



STATE OF INDIANA

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July 25, 2016

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

Re: Formal Complaint 16-FC-145; Alleged Violation of the Access to Public Records Act by the Jefferson County Sheriff's Office

Dear Mr. Wolfe:

This advisory opinion is in response to your formal complaint alleging the Jefferson County Sheriff's Office ("Office") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Sheriff John Wallace. 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 June 22, 2016.

BACKGROUND

Your complaint dated June 22, 2016, alleges the Jefferson 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 Office responded. The Office contends the fee is proper because it has "never been an issue."

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 Jefferson County Sheriff's Office is a public agency for the purposes of the APRA. *See Indiana 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)*.

I addressed this very issue in a previous opinion, *Formal Opinion 16-FC-116*. That opinion is incorporated by reference.

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 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 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, or turn a profit for selling a record.

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. The Office has not provided a justification for its fee besides mere historical practice. However, the fact an improper practice was not challenged previously does not make a practice legal.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the administrative fee charged by the Jefferson 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 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Wallace, Sheriff