

September 10, 1999

Mr. David R. Poindexter II
1225 Ridge Top Drive
Indianapolis, IN 46142

Re: *ADVISORY OPINION No. 99-FC-2:*
Excess Copying Fees charged by the Greenwood Police Department.

Dear Mr. Poindexter:

You filed a formal complaint against the Greenwood Police Department and this Office received that complaint on August 11, 1999. In that complaint, you alleged that the Department has overcharged for copies of incident reports¹ by charging \$3.00 per copy. A copy of your complaint was faxed to Greenwood City Attorney Shawna Koons-Davis on August 23, 1999. Ms. Koons-Davis responded by in writing on August 27, 1999. A copy of her response is enclosed for your reference.

For the reasons stated below, it is my opinion that the appropriate fee for copies of incident reports created in accordance with Indiana Code section 5-14-3-5(c) is the actual cost of the photocopying as defined at Indiana Code section 5-14-3-8(d). The City of Greenwood Municipal Code does not authorize the Department to charge \$3.00 per copy for incident reports, rather the Department should have been charging \$0.10 per page for such reports.

BACKGROUND

According to your complaint, the Greenwood Police Department has overcharged for copies of incident reports, \$3.00 per copy, for years and as recently as May 17, 1999. You contacted the Department in writing for copies of such reports and challenged the fee on various occasions from October, 1996 to the present. You did not receive any response from the Chief of Police or the City Attorney on this issue. While you have pending litigation against the Department, that litigation is not an action under the Access to Public Records Act, Indiana Code chapter 5-14-3.²

In her response to your complaint, City Attorney Koons-Davis points to Greenwood Municipal Code Section 4-50 which provides that the per-page copying fee for public records is \$0.10 per page unless a specific fee is set forth elsewhere in the section. She indicates that the City conducted a thorough study of the actual costs of copying various documents to arrive at the \$0.10 per page fee. The City recognizes that there is a statutory fee under Indiana Code section 9-

29-11-1 for copies of accident reports created by the Department. Ms. Koons-Davis suggests that the Police Department may have confused this provision to apply to the other types of reports created under the Access to Public Records Act, in particular, incident reports. The Department did not charge you in accordance with the fee set by city ordinance, \$0.10 per page, for copies of incident reports. Chief Robert Dine has now instructed his staff to charge according to the fee schedule and the City has offered a refund of any excess fees you have paid.

ANALYSIS

Under Indiana Code 5-14-3-5(c), a law enforcement agency must create a record or daily log that sets forth information concerning complaints, accidents and incidents that are reported to that agency. These reports must include the following information:

1. The time, substance, and location of all complaints or requests for assistance received by the agency.
2. The time and nature of the agency's response to all complaints or requests for assistance.
3. If the incident involves an alleged crime or infraction:
 - A. the time, date, and location of the occurrence;
 - B. the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;
 - C. the factual circumstances surrounding the incident; and
 - D. a general description of any injuries, property, or weapons involved.

Indiana Code α 5-14-3-5(c). Copies of such reports must be created within twenty-four (24) hours after the suspected crime, accident or complaint has been reported and be made available for copying and inspection as provided under the Access to Public Records Act. *Id.*

Copying fees for public records are set forth at Indiana Code section 5-14-3-8. For local governments, the copying fee shall be set by the fiscal body for the unit of government and reflect the "actual cost" of the copy. "Actual cost" was clearly defined by the Indiana General Assembly in 1999 as the "cost of the paper and the per-page cost for use of the copying or facsimile equipment, and does not include labor costs or overhead costs." Indiana Code α 5-14-3-8 (d), as amended by PL 151-1999, α 1.

The Access to Public Records Act, however, does recognize that other fees have been set by statute for copies of various public records. Under Indiana Code section 5-14-3-8(f), a public agency shall collect any copying fee that is specified by another statute. In the case of accident reports that are provided by law enforcement agencies, a minimum statutory fee of \$3.00 has been set at Indiana Code section 9-29-11-1. The local unit may also, by ordinance set a fee higher than \$3.00 for such accident reports.

While Indiana Code section 5-14-3-5(c) references accidents, it also refers to complaints, requests for assistance and incidents reported to law enforcement agencies. The statutory fee set forth at Indiana Code section 9-29-11-1 does not cover the latter reports. There are no other state

statutes that set a fee other than the "actual cost" of the photocopying of such reports. For this reason, it is my opinion that the Greenwood Police Department violated the copy fee provisions of the Access to Public Records Act as well as its own City ordinance setting forth specific per-page copying fees. The Department may charge only the per-page copying fee adopted by the fiscal body and that fee may not exceed the "actual cost" of such copies as defined at Indiana Code section 5-14-3-8(d).

CONCLUSION

The City of Greenwood Police Department violated the Access to Public Records Act and Greenwood Municipal Code section 4-50 by charging a flat fee of \$3.00 per copy for incident reports created under Indiana Code section 5-14-3-5(c). The Department may only charge a fee that reflects the actual cost of copying such reports as provided under Indiana Code 5-14-3-8(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Shawna Koons-Davis

¹"Incident report" as used throughout this opinion refers to the reports, other than those concerning motor vehicle accidents, which are prepared in accordance with Indiana Code section 5-14-3-5(c).

²Under Indiana Code section 5-14-4-10(6), the Public Access Counselor "may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under" the Indiana Open Door Law or the Access to Public Records Act.