



STATE OF INDIANA

MICHAEL PENCE, Governor

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April 19, 2016

Ms. Sarah Gordon, Esq.
Corporate Counsel
Zillow Group
1301 Second Avenue, Floor 31
Seattle, Washington 98101

Re: Informal Inquiry 16-INF-05; Copy Fees for Bulk Records

Dear Ms. Gordon:

This is in response to your informal inquiry regarding the release of records which include personal information. I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. al.

BACKGROUND

The Zillow Group ("Zillow") seeks to address whether a copy fee charged is appropriate for bulk records. Zillow requested bulk images from the Posey County Recorder ("Recorder"). The recorder responded that bulk image requests were fulfilled by its third-party vendor. Zillow contends it is entitled to the records in the form possessed by the Recorder and the copy fee is set at \$0.07 per page. The Recorder contends the fee is \$0.10 per page.

ANALYSIS

According to the APRA, Ind. Code § 5-14-3-1, Indiana public policy provides 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 § 36-2-7-10.1 governs the release of bulk data to requestors and provides for a maximum charge for the sale of bulk form images at \$.07 a copy. The intent of the bulk data statute is to provide a more cost effective way for bulk users to purchase bulk form public records. In contrast, the Access to Public Records Act caps most documents at \$.10 per page.

To my knowledge, nothing in Indiana Code prohibits the outsourcing of public record maintenance and

is quite widespread throughout the State. In most instances, however, outsourcing lowers costs instead of increasing them. It cuts down on overhead in order that public agencies do not have to bear storage and maintenance costs. In this case, however, the Recorder argues that its actual costs are \$.10 per page due to the third-party vendor arrangement. Actual cost is permitted to be charged under subsection (h) of the bulk data statute

Outsourcing typically reduces variable labor, storage and inventory costs and is a substitute for overhead cost. Pursuant to subsection (h), labor and overhead is not to not to be calculated in the actual cost analysis, however, this is precisely what the Recorder is attempting to do. And instead of increasing efficiency and cost-effectiveness, it appears as if the inverse is true and those costs are being passed on to the end user. The labor and overhead are merely transferred to a third party.

Moreover, the Recorder ascribes a watermark to each image, thereby increasing the cost to produce an image. This watermark is applied pursuant to a local ordinance and is not mandated by statute. This is not a necessary element of 'maintenance' and is superfluous to the original form of the public record.

If a public agency voluntarily chooses to outsource a government function to a third-party, it has the discretion to enter into such an arrangement. But, it may not inflate costs or charge back the fee of overhead when a statute expressly prohibits doing so. It is clear from a plain reading of the statute that the intent of the General Assembly was to lower the costs associated with the transmission of bulk data, not to encourage raising them by outsourcing labor and overhead.

For the foregoing reasons it is the Opinion of the Public Access Counselor that the Posey County Recorder may only charge \$.07 an image for the transmission of bulk data.

Best regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Brandon W. Shirley, Esq.