
OPINION OF THE PUBLIC ACCESS COUNSELOR

JAMES F. ELLIOTT,
Complainant,

v.

TOWN OF CHESTERFIELD,
Respondent.

Formal Complaint No.
19-FC-67

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Town of Chesterfield violated the Access to Public Records Act.¹ Attorney Tom Beeman filed an answer to the complaint on behalf of the town. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 13, 2019.

¹ Ind. Code § 5-14-3-1 to -10

BACKGROUND

This case involves a dispute about response time and copy fees under the Access to Public Records Act.

Around July 26, 2019, James Elliott (“Complainant”) hand-delivered a request for public records to Chesterfield Town Council President Jack Taylor seeking the following:

A copy of the yearly salaries of each Chesterfield Town Employee receiving payment for work done for the Town.

A copy of any disciplinary actions taken against Officer Grant Stephens in the past, and the outcome of those actions. Also a copy of his date of hire.

A copy of all emails that were generated concerning my alleged “Criminal Trespass” on May 15, 2019[;] all emails that were generated concerning my formal complaint sent to you June 14, 2019[;] and any personal e-mails sent to any employees that discussed me personally, or discussed the incident and the complaint in a personal or confidential manner.

Elliott also sent the request to the town by certified mail. On August 9, 2019, Elliott filed a formal complaint (“Complaint One”) asserting that Chesterfield failed to respond to his request.

On August 13, 2019, Elliott filed a second formal complaint against Chesterfield. In the second complaint (“Complaint Two”), Elliott contends that Chesterfield’s practice of charging a flat fee of \$8.00 for all police reports violates Indiana Code section 5-14-3-8. Elliott sent letters, dated July 30, 2019, to the Chesterfield Police Chief and the Town Council President challenging the town’s fee. Elliott asserts that he

filed his complaint after not receiving a response to the letters.

This office consolidated Elliott's complaints into a single case, notified Chesterfield, and solicited a response. On October 14, 2019, this office received Chesterfield's answer to Elliott's complaints.

First, regarding Complaint One, Chesterfield contends that it compiled all documents and recordings responsive to Elliott's request and mailed them to Elliott under cover a letter dated August 6, 2019. Chesterfield asserts that it made a good faith effort to get the requested records to Elliott, and speculates that he did not receive the records prior to filing Complaint One on August 9, 2019. Moreover, Chesterfield notes that Elliott has not complained about what the town provided, so it assumes he is satisfied.

Second, regarding Complaint Two, Chesterfield disputes Elliott's claim that the town's practice of charging a flat fee of \$8.00 for police reports constitutes a public access violation.

Specifically, Chesterfield argues that the town enacted an ordinance to charge the fee, which is based on the cost of producing copies. The town contends the cost of making copies includes: (1) Officer preparation of the report; (2) Supervisor review and acceptance of the report; (3) An officer's time to search, recall, and print the report, (4) Cost of ink and paper; and (5) Cost to purchase a copier to provide copies.

Chesterfield contends the applicable statute "clearly allows the charge to be based on the actual cost of providing the copy rather than the ten cent per page guideline.

ANALYSIS

1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.5-1.

The Access to Public Records Act (“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.” *Id.* The Town of Chesterfield is a public agency for the purposes of APRA; and thus, subject to the act’s requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the town’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

2. Elliot’s Complaints

As set forth above, Elliott filed two separate formal complaints against Chesterfield, one challenging the timeliness of the town’s response to his request for records and one challenging the copy fee for the town’s police reports.

2.1 Agency Response to Records Request

In Complaint One, Elliott argues that Chesterfield failed to respond to his July 26 request for records by August 9, 2019. The Town contends that it compiled the responsive records and mailed them to Elliot around August 6, 2019. The

town's theory is that Elliott had not yet received the records at the time he filed Complaint One.

It appears the town provided the requested records to Elliott. As a result, this portion of the complaint will not be analyzed further.

2.2 APRA's Fee Provisions

Elliott also challenges Chesterfield's \$8.00 fee for town police reports. The town concedes that it charges this amount in accordance with a local ordinance "whether the report is two pages or fifteen pages." Moreover, the town argues that APRA "clearly allows the charge to be based on the actual cost of providing the copy rather than the .10 cent per page guideline."

APRA's fee provision are governed by Indiana Code section 5-14-3-8. Subsection (d) governs copy fees for public agencies that are not state agencies (e.g., towns). Specifically, subsection (d) provides:

The fiscal body (as defined in IC 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 or copying of documents. The fee for certification of documents may not exceed five dollars (\$5) per document. The fee for copying documents may not exceed the greater of:

- (1) ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) per page for color copies; or
- (2) the actual cost to the agency of copying the document.

Ind. Code § 5-14-3-8(d). Here, Chesterfield argues that APRA allows for the town's flat fee of \$8.00 for copies of police reports because fee reflects the actual cost to the town. As mentioned above, Chesterfield maintains that the cost of making copies includes: (1) Officer preparation of the report; (2) Supervisor review and acceptance of the report; (3) An officer's time to search, recall, and print the report, (4) Cost of ink and paper; and (5) Cost to purchase a copier to provide copies.

APRA defines "actual cost" as:

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. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

Ind. Code § 5-14-3-8(d)(emphasis added).

Labor and overhead costs are specifically excluded from the calculation of actual cost. The price of ink and paper is the cap to actual cost. Even then, given the practical cost of printing, agencies likely come out ahead if capping copies at \$.10 per page. Chesterfield's fees are not justifiable or reasonable.

In reality, the actual cost calculation comes into play only when copying unusually sized pieces of paper and postage costs to remote requesters. There is no need to use the actual cost calculation with standard size copies.

2.3 Remaining Issues

As a final aside, Elliot's second complaint contends that Chesterfield committed a public access violation by failing to respond to his letters complaining about the town's fee for copies of police reports.

APRA governs access to public records. In the absence of a request for records, APRA does not require a response from a public agency.

Regardless, the Town of Chesterfield's practice of charging a flat fee of \$8.00 for all police reports is prohibited by the Access to Public Records Act. This office recommends the town course correct to comply with the law.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Town of Chesterfield's \$8.00 flat fee for police reports violates the fee provisions of the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor