

November 1, 2004

Mr. Richard Corbin, #975153
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 04-FC-182; Alleged Violation of the Access to Public Record Act by the Indiana State Police Department

Dear Mr. Corbin:

This is in response to your formal complaint alleging that the Indiana State Police Department ("Department") violated the Access to Public Records Act ("APRA") by denying you access to public records by requiring you pay a \$3.00 accident report fee. For the following reasons, I find that the Indiana State Police Department did not violate the Access to Public Records Act.

BACKGROUND

On September 15, 2004, you submitted to the Indiana State Police Department a request for access to public records. Specifically, you asked for a copy of the accident report for a traffic accident involving Nichole Harris that occurred on October 30 or 31, 1996 at State Road 67 in which two individuals with the last name of Wingart were killed. On September 17th, Anthony Sommer, Staff Attorney for the Indiana State Police Department, responded to your request. Mr. Sommer advised you that pursuant to Ind. Code 9-29-11-1, a statutory fee of \$3.00 was required for the report you requested. He advised you that you could submit your request and a check for the \$3.00 to the Indiana State Police Department.

On September 30th, you sent to the Superintendent of the Indiana State Police Department an appeal asking the Department to waive the \$3.00 statutory fee. That same day, you also filed a formal complaint with the Office of the Public Access Counselor, which we received on October 1, 2004. I forwarded a copy of your complaint to the

Department, and Mr. Sommer responded on its behalf. I have enclosed a copy of Mr. Sommer's response for your reference.

In his response to your formal complaint, Mr. Sommer states that the Department complied with IC 9-26-2-3, which requires that a report filed by a law enforcement officer that documents a motor vehicle crash must be made available to the public for inspection and copying under IC 5-14-3. Mr. Sommer also states that IC 9-26-11-1 authorizes a law enforcement agency to charge a fee that is fixed by an ordinance of the agency's fiscal body in an amount not less than three dollars (\$3.00). He further states that the fiscal body for the Indiana State Police Department is the General Assembly, and that the General Assembly has not established any fee for copies of crash reports for the Department, other than "an amount not less than three dollars." The Department's practice is to not waive the fee established for copies of accident reports filed by law enforcement officers.

ANALYSIS

Pursuant to IC 5-14-3-3(a), any person may inspect and copy the public records of any public agency, unless those records are confidential or otherwise nondisclosable. The Indiana State Police Department is a public agency for purposes of the APRA. IC 5-14-3-2. Pursuant to IC 5-14-3-8(f), 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.

Indiana Code §9-29-11-1 governs fees for accident reports, which are required to be made available for inspection and copying pursuant to IC 9-26-2-3. Specifically, IC 9-29-11-1 states that "the main department, office, agency, or other person under whose supervision a law enforcement officer carries out the law enforcement officer duties may charge a fee that is fixed by ordinance of the fiscal body in an amount not less than three dollars (\$3.00) for each report." See also *Opinion of the Public Access Counselor 99-FC-7*. Mr. Sommer states that the General Assembly is the fiscal body of the Department, and the General Assembly has set no fee schedule other than "an amount not less than three dollars." Accordingly, the \$3.00 fee charged by the Department for copies of accident reports, as set out in IC 9-29-11-1, is not a violation of the Access to Public Records Act.

You asked that the Department waive the \$3.00 statutory fee, and the Department refused to do so. The APRA does not expressly provide that an agency must waive the copy fee. Neither does the Access to Public Records Act expressly prohibit the provision of copies at no charge. The Department uniformly requires a fee of three dollars (\$3.00) for accident reports. As long as that policy is enforced uniformly, the Department did not violate the Access to Public Records Act by refusing to waive the copy fee for the accident report you requested.

CONCLUSION

For the foregoing reasons, I find that the Indiana State Police Department did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Anthony Sommer