

January 24, 2008

Sherry Chapo
10214 West Deputy Pike
Deputy, Indiana 47230

Re: Your informal inquiry regarding the Jefferson County Plan Commission

Dear Ms. Chapo:

This is in response to your informal inquiry dated December 10, 2007. You initially sent the complaint to this office as a formal complaint. It was converted into an informal inquiry because it was untimely under Ind. Code §5-14-5-7. I apologize for the delay in the response. Upon taking office July 1, 2007, I found a backlog of informal inquiries. I am currently endeavoring to address the backlog and issue opinions in response to the inquiries, pursuant to I.C. §5-14-4-10(5).

BACKGROUND

You originally filed a formal complaint on December 10, 2007. Because it was considered untimely, your complaint was converted into an informal inquiry. You allege the Jefferson County Plan Commission (“Commission”) violated the Access to Public Records Act (“APRA”) (Ind.Code 5-14-3) by charging you excessive copy fees. You allege that you purchased a copy of a 132-page ordinance on July 6, 2005, and the Commission charged you \$30. You further allege that the Commission charged you \$30 for another 84-page ordinance. You allege the fee structure is excessive under the APRA.

The Commission responded to your complaint by letter from attorney Kristen VandeWater dated January 7, 2008. Ms. VandeWater addresses allegations regarding records obtained by her office for you during the discovery process in a civil litigation matter. That matter is outside the purview of this office, and it is my understanding your complaint centers only around the \$30 fee charged by the Commission for copies of the two ordinances you purchased. Regarding the \$30 fee, Ms. VandeWater contends that I.C. §5-14-3-8(a) only addresses fees charged by state agencies. Ms. VandeWater contends that the \$30 per ordinance fee was set by the Jefferson County Commissioners and is contained as part of the Jefferson County Zoning Ordinance. Further, she contends that the fees are imposed uniformly on all purchasers.

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

This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in I.C. §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.

A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.
I.C. §5-14-3-8(d).

Here, the Commission, per ordinance passed by the County Commissioners, charges \$30 per ordinance for copying of a zoning ordinance, regardless of the number of pages. The APRA provides that the fee for copying documents may not exceed the greater of ten cents per page or the actual cost to the agency of copying the document. I.C. §5-14-3-8(d).

Further, an agency may not charge a fee to search for, examine, or review a record to determine whether the record may be disclosed. I.C. §5-14-3-8(b). Since the Commission cannot charge costs associated with searching for the ordinance, the actual cost would be the per page costs relating to copying. Since zoning ordinances each have different numbers of pages, it is my opinion the fiscal body cannot establish a flat fee for copies of each ordinance. Therefore, it is my opinion that \$30 for an 84 page document is excessive, unless the agency can prove its actual cost to provide the copy is \$30.

As a final note, I.C. §36-1-2-6 establishes the County Council as the fiscal body of the county, which is responsible for establishing a fee schedule under the APRA. I.C. §5-14-3-8(d).

CONCLUSION

For the foregoing reasons, I find that the Commission has violated the APRA by charging an excessive fee for copies of zoning ordinances.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Kristen Vandewater