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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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CHARITY A. SHETTLE,  
*Complainant,*

v.

WARREN COUNTY AUDITOR'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
19-FC-90

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Warren County Auditor's Office violated the Access to Public Records Act.<sup>1</sup> Warren County Auditor Robin Weston-Hubner filed an answer to the complaint on behalf of the office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint

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<sup>1</sup> Ind. Code § 5-14-3-1 to -10

received by the Office of the Public Access Counselor on September 19, 2019.

### **BACKGROUND**

This case involves a dispute about copy fees for public records in Warren County.

On September 16, 2019, Charity A. Shettle (“Complainant”) appeared at the Warren County Auditor’s office and requested copies of certain public records including a specific contract and ordinance. In total, the Shettle’s request amounted to 13 pages of documents. Shettle contends the Warren County Auditor’s Office informed her that she owed \$13.00 for the copies.

Shettle says she challenged the \$1.00 per page copy fee as contrary to state law, but the staff at the auditor’s office indicated a county ordinance authorized the copy fee. Shettle refused to pay the fee and left.

As a result, Shettle filed a formal complaint with this office on September 19, 2019. In essence, Shettle argues the copy fee constitutes a public access violation under the Access to Public Records Act. Shettle also raises other potential access issues that occurred in 2017 and 2018.<sup>2</sup>

On October 2, 2019, Warren County Auditor Robin Weston-Hubner filed an answer to Shettle’s complaint with this office. The Auditor does not dispute Shettle’s claim about

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<sup>2</sup> The statutory time for filing a complaint on these issues passed; and thus, these issues will not be addressed in this opinion.

her records request or the copy fee. The Auditor argues that the copy fee is set by county ordinance.<sup>3</sup>

## ANALYSIS

The primary issue in this case is whether Warren County's copy fee of \$1.00 per page comports with the Access to Public Records Act.

### 1. The Access to Public Records Act ("APRA")

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.5-1.

The Access to Public Records Act ("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." *Id.* The Warren County Auditor's Office is a public agency for the purposes of APRA; and thus, subject to the act's requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the town's public records during regular business hours. Ind. Code § 5-14-3-3(a).

### 2. APRA's Fee Provisions

Shettle argues that Warren County, in this case the auditor's office, impermissibly charges a copy fee of \$1.00 per page for

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<sup>3</sup> Ordinance number 2007-008.

public records. The Auditor concedes that her office charges this amount in accordance with a local ordinance.

APRA's fee provision are governed by Indiana Code section 5-14-3-8. Subsection (d) governs copy fees for public agencies that are not state agencies (e.g., counties). Specifically, subsection (d) provides:

The fiscal body (as defined in IC 36-1-2-6) 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. The fee for certification of documents may not exceed five dollars (\$5) per document. 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.

Ind. Code § 5-14-3-8(d). Here, the Warren County Council adopted ordinance 2007-08 establishing the \$1.00 per page copy fee based on the actual cost provision in the law.

The ordinance expressly declares that “the meaning [of] ‘actual cost’ is not defined in IC 5-14-3-2 or IC 5-14-3-8[.]” So, the Warren County Council determined that the actual cost of copying documents is \$1.00 per page “based upon the cost of paper, depreciation or rental of equipment, maintenance and supplies for copier, overhead, and labor costs” APRA defines “actual cost” as:

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*. A fee established

under this subsection must be uniform throughout the public agency and uniform to all purchasers.

Ind. Code § 5-14-3-8(d)(emphasis added).

Labor and overhead costs are specifically excluded from the calculation of actual cost. The price of ink and paper is the cap to actual cost. Even then, given the practical cost of printing, agencies likely come out ahead if capping copies at \$.10 per page.

Granted, our legislature amended APRA's definition of "actual cost" to its current version in 2008. *See* P.L.16-2008. So, the ordinance may have been in compliance with the law in 2007. Regardless, the legislature amended APRA's fee provision over ten years ago to expressly prohibit what Warren County's ordinance is doing today (e.g., charging for overhead, labor, depreciation, etc.).

This office recommends Warren County change course to comply with the law.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that Warren County's \$1.00 per page copy fee for public records violates the fee provisions of the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish extending from the bottom.

Luke H. Britt  
Public Access Counselor