

March 21, 2003

Philip S. Herman
53199 Oakmont West Drive
South Bend, IN 46637-3536

Re: *Advisory Opinion 03-FC-14*; Alleged Violation of the Access to Public Records Act concerning Copying Fees charged by LaPorte County Community Corrections.

Dear Mr. Herman:

This is written in response to your formal complaint, which was received on March 7, 2003. You have alleged that the LaPorte County Community Corrections Office ("Community Corrections") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that Community Corrections violated the APRA by charging an excessive copying fee of \$0.25 per page. Mr. Robert Szilagyi, attorney for Community Corrections, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the current copying fee charged by Community Corrections is not valid because it was adopted by the county executive, not the county fiscal body as is required under Indiana Code section 5-14-3-8(d).

BACKGROUND

According to your complaint, you were advised by Mr. Joe Frye, Director of Community Corrections, that the per-page copying fee for public records you had requested was \$0.25. It is your interpretation of the APRA, however, that a public agency may only charge \$0.10 per page unless the agency can demonstrate that actual cost allows the agency to charge a higher fee. For this reason, you filed a formal complaint with this Office.

In response to your complaint, Mr. Szilagyi stated that the LaPorte County Commissioners object to your formal complaint. However, the Commissioners apparently authorized Mr. Szilagyi to direct Community Corrections to charge you only \$0.10 per page for the copies 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." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

Community Corrections is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of Community Corrections during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

A public agency at the local level may also charge a copying fee for photocopies under Indiana Code section 5-14-3-8(d). This statute provides that the "fiscal body of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the . . . copying . . . of documents." In the case of Community Corrections, this would be the LaPorte County Council. Further, the fee must not exceed the actual cost ¹, which is defined as "the cost of paper and the per-page cost for use of [the] copying . . . equipment and does not include labor costs or overhead costs." Id

According to the information provided, the LaPorte County Commissioners set the current copying fee of \$0.25 per page. The Commissioners are the county executive, but are not the fiscal body for Community Corrections. Since Indiana Code section 5-14-3-8(d) states that the fiscal body for a public agency must set the copying fee, it is my opinion that the copying fee set by the County Commissioners is not valid and may not be charged. Further, the Commissioners have directed Community Corrections to charge you a lower fee, but again, since the Commissioners are not the fiscal body for the public agency, even this lower fee is not valid. When the LaPorte County Council considers setting a copying fee under Indiana Code section 5-14-3-8(d), the fee may only be for the "actual cost" of making the copy and the burden for showing that the fee is the actual cost lies with the Council.

CONCLUSION

It is my opinion that LaPorte County Community Corrections may only charge a copying fee that has been set by the fiscal body for the agency, the LaPorte County Council. A copying fee set by any other body, including the county executive, is not valid under Indiana Code section 5-14-3-8(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. David Hirschle, Director of Planning

¹ You referenced in your complaint the \$0.10 per page that appears in the APRA. This fee is the minimum that may be charged by a state agency and is not applicable to what local public agencies may or may not charge. See, Ind. Code §5-14-3-8(c).
