



STATE OF INDIANA

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July 7, 2011

Ms. Mary Perren
Pulaski County Press, Inc.
114 W. Main Street
Winamac, IN 46996

Re: Formal Complaint 11-FC-142; Alleged Violation of the Access to Public Records Act by the Starke County Clerk

Dear Ms. Perren:

This advisory opinion is in response to your formal complaint alleging the Starke County Clerk (the "Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Clerk's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Clerk violated the APRA by charging you an excessive fee for transmitting a copy of a file to you via facsimile. The Clerk informed you that the office charges \$2.00 per page for pages sent via facsimile. When you pressed for a basis for that charge, you were told, "The state says we can."

In response to your complaint, the Clerk states that the \$2.00 charge was misquoted to you in the Clerk's response, and that the applicable copy fees will be \$1.00 per page in instead of \$2.00. The Clerk cites to Ind. Code § 33-37-5-1 for the authority to charge \$1.00 per page for facsimiled pages.

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 Clerk 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 Clerk's public records

during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. Normally, a charge of \$1 per page would be excessive for a public agency to charge an individual when the cost of copying cannot exceed the “actual cost of copying.” *Id.* However, the APRA also provides that notwithstanding other provisions within section 8 of the APRA, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. I.C. § 5-14-3-8(f). Thus, where a specific statute other than the APRA provides a public agency with the authority to charge a fee that exceeds the “actual cost,” the public agency may charge the statutory fee without violating the APRA. Under Ind. Code § 33-37-5-1, a court clerk shall collect a fee of one dollar (\$1) per page for legal size or letter size pages, including a page only partially covered with writing. However, that code section also contains a provision stating that it “does not apply to . . . [t]he transmitting of a document by facsimile machine or other electronic device.” I.C. § 33-37-5-1(a)(2). Consequently, it cannot form the basis for the Clerk’s \$1.00 per page fee in this case. If the Clerk had provided you with paper copies of the records, the \$1.00 page would have been justified under Ind. Code § 33-37-5-1, but it appears that it was an excessive fee because the records were ultimately sent via facsimile.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk charged you an excessive fee for transmitting records via facsimile because the \$1.00 per page fee found in Ind. Code § 33-37-5-1 does not apply to records sent via facsimile.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Evelyn Skronski