

January 10, 2005

Mr. Robert Altman  
2258 E. Florida  
Evansville, IN 47711

*Re: Informal Inquiry Response Regarding Excessive Fees for Records of the  
Evansville Police Department*

Dear Mr. Altman:

This is in response to your request for an informal opinion regarding the fee quoted to you by the Records Division of the Evansville Police Department.

You had requested a copy of an "offense report" from the Records Room of the Evansville Police Department ("Department"). You became aware of an alleged burglary at 2216 E. Florida on or around December 28 or 29, 2004. The report that you requested contains information regarding the Department's response to that incident. When you inquired at the Records Room regarding inspecting this report, you were told that the Department charged a \$3 fee to inspect or copy such an offense report. You were also told that the media were not charged this fee.

You contacted my office on or about January 5, 2005 to inquire about whether this fee was consistent with the Access to Public Records Act ("APRA"). I spoke with Lt. John Schnacke of the Records Division of the Evansville Police Department. He told me that members of the public and the media were charged a \$3 fee for all reports, to account for the time and effort to retrieve offense reports or other reports that are not in the "media basket" because the reports were aged several days at the time of the request for the record. He also assured me that members of the public as well as media could examine any recent reports that are in the media basket, and may inspect those reports without charge. He then referred me to Evansville Police Department attorney Robert Rock. Although I made several attempts to contact Mr. Rock by telephone, I was unsuccessful in speaking with him prior to issuing this response.

As stated in the Access to Public Records Act, providing person 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. IC 5-14-3-1. Consistent with that philosophy, any person is entitled to inspect and copy the public records of a public agency during the agency's regular business hours, unless the record is excepted from disclosure under APRA's section 4. IC 5-14-3-3(a).

There is no dispute that the Department is a public agency, as that term is defined in APRA. IC 5-14-3-2. Also, there appears to be no dispute that the Department considers the record that you requested a disclosable public record. In fact, it appears that the offense report is the type of record (also called a "daily log") that the Department is required to create within 24 hours of a suspected crime, under IC 5-14-3-5(c). The Department is required to maintain this record and to allow inspection and copying of it.

A public agency may charge a fee to copy a public record. However, a public agency may not charge any fee under APRA: 1) to inspect a public record, or 2) to search for, examine, or review a record to determine whether the record may be disclosed. IC 5-14-3-8(b). In order to assess a copying fee, the fiscal body of a public agency that is not a state agency is required to establish a fee schedule for the certification, copying, or facsimile transmission of the record, and the fee must be uniform throughout the public agency and uniform to all purchasers. IC 5-14-3-8(d). In addition, the fee may not exceed the actual cost of certifying, copying, or facsimile transmission of the record. IC 5-14-3-8(d). "Actual cost" is defined in APRA to mean the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. IC 5-14-3-8(d). Notwithstanding this provision, an agency must collect a copying or search fee that is specified by statute. IC 5-14-3-8(f).

Hence, motor vehicle accident reports are subject to a fee of not less than \$3 pursuant to state statute. IC 9-29-11-1. However, I am not aware of any statute allowing a special fee to be charged for a record called an "offense report." More pertinently, state law does not contain a provision for a special fee for the "daily log" information that you are seeking. In the absence of a statute requiring a higher fee for a specific record, the Department may charge you and other members of the public and media only the actual cost of copying the record, as established by a fee schedule adopted by the fiscal body. A fee in excess of the actual cost of the copy is excessive under the Access to Public Records Act. Also, any fee charged for research, retrieval, labor, or overhead is not allowed by APRA.

The Evansville Police Department's continuing refusal to allow you to inspect the offense report you seek without charge is a continuing violation of APRA that is actionable under IC 5-14-3-9(e). Also, charging you a fee in excess of the actual cost of copying for a copy of the offense report is also a violation of the Access to Public Records Act. A fee of \$3 per report for a one or two page report is excessive because it is higher than the actual cost of copying the report.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Robert Rock