



# STATE OF INDIANA

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July 30, 2012

Ms. Marian Rita Ward  
1025 East Co. Road 550 South  
Winslow, Indiana 47598

*Re: Amended Formal Complaint 12-FC-169; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Health Department*

Dear Ms. Ward:

This amended advisory opinion is in response to your formal complaint alleging the Vanderburgh County Health Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Joseph H. Harrison, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you alleged that on June 6, 2012, you submitted a written request to inspect and copy records maintained by the Department under I.C. § 16-37-3-3 for the month of May 2012. On June 13, 2012, Mr. Harrison denied your request in writing pursuant to I.C. § 16-37-1-8 and 16-37-1-10. You cite to a 1998 Advisory Opinion issued by the Attorney General which concludes that with the exception of records prepared by the local health officer under I.C. 16-37-3-9(d), death certificates and information from death certificates are disclosable public records."

In response to your formal complaint, Mr. Harrison advised that it was his understanding that the Indiana death registration system is an electronic web based system under control of the Indiana Department of Health. The physician last in attendance upon the deceased or the person in charge of interment shall file a certificate of death with the local health officer of the jurisdiction in which the death occurred via the Indiana death registration system. The Department has access to copies of the official certificate of death for those persons who have passed away in Vanderburgh County.

Pursuant to I.C. § 16-37-1-8 and I.C. § 16-37-1-10, in order to obtain a copy of the certificate of death, the applicant seeking such certificate 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. Regardless, pursuant to

I.C. § 16-37-3-9, 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 of the deceased during the last two (2) years of the decedent's life, and social security number. The records shall be open to public for inspection purposes, except that the social security number shall be kept confidential.

You were advised that so long as you could satisfy the requirements of I.C. 16-37-1-10, you could receive a certificate of death for a particular person who passed away in May of 2012 in Vanderburgh County. You were further advised that if you could not meet the statutory requirements to obtain a death certificate, the Department was denying your request for copies of the requested certificates of death. Notwithstanding such denial, you were informed that you were welcome to visit the Health Department during its regular business hours to view, inspect, and copy any records maintained by the Department pursuant to I.C. § 16-37-3-9.

#### 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.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, the Department responded to your written request to inspect and copy in writing within seven (7) days of the receipt of your request. As such, it is my opinion that the Department complied with the requirements of section 9 of the APRA.

As to the substance of your request, you sought “copies of records created under I.C. § 16-37-3-3 maintained by the Vanderburgh County Health Department for the month of May, 2012.” I.C. § 16-37-3-3 (“Certificate of Death”) provides the following:

Sec. 3. (a) The physician last in attendance upon the deceased or the person in charge of interment shall file a certificate of death or of stillborn with the local health officer of the jurisdiction in which the death or stillbirth occurred. The local health officer shall retain a copy of the certificate of death.

(b) Notwithstanding subsection (a), beginning January 1, 2011, for a death occurring after December 31, 2010, the physician last in attendance upon the deceased or the person in charge of interment shall use the Indiana death registration system established under I.C. 16-37-1-3.1 to file a certificate of death with the local health officer of the jurisdiction in which the death occurred.

Thus, the Department receives from the physician that was last in attendance upon the deceased or the person in charge of internment, a Certificate of Death or certificate of stillborn. The local health officer is required to maintain a copy of the Certificate of Death. You have sought copies of all records maintained by the Department pursuant to I.C. § 16-37-3-3 for May of 2012. A 1998 advisory opinion issued by the Office of the Attorney General provided that aside from the exception set forth in I.C. § 16-37-3-9(d), the death certificate and information in it are disclosable public records. *See Official Opinion 98-01; Office of the Attorney General*. The Attorney General opinion was primarily based on *Evansville-Vanderburgh County Dept. of Health v. Evansville Printing Corp.*, 332 N.E.2d 829 (Ind. Ct. App. 1975), which still remains good law. The Attorney General's opinion provided that the local health officer may exercise discretion *only* in deciding to whom to release the document that constitutes the Certificate of Death Registration, which is a separate document than the Certificate of Death. *Id; Evansville*, 332 N.E.2d at 833. "However, the information contained in the document and the information used to prepare the document are disclosable public records under the Act. Only the records prepared by the local health officer under I.C. § 16-37-3-9(d) are not disclosable public records." *Official Opinion 98-01; Office of the Attorney General*.

I.C. § 16-37-1-8 provides information regarding the Certificate of Death Registration (also referred to as "Certification of Death"). This statute provides that a local health officer shall provide a certification of birth, death, or stillbirth registration upon request by any person. *See* I.C. § 16-37-1-8. However, the Certificate of Death Registration may only be provided if:

- (1) the health officer is satisfied that the applicant has a direct interest in the matter;
- (2) the health officer determines that the certificate is necessary for the determination of personal or property rights or for compliance with state or federal law; and
- (3) the applicant for a birth certificate presents at least one form of identification.  
*Id.*

I.C. § 16-37-1-10 provides that:

Sec. 10. (a) Except as provided in subsection (b), the records and files of the division of the state department concerning vital statistics are subject to this article and rules of the state department. Data contained in the records and files may be disclosed only as follows:

- (1) The state registrar shall permit inspection of the records or issue a certified copy of a certificate or part of a certificate only if the state registrar is satisfied of the following:
  - (A) That the applicant has a direct interest in the matter recorded.
  - (B) That the information is necessary for the determination of personal or property right or for the compliance with state or federal law.The state registrar's decision is subject to review by the state department or a court under this section.
- (2) The state department may permit the use of data contained in vital statistical records for research purposes only, but no identifying use may be made of the data.
- (3) In any extraordinary case that the state registrar determines is a direct tangible and legitimate public interest.
- (b) The birth record of an adopted child remains subject to the confidentiality provisions of IC 31-19 regarding the release of adoption information.

It should be noted that I.C. § 16-37-1-10 would only apply to records maintained by the State Department of Health. Thus, the Department could not deny your request pursuant to this section of the statute, as it is not a state department. As applicable here, you have sought copies of records maintained by the Department pursuant to I.C. § 16-37-3-3. While the Department may deny your request for the Certificate of Death Registration under I.C. § 16-37-1-8(a), it is my opinion that it may not deny your request for records maintained by the Department under I.C. 16-37-3-3. Further, it is my opinion that the Department may not cite to I.C. § 16-37-1-10 in denying a request for records, as the Department is not a "state department". From what the law currently provides, while the State Department of Health could deny a similar request under I.C. § 16-37-1-10, the information as maintained by the local health department has not been afforded the same protections.

CONCLUSION

For the foregoing reasons, it is my opinion that your request for records maintained by the Department pursuant to I.C. § 16-37-3-3 was improperly denied.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Joseph H. Harrison