



STATE OF INDIANA

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April 10, 2012

P. Gregory Yeary
DOC 169399
1946 W. U.S. 40
Greencastle, Indiana 46135

Re: Informal Inquiry 12-INF-14; Copy fees

Dear Mr. Yeary:

This is in response to your informal inquiry regarding allowable copy fees that may be charged by a public agency pursuant to the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

BACKGROUND

You have submitted the following inquiry regarding fees charges by a county clerk:

"If a county clerk of court is charging a fee of \$1.00 per page for public records, and I can make copies cheaper, specifically \$.10 per page, can I rely on I.C. § 5-14-3-3(b)(2), to borrow a copy of the records to make copies on my own equipment?"

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 I.C. § 5-14-3-1. Accordingly, any person has the right to inspect and copy a public agency's records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. For public agencies that are not state agencies, the fee for copying documents may not exceed the greater of ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) for color copies; or the actual cost of to the agency of copying the document. *See* I.C. § 5-14-3-8(d). However, the APRA also provides that notwithstanding other provisions within section 8 of the APRA, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. *See* I.C. § 5-14-3-8(f). Thus, where a specific statute other than the APRA provides a public agency with the authority to charge a fee that exceeds the “actual cost,” the public agency may charge the statutory fee without violating the APRA. Pursuant to I.C. § 33-37-5-1, a court clerk shall collect a fee of one dollar (\$1) per page for legal size or letter size pages, including a page only partially covered with writing. The fee collected by the clerk may not exceed one dollar (\$1) per page for the actual copy. *See* I.C. § 33-37-5-1(c).

The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). A public agency shall protect public records from loss, alteration, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). A public agency shall further taken precautions that protect the contents of public records from unauthorized access, unauthorized access by electronic device, or alteration. *See* I.C. § 5-14-3-7(b).

In response to your inquiry, it is my opinion that the County Clerk would be in violation of I.C. § 5-14-3-7(a) if it allowed you to borrow the records of the Clerk in order to allow you to make copies of the records on your own equipment. I am limited in my response to your inquiry by your interpretation of the “borrow”, which I interpret to mean as to allow you to remove the record from the Clerk’s offices. I have enclosed an informal opinion issued by Counselor Kossack addressing similar issues, where I would concur in his analysis and conclusion. *See Informal Opinion of the Public Access Counselor 11-INF-02*. I would note that a public agency may not charge any fee under APRA to inspect a public record or to search for, examine, or review a record to determine whether the record may be disclosed. *See* IC 5-14-3-8(b).

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor