

January 28, 2005

Mr. Mike Herndon  
Special Investigations Unit  
Farm Bureau Insurance  
6767 E. Washington Street  
Indianapolis, IN 46219

*Re: Informal Inquiry; Alleged Violation of the Access to Public Records Act by the  
Munster Police Department*

Dear Mr. Herndon:

This is in response to your inquiry regarding the fee the Munster Police Department charged you for a copy of a motor vehicle accident report. You submitted a request to the Munster Police Department ("Police Department") for a copy of a motor vehicle accident report and were advised that the fee for that report is \$25. You contacted this office for an opinion as to whether that fee is excessive under the Access to Public Records Act.

Any person may inspect and copy the public records of a public agency unless the record is confidential or otherwise nondisclosable pursuant to IC 5-14-3-4. IC 5-14-3-3(a). The Access to Public Records Act ("APRA") provides that public agencies may charge a fee for copies of public records. IC 5-14-3-8. Specifically, IC 5-14-3-8(d) states that public agencies that are not state agencies must charge a fee that is set by the fiscal body of the public agency. If the public agency has no fiscal body, the fee schedule must be set by the public agency's governing body. Indiana Code §5-14-3-8 further states that the cost set by the fiscal or governing body cannot exceed the "actual cost" of copying. "Actual cost" means the cost of paper and the per-page cost for use of the copying equipment.

While the APRA sets general parameters for copy fees, it is a statute of general applicability, which means that it governs unless there is some other, more specific statute that addresses the issue. In this case, IC 9-29-11-1(a) governs the cost of copies of motor vehicle accident reports, which is the type of record you requested from the Police Department. Indiana Code 9-29-11-1(a) states, in pertinent part, that "the main department, office, agency, or other

person under whose supervision a law enforcement officer carries on the law enforcement officer's duties may charge a fee that is fixed by ordinance of the fiscal body in an amount not less than three dollars (\$3) for each report.” Indiana Code §9-29-11-1 does not set a maximum amount that may be charged for the motor vehicle accident report. As the Police Department’s fiscal body, the Munster Town Council (“Town Council”) passed an ordinance setting the fee for motor vehicle accident reports at \$25 each, as it is allowed to do pursuant to IC 9-29-11-1(a). It is my opinion that the ordinance, which sets the fee at \$25, is consistent with IC 9-29-11-1, and therefore, the fee set for motor vehicle accident reports does not violate the letter of the Access to Public Records Act.

While the ordinance complies with the letter of the law, the cost of copies of motor vehicle accident reports may prevent people from being able to obtain copies of those records.

“Providing persons with the 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. This chapter shall be liberally construed to implement this policy and shall 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.”

This office shares your concern that people will be unable to obtain a copy of motor vehicle accident reports as a result of the fee charged. However, I note that IC 9-29-11-1(b)(3) provides that the fee that is paid to a city or town for a copy of a motor vehicle accident report is used for a local law enforcement agency’s continuing education fund. Therefore, the legislature has weighed and balanced the interest in obtaining a copy of a motor vehicle accident report with the need for additional training resources in favor of the latter. This balancing is clearly within the legislature’s purview.

Please keep in mind that the fee set by IC 9-29-11-1 governs the cost of obtaining a copy of a motor vehicle accident report; it does not apply to inspecting those reports. Pursuant to IC 9-26-2-3, motor vehicle accident reports are not confidential and shall be made available for inspection and copying. The Access to Public Records Act provides that a public agency may not charge a fee to inspect a public record. IC 5-14-3-8(b)(1). Therefore, you may inspect the motor vehicle accident report without cost. Under IC 5-14-3-2, inspection includes the right to manually transcribe and make notes, abstracts, or memoranda.

I note that during a telephone conversation with me you referenced a prior call that was made to this office on August 9, 2001 in which you asked for assistance regarding a \$300 accident reconstruction report. An accident reconstruction report, which is a report in which a determination is made as to how and why an accident occurred, is different from a motor vehicle accident report. A motor vehicle accident report contains only the name and address of the owner and operator of the vehicle, the license number and description of the vehicle, the time and place of the accident, the name and address of each person killed or injured, and the name and address of each witness to the accident. IC 9-26-2-3. The fee for copies of motor vehicle accident reports is specifically set by state statute; no such statute exists to dictate the cost of an

accident reconstruction report. Accordingly, the cost for the accident reconstruction report was limited to the actual cost of producing the record.

Should you have any questions, please feel free to contact me.

Sincerely,

Lea Ellingwood  
Staff Attorney