



STATE OF INDIANA

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August 22, 2011

Mr. Marlan C. Bonds
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaints 11-FC-198; Alleged Violation of the Access to Public Records Act by the Elkhart Superior Court III

Dear Mr. Bonds:

This advisory opinion is in response to your formal complaint alleging the Elkhart Superior Court III ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Wendy Hudson, Clerk of the Elkhart Circuit Court, responded on behalf of the Court. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a written request to the Court for the chronological case summary for Cause No. 20-D03-0610-PC-00011 or the date(s) when the matter was withdrawn without prejudice. You maintain that the Court did not produce any records in response to your request and the only response you received was a request for payment for the copies on July 24, 2011.

In response to your formal complaint, Ms. Hudson provided that the Court received your written request on July 15, 2011 and was able to produce thirty-five (35) pages of records in response. Prior to sending the records, the Court submitted to you an invoice for the fees associated with copying the records, at a cost of \$1 per page, that was required to be paid prior to the records being sent. To date, the Court has not received your payment. After receiving your formal complaint, the Court provided to you the dates that the two cases you requested were withdrawn.

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 Court 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 Court'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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Court responded to your request within the seven-day time period required by the APRA.

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. *See* 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 I.C. § 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. Thus, it is my opinion that the Court has not violated the APRA by charging you the fee of one dollar (\$1) per page for copies of the requested records.

Additionally, a public agency may require a person to pay the copying fee in advance. I.C. 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124.* As such, it is my opinion that the Court did not violate the APRA in response to your request. However, I trust that the information provided by the Court in response to your formal complaint was in satisfaction of your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Wendy Hudson