



# STATE OF INDIANA

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October 21, 2013

Ms. Linda K. Davenport  
749 Jim Haaf Blvd.  
Rockport, IN 47635

*Re: Formal Complaint 13-FC-283; Alleged Violation of the Access to Public Records Act by the Spencer County Clerk of the Circuit Court*

Dear Ms. Davenport,

This advisory opinion is in response to your formal complaint alleging that the Spencer County Clerk of the Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk has responded to your complaint by way of Clerk Gay Ann Harney. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 19, 2013.

## BACKGROUND

Your complaint alleges Clerk of the Spencer County Circuit Court violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

You allege that on August 19, 2013, you went in person to the Spencer County Courthouse seeking a copy of your great-grandmother's inquest for insanity from 1930. You were denied and told the records could not be released to the public. Furthermore, the Hon. Judge Jon Dartt further denied your request on the following Monday when he indicated mental health records could not be released.

## 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 Ind. Code § 5-14-3-1. The Clerk of the Spencer County Circuit Court is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk's public records during regular business hours

unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The APRA holds that public records declared confidential by state statute are not subject to disclosure (See Ind. Code § 5-14-3-4(a). In section (d) of that statute, the APRA states that:

Notwithstanding any other law, a public record that is classified as confidential, **other than a record concerning an adoption or patient medical records**, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

Emphasis added.

Based on that statute, patient medical records (including mental health records) are unable to be released. The first clause of the provision, “Notwithstanding any other law”, is particularly applicable because Title 16 of the Indiana Code directly addresses mental health records of decedent. Ind. Code § 16-39-2-3 declares confidential a patient's mental health record and shall be disclosed only with the consent of the patient. Nevertheless, Ind. Code § 16-39-2-10 holds that:

For the purposes of this chapter, consent to the release of a deceased patient's record may be given by the personal representative of the patient's estate. If there is no appointment of a personal representative, consent may be given by:

- (1) the patient's spouse; or
- (2) if there is no spouse, **any responsible member of the patient's family**, including a parent, guardian, or custodian of the deceased patient's minor child.

Emphasis added.

“Responsible member of the patient's family” is not defined in the Code; therefore, the determination is presumably at the discretion of the local trial court. An argument could be made that a member of the patient's family could obtain a copy of an 83-year-old public record if the Court allows it.

Despite the foregoing, in her response, the Clerk indicates the Circuit Court does not have any records responsive to your request. The information you sought related to a Harriet

Stuteville. According to the Clerk, there are only two records in 1930 and neither was your great-grandmother. Coincidentally, the Clerk in 1930 was a Dr. R.S. Stuteville. It is unclear if there was any relation or why the records do not exist for that time period.

#### CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Clerk of the Circuit Court of Spencer County did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish underneath.

Luke H. Britt  
Public Access Counselor

cc: Gay Ann Harney