



STATE OF INDIANA

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June 24, 2016

Mr. Bryan Wolfe
2850 North Meridian Street
Indianapolis, Indiana 46208

Re: Formal Complaint 16-FC-116; Alleged Violation of the Access to Public Records Act by the Bartholomew County Sheriff's Office

Dear Mr. Wolfe:

This advisory opinion is in response to your formal complaint alleging the Bartholomew County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Sheriff has responded via counsel, Mr. Jeffrey Beck, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 24, 2016.

BACKGROUND

Your complaint dated May 24, 2016, alleges the Bartholomew County Sheriff's Office violated the Access to Public Records Act by charging excessive copy fees.

On May 24, 2016, you inquired about the procedure to obtain photographs from the Sheriff pursuant to the investigation of a crash. The Office's form stated an administrative fee of \$50.00 is required per disc.

On June 9, 2016 the Sheriff responded via counsel. The Sheriff contends the fee is proper because Indiana Code § 5-14-3-8(g) permits a copy fee for direct cost of the production of records. The Sheriff notes direct costs come to a total of \$3.24 for the disc and mailing. Annual maintenance is \$43,535.25 and the cost of the camera is \$300.00 -a portion of which is charged back to the end user of the public record.

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 Indiana Code § 5-14-3-1.* The Bartholomew County Sheriff's Office 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 Office's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Indiana Code § 5-14-3-8 discusses copy fees for records. Indiana Code § 5-14-3-8(g) states:

for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following: (1) The agency's direct cost of supplying the information in that form. (2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

It is my opinion that a disc containing photographs would fall under this section. Therefore, the Sheriff may charge direct cost for supplying a disc with the photographs.

Pursuant Indiana Code § 5-14-3-2(d), "direct cost" means one hundred five percent (105%) of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output; for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

Section (c)(1) is inapplicable to this situation, because the Office did not develop the storage software exclusively for the purpose of this public records request. The costs under Section (c)(2) would be variable depending on the exact nature and volume of the records request. Section (c)(3) is the cost of the disc on which the photographs are stored.

The Sheriff has stated its direct costs amounting to \$3.24 for the disc and postage. The Office has not provided a justification as to how the annual maintenance fee or the cost of the camera is relevant. Overhead costs cannot be prorated and charged back to an end user. Any wear and tear to equipment is negligible in this circumstance as everything would be transmitted electronically.

The administrative fee amounts to a tax on a public record which was already developed at taxpayer's expense. The Sheriff ostensibly paid for the software and camera from an appropriation from the County's fiscal body. To charge above and beyond actual cost would amount to double-dipping into the pockets of the public. A public agency may certainly charge a fee in order to reimburse it for the cost of providing a public record, but it cannot recoup costs for overhead and equipment it uses for daily use.

Additionally, the Sheriff appears to take special exception to the fact you are a private investigator and "would lose money and be at risk of becoming every personal injury firms' private investigator". The Sheriff compares the \$50.00 administrative charge against the fee charged by a typical private investigator.

Unless otherwise provided by statute, providing public records is not a money-making enterprise or a for-profit endeavor. There is an affirmative duty for public agencies to provide access to public records upon request and to do so free from prohibitive cost. The Sheriff investigates accidents for public safety purposes for the benefit of the public. So, while it is true the fruits of an investigation may result in a public record which can be used for commercial purposes by a private investigator, there is no statutory prohibition against anyone seeking those records. Generally, government information is available to any member of the public, regardless of their intended use and may not justify an excessive fee based upon its bias toward your profession.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the administrative fee charged by the Bartholomew County Sheriff's Office is excessive and improper under the Access to Public Records Act. The Office may recoup its direct cost for the disc and postage but may not charge beyond that amount.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Jeffrey Beck, Esq.