



STATE OF INDIANA

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November 20, 2014

Mr. Kevin C. Smith
9301 Calumet Ave. Ste. 1F
Munster, IN 46321

Re: Formal Complaint 14-FC-251; Alleged Violation of the Open Door Law by the Portage Police Department

Dear Mr. Smith,

This advisory opinion is in response to your formal complaint alleging the Portage Police Department ("PPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The PPD has responded via Mr. Gregory A. Sobkowski, Esq., PPD Counsel. His 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 October 21, 2014.

BACKGROUND

Your formal complaint alleges the Portage Police Department has violated the Indiana Access to Public Records Act by proposing to charge you an exorbitant fee for a document.

On or about September 30, 2014, you submitted a public records request to the PPD seeking several documents related to a traffic accident. On October 3, 2014, the PPD acknowledged your request and provided you with an itemized breakdown of responses and fees associated with the production of documents. Among those fees was a \$1,500 charge for an accident reproduction report. You take exception with this fee.

On November 7, 2014, this Office received a response from PPD counsel acknowledging the charge was inappropriate under the APRA and the PPD will be revising the charge to more accurately reflect what is allowed to be charged under the law.

DISCUSSION

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 Portage Police Department 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 PPD’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).

Ind. Code § 5-14-3-8 states:

- 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 have not been made aware how many pages the accident reconstruction report contains. To justify the \$1,500 charge, the report would have to be 15,000 pages long in black and white. It appears this is not the case based on the PPD’s response to the complaint. Therefore, I encourage the PPD to calculate the revised actual cost of copying the document and advise you of the new charge as soon as possible.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Gregory A. Sobkowski, Esq.