



# STATE OF INDIANA

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July 6, 2009

John Faucett  
1035 Krug Road  
Frankfort, Indiana 46041

*Re: Formal Complaint 09-FC-143; Alleged Violation of the Access to Public Records Act by the Clinton County Sheriff's Office*

Dear Mr. Faucett:

This advisory opinion is in response to your formal complaint alleging the Clinton County Sheriff's Office ("Office") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records and by charging an excessive fee for copies of records. The Office's response to the complaint is enclosed for your reference. It is my opinion the Office likely violated the APRA by charging you a copy fee in excess of the "actual cost" but did not otherwise violate the APRA.

## BACKGROUND

You filed the present complaint on June 16, 2009 (postmarked June 12), alleging the Office has denied you access to copies of daily observation reports and other records related to your field training status. You allege the Office has refused to communicate with your counsel to set a time for you to inspect and copy the records. Further, you allege you were charged \$.25 for copies when you should have been charged only \$.10.

The Office responded to the complaint by letter dated July 3 from A. Howard Williams. The Office contends you were not denied access to your personnel file and that there is no charge to inspect the file. Regarding the fees charged for copies, the Office contends that a local ordinance mandates a charge of \$.25 per page for copies, to cover the cost of copying and compensate for employee time spent making copies. Regarding the records you have requested to which you have not been provided access, the Office contends it maintains no records responsive to your request other than those which the Office has already provided to you. The Office indicates that additional records may be maintained by the Indiana Law Enforcement Academy.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Office is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Regarding copy fees, the Office contends it follows county ordinance in charging \$.25 per page, which covers copy cost and employee labor. The APRA provides the following regarding copy costs:

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. The fee for certification of documents may not exceed five dollars (\$5) per document. The fee for copying documents may not exceed the greater of:

(1) ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) per page for color copies; or

(2) the actual cost to the agency of copying the document.

As used in this subsection, "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*. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

I.C. § 5-14-3-8, emphasis added.

To the extent the county ordinance has been established to compensate the Office and other county offices for labor costs, the ordinance violates the APRA. While I do not have comprehensive data regarding the costs of copies throughout the state, it is my opinion \$.25 is likely higher than the per-page cost for paper and the use of the copying equipment. To the extent that it is, you should be reimbursed for the amount you paid which is in excess of the fee permitted by I.C. § 5-14-3-8(d). It would be my recommendation that the county re-examine the per-page cost for copying documents. Generally, I find the per-page "actual cost" is less than \$.10 per page. In that event, the county could charge \$.10 per page, pursuant to I.C. § 5-14-3-8(d)(1).

Regarding the records to which you allege you have been denied access, the Office contends it does not maintain them. The Office contends it has provided you

access to the records it maintains which are responsive to your request. The Office refers you to the Indiana Law Enforcement Academy for any additional records. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If the Office does not maintain any other records responsive to your request, it has not violated the APRA by failing to produce additional records.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Office likely violated the APRA by charging you a copy fee in excess of the “actual cost” but did not otherwise violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: A. Howard Williams, Clinton County Sheriff's Office