



STATE OF INDIANA

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January 13, 2010

Mr. Michael R. Shaver
3799 Steeplechase Dr.
Carmel, IN 46032

Re: Formal Complaint 10-FC-7; Alleged Violation of the Access to Public Records Act by the Montgomery County Coroner

Dear Mr. Shaver:

This advisory opinion is in response to your formal complaint alleging the Montgomery County Coroner ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

BACKGROUND

According to your complaint, you requested a copy of "the Coroner's Report as well as any other public records of your office on the death of Wabash College student Johnny Smith in October, 2008" via email on December 15, 2009. Coroner David Hunt responded to you via email the same day. Mr. Hunt denied your request, claiming that coroners' reports "are investigative records and therefore exempt from disclosure."

My office forwarded a copy of your complaint to the Coroner. To date, we have not received a response. Therefore, I issue the following advisory opinion based on the facts presented in your complaint.

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 Coroner 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 Coroner 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

By way of background, there are multiple types of public records related to the death of individuals in Indiana. To obtain a copy of a death certificate, the certificate’s 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. These specific requirements exist notwithstanding the general provisions regarding investigatory records in the APRA. To the extent there is a conflict between the two, the specific provisions under Ind. Code § 36-2-14-18 control pursuant to Ind. Code § 5-14-3-4(a)(1).

Here, it is my understanding you have not requested a copy of the death certificate but have requested a copy of the Coroner’s report. To the extent you seek information required to be kept in the permanent record of the Coroner under I.C. § 36-2-14-18, those records should be made available to you upon request. The APRA requires disclosure of public records unless they are confidential or otherwise non-disclosable under the APRA. I.C. § 5-14-3-3. Moreover, the APRA requires public agencies to separate and/or redact the nondisclosable information in public records in order to make the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a).

CONCLUSION

For the foregoing reasons, it is my opinion that to the extent the Coroner failed to provide you with disclosable information required by I.C. § 36-2-14, the Coroner violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

cc: David Hunt, Montgomery County Coroner