

September 15, 2005

Mr. Herbert S. Foust  
#124101  
1946 W. U.S. Highway 40  
Greencastle, IN 46135

*Re: Formal Complaint 05-FC-168; Alleged Violation of the Access to Public Records Act by the Starke County Coroner's Office*

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Starke County Coroner's Office ("Coroner") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records. I find that the Coroner violated the Access to Public Records Act.

#### BACKGROUND

On or about July 21, 2005, you sent a request to the Coroner seeking a copy of the coroner's report or autopsy report on Cynthia Foust. You state that you have not received a response. You filed your formal complaint with my office on August 16, 2005.

I faxed to the Coroner's office a copy of your complaint. When I had not received any response from the Coroner, I telephoned the office and left a message; however, I still have not received a response from the Coroner to your complaint.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request for records via U.S. Mail is required to issue a response within seven days of receipt of the request. IC 5-14-3-9(b). If the request for records is in writing, any denial must be in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person

responsible for the denial. IC 5-14-3-9(c). The burden is on the public agency to show that the record is confidential or nondisclosable in the agency's discretion. IC 5-14-3-1; IC 5-14-3-9(f), (g). The coroner's office is a law enforcement agency for purposes of the Access to Public Records Act when it acts pursuant to the autopsy statute at IC 36-2-14-6. *Althaus v. Evansville Courier Co.*, 615 N.E.2d. 441 (Ind. App. 1993). Investigatory records of law enforcement agencies may be withheld at the agency's discretion. IC 5-14-3-4(b)(1). An investigatory record means information compiled in the course of an investigation of a crime. IC 5-14-3-2(h).

Notwithstanding IC 5-14-3-4(b)(1), when a coroner investigates a death, the office of the coroner is required to make available for public inspection and copying certain information regarding the death investigation, including, among other things, information regarding an autopsy such as the date, the person who performed the autopsy, where the autopsy was performed, and a conclusion as to the probable cause of death, probable manner of death, and the probable mechanism of death. IC 36-2-14-18. There are also provisions regarding surviving spouses' and next of kin's access to full autopsy reports and photographs, video recordings or audio recordings of an autopsy. *See* IC 36-2-14. I have no information upon which to base an opinion regarding whether you would meet the criteria for viewing a full autopsy report. However, the law mandates that any member of the public is entitled to certain information from an autopsy.

You have alleged that you have not received a response from the Coroner's Office. In the absence of any response to your complaint from the Coroner, I have no basis upon which to doubt your assertion. In any case, the Coroner *was* required to send you a written response citing any applicable exemption. If he failed to do this, he violated the Access to Public Records Act. In addition, even if you are not entitled to a full autopsy report, you would be entitled to the information from an autopsy report, as provided in IC 36-2-14-18. You are entitled to file a court action to compel the Coroner to disclose the record, in accordance with IC 5-14-3-9(e).

#### CONCLUSION

The Starke County Coroner violated the Access to Public Records Act in failing to respond to your request for a record of an autopsy, and in failing to provide information from an autopsy that is mandated to be disclosed by law.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mark Smith, Starke County Coroner