

November 10, 2004

John Emry  
62 W. Jefferson Street  
Franklin, IN 46131-2311

*Re: Formal Complaint 04-FC-187; Alleged Violation of the Access to Public Records Act by the Montgomery County Sheriff's Department*

Dear Mr. Emry:

This is in response to your formal complaint filed on behalf of Ronald L. Stewart alleging that the Montgomery County Sheriff's Department ("Department") violated the Access to Public Records Act by charging a copy fee that is in excess of the actual cost of copying. I find that the Montgomery County Sheriff's Department charged a fee for copying that was not set by the fiscal body of the County, in violation of the Access to Public Records Act.

#### BACKGROUND

You received records on behalf of Ronald L. Stewart from the Montgomery County Sheriff's Department and were presented a statement for copying charges of .20 per page. Upon hearing your protest that the fee exceeded the actual cost of copying the documents, Mr. A. Howard Williams, attorney for the Department, replied that although he disagreed that only .05 per page was the actual cost of copying, the Department would accept whatever payment for copies you believed you owed. You filed your formal complaint with this office after paying .10 per page for the copies. You stated with your complaint your intention to ask the Sheriff to establish a published fee policy to avoid questions about the fairness of the copying fee.

I sent a copy of your complaint to Mr. Williams; his response is enclosed for your reference. With respect to the copying fee, Mr. Williams admits that an ordinance for copying fees is necessary, and that he intends to ask the Sheriff to propose such action to the County Council. He also indicated that in view of the importance of the issue to you, the Department had voided your check.

## 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." Ind. Code §5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code §5-14-3-3(a).

Under IC 5-14-3-8, an agency may charge a fee for copying a record. IC 5-14-3-8(d) applies to records of a public agency that is not a state agency. This subsection requires that the fiscal body of the public agency establish a fee schedule for the copying of documents. The fee may not exceed the actual cost of copying the document, and the fee must be uniform throughout the public agency and uniform to all purchasers. "Actual cost" is defined as the cost of paper and the per-page cost for use of the copying equipment, and does not include overhead or labor charges. IC 5-14-3-8(d).

Copies of records of the Department, an agency of county government, would be subject to a fee schedule set by the Montgomery County Council as the County's fiscal body, not by the Sheriff. You have been told that no such fee schedule exists. In that case, no fee for copying could be charged under IC 5-14-3-8, although the Department could charge a fee for any record where the fee for that specific record is set by statute. IC 5-14-3-8(f). Mr. Williams has stated that if no such fee schedule exists, and he believes it does not, then it would be appropriate for the County Council to adopt a fee schedule. Also, he has essentially refunded the fee that you paid. The Department's action to address its lack of authority to charge you a fee was notable; however, to the extent that you were charged a fee in the first instance, the Department violated the Access to Public Records Act.

## CONCLUSION

For the foregoing reasons, I find that the Montgomery County Sheriff's Department violated the Access to Public Records Act when it charged a copy fee that was not adopted by the county fiscal body in a fee schedule.

Sincerely,

Karen Davis  
Public Access Counselor

cc: A. Howard Williams