

October 1, 2001

Mr. Donald D. Slayton #944663
Post Office Box 601
Pendleton, IN 46064

Re: *Advisory Opinion 01-FC-62*;

Alleged Violation of the Access to Public Records Act Concerning Copying Fees by the Greene County Clerk's Office.

Dear Mr. Slayton:

This is in response to your formal complaint, which was received on September 13, 2001. You have requested an opinion as to whether the Greene County Clerk's Office ("Clerk's Office") violated the Access to Public Records Act, Indiana Code chapter 5-14-3 ("APRA,") by requiring you to pay one dollar (\$1.00) per page copying fees related to your request for access to court records. Clerk Thomas Franklin responded to your complaint and a copy of his response is enclosed for your reference.

It is my opinion that the Clerk's Office did not violate the APRA with respect to your August, 2001 request for copies of public records. The Clerk's Office may collect a copying fee of one dollar (\$1.00) per page as authorized under Indiana Code section 33-19-6-1(b). Further, the Clerk's Office may charge a copying fee unless there is statutory authority or a valid court order directing otherwise, which would include an order granting indigent status.

BACKGROUND

According to the facts presented in your complaint, you made a written request to the Clerk's Office for copies of records in and concerning the court file with a cause number, 28D01-9408-CF-460. In response to your request, you received a letter from the Clerk's Office indicating that you would be required to pay \$1.00 per page for each of the ninety-two (92) pages you requested. You filed your formal complaint with this Office alleging that the Clerk's Office violated the APRA by charging you one dollar (\$1.00) per page copied and for charging you any copying fees at all.

According to Clerk Franklin, he responded to your August request for copies of public records and included the calculation of the copying fee that is authorized by the Indiana State Board of Accounts' Guidelines to Clerks of Circuit Courts, specifically one dollar (\$1.00) per page. While the County may charge a lower fee for copies of other public records, court documents are still one dollar (\$1.00) per page. With respect to your claim that you are entitled to free copies, Mr. Franklin is not aware of any authority for providing copies to you free of charge.

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." Ind. Code § 5-14-3-1. The Clerk's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

In this case, you requested copies of certain court records. The APRA provides that public agencies may charge a copying fee under Indiana Code section 5-14-3-8. In most cases, local public agencies may only charge the actual cost, which means the cost of the paper and the cost of running it through the copying machine, for photocopies. Ind. Code §5-14-3-8(d). Public agencies may also request payment in advance for photocopies. Ind. Code §5-14-3-8(e).

There are instances, however, when the General Assembly has provided separate statutory authority for local officials to charge a copying fee different from the actual cost. Ind. Code §5-14-3-8 (f). For county clerks who are providing copies of court records, there is a statute that requires them to charge a fee different from that provided under Indiana Code section 5-14-3-8(d). Under Indiana Code section 33-19-6-1(b), the "clerk shall collect a fee of one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing." The Clerk's Office did not violate the APRA by notifying you of the copying fee for the ninety-two (92) pages you requested in August.

You also claim that under Indiana Code section 5-14-3-8(e)(2), you are entitled to at least one (1) copy of a public record at no charge. It is my opinion that this statute, however, does not state that you are entitled to copies of public records at no charge. It is possible that in some instances the General Assembly may have provided for fee waivers for copies of certain public records. Further, there are instances when a court will issue an order of indigency that would provide that an incarcerated person would be entitled to copies of certain public records at no charge. In the case of your request to the Clerk's Office, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge from that Office.

CONCLUSION

It is my opinion that the Greene County Clerk's Office did not violate the Access to Public Records Act by requiring you to pay one dollar (\$1.00) per page for the photocopies you requested as this fee is authorized under Indiana Code sections 5-14-3-8(f) and 33-19-6-1(b). Absent any other statutory authority or an order from a court providing you with indigent status with respect to the public records requested, the Clerk's Office is not obligated to waive the copying fee.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable Thomas Franklin, Greene County Clerk w/o enclosures
