



STATE OF INDIANA

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April 26, 2013

Mr. Joseph C. Toth
3281 Lakeshore Drive
Bremen, Indiana 46506

Re: Formal Complaint 13-FC-118; Alleged Violation of the Access to Public Records Act by the Lake of the Woods Regional Sewer District

Dear Mr. Toth:

This advisory opinion is in response to your formal complaint alleging the Lake of the Woods Regional Sewer District ("District") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jonathon G. Oswald, Treasurer, responded on behalf of the District. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that that the District is charging a \$2.50 labor fee, in addition to \$.10 per page, to provide copies of any records maintained by the District. You believe that the fees are in violation of the APRA.

In response to your formal complaint, Mr. Oswald advised that due to escalating operating costs, the District decided to charge a reproduction service fee of a maximum of \$.10 per page. By way of example, the meeting minutes from the District's March 26, 2013 meeting totaled 27 pages. Thus, the reproduction service fee to receive a copy of the minutes would be \$2.70. The District's fees are posted at the main office and you were in attendance at the meeting where the adoption of the fee was discussed and unanimously approved.

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 District 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 District'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).

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 or 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) 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.* The fee for certification of documents may not exceed five dollars (\$5) per document. 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). An agency may only charge a fee greater than what is provided in section 8 of the APRA pursuant to a specific state statute (e.g. I.C. § 9-29-11-1 provides that a law enforcement agency may charge a fee not less than \$5.00 for an accident report).

You have alleged that the District has adopted a fee schedule that would charge a fee of \$.10 per page, in addition to a \$2.50 labor fee. In response, the District provided that the fee for copies is \$.10 per page; there is no labor fee being charged. By way of example, the District provided that a 27-page record would result in a fee of \$2.70. It is undisputed that a labor fee may not be charged by a public agency in order to fulfill a public records request. *See* I.C. § 5-14-3-8. As applicable to the facts presented, there appears to be a misunderstanding what fees are being imposed by the District for copies. It is my opinion that the District would not be in violation of section 8 of the APRA by charging a fee of \$.10 per page. Any other fees beyond \$.10 per page would be in violation of the APRA, unless specifically directed by state statute.

CONCLUSION

Based on the foregoing, it is my opinion that the District did not violate the APRA by charging \$.10 per page for copies pursuant to section 8 of 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: Jonathon G. Oswald