



# STATE OF INDIANA

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*Via email transmission*

September 12, 2016

Mr. John Priore  
3197 South 600 East  
Greenfield, IN 46140

*Re: Informal Inquiry 16-INF-24; Excessive Fees*

Dear Mr. Priore:

This is in response to your informal inquiry regarding whether the Hancock County Offices and Departments violated the Access to Public Records Act. Hancock County has responded via Mr. Ray Richardson, Esq., Attorney for the Hancock County Board of Commissioners. His response is enclosed for your review.

## BACKGROUND

You seek a determination as to whether the copy fees charged by Hancock County are consistent and in compliance with the Access to Public Records Act. Specifically, you submit County Ordinance 34.23 of Chapter 34 of Title III of the Hancock County Code as an example.

The Hancock County Auditor requested an extension of time to address your claims, however, this Office was unable to grant said extension due to scheduling conflicts. The attorney for the County Board of Commissioners did respond by indicating the Auditor will recommend to the Council that an amendment to the Ordinance be passed to reflect the APRA fee schedule, which will be explained in detail below.

## 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." *See Indiana Code § 5-14-3-1*. Hancock County is a public agency and a governmental unit for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the County's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See Indiana Code § 5-14-3-8*. For public agencies which are not state agencies, the fee for copying documents may not exceed the greater of ten cents (\$0.10) per page for copies which are not color copies or twenty-five cents (\$0.25) for color copies; or the actual cost of to the agency of copying the document. *See Indiana Code § 5-14-3-8(d)*. For non-standard documents, actual cost may be charged. "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.

However, the APRA also provides that notwithstanding other provisions within section 8 of the APRA, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee specified by statute or is ordered by a court. *See Indiana Code § 5-14-3-8(f)*. Thus, where a specific statute other than the APRA provides a public agency with the authority to charge a fee which exceeds the "actual cost," the public agency may charge the statutory fee without violating the APRA. For example, pursuant to Indiana Code § 33-37-5-1, a court clerk shall collect a fee of one dollar (\$1) per page for legal size or letter size pages, including a page only partially covered with writing. The fee collected by the clerk may not exceed one dollar (\$1) per page for the actual copy. *See Indiana Code § 33-37-5-1(c)*.

In regard to your specific inquiry, a fee schedule conforming to these considerations must be adopted by the Hancock County Council, but does not have to be uniform across the county (only fees for state agencies must be uniform; *See Indiana Code 5-14-3-8(c)*). As long as it conforms to the \$.10/.25 cap, it is legitimate. As to the Ordinance in question, there seems to be a few non-compliant portions which conflict with the APRA. For example, the copy fee for a C form tax statement charged by the County Assessor is in excess of \$.10 and therefore invalid.

Similarly, the fee for "assistance" with copying public records exceeds the \$.10 cap. Because "actual cost" does not include labor costs or overhead costs, a chargeback for such a service is excessive. As for a service charge for copying personal documents which are not public records, the APRA does not speak to this issue and the fiscal body of a county can ostensibly charge a reasonable fee under Indiana Code § 36-1-3-8(a)(6) for such assistance.

In any case, it appears as if the County has agreed to look into the fee schedule to determine whether the charges are consistent with the APRA. It is my sincere hope they are able to take the above recommendations under consideration when doing so.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to be the initials 'JTB' with a large, sweeping flourish underneath.

Luke H. Britt  
Public Access Counselor