



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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October 4, 2012

Joseph F. Zrnchik
9306 Saric Drive
Highland, Indiana 46322

Re: Formal Complaint 12-FC-278; Alleged Violation of the Access to Public Records Act by the Highland Police Department

Dear Mr. Zrnchik:

This advisory opinion is in response to your formal complaint alleging the Highland Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jared R. Tauber, Attorney, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Department for records to which Police Chief Pete Hojnicky claimed were part of an old information system. In light of this fact and because some of the records were filed as hard copies, the fees for such records would exceed the \$.10 per page provided for under the APRA. You provide that the total number of documents to be produced by the Department would consist of no more than 200 pages; the Department's fees for the records totaled \$350. You believe that the fees charged by the Department are contrary to section 8 of the APRA.

In response to your formal complaint, Mr. Tauber advised in response to your request for records, the Department notified you on September 20, 2012 that there were approximately 254 pages of incident reports that were responsive to your request, in addition to 16 accident reports. The fee for the incident reports totaled \$25.40, while the fee for the accident reports totaled \$320. Highland Municipal Code § 51.64 provides that the charge to produce accident reports to residents is \$20.00. The ordinance is supported by I.C. § 9-29-11-1, which states that the Department may charge a fee in an amount of not less than \$5 per report. The fee charged for the incident reports that you received was calculated pursuant to I.C. § 5-14-3-8.

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. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public 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 copies of public records. *See* I.C. § 5-14-3-8. Public agencies may require a person to pay the copying fee in advance. *See* I.C. § 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. For public agencies that are not state agencies, the fiscal body of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification and copying of documents. *See* I.C. § 5-14-3-8(d). The fee for copying documents may not exceed the greater of ten cents (\$0.10) for black and white copies or the “actual cost” to the agency. *Id.* “Actual cost” is the cost of the paper and the per-page cost for use of copying or facsimile equipment and does not include labor or overhead costs. *Id.* A fee established under section 8 of the APRA must be uniform throughout the public agency and to all purchasers. *Id.*

The APRA recognizes that other fees have been set by statute for copies of various public records. Under I.C. 5-14-3-8(f), a public agency shall collect any copying fee that is specified by another statute. In the case of motor vehicle accident reports, a minimum statutory copying fee of \$5.00 has been set at IC 9-29-11-1. The local unit may also, by ordinance, set a fee higher than \$5.00 for such accident reports. *See Opinion of the Public Access Counselor 05-FC-103*. The Department in response to your request has provided a copy of Highland Municipal Code § 51.64, that sets the fee for accident reports at \$20.00. As such, it is my opinion that the Department did not violate the APRA in regards to the fees charged in response to your request that sought accident reports maintained by the Department.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Jared R. Tauber