

May 21, 1999

Mr. Robert E. Peterson
PETERSON & WAGGONER
120 East Eighth Street
Rochester, Indiana 46975-1508

Re: PAC Opinion 99-4: Application of Indiana Code 5-14-3-8 to the public records of a county hospital.

Dear Mr. Peterson:

This is in response to your letter of May 6, 1999, requesting an advisory opinion on behalf of your client, Woodlawn Hospital, a county hospital owned and operated as a entity of Fulton County, Indiana government. Specifically, you have asked what statute applies to the provision of copies of public records maintained by the Hospital, other than health records, and whether the Hospital may charge the \$0.25 per page copying fee provided under Indiana Code section 16-39-9-3 for copies of health records. It is my opinion that a county hospital may only charge a copy fee that has been adopted in accordance with Indiana Code 5-14-3-8, the same statute that applies to other non-state public agencies, unless a specific copy fee has been set by statute for a particular public record.

ANALYSIS

The Access to Public Records Act applies to public agencies, as that term is defined at Indiana Code section 5-14-3-2, which includes, among other entities, any county board, such as the Woodlawn Hospital Board described in your letter. A public record, for the purposes of the Act, includes:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code section 5-14-3-8 governs fees for copies of documents. For state agencies, as defined at Indiana Code section 4-13-1-1¹, the copy fee is established by the Indiana Department of Administration and this fee "may not exceed the average cost of copying records by state agencies or ten cents (\$0.10) per page, whichever is greater." IND. CODE \S 5-14-3-4(c).

For other public agencies, such as county hospital boards, that are not considered state agencies, the copy fee is to be established as follows:

The fiscal body (as defined in IC 36-1-2-6²) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification, copying or facsimile transmission of documents. The fee may not exceed the actual cost of certifying, copying or facsimile transmission of the document by the agency and the fee must be uniform throughout the public agency and uniform to all purchasers.

Indiana Code α 5-14-3-8(d). The Indiana General Assembly amended this provision during the 1999 Session and, effective July 1, 1999, a new sentence has been added defining the term "actual cost:"

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.

Senate Enrolled Act 321 (1999), α 1. The Woodlawn Hospital Board or the Fulton County Council, whichever serves as the fiscal body for the Hospital, must adopt a fee schedule that conforms to Indiana Code section 5-14-3-8(d) for copies of public records that are disclosable under the Access to Public Records Act.

As you pointed out in your letter, there are exceptions to Indiana Code section 5-14-3-8 that permit state and local public agencies to charge fees different than those determined under subsections (c) and (d). A "public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or ordered by a court." IND. CODE α 5-14-3-8(f). One such statutory fee has been established for health records. Indiana Code section 16-39-9-3 states that providers of health care services may charge a per-page copying fee of \$0.25 for copies of health records. IND. CODE α 16-39-9-3(a).

Woodlawn Hospital is a "provider" for the purposes of Indiana Code section 16-39-9-3 and may charge the per-page copying fee, as well as the retrieval fees and postage costs enumerated in that statute for health records. For the purposes of any other records maintained by the Hospital that are disclosable public records³, the Hospital Board or the County Council must adopt a per-page copying fee that conforms to Indiana Code section 5-14-3-8(d).

CONCLUSION

It is my opinion that the fiscal body for a county hospital must adopt a fee schedule that conforms to Indiana Code section 5-14-3-8(d) for copies of documents except for those documents, such as

health records, for which there are statutes that set specific fees.

Sincerely,

Anne Mullin O'Connor

¹State agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government. The term "state agency" does not include the judicial or legislative departments of state government, nor does that term include a state educational institution as defined in IC 20-12-0.5-1. Ind. Code $\text{\textasciixchar"27}$ 4-13-1-1(b).

²"Fiscal body" means a county council, for a county not having a consolidated city or governing body or budget approval body, for any other political subdivision. Ind. Code $\text{\textasciixchar"27}$ 36-1-2-6.

³Indiana Code article 16-39 applies to all health records maintained by a provider, except records regarding communicable diseases, which are governed by Indiana Code section 16-41-8-1 or records regarding alcohol and other drug abuse patient records, which are governed by 42 Code of Federal Regulations. Ind. Code $\text{\textasciixchar"27}$ 16-39-1-1(b). "Health records", for purposes of Indiana Code article 16-39, means written or printed information possessed by a provider concerning any diagnosis, treatment, or prognosis of the patient and includes mental health records and alcohol and drug abuse records. Ind. Code $\text{\textasciixchar"27}$ 16-18-2-168. A "provider" includes a hospital or facility licensed under IC 16-21-2 or IC 12-25 or described in IC 12-24-1 or IC 12-29. Ind. Code $\text{\textasciixchar"27}$ 16-18-2-295.