



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 29, 2012

Jeff Wiehe
The Journal Gazette
600 W. Main Street
Fort Wayne, Indiana 46802

Re: Formal Complaint 12-FC-233; Alleged Violation of the Access to Public Records Act by the Whitley County Coroner

Dear Mr. Wiehe:

This advisory opinion is in response to your formal complaint alleging the Whitley County Coroner ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Scott A. Smith, Coroner, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Coroner on August 2, 2012. As of August 16, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Coroner has failed to respond to your request.

In response to your formal complaint, Mr. Smith advised that your original request was sent to an incorrect address. The Coroner did not receive your request until August 17, 2012. On August 28, 2012, all records that were responsive to your request were provided.

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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). The seven-day time period does not commence until the public agency is in receipt of the request for records. 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, you provided that your request was submitted to the Coroner on August 2, 2012. In response, the Coroner advised that your request was not actually received until August 17, 2012 due to an incorrect address.¹ Thus, the Coroner was required to respond to your request no later than August 24, 2012 and at a minimum, acknowledge its receipt. As the Coroner did not respond to your request until August 28, 2012, it is my opinion that it acted contrary to the requirements of section 9 of the APRA in responding to your request for records. As the Coroner has now provided all records that are responsive to the request, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Coroner acted contrary to the requirements of section 9 of the APRA by failing to respond in writing to your request within seven days of receipt.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Scott A. Smith

¹ Our office has similar difficulties in providing a copy of the formal complaint to the Coroner. The e-mail address listed for the Coroner on the Whitley County Homepage (<http://whitleygov.com/egov/apps/directory/list.egov?path=pro&usr=202>) provides that the Coroner's email address is wccoroner@whitleynet.org. As provided by Mr. Smith, the correct email address is wccoroner@whitleygov.com.