



STATE OF INDIANA

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February 17, 2012

Mr. Howard L. Steele
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-23; Alleged Violation of the Access to Public Records Act by the Marion County Coroner's Office

Dear Mr. Steele:

This advisory opinion is in response to your formal complaint alleging the Marion County Coroner's Office ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the Coroner. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on January 6, 2012, you submitted a written request to the Coroner for the Coroner's Verdict and written reports performed on your brother. As of January 23, 2012, the date you filed your complaint with the Public Access Counselor's Office, you have not received a response from the Coroner.

In response to your formal complaint, Ms. Newsom advised that it received your written request on January 6, 2012 to which you sought: "A copy of the Coroner's report and Autopsy report done on Leslie Darrell Steele 59, born 1954, died on December 13, 2011. I also want to no [sic] the cause of death, is should be in said report." The Coroner does confirm receipt of your request and regrets its oversight in failing to acknowledge the request. However, the Coroner has no records that were responsive to your request, as the decedent identified was not the subject of a Coroner's case.

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 Coroner 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 Coroner'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 information regarding how or when the agency intends to comply. Here the Coroner acknowledged that it failed to respond to your request pursuant to the requirements of section 9(b). As such it is my opinion that the Coroner acted contrary to the APRA when it failed to respond to your written request within seven (7) days of receipt.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy..."). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, the Coroner has indicated that it does not maintain any records that were responsive to your request. As such, it is my opinion that it did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Coroner acted contrary to the APRA by failing to respond to your written request within seven (7) days of receipt. As to all other issues, it is my opinion that the Coroner did not violate the APRA.

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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Andrea Brandes Newsom