

April 4, 2005

Tanya S. Hiatt
305 N. Sycamore Street
Gaston, IN 47342

Re: Formal Complaint 05-FC-49; Alleged Violation of the Access to Public Records Act by the Gaston Police Department

Dear Ms. Hiatt:

This is in response to your formal complaint alleging that the Gaston Police Department (“Department”) violated the Access to Public Records Act by failing to provide daily log sheets and charging you an excessive fee for a record that you did not request. I find that the Gaston Police Department violated the Access to Public Records Act.

BACKGROUND

On February 24, 2005, you requested copies of daily log sheets for all police officers and the town marshal for the months of January 2005, February 2005 and September 2004. On February 25, 2005, the Department mailed a written response to you stating that you would receive “an incident report for \$5 and a \$.10 per copy charge for each copy that you requested.”

You filed your formal complaint on March 4, 2005. You complain that you did not request a copy of any incident report, and should not be charged \$5 for an incident report in any case. I sent a copy of your complaint to the Department. Town Marshal James Oliver submitted a written response, which I enclose for your reference. In his response, he states that he would not charge you for an incident report because you did not request one, but the daily log sheets would be available for \$.10 per copy.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency’s regular business hours, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). An agency may charge for supplying copies. However, public

agencies that are not state agencies are required to assess a charge for copying only in accordance with a fee schedule set by the fiscal body in an amount not to exceed the “actual cost” of copying. IC 5-14-3-8(d). “Actual cost” is the cost of paper and the per-page cost for the use of the copying equipment. IC 5-14-3-8(d). An agency may charge a fee for copying that is specified in statute. IC 5-14-3-8(f).

Law enforcement agencies are required to maintain a daily log or record that lists suspected crimes, accidents, or complaints, and certain information is required to appear on the log. IC 5-14-3-5(c). This is the record that you requested for January and February 2005 and September, 2004. For some reason, the response of the Department was to prepare a copy of an incident report, for a \$5 copying charge. Presumably, the other copies referred to in the response were of the daily logs, at \$.10 per copy. It was not appropriate for the Department to charge you a fee for a record that you did not request, and the Department may not charge more than the actual cost of copying a record. It would appear that \$5 for an incident report exceeds the actual cost of copying. Also, no statute specifies a copying charge for an incident report. Therefore, I find that the Department violated the APRA when it stated that it would fulfill your request by giving you a record that you did not request and demanding an excessive copying charge.

Marshal Oliver refers to a Gaston town ordinance for copying fees. If the ordinance specifies \$.10 per page for copies, and that fee is the “actual cost” of copying, the Department may charge you this fee for copying the daily log reports. I note that Marshal Oliver called me to discuss your complaint, and he assured me that he would give you only the daily logs that you had requested, for \$.10 per page. In spite of his assurances, I must find that his February 25 response to you was not consistent with the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the Gaston Police Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Marshal James Oliver