



# STATE OF INDIANA

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October 16, 2014

Mr. Tyrone Frazier #910476  
Indiana State Prison  
One Park Row  
Michigan City, IN 46360

*Re: Formal Complaint 14-FC-208; Alleged Violation of the Access to Public Records Act ("APRA") by the City of Indianapolis*

Dear Mr. Frazier,

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Samantha DeWester, Esq., City Prosecutor has responded on behalf of the City. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 15 2014.

## BACKGROUND

Your complaint dated September 5, 2014, alleges the City of Indianapolis violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

In March 2009, you received a reply from the Indianapolis Metropolitan Police Department ("IMPD") in response to a records request seeking a number of photographs. IMPD informed you the cost of the records amount to \$210.00. After accumulating the necessary funds, you again requested the records on or about August 18, 2014. This time the IMPD denied your request pursuant to the investigatory records exception found at Ind. Code § 5-14-3-4(b)(1). You take exception to both the cost of the records and the denial itself.

The City responded to your formal complaint and identified 42 photos responsive to your request. Of the 42 (forty-two), 23 (twenty-three) were determined to be disclosable public record. The remaining 19 (nineteen) were determined to be investigatory. The per-item cost of the record has also been reduced to \$.92.

## 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.” See Ind. Code § 5-14-3-1. The City of Indianapolis is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

As to your 2009 request, it appears the City was then charging a cost above and beyond what the APRA allows. Pursuant to Ind. Code § 5-14-3-8(d)(2), only the actual cost of copying a public record may be charged. It stands to reason that \$5.00 per photo/page exceeds actual cost. In the meantime, however, it appears the City has appropriately revised its fee schedule to conform to the APRA. Ninety-two cents per copy sounds appropriate. Because your complaint involves a request from five years ago, I am precluded by Ind. Code § 5-14-5-7 from addressing the issue further, as it is beyond the thirty (30) day statutory deadline for filing a complaint.

The release of investigatory records of law enforcement agencies is discretionary. See Ind. Code § 5-14-3-4(b)(1). A law enforcement agency, at its discretion, may choose to withhold investigatory records upon request. While I discourage law enforcement from having a blanket policy against the disclosure of all records, the General Assembly did indeed identify the need for protecting the integrity of investigatory records with the exception. The City is justified in withholding those records deemed investigatory. The City is, however, offering 23 of the photos at the \$.92 cent rate. It is my sincere hope this will satisfy your request.

## CONCLUSION

It is the Opinion of the Public Access Counselor that the City of Indianapolis did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Samantha DeWester, Esq.