



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) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

October 8, 2012

Marisa Kwiatkowski
2080 N. Main Street
Crown Point, Indiana 46307

Re: Formal Complaint 12-FC-267; Alleged Violation of the Access to Public Records Act by the Benton County Coroner

Dear Ms. Kwiatkowski:

This advisory opinion is in response to your formal complaint alleging the Benton County Coroner ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John Cox, Benton County 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 request for records to the Coroner on June 15, 2012. Coroner John Cox acknowledged receipt of your request and stated he would gather the records. Approximately one month later, you inquired with Mr. Cox regarding the status of your request, to which he provided that all records would be produced within five days. Since that time, Mr. Cox has not returned numerous calls regarding your request, nor have any records been produced.

In response to your request, Mr. Cox provided that your request sought the "names, dates of death, ages, genders, races, residences, locations of death, causes and manner of death for all children (ages 0-17) who died between July 1, 2008 and June 30, 2011." As elected Coroner since January 1, 2004, Mr. Cox advised that he has investigated two deaths of children under the age of seventeen (17); as both of the deaths were outside the scope of your request, the information will be kept confidential.

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, it is my opinion that the Coroner violated section 9(c) the APRA by failing to cite to the specific statutory exemption that would authorize the withholding of all or part of the records that were requested. The Coroner would not meet its burden to demonstrate that a proper denial was issued pursuant to section 9 of the APRA by simply stating the deaths that occurred were outside the scope of the request and therefore confidential.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As applicable here, your initial request for records was submitted to the Coroner on June 15, 2012. The Coroner did not provide a response or a denial to your request



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) 234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

until October 7, 2012, only after you filed a formal complaint with the Public Access Counselor's Office. The Coroner in its response to your formal complaint did not provide any reasoning regarding why it took three months to either deny your request or provide any records that were responsive. As such, it is my opinion that the Coroner did not meet its burden to demonstrate that it complied with section 3(b) of the APRA in responding to your request for records.

CONCLUSION

For the foregoing reasons, it is my opinion that the Coroner violated the APRA by failing to comply with the requirements of section 9(c) in denying your request and by failing to provide all records in a reasonable period of time, as required under section 3(b) of the APRA.

Best regards,

A handwritten signature in black ink that reads "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: John Cox