



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 9, 2009

Mr. Travis Scott
DOC # 136189
P.O. Box A
New Castle, IN 47362

Re: Formal Complaint 09-FC-231; Alleged Violation of the Access to Public Records Act by the St. Joseph County Police Department

Dear Mr. Scott:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Police Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, when it charged you an excessive copy fee.

BACKGROUND

In your complaint, you allege that you contacted the Department and expressed your interest in purchasing copies of "specific book-in photos." You further allege that the Department notified you that copies of the photographs would cost five dollars (\$5.00) each. You also say that you do not think you should have to provide the requested person's social security number because doing so would make it "extremely difficult to further [your] request." Rather, you believe a person's name and date of birth should be sufficient.

My office forwarded a copy of your complaint to the Department. The Department's response from its legal deputy, A. Howard Williams, is enclosed for your review. Dep. Williams acknowledges that the Department received your request for approximately fourteen book-in photos with no identifier other than a name. Sergeant Mary Potter responded to your request via letter advising you that there was a five dollar (\$5.00) per photo charge and that she would need the person's name, date of birth and/or social security number.

Dep. Williams states that you were never denied the right to inspect copies of book-in photos. He notes that the St. Joseph County Jail books over 15,000 arrestees per year and many have the same or similar name, so distinguishing information is essential for locating information based on a particular arrestee. He argues that the APRA "requires public access to specifically identifiable records," and that your request gave no

identification other than a name with two possible spellings: “Belantine” and “Ballentine.”

With regard to the copy fees, Dep. Williams acknowledges that there was a “conflict between the Sheriff’s Office and the County Council governing law for copy charges.” He notes the APRA’s provision of a ten cents (\$.10) per page copy fee for non-color copies and twenty-five cents (\$.25) per page fee for color copies. Dep. Williams states that he has “advised the Records Division that the state statute controlling copy costs supersedes the desire of the County Council to generate revenue.”

Dep. Williams states that you will be allowed to inspect specifically identifiable public records without expense and, if you should still desire copies of the records, the charges will not exceed those provided by the APRA.

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.” I.C. § 5-14-3-1. The Department does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The burden of proof for nondisclosure of a public record is on the public agency that would deny access to the record. I.C. § 5-14-3-1.

Under the Access to Public Records Act (“APRA”) a public agency may charge a fee for providing copies of public records. *See generally* IC § 5-14-3-8.¹ For a public agency that is not a state agency, the fiscal body of the public agency (or the governing body if there is no fiscal body) shall establish a fee schedule for the certification,

¹ Section 8 of the APRA provides the following:

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. The fee for certification of documents may not exceed five dollars (\$5) per document. The fee for copying documents may not exceed the greater of:

(1) ten cents (\$.10) per page for copies that are not color copies or twenty-five cents (\$.25) per page for color copies; or

(2) the actual cost to the agency of copying the document.

As used in this subsection, "actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

I.C. § 5-14-3-8.

copying, or facsimile machine transmission of documents. I.C. § 5-14-3-8(d). However, 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. *Id.* “Actual cost” means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. *Id.*

Based on these standards, it is my opinion that the Department violated the APRA when it requested five dollars (\$5.00) for copies of each photograph you requested. As Dep. Williams has stated, the APRA authorizes the Department to charge the actual cost of copying your records and may “require that the payment for copying costs be made in advance.” I.C. § 5-14-3-8(e)(2). Dep. Williams acknowledges the error and I take him at his word that the Department will comply with these standards in the future.

With regard to your allegation that the Department improperly denied you records by requiring you to submit social security numbers with your request, Dep. Williams notes that the Department can locate the responsive documents if you provide the name and date of birth of the subject(s). Because you acknowledge in your complaint that the subject’s “name and D.O.B. (date of birth) should be sufficient” to fulfill a request, I trust this issue is resolved.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated the APRA by charging you an excessive copy fee.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Dep. A. Howard Williams, St. Joseph County Police Department