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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JASON R. HAGERTY,  
*Complainant,*

v.

HOWARD COUNTY SHERIFF'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
21-FC-1

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Howard County Sheriff's Office violated the Access to Public Records Act.<sup>1</sup> Captain Matthew Decker filed an answer on behalf of the HSCO. 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 January 11, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over the copy fee charged by the Howard County Sheriff's Office (HCSO) for public records.

On November 16, 2020, Jason Hagerty (Complainant) filed a public records request with the HCSO, seeking the following:

- Any paperwork regarding arrest dates, incarceration dates, and release dates.
- All abstract of judgements and sentencing orders.
- A copy of the probation release letter dated June 19, 2015, faxed from Westville Correctional Facility.
- All work release incarceration dates.
- A copy of all arrest warrants under the above case number [34D01-1310-FA-00862]

On November 24, 2020, the HCSO acknowledged Hagerty's request and informed him of the agency's copy fee of \$0.20 per page.

On January 11, 2021, Hagerty filed a formal complaint with this office alleging the HCSO's copy fee violates the Access to Public Records Act (APRA).

Two days later, the HCSO filed a response to Hagerty's complaint denying any wrongdoing. Specifically, the HCSO contends it complied with the law by acknowledging Hagerty's request, sending a follow up letter informing him the agency collected 28 pages of responsive documents, and informing him that a copy fee of \$5.60 must be sent to the Sheriff's Office before the agency would release the records.

Moreover, the HCSO claims at the time Hagerty filed his complaint that it was simply waiting for him to pay the copy fee before fulfilling the request.

The HCSO did not address the amount of the copy fee.

Hagerty claims he mailed the \$5.60 copy fee in January, but he did not receive the responsive records from the HCSO as promised.

## 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.

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.” Ind. Code § 5-14-3-1. The Howard County Sheriff’s Office (HCSO) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy the HCSO’s public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

## **2. Public records fee schedule**

The crux of this complaint is the amount of the fee that the HCSO charges for copies of public records.

Simply put, the HCSO charges a copy fee for public records that exceeds the amount authorized by APRA.

APRA explicitly caps the amount that most public agencies may charge for black and white copies of regular sized paper records at \$.10 per page:<sup>2</sup>

...The fee for copying documents may not exceed the greater of: (1) ten cents (\$.10) per page for copies that are not color copies...

Ind. Code § 5-14-3-8(d). If the Howard County Council—as the county’s fiscal body—set this fee by ordinance, the ordinance is out of step with statute and should be revised accordingly. On the other hand, if the HCSO is unilaterally charging this amount, the agency should also change its practices to comply with the law.

While ten cents extra does not appear to be a burdensome amount for smaller requests, it can add up quickly with larger inquiries.

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<sup>2</sup> Exceptions may apply for other types of records such as vehicular accident reports, however, that is not the case in this controversy.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Howard County Sheriff's Office should revise its fee schedule for copies of public records consistent with the Access to Public Records Act and this opinion.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt  
Public Access Counselor