



# STATE OF INDIANA

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January 6, 2009

Gregory Sobin  
DOC #113650  
5501 South 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 09-FC-3; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department*

Dear Mr. Sobin:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department (Department) violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records and charging an excessive copy fee. A copy of the Department's response to the complaint is enclosed. In my opinion the Department has not violated the APRA by requiring payment in advance of providing you copies of the records. Further, it is my opinion the Department should provide the copies of the records upon receipt from you of the \$.04 per page copy fee.

## BACKGROUND

You filed the present complaint on December 9, 2008. You allege that you have requested from the Department copies of incident reports. You allege the Department has denied you access to the reports and has charged you an excessive copy fee. You requested priority status for the complaint but did not allege any of the circumstances for priority status provided in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to the complaint by letter dated December 29 from City of Indianapolis Chief Deputy Corporation Counsel and Public Access Counselor Samantha Karn. The Department contends it has not denied you access to records but instead has indicated it will provide you copies of the records upon receipt of payment for those records. The Department further contends that the quoted fee of \$5.00 per page is not in compliance with the APRA and has therefore adjusted the fee to \$.04 per page. The Department indicates it will provide you with an updated fee amount later this week when the person responsible for doing so returns to work from leave.

## 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 Department 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 Department 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).

A public agency may not charge a fee to search for, examine, or review a record to determine whether the record may be disclosed. I.C. § 5-14-3-8(b). The fiscal body, or governing body if there is no fiscal body, of a public agency shall establish a fee schedule for the certification or copying of documents. The fee for copying documents may not exceed the greater of ten cents per page for non-color copies or the actual cost to the agency of copying the document. I.C. § 5-14-3-8(d). A public agency may require that the payment for copying costs be made in advance. I.C. § 5-14-3-8(e).

The Department contends that it did not deny you access to the records but instead indicated the records would be sent to you after you submitted payment. It is my opinion that absent a separate statute fixing the fee, the \$5.00 fee initially charged by the Department exceeded the amount allowed by the APRA. The Department recognized this error as well and has now indicated it will provide the copies for a fee of \$.04 per page. Pursuant to the APRA, the Department may charge you in advance for those copies. It is my understanding the Department will send you a revised invoice at \$.04 per page. Once you remit payment, the Department will send you the requested copies.

## CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA by requiring payment in advance of providing you copies of the records.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Samantha Karn, City of Indianapolis