



STATE OF INDIANA

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August 26, 2010

Marisa L. Kwiatkowski
2080 N. Main St.
Crown Point, IN 46307

Re: Formal Complaint 10-FC-169; Alleged Violation of the Access to Public Records Act by the Gary Health Department

Dear Ms. Kwiatkowski:

This is in response to your formal complaint alleging the Gary Health Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Department's response is enclosed for your review.

BACKGROUND

In your complaint, you allege that you submitted a request for records to the Department on May 24, 2010. You followed up with the Department on several occasions since that time, but as of July 8th you had not yet received the records. You state that each time you contacted the Department, officials say they are reviewing it or deciding what to do with it.

In response to your complaint, City of Gary Corporation Counsel Susan Severtson states that the Department is uncertain if it can comply with your request without violating the Privacy Rule found in the Health Insurance Portability and Accountability Act ("HIPAA"), 45 CFR 164.502.

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." 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. Accordingly, any person has the right to inspect and copy the Department's public records 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).

In your request to the Department, you sought access to the “ages, hometowns and causes of death” for several individuals. Several provisions in Indiana law pertain to the public’s access to death records. 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. Thus, unless you can show a direct interest in the deaths of the individuals’ death certificates you requested, those records are confidential and the Department (and any other public entity) cannot disclose them.

However, Indiana law also provides that 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 inspection¹ except that the social security number shall be kept confidential. I.C. § 16-37-3-9.

I also note that 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 probable mechanism of death. I.C. § 36-2-14-18. I do not know whether or not the Department maintains these records, but if the Department does have the records they should be disclosed in accordance with these provisions upon request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department should make available to you the record described in Indiana Code section 16-37-3-9 upon request if the Department maintains those records. The Department is not required to release a copy of the requested death certificates to you because those records are confidential under Indiana Code section 16-37-1-10.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Susan Severtson, Corporate Counsel, City of Gary

¹ The Department expresses concern regarding the accessibility of this information in light of HIPAA. However, I see no conflict between HIPAA and I.C. § 16-37-3-9 because HIPAA permits coroners and medical examiners to use protected information “for the purpose of identifying a deceased person, determining a cause of death, *or other duties as authorized by law.*” 45 CFR 164.512(g) (emphasis added).

