



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Department South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 30, 2008

Betty Quier
6461 Erlenbaugh Drive
Macy, Indiana 46951

Re: Formal Complaint 08-FC-246; Alleged Violation of the Access to Public Records Act by the Miami County Health Department

Dear Ms. Quier:

This advisory opinion is in response to your formal complaint alleging the Miami County Health Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by charging you an excessive search fee. A copy of the Department's response to the complaint is enclosed. In my opinion the Department may not charge a fee to search for or examine records absent separate statutory authority or court order specifying the fee, but the Department must provide you access to only those records you identify with reasonable particularity.

BACKGROUND

You filed the present complaint on December 1, 2008. You allege that the Department does not allow anyone except an employee to touch the books maintained by the Department. Further, the charge for the employee to look through the books to do a genealogy search is \$25 for the first thirty minutes and \$10 for each additional thirty minutes. You allege this is an excessive fee.

The Department responded to the complaint by letter dated December 3 from Miami County Health Officer Rafik Farag, M.D. The Department contends the registrar will search for any record the office maintains and will provide access to the record. The Department contends the books are old and some of them are in poor condition, and this has led to the requirement that the registrar assist with the books. Dr. Farag indicates the Department has microfilmed the books and is in the process of setting up a system for using a microfilm reader to access the records. Finally, the Department contends the search fee was approved by the Board of Health and the County Board of Commissioners on December 17, 2007.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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 the APRA. I.C. § 5-14-3-3(a).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2(n). The books maintained by the Department are public records, and the Department has not asserted an exception to disclosure.

You contend the fee to search the books maintained by the Department is excessive. The Department contends the registrar must help anyone who wishes to inspect the books because they are in poor condition. The Department further contends that the fee ordinance was passed by the Board of Health and the County Board of Commissioners. The APRA provides that the fees for certification or copying of documents by a public agency that is not a state agency may be set by the fiscal body. I.C. § 5-14-3-8(d). The APRA further provides, though, that a public agency may not charge a fee to inspect a public record or to search for or examine a public record. *See* I.C. § 5-14-3-8(b).

Here, it appears the Department is charging you a fee to inspect a record and/or for the Department to search for or examine a record. Under the APRA, the Department may not charge for those activities, absent separate statute or court order establishing such search fees. *See* I.C. § 5-14-3-8(f).

I would note, though, that you must identify with reasonable particularity the record to which you are requesting access. I.C. § 5-14-3-3(a)(1). In other words, the APRA does not require the Department to conduct the genealogy search for you. But if you identify the particular record you wish to access (e.g. a particular book or particular section of a book), the Department must provide you access to inspect the record at no charge.

The Department has a duty under the APRA to protect records from loss, alteration, mutilation, or destruction, but the Department must carry out this duty without denying any person the right to access the records. *See* I.C. § 5-14-3-7.

CONCLUSION

For the foregoing reasons, it is my opinion the Department may not charge a fee to search for or examine records absent separate statutory authority or court order specifying the fee, but the Department must provide you access to only those records you identify with reasonable particularity.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Dr. Rafik Farag, Miami County Health Officer