



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 31, 2016

Alvin M. Best #850121
Putnamville Correctional Facility
1946 West US Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 16-FC-174; Alleged Violation of the Access to Public Records Act by the Hendricks County Clerk's Office

Dear Mr. Best:

This advisory opinion is in response to your formal complaint alleging the Hendricks County Clerk's Office ("Office") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Ms. Debbie Hoskins. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 25, 2016.

BACKGROUND

Your complaint dated July 25, 2016, alleges the Hendricks County Clerk's Office violated the Access to Public Records Act by charging you for copies of pleadings and certification of records.

On July 7, 2016 you submitted a request for a court certified document stating the alleged date of arson for your case number. The Office acknowledged your request on July 11, 2016 and informed you it had located one page responsive to your request. It also stated, pursuant to IC 33-37-5-1, copies can be made for \$1.00 per page and certification of the document can be done at an additional charge of \$1.00 per page. You were notified that you would receive the requested documents when the office was in receipt of a cashier's check or money order in the amount of \$2.00.

In your formal complaint, you contend Indiana Code § 33-37-5-1 does not apply to defendants and counsel of record and therefore the documents are to be provided to you free of charge.

On July 29, 2016 the Office responded, stating it was unaware of any Indiana law permitting an incarcerated individual to receive certified copies or copies without payment. In addition, the Office is also unaware of a defendant acting Pro Se Attorney of Record being entitled to certified copies at no charge.

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 Indiana Code § 5-14-3-1*. The Hendricks County Clerk’s Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

The APRA provides a public agency shall collect fees specified by statute or ordered by a court (Indiana Code § 5-14-3-8(f)). The legislative body of a county is to adopt a fee schedule of document fees to be collected by the Clerk, and the *per page fee* may not exceed \$1.00. (Indiana Code § 33-37-5-1). As long as the county legislative body has adopted a fee schedule setting the per page copy fee at \$1.00, the Clerk has not violated the APRA by charging this fee. Additionally, your assertion this statute does not apply to defendants and counsel of record is incorrect. There is no indigence exception or pro se waiver to the APRA or Indiana Code § 33-37-5-1.

You contend Indiana Code 33-37-5-1 does not apply to defendants and counsel of record. However, your request is conspicuously marked as a request for a public record and not a request for discovery. I have stated on several occasions this office will not interfere with the judiciary’s exclusive jurisdiction to adjudicate discovery requests under the trial rules. However, you have not made a request for discovery under the trial rules. Therefore, the copy fee was properly assessed.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Hendricks County Clerk’s Office did not violate the Access to Public Records Act

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Debbie Hoskins