
OPINION OF THE PUBLIC ACCESS COUNSELOR

JACKIE STEVENSON,
Complainant,

v.

HOUSING AUTHORITY OF SOUTH BEND,
Respondent.

Formal Complaint No.
22-FC-53

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Housing Authority of South Bend violated the Access to Public Records Act.¹ Pamela Rogers filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on April 5, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether the Housing Authority of South Bend (HASB) violated the Access to Public Records Act (APRA) by charging \$250 fee to fulfill a public records request.

On March 11, 2022, Jackie Stevenson (Complainant) filed a public records request with the HASB seeking the following:

- copies of the June 2021 to February 2022 Board reports
- the email address of the members of the Board of Commissioners
- Payment details including each property and amount paid to Choose Property Management for 2016, 2017, 2018, 2019 and 2020

On March 15, 2022, the HASB responded to Stevenson, informing her that she needed to pay \$250 to receive the requested records. The agency noted that any additional time needed to address the request would result in an additional \$50 for a half-hour search fee.

Stevenson mailed a check for \$250 to the HASB. On March 30, 2022, the agency sent Stevenson two emails including copies of the requested records along with a receipt for the \$250, which included a memo line indicating that payment was for “office supplies.”

After receiving the two emails, Stevenson filed a formal complaint on April 4, 2022, arguing that the HASB violated APRA by charging an excessive fee for the records.

On April 14, 2022, the HASB filed an answer to Stevenson’s complaint. The HASB argues the agency’s actions were appropriate under the law and that the fees charged for fulfilling the records request were fair.

Additionally, HASB raises several issues about its relationship with Stevenson that exceed the scope of this office’s jurisdiction. As a result, this office will not address those issues in this opinion.

ANALYSIS

1. The Access to Public Records Act

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.” Ind. Code § 5-14-3-1. The Housing Authority of South Bend (HASB) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the HASB’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Statutory fee schedules

Generally, certain exceptions notwithstanding, public agencies must follow the fee schedules set forth by the Access to Public Records Act.

For most standard-sized documents, the allowable copy fee is \$.10 per page. *See* Ind. Code § 5-14-3-8(d)(1). Therefore, to warrant the \$250 charge that Stevenson remitted, she would need to have received 2,500 documents.

In this case, based on the information provided, the production of documents does not appear that voluminous. Inasmuch, the HASB greatly exceeded its statutory authority in charging this fee.

What is more, the law provides for free electronic transmission of public records that are already digitized:

...a public agency may not charge any fee under this chapter for the following:

...

(4) To provide an electronic copy of a public record by electronic mail.

Ind. Code § 5-14-3-8(b). Therefore, if the records provided to Stevenson were already in electronic form and were transmitted by email, the production of documents should have been free.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the fee the Housing Authority of South Bend charged Stevenson exceeds the amount authorized by law. As a result, the Housing Authority of South Bend violated the Access to Public Records Act.



Luke H. Britt
Public Access Counselor

Issued: May 26, 2022