

February 18, 2008

John Emry
62 West Jefferson Street
Franklin, Indiana 46131

Re: Formal Complaint 08-FC-40; Alleged Violation of the Access to Public Records Act by the Muncie Police Department

Dear Mr. Emry:

This advisory opinion is in response to your formal complaint alleging the Muncie Police Department ("Department") violated the Access to Public Records Act ("APRA")(Ind. Code 5-14-3) by charging an excessive fee for copies of public records. It is my opinion the Department violated the APRA.

BACKGROUND

In your complaint you allege you submitted a request to the Department for copies of a number of records from the Department. Specifically, you requested copies of case reports, crash reports, and other records maintained by the Department. You received a letter from the Department dated January 9, 2008. The letter indicated the fee for the copies included a charge of \$5 per copy for initial case reports and crash reports. You do not dispute the \$5 per copy charge for accident reports since that fee was fixed in ordinance by the City of Muncie, pursuant to I.C. § 9-29-11-1. The same ordinance establishes a charge of \$5 per copy for the case reports as well, and you allege that no statutory authority allows the Department to charge \$5 per copy for the case reports. You filed this complaint on January 17.

I sent a copy of your complaint to the Department and invited the Department to respond to the complaint. I have not received a response to the complaint.

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 Department 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 Department 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).

A public 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). The fiscal body, or governing body if there is no fiscal body, of a public agency shall establish a fee schedule for the certification or copying of documents. The fee for copying documents may not exceed the greater of ten cents per page for non-color copies or the actual cost to the agency of copying the document. I.C. § 5-14-3-8(d).

The general fee structure provided in the APRA applies to all public records for which no specific statute fixes the fee. As you have indicated, a separate statute sets the minimum fee for a copy of a crash report at \$5 per copy. I.C. § 9-29-11-1. As such, the fiscal or governing body may enact an ordinance establishing a fee of \$5 per copy for accident reports.

Regarding the case reports about which you complain, the only statute I find regarding the fee is the statute to which you refer, I.C. § 10-13-3-31, which provides the following:

Unless otherwise prohibited by law, a criminal justice agency that maintains criminal history data, upon request and proper identification of the person about whom criminal history data is maintained, shall provide that person with a copy of the person's criminal history data for a reasonable fee. I.C. § 10-13-2-31(a).

The statute provides no guidance as to what constitutes a reasonable fee, and no definition for the term "reasonable" is provided. Here, the legislature has enacted a separate statute, the APRA, which provides some guidance as to what fees a public agency may charge for copies of public records. See I.C. § 5-14-3-8(d).

Because I.C. § 10-13-2-31(a) does not provide guidance as to what is a reasonable fee for a copy of a case report, we must rely on the fee language provided in the APRA. As such, it is my opinion the fiscal body of the Department, or the City of Muncie, may enact an ordinance fixing the fee for copies of case reports at no more than ten cents per page or the actual cost to the agency, pursuant to I.C. § 5-14-3-8(d).

CONCLUSION

For the foregoing reasons, it is my opinion the Department violated the Access to Public Records Act by charging an excessive fee for copies of case reports.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Sgt. R. Gordon Watters