

July 14, 2004

Ms. LaDonna Wright Snyder
P.O. Box 236
Dayton, IN 47944

*Re: Formal Complaint 04-FC-100, Alleged Denial of Access to Public Records
by Town of Dayton*

Dear Ms. Snyder:

This is in response to your formal complaint, which was received on June 14, 2004. You have alleged that the Town of Dayton ("Town") violated the Indiana Access to Public Records Act ("APRA"), Ind. Code 5-14-3. In that complaint, you allege that the Town has overcharged for copies of records and has unjustifiably charged you postage fees for mailing copies of requested records despite the fact that you specifically asked to pick up those copies from the Town's office during their normal business hours. A copy of your complaint was sent to Mr. Ron Koehler on June 15, 2004. Mr. Koehler did not respond to our request for information.

BACKGROUND

According to your complaint, on March 12, 2004, you submitted a request to the Town for public records and specifically asked that you be able to pick up the records in person rather than have them mailed to you. Your complaint also states that on May 3, 2004, the Town Council passed a new ordinance regarding copying fees which resulted in additional charges on your copy bill. On May 13, 2004, you received a certified letter containing a photocopy of one of the records requested. Enclosed with that photocopy was a bill for \$4.77, set out as follows: Copy Order Charge: \$.25, Copy Order Charge \$.10; Postage Charge \$4.42. On May 17, 2004, you called and left a message for Randy Williams, the Town's attorney regarding this bill. After receiving no response from the Town's attorney, you filed your formal complaint with this Office. This Office then forwarded your complaint to Ron Koehler and asked that he provide a copy of the fee schedule and citation to any statutes which authorize the fee charged in this matter. No response from Mr. Koehler was forthcoming.

ANALYSIS

The public policy of the APRA states that “(p)roviding person 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 Town is clearly a public agency for the purposes of the APRA. Ind. Code 5-14-3-2.

Any person has the right to inspect and copy the public records of the Town 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). The general rule, therefore, is that a public agency is required to permit inspection and copying of public records under the APRA unless there is a valid statutory exception to disclosure.

Indiana Code section 5-14-3-8 governs fees for copies of documents. For state agencies, as defined at Indiana Code section 4-13-1-1¹, the copy fee is established by the Indiana Department of Administration, and this fee “may not exceed the average cost of copying records by state agencies or ten cents (\$.10) per page, whichever is greater.” Ind. Code 5-14-3-4(c). For other public agencies, such as towns, that are not considered state agencies, the copy fee is to be established as follows:

“(t)he fiscal body (as defined in IC 36-1-2-6)² of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification, copying or facsimile transmission of documents. *The fee may not exceed the actual cost of certifying, copying or facsimile transmission of the document by the agency and the fee must be uniform throughout the public agency and uniform to all purchasers.*” Ind. Code 5-14-3-8(d). [Emphasis added.]

The Indiana General Assembly amended this provision during the 1999 Session and defined “actual cost” as

“the cost of paper and the per-page cost for use of copying of facsimile equipment and does not include labor costs or overhead costs.” Ind. Code 5-14-3-8(d).

As this Office stated in Formal Advisory Opinion 99-FC-3, “(w)hile the law does not set a minimum or maximum amount for a per-page copy fee, it is not likely that the cost of a piece of paper plus the per-page cost of the use of a copying machine will approach \$0.50 per page.” We have received no response from the Town regarding the actual cost of photocopying or the fee schedule and ordinance setting out copying cost and we find that it is not likely that the cost of a piece of paper plus the cost per-page of

¹ “State agency” means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative department of state government. The term “state agency” does not include the judicial or legislative departments of state government, nor does that terms include a state educational institution as defined in IC 20-12-.05-1. Ind. Code 4-13-1-1(b).

² “Fiscal body” means a county council, for a county not having a consolidated city or governing body or budget approval body, for any other political subdivision. Ind. Code 36-1-2-6.

use of the copying machine will approach \$.25. This is supported by the fact that the Town charged \$.10 per page for copying some of the pages requested.

As to the costs charged for postage, it is our opinion that if these records are public records of the Town, then the Town may only charge fees that are authorized under the APRA. As stated in Formal Advisory Opinion 03-FC-28, “(a)lthough there is nothing in the APRA that deals with the cost of mailing public records, it is our opinion that so long as a public agency charges only the actual cost of that mailing, the policy and the spirit of the APRA are met.” However, when an individual requesting records asks to exercise his or her rights set forth in Indiana Code section 5-14-3-3(a) by going to the agency’s office to personally pick up those records during normal business hours, mailing the copies and charging postage fees for mailing is contrary to the spirit of the APRA.

For these reasons, it is my opinion that charging \$.25 per copy and charging a fee for postage is in violation of the Access to Public Records Act.

CONCLUSION

It is my opinion that the Town of Dayton violated the Access to Public Records Act, that the Town may only charge the copying fees provided under Indiana Code section 5-14-3-8(d), and that the Town may not charge postage fees when the person requesting records asks to come in to the office to pick up the requested copies during regular business hours.

Sincerely,

Karen Davis
Public Access Counselor

Enclosure

cc: Ron Koehler, w/o enclosure