



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 25, 2012

Sylvia Watson
Legal Consultant and Counsel to the Indiana State Library
140 N. Senate Avenue
Indianapolis, IN 46204-2296
Via email: sywatson@library.IN.gov

Re: *Informal Inquiry 12-INF-21; Copying fees*

Dear Ms. Watson:

This is in response to your informal inquiry regarding allowable copy fees that may be charged by a public agency pursuant to the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

BACKGROUND

Your informal inquiry seeks guidance whether a public library would be allowed to charge a copying fee pursuant to I.C. § 5-14-3-8 for providing a scanned copy of a record in response to a request submitted pursuant to the APRA. You note that public libraries have the statutory authority to charge patrons to use scanning equipment to copy library materials and their own personal documents. Providing a scanned copy of a record requires an employee to run the paper copy of the record through a scanning machine (generally a copy machine, flatbed, or similar piece of equipment) that either sends an e-mail to the requestor's account with the scanned copy attached or sends the document to a remote off-site printer via a faxing mechanism.

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 I.C. § 5-14-3-1. Accordingly, any person has the right to inspect and copy a public agency's records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. The definition of “copy” includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means. *See* I.C. § 5-14-3-2(b). The APRA does not specifically require that an agency provide a scanned copy of a record in response to a request. If a person is entitled to a copy of a public record and the public agency has reasonable access to a machine capable of reproducing the record, the public agency must provide at least one (1) copy of the record. *See* I.C. § 5-14-3-4(e). It is my opinion that an agency that chooses to provide a scanned copy of a record is providing a “copy” as defined by I.C. § 5-14-3-2(b).

For state agencies, the Indiana Department of Administration shall establish a uniform copying fee for the copying of one page of a standard-sized document by state agencies. *See* I.C. § 5-14-3-8(c). For copies that are not color copies, the fee may not exceed the average cost of copying records by state agencies or ten centers per page, whichever is greater. *Id.* A state agency may not collect more than the uniform copying fee for providing a copy of a public record. *Id.* However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized documents. *Id.*

For public agencies that are not state agencies, the fee for copying documents may not exceed the greater of ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) for color copies; or the actual cost of to the agency of copying the document. *See* I.C. § 5-14-3-8(d). 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. *Id.* A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers. *Id.* A public agency may require that payment for copying costs be made in advance. *See* I.C. § 5-14-3-8(e).

I am not aware of any agency that currently requires the payment of a copying fee in order to provide a scanned copy of a record. If a non-state agency wishes to commence charging for scanned copies, it is my opinion that the agency would first be required to amend its fee schedule. This is due to the distinct differences and costs associated with providing a paper copy of a record as opposed to providing a scanned copy of a record. With a paper copy, the “actual cost” to the agency would be the cost of the paper and the per-page cost for use of the copying or facsimile equipment. The agency would be allowed to charge the greater of the “actual cost” or ten cents per page for black and white copies. Alternatively, there would not be a paper cost associated with providing a scanned copy. The only cost that that could be contributed towards the “actual cost” would be for use of the scanning equipment. In either scenario, the agencies “actual cost” may not include labor or any overhead costs. In amending its fee schedule to allow for the payment of a copying fee for scanned copies, the non-state agency would have to be able to quantify its per page cost for the use of the scanning equipment. The agency would then be allowed to charge the greater of \$.10 per copy or

the actual cost to the agency. *See* I.C. § 5-14-3-8(c). It is my opinion that if the agency was not able to quantify the actual cost of providing a scanned copy, then it should not charge a fee for providing a scanned copy. This is due in part to the fact that the agency may charge the greater of \$.10 or the “actual cost”; if there is no actual cost to the agency in providing the scanned record, the agency would in essence be profiting by providing scanned copies, which would be contradictory to the spirit of the APRA.

In speaking with various agencies in the past regarding this topic, the most common response in not requiring payment for scanned copies is that the agency is unable to quantify its actual cost or the administrative function of collecting and processing payment for such a diminutive cost would not be a cost-effective endeavor. However, as stated prior, it is my opinion that a non-state agency would be allowed to charge a fee for providing a scanned copy if it amended its fee schedule to allow for such a practice and if it could quantify its “actual cost” for providing scanned copies pursuant to section 8 of the APRA.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor