

October 12, 2004

Mr. Marc L. Griffin  
Attorney at Law  
821 N. Madison Ave.  
Greenwood, IN 46142-4128

*Re: Formal Complaint 04-FC-163; Alleged Violation of the Access to Public Records Act by the Switzerland County Assessor's Office*

Dear Mr. Griffin:

This is in response to the formal complaint you filed with this office on behalf of your client, Mr. Greg Shoulders. The complaint alleges that the Switzerland County Assessor's Office ("Assessor") violated the Access to Public Records Act, I.C. §5-14-3, by charging you \$1.00 per copy, pursuant to a local ordinance. For the following reasons, I find that the Switzerland County Assessor's Office violated the Access to Public Records Act when it charged an excessive fee for copies of its records.

#### BACKGROUND

You allege that on August 26, 2004, Mr. Shoulders requested copies of property record cards from the Switzerland County Assessor's Office. Mr. Shoulders was told that pursuant to local resolution, the copy fee would be \$1.00 per page. After learning of the copy fee, Mr. Shoulders declined to have the copies made.

You then filed a formal complaint with this office. I received your complaint on September 10, 2004, and I forwarded a copy of it to the Auditor's Office. Joan Armstrong, Switzerland County Assessor, responded. Ms. Armstrong believes that Mr. Shoulders was not denied access to the property record cards because he was allowed to look at them and therefore could have obtained the information without needing to pay for a copy. She further states that the copy fee charged to Mr. Shoulders was the one required by local resolution Number 04-07-03, which was adopted by the Switzerland County Board of Commissioners. Ms. Armstrong has provided a copy of that local resolution.

## ANALYSIS

The Access to Public Records Act ("APRA") provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, unless that record is confidential or otherwise nondisclosable under I.C. §5-14-3-4. I.C. §5-14-3-3(a). (Emphasis added.) The Switzerland County Assessor's Office is a public agency for purposes of the APRA. I.C. §5-14-3-2. Therefore, you have the right to not only review the property cards, but to request a copy of those records.

Copy fee standards for public records are set forth in I.C. §5-14-3-8. For local governments, the copy fee for documents shall be set by the fiscal body for the unit of government and shall reflect the "actual cost" of the copy. "Actual cost" is defined as the "cost of the paper and the per-page cost for use of the copying or facsimile equipment, and does not include labor costs or overhead costs." I. C. §5-14-3-8(d).

In a prior advisory opinion, this office addressed a situation in which a local ordinance was alleged to exceed the standards set forth by I.C. §5-14-3-8(d). *Opinion of the Public Access Counselor* 99-FC-3. In that opinion, the Johnson County Surveyor's Office charged \$.50 per page for copies pursuant to the county ordinance which set the copy fees for county offices. In that opinion, this office stated that "(w)hile the law does not set a minimum or maximum amount for a per-page copy fee, it is not likely that the cost of a piece of paper plus the per-page cost of the use of a copying machine will approach \$.50 per page. For this reason, the current ordinance governing copy fees in Johnson County appears to exceed the standards for 'actual cost' under Indiana Code section 5-14-3-8(d)." In the present case, the Switzerland County local ordinance sets the cost of a Xerox copy at \$1.00 per page.<sup>1</sup> Certainly, if \$.50 per page for a photocopy exceeds the standards set forth in I.C. §5-14-3-8(d), \$1.00 also exceeds the "actual cost" standard, even accounting for the passage of five (5) years from the issuance of 99-FC-3.

## CONCLUSION

For the foregoing reasons, I find that the copy fee charged by the Switzerland County Assessor, which was based on the local resolution adopted by the Switzerland County Board of Commissioners, exceeds the standard for actual cost as set out in I.C. §5-14-3-8(d).

Sincerely,

Karen Davis  
Public Access Counselor

cc: Joan Armstrong

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<sup>1</sup> The local resolution also set the cost of copies of aerial maps at \$5.00 per page