



STATE OF INDIANA

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August 10, 2009

Michael Ames
DOC #978128
PO Box A
New Castle, Indiana 47362

Re: Formal Complaint 09-FC-158; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Sheriff's Office

Dear Mr. Ames:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Sheriff's Office ("Office") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by charging you 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 may not charge you a copy fee in excess of the "actual cost" of providing the copy.

BACKGROUND

You filed the present complaint on July 13, 2009 (postmarked July 9), alleging the Office has charged you an excessive fee for copies of photographs. You requested copies of booking photos of five individuals, and the Office sent you a letter dated July 1 wherein the Office indicated the charge for the copies is \$2.00 per copy. You contend this fee is excessive under the APRA.

The Office responded to the complaint by letter dated August 10 from Major Charles Williams. The Office indicated you were sent a letter indicating the costs of the copies but did not further contact the Office. Further, Major Williams indicates the Office is "in the process of reviewing the ordinances due to new technology."

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).

The Office has indicated to you that the charge for color copies of the photographs you requested is \$2.00 per copy. 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. The county may not charge more than \$.25 per page for the color copies of the photographs unless the “actual cost” of copying the photographs exceeds \$.25. And then the Office may only charge the “actual cost” and no more. It would be my recommendation that the Office re-examine the per-page cost for copying documents. Generally, I find the per-page “actual cost” is less than \$.10 per page for black and white copies or \$.25 per page for color copies. In that event, the county could charge \$.25 per page for color copies, pursuant to I.C. § 5-14-3-8(d)(1).

Regarding your contention that you should be allowed to pay for your copies with postage stamps, nothing in the APRA provides that you may pay for copies by any method other than legal tender. It is my opinion you must pay the appropriate copy fee by using cash, check, money order, or other payment method accepted by the Office.

CONCLUSION

For the foregoing reasons, it is my opinion the Office may not charge you a copy fee in excess of the “actual cost” of providing the copy.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Major Charles Williams, Tippecanoe County Sheriff's Office