



STATE OF INDIANA

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May 2, 2012

Mr. Rocky M. Shroyer
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaints 12-FC-99; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court – Criminal Court Four

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Marion County Superior Court – Criminal Court Four (“Clerk”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Scott Hohl, Chief of Staff, responded to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on March 20, 2012, you submitted a written request for records to the “Clerk of the Marion Superior Court.” On March 28, 2012, the Clerk responded to your request and provided that the fee for the records would be \$1.00 per page. You allege that the copying fee charged are in violation of I.C. § 5-14-3-8, as the fee exceeds the average cost of copying records. Further, the \$1.00 is not uniform and consistent to all purchasers, as you have previously obtained records from Marion County Courts (“Court”) for \$.10 per page.

In response to your formal complaint, Mr. Hohl advised that the Clerk is allowed to charge \$1.00 per page for copies of court records pursuant to I.C. § 33-37-5-1. When a request for records is delivered to a Court or the Clerk’s office, the proper procedure is for the request to be forwarded and filed with the Clerk. As to your previous requests, the Court failed to forward the requests to the Clerk and the request was completed by the Court. The Court would only be allowed to charge a fee of \$.10, as permitted under state law. To prevent additional confusing situations from arising, the Clerk is meeting with the Court staff to discuss the proper handling procedures for public records requests to ensure consistency in completing the request.

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.” *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* 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. *See* 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 Clerk responded to your written request within seven (7) days of its receipt. As such, it is my opinion that the Clerk complied with the requirements of section 9 of the APRA in responding to your request.

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. Further, a fee established pursuant to subsection (d) must be uniform throughout the public agency and uniform to all purchasers. *See* IC. § 5-14-3-8(d). A public agency may require a person to pay the copying fee in advance. *See* IC 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 applicable here, your request was made to the “Clerk of the Marion Superior Court.” The Clerk would be allowed to charge you a fee of \$1.00 per page for records pursuant to I.C. § 33-37-5-1. Accordingly, it is my opinion that the Clerk did not violate

the APRA in charging you a fee of \$1.00 per page. I.C. § 5-14-3-8(d) requires that the copying fee be uniform throughout the public agency and to all purchasers. The copies you received from previous public record requests show that various Courts, not the Clerk, charged you a fee of \$.10 per page. As I have nothing before me to indicate that the Clerk has charged a non-uniform fee, it is my opinion that the Clerk has complied with the requirements of I.C. § 5-14-3-4(8)(d) in responding to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk 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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Scott Hohl