

June 21, 2004

Mr. John Emry
62 West Jefferson Street
Franklin, Indiana 46131

*Re: Formal Complaint 04-FC-99; Alleged Denial of Access to Public Records
by the Vigo County Sheriff's Department*

Dear Mr. Emry:

This is in response to your formal complaint alleging that the Vigo County Sheriff's Department (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3), when it charged you a fee for copies of public records that you allege is in excess of the fee permitted by state statute. A copy of the Department's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the fee requested by the Department is in excess of the amount authorized by the APRA.

BACKGROUND

On May 24, 2004, you submitted a written request for records to the Department. Your request accompanied a written authorization for release of medical records prepared by your client, and with your request you sought a copy of your client's medical records and inmate file which you allege are maintained by the Department. Your request was limited to a period beginning on January 1, 2004, and for the year 2004. You do not provide a copy of any written response to that request, and it appears none was provided. Rather, you state that you received a telephone call from the Department on June 7, 2004, at which point you were told that there were 28 pages of responsive records and that the cost for copying them would be one dollar (\$1.00) per page for a total charge of \$28.00. When you objected to the copy charge as excessive, you were told that the fee would stand. This complaint followed.¹

The Department submitted its response to your complaint on June 17, 2004. That response accompanied a memorandum from the Vigo County Auditor dated February 23, 2000, purporting to set forth the terms of a resolution by the Vigo County Council establishing a copy fee schedule for the county. That resolution accurately incorporated the statutory provisions of the APRA regarding fees that can be charged by local public agencies, and established a fee of five cents (\$.05) per page for standard paper copies on records that are not otherwise covered at a different fee established by any other statute.

¹ Your complaint is limited to the copy charge being in excess of the amount permitted under the APRA. You do not complain that the Department's response was not timely or that it was not in writing. *See* IC 5-14-3-9(b), 9(c).

The Department separately writes that it has “always charged \$1.00 for all offense reports ... and \$3.00 for all accidents requested.”

ANALYSIS

Indiana Code 5-14-3-8(d) permits local public agencies to charge a fee for copies of public records, and to set that fee in a fee schedule adopted by the fiscal body or by the public agency’s governing body. However, the fee may not include labor or overhead, and may not exceed the actual cost of the copy. IC 5-14-3-8(d). “Actual cost” is expressly defined as meaning “the cost of paper and the per-page cost for use of copying ... equipment.” IC 5-14-3-8(d). Notwithstanding these provisions, a public agency may collect other fees authorized or set by statute or as ordered by a court. IC 5-14-3-8(f).

No complaint is made and I offer no opinion here regarding the per-page cost as supported by the fee schedule provided by the Department. That said, it appears that the Department is not complying with that ordinance and, in any event, is charging a fee for responsive records that is in excess of the fee permitted by the APRA. Your request sought medical records and your client’s inmate file. The APRA requires that these records must be produced at a uniform fee set by the county’s fee schedule, and that fee may not exceed the actual cost of the copy unless otherwise set in statute. The Department does not allege or otherwise establish that any records you requested fall within any other statutory fee provisions. Unless the Department can establish that the records you are seeking fall within another statutory fee provision, the Department may not charge you more than a nickel a page for copies of the records that are responsive to your request. The Department’s request that you pay one dollar (\$1.00) a page for the records you requested violates the APRA.

CONCLUSION

For the reasons set forth above, I find that the fee requested by the Department is in excess of the amount authorized by the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Vicki S. Allen