



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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December 7, 2005

Sandra L. Frazier
400 S. Jasper St.
Gary, IN 46403

Re: Formal Complaint 05-FC-234; Alleged Violation of the Access to Public Records Act by the School City of East Chicago

Dear Ms. Frazier:

This is in response to your formal complaint alleging that School City of East Chicago (“School”) violated the Access to Public Records Act (“APRA”) by charging you \$0.50 per page to copy public records. I find that the School City of East Chicago violated the Access to Public Records Act by charging an unauthorized copy fee.

BACKGROUND

On November 14, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-234. You stated that you requested a copy of your personnel file from the School. You were told that the copy fee is \$0.50 per page. You were further told that part of the copy fee “went toward the staff’s copy time.” You then asked to see a fee schedule; however, the School could not provide you with one.

A copy of your complaint was forwarded to the School. Ms. Elaine Martinez, Director of Human Resources, responded to your formal complaint on behalf of the School by letter dated November 21, 2005. Ms. Martinez stated that the \$0.25¹ copy fee that the School charged was not in compliance with the Indiana Code. She asserted that she is working toward developing an appropriate fee schedule. She also indicated that the School will provide you with the requested copies free of charge.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency’s regular business hours, unless a record is excepted from disclosure under applicable

¹ There is some discrepancy in the \$0.50 copy fee that you alleged the School was charging and the \$0.25 per page copy fee that Ms. Martinez referred to. However, as the School has acknowledged that its copy fee is not in accordance with the law it is not necessary to address this discrepancy in depth.

law. IC 5-14-3-3(a). Under the APRA, a public agency may charge a fee to copy a record. IC 5-14-3-8. For local agencies, the copy fee for documents shall be set by the fiscal body (as defined by IC 36-1-2-6) of the public agency, or the governing body if there is no fiscal body, and may not exceed the “actual cost” of the copy. “Actual cost” was clearly defined by the Indiana General Assembly in 1999 as the “cost of the paper and the per-page cost for use of the copying or facsimile equipment, and does not include labor costs or overhead costs.” IC 5-14-3-8(d).

The School has acknowledged that its copy fee is not in accordance with the APRA. You alleged, and the School did not dispute, that the School informed you that the cost of copies included labor costs. The School violated the APRA when it included labor costs in the setting of its copy fee.

Additionally, Ms. Martinez has asserted that she will work on developing an appropriate fee schedule immediately. The School should note that the fee schedule must be set by the fiscal body for the School as defined by IC 36-1-2-6, or if there is no fiscal body, the governing body shall set the fee schedule. IC 5-14-3-8(d). In this instance, IC 36-1-2-6 does not establish a fiscal body for the School. Therefore, the school board, as the governing body for the School, must set the fee schedule for the School.

CONCLUSION

For the foregoing reasons, I find that the School City of East Chicago violated the Access to Public Records Act when it attempted to charge you a copy fee that was not set in accordance with the requirements of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Elaine Martinez