were, by chance, the Clerk could only charge \$1.00 per page like any other public record. The \$5.00 per page fee is for court reporter preparation and not for copying. There is no indication this is the case, but I note this point for clarification.

You live quite a distance from Adams County and you mention the time and expense to drive to the Clerk’s office in person to make the request. Given the privacy concerns for

minors and the sensitivity surrounding child support it is not entirely unreasonable for the Clerk to require and in-person presence to request a transcript of this sort. Now that you have established you are the father of the children in question, it is my expectation there is no longer a need to appear in person again.

While my conclusion is the Adams County Clerk did not violate the APRA and the fees charged were within the usual course of business, I do have some recommendations which may defray the expense of the written transcript. Ind. Code § 5-14-3-3(d) requires:

a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system.

Although I am not familiar with the Adams County method of recording and storing recordings of court proceedings; many other courts throughout the state are willing to download the file of the recording on a write-protected disk and provide the record in that manner. It is my opinion Adams County must make reasonable efforts to do so if you make this request. The only expense would be actual cost of the physical media (CD, DVD, flash drive, etc.) upon which the file is downloaded. If you do not have a method of playback for the file format, perhaps you could either retain the services of a local court reporter which may have access to a data playback device compatible with the file extension. Similarly, a local court may allow you to listen to the file on their equipment if it would not compromise court operations. I genuinely hope this is a possible solution and that Adams County is willing to make reasonable efforts to provide this to you.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Adams County Clerk has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt
Public Access Counselor

Cc: Ms. Gayla M. Reinhart