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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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SALEM TITLE CORP.,  
*Complainant,*

v.

LAWRENCE COUNTY CLERK'S OFFICE  
*Respondent.*

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Formal Complaint No.  
21-FC-48

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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 the Lawrence County Clerk's Office violated the Access to Public Records Act (APRA).<sup>1</sup> Lawrence County Clerk Billie Tumey filed an answer on behalf of the office. In

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

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 April 15, 2021.

### **BACKGROUND**

In this case we consider whether a policy of the Lawrence County Clerk's Office, which requires a public records requester to pay a \$1.00 per page copy fee for an entire document even if they request only a portion of a record, complies with the Access to Public Records Act (APRA).

On March 31, 2021, an employee of Salem Title Corporation (Complainant) filed an in-person public records request with the Lawrence County Clerk's Office seeking a partial copy of a mortgage foreclosure complaint filed under case number: 47C01-0502-MF-253.

Specifically, STC asserts that the Clerk's office attempted to charge the employee a copy fee of \$72.00 when the employee requested a copy only on single page from the case file. STC also contends that the Clerk's office explained that it had to make a copy of the entire complaint file including all exhibits and could not make a copy of a single page without charging a copy fee for all the stapled pages.

On April 14, 2021, Salem Title Corporation filed a formal complaint alleging the Lawrence County Clerk's Office violated the Access to Public Records Act (APRA). Essentially, STC argues the Clerk's Office denied the employee access to the requested record as a result of the improper copy policy and the associated fee. STC argues its employee should have paid \$1.00 to receive a copy of the single requested page.

On April 22, 2021, Lawrence County Clerk Billie Tumey filed a response to the complaint, which included statements from Tumey and two other employees. The Clerk does not dispute STC's claim about the copy policy. Instead, Clerk Tumey contends that it has been the long-standing policy of her office that case documents are copied as a whole. The Clerk contends this policy was initially implemented following the advice of a previous Lawrence County judge.

The Clerk concludes that neither STC nor its employee were denied access to public records.

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act 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 Lawrence County Clerk's Office is a public agency for purposes of APRA; and therefore, subject to the law's 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 Clerk's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a); -(b).

## **2. Salem Title Corp.'s request**

Although some of the facts are in dispute, STC argues its employee requested a copy of a single page of a 72 page case file and the Lawrence County Clerk's Office attempted to charge a \$72.00 copy fee for the entirety of the file. What is not in dispute is the Clerk's policy of requiring a requester to copy and pay the fee for an entire public record.

It is true that a county clerk is generally required to collect a copy fee of \$1.00 per page for copies of court records. *See* Ind. Code § 33-37-5-1. At the same time, nothing in statute or case law gives an agency the ability to collect a copy fee for a public record on an all-or-nothing basis. There is simply no authority to approach public access this way for any type of public entity whether executive, legislative, or judicial.

Public records can be copied and produced on a piecemeal, per page basis. The law even contemplates separation of portions of material. *See* Ind. Code § 5-14-3-6.5.

Even if documents are stapled together, as the Clerk contends, an agency forcing an upcharge of \$71.00 for a single page of requested document is a barrier to access and will not be ratified by this office.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Lawrence County Clerk's Office must provide Salem Title Corporation with a copy of the partial mortgage foreclosure complaint as requested.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor