



# STATE OF INDIANA

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November 18, 2015

Mr. Jason Critchlow  
221 Marquette  
South Bend, Indiana 46617

*Re: Formal Complaint 15-FC-273; Alleged Violation of the Access to Public Records Act by the St. Joseph County Commissioners*

Dear Mr. Critchlow,

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Commissioners ("Commissioners") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Commissioners have responded via Mr. Peter Agostino, Deputy County Attorney. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 13, 2015.

## BACKGROUND

Your complaint dated October 7, 2015, alleges the St. Joseph County Commissioners violated the Access to Public Records Act by not providing access to the requested documents.

On September 3, 2015, you hand-delivered a request for records to the Commissioners. You are seeking emails between five (5) county employees and elected officials. On September 10, 2015 your request was acknowledged, but a fee between \$2,000 and \$5,000 may be possible.

On September 15, 2015, you attempted to obtain in-person access to the records. You were told by both County IT and the County Attorney in-person access would not be allowed.

On October 15, 2015 the Commissioners responded to your formal complaint. The Commissioners note you were merely denied unfettered access to the county computer terminals, but not the records themselves and you were provided documentation on October 13, 2015. The Commissioners also contend the copy fee alleged was merely an



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estimate for the cost of hiring an outside vendor and not an attempt to demand payment. Finally, the Commissioners note your request was fairly extensive and it required the assistance of several individuals.

## 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 Ind. Code § 5-14-3-1. The St. Joseph County Commissions is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Commissioners’ disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

You contend the requested records were not provided in a reasonable amount of time. What is considered a reasonable amount of time depends on the circumstances. You originally requested documents on September 3, 2015. Your request was acknowledged on September 10, 2015 and fulfilled on October 13, 2015. A time of one month to release documents is not necessarily unreasonable, considering you requested all emails between certain officials, which totaled 200 pages. Because of this request, a one month time period is not unreasonable.

You also contend the commissioners demanded excessive copy fees. In the September 10, 2015 communication, you were told the Commissioners were awaiting a quote from an outside vendor, due to the fact the Commissioners thought the vendor would be “helpful in expediting a response.” While nothing in the APRA requires a public agency to seek outside assistance with public access requests, public agencies are free to do so. However, the requestor does not have bear the burden for outside assistance. The agency’s options in that situation would be to either absorb the cost of the vendor or use its own manpower to fulfill the request.

In this case, the communication does not appear to be an attempt to impose additional fees on you. It merely was to inform you of the cost if you chose to pay for the vendor versus some additional time for the records request obligation to be fulfilled. Therefore, there is no violation of the APRA for the improper charging of copy fees.



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Finally, the references to inspection in the APRA do not necessarily entitle a requestor to access government computer terminals or IT systems to view electronic records. There are practical limitations to inspection access and while it is encouraged public agencies make best efforts to be transparent, this is balanced against practicalities. In any event, it appears as if the Commissioners have made a good faith effort to fulfill your request in a timely manner.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the St. Joseph County Commissioners did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Peter Agostino, Esq.