

October 2, 2006

*Sent Via Facsimile*

Rod B. Crossland  
201 S. Walnut  
Muncie, IN 47305

*Re: Formal Complaint 06-FC-154; Alleged Violation of the Access to Public Records Act by the City of Muncie*

Dear Mr. Crossland:

This is in response to your formal complaint alleging that City of Muncie Building Department ("City") violated the Access to Public Records Act by denying you records that you specifically requested, and by charging an excessive copying fee. I find that the City may not have understood your request but complied once you brought the matter to the City's attention, and the City charged you an excessive fee for copies.

#### BACKGROUND

You allege in your formal complaint that the City denied you records when it failed to provide "full records" on the properties at 201 and 205 S. Walnut. You do not pinpoint specifically what records the City omitted, but charge that upon reviewing the packet of material provided by the City, the City had provided only 3 or 4 pages of material that you had not already provided the City on the properties. You state that there may have been two different versions of your records request and that the City Attorney may have received the shorter of the two versions, but the longer version was hand-delivered to the City on July 7. You enclosed both versions of the requests. The longer version that you read to the City on July 7 asked for "full records held by the building commissioner's office on 201 and 205 S. Walnut." The shorter version requests "copies of records that your office has pertaining to the 201 and 205 S. Walnut." (sic). You contend that the City has stonewalled you. You allege that the City's production of the records was slow. Finally, you fault the City for charging \$.25 per page for copies.

The City sent me a response to your complaint. I have enclosed a copy of the response of Mr. Jerry Friend, Building Commissioner for the City, for your reference. The City maintains that in the shorter version of your request, you had asked only for specific items such as written reports after inspections, e-mails, and receipts for expenses. Those items were provided on August 30, and it was then that you reviewed the documents and believed that the City had not provided all the documents pertaining to those properties. The City believed it had provided all the documents you had requested, apparently relying on the shorter version of your requests. On August 31, having received a request from you for “all of the documents” the City provided them.

In addition, the City admits that the \$.25 per page copy charge was not in compliance with the Access to Public Records Act, and should have been \$.10 per page. The City invited you to come to the building commissioner’s office for a refund.

### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). A request must describe the record requested with reasonable particularity. IC 5-14-3-3(a)(1). If a public agency is unsure what record is being requested, the public agency should seek clarification from the requester. A public agency should produce the records within a reasonable time after receiving the request, where no timeframe for production is mandated in the Access to Public Records Act.

A public agency may charge a fee for copies of records. IC 5-14-3-8. Under IC 5-14-3-8(d), for a public agency that is not a state agency, the fiscal body 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 machine transmission of documents. The fee may not exceed the actual cost of copying, and the fee must be uniform throughout the public agency and uniform to all purchasers. “Actual cost” means the cost of paper and the per-page cost for use of copying equipment and does not include labor costs or overhead costs. IC 5-14-3-8(d).

You allege that the City has withheld documents because it should have followed the longer version of your two requests for records. Although you state that you delivered to the City the request that asked for “full records,” and I do not doubt the veracity of your statement, I decline to find that the City withheld the records or meant to stonewall. This is because of the confusion as to which version the City was relying on, and the fact that once you contacted the City to complain that records were missing, the City complied by giving you its full file. It is not significant that only 3 or 4 “new” records were in the first production of documents, since you did not delimit your request to only those records that the City had not received from you.

The City is required to contact you in the event that it believed your request was not reasonably particular, but it appears that the City relied on one of your own requests and did not believe it had misunderstood you. In this situation, the City could have complied more readily by allowing you to review the records in the files and allowing you to determine which documents you wanted copies of.

I also do not find that you have sustained your allegation that the City has not produced records within a reasonable time. Neither information regarding how many records were produced to you and when they were produced was stated in your complaint. I decline to find that the City's production time unreasonable on the bare allegations of your complaint.

However, you allege that the \$.25 per page copy fee is excessive, and the City has retracted its claim and will recalculate the copying fee at \$.10 per page. It is not likely that \$.25 per page represents the actual cost of copies, which is the limit established in the Access to Public Records Act. Although the City has re-assessed the actual cost of copies to be \$.10 per page, it is not clear whether the common council, which is the public agency's fiscal body under IC 36-1-2-6, has established a copying fee in a fee schedule, as required by IC 5-14-3-8(d). The City may charge only the fee set by the common council, and only when the common council has set the copying fee at the "actual cost" of copies.

#### CONCLUSION

For the foregoing reasons, I find that the City charged an excessive copying fee and must charge only the amount set forth in the common council's fee schedule, which may not exceed the actual cost of copying.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Jerry Friend