



# STATE OF INDIANA

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December 4, 2009

Mr. Marcus D. Harden  
0187 Lincoln Quad  
Terre Haute, IN 47809

*Re: Formal Complaint 09-FC-256; Alleged Violation of the Access to Public Records Act by the City of Gary*

Dear Mr. Harden:

This advisory opinion is in response to your formal complaint alleging the City of Gary ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, my opinion is that the City violated the APRA by charging you an excessive copy fee.

## BACKGROUND

In your complaint, you allege that the City violated the APRA by charging you an excessive fee of one dollar (\$1) per page for copies of public records.

My office forwarded a copy of your complaint to the City. City Attorney Carl Jones' response is enclosed for your review. Mr. Jones maintains that the City's fee is permissible pursuant to Ind. Code § 33-37-5-1, which provides in part, "the clerk shall collect a fee of one dollar (\$1) per legal size or letter size page, including a page only partially covered in writing."

## 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. Any person has the right to inspect and copy the public records of a public agency 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 City 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 City during regular business hours unless the records fall within one of the APRA's exceptions to disclosure. I.C. § 5-14-3-3(a).

The APRA provides that public agencies may charge a copying fee. *See generally* I.C. § 5-14-3-8. For a public agency that is not a state agency, the fiscal body (as defined in Indiana Code 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, copying, or facsimile machine transmission of documents. I.C. § 5-14-3-8(d). The fee may not exceed the actual cost of certifying, copying, or facsimile transmission of the document. *Id.* The "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.*

The City cites to Ind. Code § 33-37-5-1 for its authority to charge \$1 per page for copies. However, Title 33 applies to courts and court officers, and Article 37 of Title 33 applies to proceedings in various courts throughout the State. Thus, the citation does not appear to apply to the City. If the City has no other statutory authority for charging the \$1 per page fee, it is my opinion that the City violated the APRA by charging you \$1 per page.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the City violated the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Carl Jones, City of Gary