



# STATE OF INDIANA

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March 24, 2009

Clay Howard  
DOC #112612  
PO Box A  
New Castle, Indiana 47362

*Re: Formal Complaint 09-FC-68; Alleged Violation of the Access to Public Records Act by the City of Lafayette Police Department*

Dear Mr. Howard:

This advisory opinion is in response to your formal complaints alleging the City of Lafayette Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by charging an excessive copy fee. In my opinion the Department has charged you an excessive fee for copies of records.

## BACKGROUND

You allege that the Department has charged you an excessive copy fee for a copy of records associated with a case investigated by the Department. You include a copy of a letter dated February 12, 2009 sent to you by the Department's Records Division. In the letter, the Department indicated that pursuant to a May 1, 2000 city ordinance, the fee is \$7.00 for a copy of each incident report.

My office sent a copy of the complaint to the Department and invited the Department to respond to the complaint. To date my office has not received a response. I telephoned the Department today and spoke to a clerk in the Records Division. The Clerk confirmed that the Department charges a fee "starting at \$7.00" for each incident report. I located a copy of the ordinance via the City's website and have included a copy for your reference.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public

records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Regarding fees for copies of records of a public agency, the APRA provides the following:

(d) This subsection applies to a public agency that is not a state agency. 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.

As used in this subsection, "actual cost" means 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.

I.C. § 5-14-3-8.

A public agency is allowed by the APRA to charge fees for copying and certification of records. Further, the Indiana Code contains some statutes which address fees for specific records or records maintained by specific agencies. One such statute is I.C. § 9-29-11-1, which sets the fee for copies of motor vehicle accident reports at no less than \$5.00. In the absence of a specific statute establishing fees, the fiscal body of the City may not set a fee above the general fee allowed by I.C. § 5-14-3-8(d). In this case, you have requested copies of records associated with an investigation conducted by the Department. The records are not motor vehicle accident reports, so I.C. § 9-29-11-1 is not applicable. I find no statute allowing the fiscal body to establish a fee for police department incident reports at any more than \$.10 per page or the actual cost of copying the document. Actual cost cannot include labor and overhead. *See* I.C. § 5-14-3-8. In my opinion, the \$7.00 fee established by the Common Council in Ordinance No. 2000-15 violates the APRA. My predecessor addressed similar issues and drew the same conclusion. *See Opinions of the Public Access Counselor 05-FC-103 and 05-FC-264*, available at [www.in.gov/pac](http://www.in.gov/pac).

Regarding your indigence claim, there is no provision in the APRA entitling you to copies of public records at no charge. It is possible in some instances the General Assembly may have provided for fee waivers for copies of certain public records. Further, there may be instances when a court will issue an order of indigence ordering an

incarcerated person to receive copies of certain public records at no charge. In the case of your request to the Department, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge. As such, the Department may charge you a fee which conforms with I.C. § 5-14-3-8 and has been set by the county fiscal body.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Department has violated the APRA by charging excessive fees for copies of records.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Captain Bruce Biggs, City of Lafayette Police Department  
City of Lafayette Common Council