



STATE OF INDIANA

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Via email transmission

March 16, 2017

Mr. Gerry Lanosga
Via email

Re: Informal Inquiry 17-INF-03; HB 1523, Search Fees and Electronic Records

Dear Mr. Lanosga:

This is in response to your informal inquiry regarding House Bill 1523 and its impact upon the Access to Public Records Act's ("APRA") current provisions.

DISCUSSION

During the 2017 session of the Indiana General Assembly, the Indiana House of Representatives proposed House Bill 1523 to accomplish the following in summary:

Allows a state or local government agency (agency) to charge a maximum hourly fee for any records search that exceeds two hours. Prohibits, with certain exceptions, an agency from charging a fee for providing a public record by electronic mail. Provides that if a public record is in an electronic format, an agency (excluding the office of the county recorder) shall provide an electronic copy or a paper copy, at the option of the person making the request for a public record.

You ask how this reconciles with the current version of the APRA in regard to electronically stored data. This Office does not generally comment on pending litigation. The legislative branch passes laws at its discretion and this Office interprets the laws passed. Therefore, I will reserve comment on the Bill in its current form, which has passed the House and is in the Senate Committee on Local Government.

I will, however, interpret the current state of electronic records in regard to the APRA. Electronic data and digitized files are potentially subject to disclosure as public records under Indiana Code § 5-14-3-2(o). So long as the files do not contain discretionary or confidential information, they are to be disclosed under Indiana Code § 5-14-3-2(b) & (h)(4):

“Copy” includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

“Inspect” includes the right to do the following: In the case of electronically stored data, to manually transcribe and make notes, an abstract, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

Additionally, pursuant to Indiana Code § 5-14-3-3(d), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency’s data storage system.

Therefore, if an individual asks for an Excel spreadsheet or an Access Database, a public agency should make reasonable efforts to provide those documents in .xls or .acc form (or any derivations thereof based on version or add-on). It would not be enough to convert a file to .pdf form to preclude the manipulation of data. Webster’s online dictionary defines “duplicate” as “*exactly like something else; identical.*” To convert a file to a .pdf or a locked spreadsheet before disclosure would be to compromise the exactitude of the record.

Many public agencies have approached this Office with valid concerns data will be fraudulently manipulated or misinterpreted for nefarious purposes. The best defense to the unauthorized alteration of public records is to keep a secure master copy of the public record in-house. The *potential* modification of data in order to mischaracterize the underlying nature of the information is not a justifiable exception to disclosure. While an agency has a duty to protect a record from loss, alteration or destruction (Indiana Code § 5-14-3-7), that duty only extends to records in the custody of the agency. Any alteration or manipulation of a duplicate or copy by a requestor is done at the requestor’s own risk of committing libel, fraud or deception.

While many other exemptions to disclosure could apply, it is this Office’s interpretation of the current version of the APRA in which a requestor is able to obtain a disclosable electronic record in the same form or file extension as it appears on the public agency’s electronic equipment.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor