

July 25, 2005

Mr. Chester Wilms  
#943-594  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, IN 47838

*Re: Formal Complaint 05-FC-125; Alleged Violation of the Access to Public Records Act by the City of Fort Wayne*

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the City of Fort Wayne (City) violated the Access to Public Records Act by failing to give you a transcript of a tape recording. I find that the City did not violate the Access to Public Records Act (“APRA”), but that the City may not charge an excessive fee for a copy of a tape recording.

#### BACKGROUND

Two discrete requests that you made of the City form the basis for your formal complaints—one request was dated June 13, 2005, and the second dated June 20, 2005. As far as I can determine, you requested the same thing in both requests: a transcription of a telephone call that would have been logged by the Fort Wayne Police Department, said call consisting of Detective Rivera’s reading of your driver’s license number to the police dispatcher at the time of your arrest. The City timely responded in writing to both requests. In its first response, it stated that no handwritten report exists. In its second response, the City understandably believed that you wanted a copy of the tape recording itself; the City indicated that it would comply upon receipt of \$40 for a copy of the dispatch tape.

In your formal complaint, you state that you believe that the cost of copies of the tape recording is excessive, and in any case, you are asking for the transcript of the call tape because you cannot receive a tape at the prison. In the City’s response to your complaint, which I enclose for your reference, Ms. Carol Taylor, Associate City Attorney, contends that the City has not violated the Access to Public Records Act because it is under no obligation to create a written

transcript of a dispatch call where none currently exists. The City also stated that because you are asking for a transcript and not the tape, your argument regarding copying fees is moot. Should you request the tape, the City would comply and would charge the cost allowable under the APRA.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). If any agency receives a request by U.S. Mail or facsimile, the agency is required to respond within seven (7) days of its receipt of the request. IC 5-14-3-9(b). If an agency has not created a record that is being requested by a person, the agency is not obliged to create a record to fulfill a person's request.

The City has indicated that, while it has the tape recording of the call, it does not have a transcription of the call. You have asked for the City to transcribe the dispatch call. The City is not required under the Access to Public Records Act to create a transcription of the tape recording for you. Therefore, the City has not violated the Access to Public Records Act by refusing to do so.

The City indicated to you that it would charge you a copying fee of \$40 for a copy of the tape recording. Although you do not want a tape recording, in the event that you decide to request one, I write to inform you and the City that the City may not charge for a copy of a tape recording that is not the actual cost of making the copy under IC 5-14-3-9(d), and the fee may not include labor or overhead costs. This is true even if the City has adopted an ordinance setting the \$40 copying fee for audiotapes. However, the City may request payment in advance for a copy of a record. IC 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, I find that the City of Fort Wayne did not violate the Access to Public Records Act when it declined to create a transcription of a dispatch call to you.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Carol T. Taylor