



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 2, 2009

Mr. Stuart Showalter
P.O. Box 374
Lebanon, IN 46052

*Re: Formal Complaint 09-FC-226; Alleged Violation of the Access to
Public Records Act by the Town of Thorntown*

Dear Mr. Showalter:

This advisory opinion is in response to your formal complaint alleging that the Town of Thorntown (the "Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, it is my opinion that the Town violated the APRA by requiring you to submit a "deposit for research and copying costs" before it provided you with public records.

BACKGROUND

In your complaint, you allege that on September 16, 2009, you requested "documents related to Town Council President Pat McPeak's 'construction company' getting work through the town for municipal projects." You state that the Town responded to your request and provided some of the requested records, but not all of them. You also attached a copy of a letter from the Town's attorney, Cy Gerde, dated September 23, 2009. In that letter, Mr. Gerde wrote,

[E]nclosed are copies of 5 invoices for McPeak Construction. It would take considerable more time to find any other invoices.

Indiana law allows us to recover direct costs and to request a deposit when there will be considerable expense and extra ordinary efforts or overtime of Town employees in researching and furnishing the information you request.

Please send to the Town Clerk a fifty and 00/100 dollars (\$50.00) deposit for research and copying costs that will be associated with the compliance of your second requested item.

Please be advised that any unused portion will, of course, be refunded to you at completion of the copying.

You allege that Mr. Gerde “should know that labor fees are not allowed.”

My office forwarded a copy of your complaint to the Town. As of the date of this opinion, we have not received any response.

ANALYSIS

Under the Access to Public Records Act (“APRA”) a public agency may charge a fee for providing copies of public records. *See generally* IC § 5-14-3-8.¹ 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. I.C. § 5-14-3-8(d). However, 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. *Id.* “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. *Id.*

Based on these standards, it is my opinion that the Town violated the APRA when it requested \$50.00 deposit for expenses associated with the “considerable expense and extra ordinary efforts or overtime of Town employees in researching and furnishing the information you request.” Charges for labor costs are expressly prohibited in the APRA. However, the APRA authorizes the Town to charge the actual cost of copying your records and may “require that the payment for copying costs be made in advance.” I.C. § 5-14-3-8(e)(2).

¹ Section 8 of the APRA provides the following:

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. The fee for certification of documents may not exceed five dollars (\$5) per document. The fee for copying documents may not exceed the greater of:

(1) ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) per page for color copies; or

(2) the actual cost to the agency of copying the document.

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. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

I.C. § 5-14-3-8.

CONCLUSION

For the foregoing reasons, it is my opinion that the Town violated the APRA when it attempted to charge you a deposit for labor costs associated with copying the records you requested.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, prominent initial "A".

Andrew J. Kossack
Public Access Counselor

Cc: Cy Gerde, Hanna, Gerde & Russell (*via facsimile*)