



STATE OF INDIANA

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September 16, 2016

Mr. Stephen T. Avery
P.O. Box 171
Downers Grove, Illinois 60515

Re: Formal Complaint 16-FC-201; Alleged Violation of the Access to Public Records Act by the City of Gary

Dear Mr. Avery:

This advisory opinion is in response to your formal complaint alleging the City of Gary ("City") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The City has responded via Mr. Joe Johnson. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 10, 2016.

BACKGROUND

Your complaint dated August 10, 2016, alleges the City of Gary charged an excessive fee for public records. On or about May 25, 2016, you requested public records related to a fire loss at a specific address. You received an invoice on July 14, 2016 for \$100.00 for the fire report and \$15.00 for the police report. You contend these charges are in excess of what is allowable by law. The City responded to your complaint by justifying the cost as authorized by City Ordinance 8968.

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

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be

an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Excessive fees are a barrier to public access. When setting a fee schedule for the cost of public records distribution, a local government must abide by the following:

The fee for copying documents may not exceed the greater of:

- (1) ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) per page for color copies; or
- (2) the actual cost to the agency of copying the document.

As used in this subsection, "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.

Indiana Code § 5-14-3-8(d).

A local ordinance cannot supersede these provisions. After a review of the ordinance in question, it is clear the City's Common Council has violated the Access to Public Records Act by charging fees in excess of what is permitted by law. Access to public records is not subject to a service charge – which is a barrier to access. Rather, the cost of a request should be determined on a case-by-case basis taking into account the number of pages in a response and what the actual cost of that production would be, minus labor and overhead.

CONCLUSION

Based on the forging, it is the opinion of the Public Access Counselor the City of Gary has violated the Access to Public Records Act.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Joe Johnson