



STATE OF INDIANA

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November 4, 2016

Ms. Kristen S. Brown
918 Shorewood Court
Columbus, Indiana 47201

Re: Formal Complaint 16-FC-251; Alleged Violation of the Access to Public Records Act by the City of Columbus Clerk-Treasurer

Dear Ms. Brown:

This advisory opinion is in response to your formal complaint alleging the City of Columbus Clerk Treasurer ("Clerk-Treasurer") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. Ms. Luann Welmer, Clerk-Treasurer responded. Her response is attached 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 September 30, 2016.

BACKGROUND

Your complaint dated September 3, 2016, alleges the City of Columbus Clerk-Treasurer violated the Access to Public Records Act by charging excessive fees for copying public records.

The City of Columbus Board of Public Works Resolution 6-2000 indicates the City charges \$.15 per copy for standard-sized black and white documents. A recent public records production from the Clerk-Treasurer was accompanied by the \$.15 per copy fee. You contend this is at odds with the APRA.

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 City of Columbus Clerk-Treasurer'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 Clerk-Treasurer'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)*.

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See Indiana Code § 5-14-3-8*. For public agencies which are not state agencies, the fee for copying documents may not exceed the greater of ten cents (\$.10) per page for copies which are not color copies or twenty-five cents (\$.25) for color copies; or the actual cost to the agency of copying the document. *See Indiana Code § 5-14-3-8(d)*. For non-standard documents, actual cost may be charged. "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.

In my experience dealing with municipalities across the state, I have not encountered a public agency, large or small, which has calculated 'actual cost' of copying standard 8^{1/2} x 11 paper at more than \$.10 per copy. In fact, many government units of political subdivisions charge much less. For example, my last conversation with the City of Indianapolis regarding this issue reflected charges of \$.04 for standard copy fees. Based upon Ms. Welmer's statement with regard to the number of public records requests submitted to the City of Columbus, Indianapolis would field a considerable amount of requests and copy many more pages at no appreciable financial burden to the city budget.

In my opinion, Board of Public Works Resolution 6-2000 is in direct conflict with state law and should be amended or voided immediately to reflect a fee schedule consistent with Indiana Code § 5-14-3-8(d), and capping the fee at \$.10 at the very most.

Please do not hesitate to contact me with any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor