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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BARTON EWER,  
*Complainant,*

v.

CITY OF PERU,  
*Respondent.*

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Formal Complaint No.  
23-FC-102

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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 the formal complaint alleging the City of Peru violated the Access to Public Records Act.<sup>1</sup> Attorney Dustin Kern filed an answer on behalf of the city. 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 September 28, 2023.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over the City of Peru's (City) fee schedule for public records and body worn camera footage.

On September 28, 2023, Barton Ewer (Complainant), received an invoice from the City of Peru after requesting two video clips and several public records. Peru charged Ewer \$130.20 total.

Ewer filed a formal complaint with this office the same day. Ewer contends the City's fee schedule exceeds the maximum allowed by the Access to Public Records Act (APRA). He also takes exception to the way the City uses the funds collected from public records fees.

On October 20, 2023, the City filed an answer to Ewer's complaint categorically denying any violation of APRA. Peru contends that a local ordinance—which will be discussed in detail below—it is consistent with state law.

## **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 City of Peru 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 city'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). This case involves the applicability of APRA's fee schedule compared to a local ordinance.

## **2. Fees for copies of public records**

This case addresses the cost of public records and the policies setting those costs. Peru's ordinance states the following insofar as copy fees are concerned:

(A) The cost of a copy for a report shall be \$2.50 plus .10 cents per sheet.

(B) The cost of an incident report shall be \$2.50 per report.

(C) The cost of a CD or DVD shall be \$6.00 per disk.

(D) The cost of photographs shall be \$2.50 plus .10 cents per sheet.

(E) The cost for a copy of law enforcement recordings shall be as follows but shall not be more than one hundred fifty (\$150.00)

a. 0-30 minutes \$50

b. 30-60 minutes \$100

c. Over 60 minutes \$150

d. Processing fee for all requests: \$4.00

The City asserts the \$2.50 figure is for certification. While Ewer submitted his receipt for the records he requested, he

did not supply an itemized breakdown of each individual record's cost.

APRA sets a fee schedule for both routine public records as well as law enforcement recordings. Generally, the cost of black-and-white, standard-sized copies of records is capped at \$0.10 per page, so long as an ordinance is in place. Color copies have a \$0.25 ceiling, and other untraditional documents are actual cost. Law enforcement recordings (e.g., body camera and dash camera recordings) are capped at \$150.00. *See* Ind. Code § 5-14-3-8.

Compared to the statute, the ordinance on its face is problematic in several ways. First, certification is not a condition precedent for the release of a public record. Requesters can obtain noncertified records without paying the \$2.50 surcharge. While it is unclear if the City actually charges the certification fee for every record, it should not be standard practice to do so. Certification should be part of the request, not a prerequisite to disclosure.

Second, this office has been critical of other municipalities' attempts to structure a tiered fee system as it relates to law enforcement recordings. Each recording is different with varying levels of context and sensitivity. Assigning a fee schedule to a complex production exercise is arbitrary. The better play is to assign costs on a case-by-case basis and charging for production costs accordingly. Nevertheless, the new statute allowing attorney review to be charged may make all this moot. Even so, footage of a routine ten-minute traffic stop probably doesn't need attorney review at all, and it should not reach a \$50.00 charge.

Finally, Peru charges a processing fee for body camera video. The \$0-150 is the processing fee. The only fee allowable by law is what is in the statute, which is silent on additional processing fees.

## CONCLUSION

Based on the foregoing, it is the opinion of this office the City of Peru's ordinance conflicts with the Access to Public Records Act and should be amended consistent with the statute and this opinion.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt  
Public Access Counselor

Issued: November 9, 2023