



STATE OF INDIANA

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October 5, 2020

Christopher Throgmorton
1607 J. Street
LaPorte, IN 46350

Re: Informal opinion 20-INF-10; Making copies on a requester's own equipment

Dear Mr. Throgmorton,

This informal opinion is in response to your inquiry the ability of a requester to make copies on his or her own equipment. In accordance with Indiana Code section 5-14-4-10(6), I issue the following informal opinion.

BACKGROUND

For some time, the LaPorte County Courthouse has been subject to a court order banning electronic devices from the building.¹ You have attempted on several occasions to use your own device to copy public records. Because of your intention to use your smartphone, you have been thwarted from doing so.

You inquire as to whether the language in the Access to Public Records Act (APRA) bestows the legal right to use your own equipment or if the county is in violation of the APRA for prohibiting it. You also ask if cell phones qualify as a "person's own equipment" under the statute. You seek clarification as to whether a circuit court clerk's office can be housed in a building with such a restriction and finally, who would be the appropriate subject for a complaint if the prohibition was enforced and prosecuted.

1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. The Access to Public Records Act (APRA) says "(p)roviding persons with information is an essential function of a representative government and an

¹ No public meetings take place at the county courthouse, therefore there are no Open Door Law ramifications to this inquiry.

integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *Id.*

There is no dispute that LaPorte County and its branches of government – including the judiciary - are public agencies for the purposes of the APRA; and thus, subject to the law’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless otherwise provided by statute, any person may inspect and copy the hospital’s disclosable public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both mandatory and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)–(b). This case involves the application of APRA’s language stating that a person may use their own equipment to make copies of records.

2. Copying public records on personal equipment

Your first inquiry concerns a requester’s ability to make copies of or scan public records using their own equipment. In terms of accessing documents, a public agency must comply with this provision:

...Within a reasonable time after the request is received by the agency, the public agency shall either:

(1) provide the requested copies to the person making the request; *or*

(2) allow the person to make copies:

(A) on the agency’s equipment; *or*

(B) on the person’s own equipment.

Ind. Code § 5-14-3-3(b) (Emphasis added). For the purposes of this inquiry, the operative word is “or.” This is critical to this analysis because the statute places the discretion in the hands of the public agency as to the method of access. You have indicated that you interpret section 3(b)(2) as a list of options for a requester. This is not the case in terms of statutory construction.

“The words ‘and’ and ‘or’ as used in statutes are not interchangeable, being strictly of a conjunctive and disjunctive nature respectively, and their ordinary meaning should be followed if it does not render the sense of the statute dubious.” *Sekerez v. Youngstown Sheet & Tube Co.*, 337 N.E.2d 521, 524 (Ind. Ct. App.1975).

The meaning of the statute is plain: an agency has the discretion to grant the ability to a requester to use his own device, including a smart phone, to make copies. This is not an entitlement on the part of the requester.

As for your second question, this office does interpret a smart phone as a person’s “own equipment” if an agency chooses to allow it. Make no mistake, however, an agency, must do either. For example, if an agency did not have access to a copier, it must allow a requester to make a copy in some way (e.g. using his own equipment). It cannot simply deny request because the copier is

down. But if it has a fully functional copier, it can make the copy on behalf of a requester. This is especially true for a clerk's office, who must collect a \$1.00 fee for copies.²

But if an agency has a cell phone ban and makes copies on behalf of a requester, it is well within its rights to do so.

3. Location of the clerk's office and agencies responsible for buildings

The third portion of your inquiry asks whether a circuit court clerk's office may be housed in a building where there is a cell phone ban.

There is nothing in the Indiana Code specifically to suggest government buildings cannot have cell phone bans. Because there is a statutory right of the public to observe and record meetings, this office has historically interpreted the Open Door Law³ to mean that disallowing smartphones at public meetings is a violation. Even so, LaPorte County does not have meetings of any governing bodies in its courthouse.⁴ Those meetings are in a separate government center. Notwithstanding that, in light of the analysis above, electronic device bans do not violate any law of which this office is aware when public meetings are not implicated.

Your final question asks which would be the responsible agency if the ban were contrary to law. While a bit of moot point at this stage, it should be noted that while judges have exclusive jurisdiction and dominion over their own courtrooms, county commissioners have the statutory duty to maintain courthouses pursuant to Indiana Code section 36-2-2-24. To that extent, a board of commissioners may adopt a court order regulating courthouse activities, however, the ultimate decision-making authority lies with the county executive and not its judicial branch.

Please do not hesitate to contact me with any questions.

Best regards,



Luke H. Britt
Public Access Counselor

² Ind. Code § 33-37-5-1(b).

³ Ind. Code § 5-14-1.5-1-8

⁴ See *Opinion of the Public Access Counselor* 18-FC-4 (2018).