

September 5, 2007

Jon B. Barrett
13771 North Wheeling Avenue
Gaston, Indiana 47342

Re: Formal Complaint 07-FC-232; Alleged Violation of the Access to Public Records Act by the Delaware County Board of Health

Dear Mr. Barrett:

This is in response to your formal complaint alleging the Delaware County Board of Health ("Board") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not providing you with copies of two death certificates. A copy of the Board's response is enclosed for your reference. I find that the Delaware County Board of Health did not violate the APRA when it denied you access to death certificates.

BACKGROUND

In your complaint you allege that on July 26, 2007 you requested records from the Board. Specifically you requested copies of two death certificates. The Board requires the following information to be submitted by a person who requests a copy of a death certificate: name of deceased, date of death, place of death, name of requester, relationship to deceased, and the purpose for which the record is requested. In addition, the Board requires a signature. You allege Mary Whaley, Registrar of Vital Records, denied your request, indicating death certificates are not public records. You filed your complaint on August 3.

The Board responded to your complaint by letter from attorney Donald Dunnuck dated August 8. The Board in its response cites *Evansville-Vanderburgh County Department of Health v. The Evansville Printing Corporation*, 332 N.E.2d 829 (Ind. Ct. App. 1975). The Board asserts that in that case the court held that the cause of death is not considered public record and therefore the Board is not required to release that information.

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 Board is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board 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.

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

To obtain a copy of a death certificate, the purchaser must have a direct interest in the matter or the information must be necessary for the determination of a personal or property right or for the compliance with state or federal law. I.C. §16-37-1-10. The local health officer shall from the death certificate make a permanent record containing the following: name, sex, age, place of death, residence, residence address during the last two year's of the decedent's life, and Social Security number. This record shall be open to public exception except that the Social Security number shall be kept confidential. I.C. §16-37-3-9.

When a coroner investigates a death, the corner is required to make available for inspection and copying certain information including the written report regarding the verdict on the death under consideration as required under I.C. §36-2-14-10 as well as certain information when an autopsy is preformed, including probable cause, probable manner, and probably mechanism of death. I.C. §36-2-14-18.

Here, you have requested copies of two death certificates from the Board. You have provided the information required by the Board for purchase of death certificates. The Board has denied you access. The Board relies on *Evansville-Vanderburgh County Department of Health*, 332 N.E.2d 829, wherein the court held that while the certificate of death registration was public record, the cause of death was not required to be disclosed because it was not listed in the Hughes Anti-Secrecy Act (Ind. Code §5-14-1-1 to §5-14-1-6) as information required to be disclosed. The Hughes Anti-Secrecy Act has since been repealed and replaced by the APRA. As such, my opinion is based on applicable provisions of the APRA.

The APRA requires disclosure of public records unless they are confidential or otherwise non-disclosable under the APRA. I.C. §5-14-3-3. Records declared confidential by state statute are excepted from disclosure under I.C. §5-14-3-4(a). Here, I.C. §16-37-3-9 restricts access to the particular records you request, copies of certificates of death, to a person with a direct interest in the matter or when the information is necessary for the determination of a personal or property right or for compliance with state or federal law. I.C. §16-37-1-10. It is my understanding you seek these records for informational purposes and that your request does not fall into either of those two categories. As such, the Board is correct in denying you access to the copies you seek.

To the extent you seek information required to be kept in the permanent record of the Board under I.C. §16-37-3-9, those records should be made available to you upon request. Cause or manner of death is not included in the information required to be kept. I.C. §16-37-3-9.

To assist you in your search for information, though, I would mention that the County Coroner is required to make available for public inspection certain records as listed in I.C. §36-2-14-18. I suggest you submit your request to the local county coroner to determine whether that office maintains any disclosable records responsive to your request.

CONCLUSION

For the foregoing reasons, I find that the Delaware County Board of Health did not violate the APRA when it denied you access to death certificates.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Donald H. Dunnuck
Mary Whaley, Registrar, Delaware County Health Department