

September 1, 2000

Mr. Joseph F. Zrnchik
9306 Saric Drive
Highland, IN 46322

Re: Advisory Opinion 00-FC-30 *Denial of Access to Public Records and Excessive Copy Fees by Lake County Sheriff's Department.*

Dear Mr. Zrnchik:

This is in response to your formal complaint, which was received on August 23, 2000. You have alleged that the Lake County Sheriff's Department ("Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Department failed to respond in a timely manner to your public records request of August 9, 2000. In addition, you state that the Department charges an excessive per-page copying fee under the APRA.¹ Mr. John P. Bushemi, Attorney for the Department, responded to your complaint in a letter dated August 27, 2000. A copy of his letter is enclosed for your reference.

It is my opinion that the Department did fail to respond within a timely manner under the APRA to your August 9, 2000 request, and that failure to respond constituted a denial under Indiana Code section 5-14-3-9. Further, although the Department may collect a fee for photocopying documents, that fee may not exceed the actual cost as defined by Indiana Code Section 5-14-3-8(d). The current per-page copying fee of fifty cents (\$0.50) per page, as set by the Lake County Council, appears to exceed the standard of actual cost provided in the APRA.

BACKGROUND

According to your complaint, on August 9, 2000 you hand-delivered your written request to the Department for the following documents:

1. List of properties which have been forfeited by court order and are being stored by the Department which are either being held for sale, or maintained for the three (3) year period for use by law enforcement agencies prior to being offered for sale as prescribed by Indiana law.
2. List of properties that have been destroyed by the Department since 1996.
3. Court documents relating to, and authorizing the destruction of properties that were maintained by the Department.
4. Results of the federal audit done in 1997 or 1998 of seized property maintained by the

Department.

5. Information regarding the auctioning of seized property to include past and future dates, places and times of auctions going back five (5) years and forward five (5) years from July 27, 2000.

As of the time of the filing of your complaint, August 23, 2000, you had not received any response from the Department. In his response to your formal complaint to this Office, Mr. Bushemi forwarded to me a copy of a letter to you, which is dated August 27, 2000, that responds to your August 9, 2000 request.

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." Ind. Code §5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code §5-14-3-2. 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 Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

Failure to Respond within Time Period under APRA

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to an oral request or a request made in person within twenty-four (24) hours after it is received. If a written request was mailed or sent via facsimile, the response must be made within seven (7) days after it is received. The failure to respond within these time periods constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, you hand-delivered your request on August 9, 2000, when two weeks passed and you had no response from the Department, you filed a formal complaint. The Department clearly did not respond with the 24 hours required for a response to a hand-delivered written request under the APRA. The Department did respond to you in a letter dated August 27, 2000, after the filing of your formal complaint, but that does not remedy the failure to respond in a timely fashion under the APRA. It is my opinion, therefore, that the Department failed to respond in a timely manner to your

August 9, 2000 request and that this failure constituted a denial under the APRA that is actionable under Indiana Code section 5-14-3-9(d).

Copying Fees

At the local level, the fiscal body for a public agency is required to establish a copying fee schedule. Ind. Code § 5-14-3-8(d). The fiscal body for the Department is the Lake County Council. Any fee for copies of documents that is set by the Council may not exceed the actual cost of copying the document. Ind. Code § 5-14-3-8(d). "Actual cost" means the cost of paper and the per page cost for use of copying or facsimile equipment and does not include the labor costs and overhead costs. Id.

While the APRA does not set a specific amount or range of acceptable amounts for the per-page copying fee, it is not likely that the cost of a piece of paper plus the per-page cost of the use of a copying machine will approach \$0.50 per page. For this reason, the \$0.50 per page that you anticipate will be charged in response to your request to the Department appears to exceed the standards for "actual cost" under Indiana Code section 5-14-3-8(d). The burden, then, lies with the Lake County Council, as fiscal body for the Department, to address this matter.

CONCLUSION

It is my opinion that the Lake County Sheriff's Department did fail to respond within the time period required under Indiana Code § 5-14-3-9(a) with respect to your public records request of August 9, 2000. Furthermore, it is my opinion that the \$0.50 per page copy fee set by the Lake County Council appears to exceed the statutory standard for "actual cost," which is defined at Indiana Code § 5-14-3-8(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. John Bushemi, Attorney
Lake County Sheriff's Department

Mr. Ray Szarmach, Attorney
Lake County Council

¹ The copying fee is set by ordinance of the Lake County Council, not the Department. I attempted to reach the attorney for the Council, Mr. Ray Szarmach to notify him of your complaint about this fee, but had not heard back prior to the writing of this opinion.
