



STATE OF INDIANA

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March 23, 2014

Ms. Bethany D. Maddox
17903 Grassy Knoll Dr.
Westfield, IN 46074

Re: Formal Complaint 14-FC-35; Alleged Violation of the Access to Public Records Act by the Howard County Health Department

Dear Ms. Maddox,

This advisory opinion is in response to your formal complaint alleging the Howard County Health Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Vital Records Registrar, Ms. Karen Johnson, responded to your complaint which is attached for your reference. 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 February 25, 2014.

BACKGROUND

Your complaint alleges the Howard County Health Department violated the Access to Public Records Act by denying producing records responsive to your request.

You have not indicated an exact date when you first made your records request upon the Department. Therefore, I cannot determine if the denial preceded your formal complaint by less than 30 days. You have indicated in your formal complaint the date of denial was between November 2013 and February 2014. Pursuant to Ind. Code § 5-14-5-7, I may only issue official Advisory Opinions when a formal complaint has been filed in a timely manner. This Opinion is for educational purposes only and not for the purposes of an adversarial determination.

Your contention involves the denial of access to death records. You have been seeking information to develop your own records for genealogical purposes. Specifically, you seek records relating to family and birth information of the deceased. To this point, you have only received names and dates of death from a document created by the Department referred to as a "search". This is a form developed by the Registrar from information contained in the death certificate.

In her response, the Registrar cites Ind. Code § 16-37-3-9 which lists all of the information a local health officer must memorialize in a permanent record from the still birth and death certificates. Moreover, the Department argues you have been offered a death index book, a genealogy search, and death certificates. The Registrar contends those records list the information critical to your genealogical endeavors.

ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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 Howard County Health Department 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 Department’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.

Any documentation held by a public agency is a public record. ‘Public record’ means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. Ind. Code § 5-14-3-2(o). There can be no doubt that a record of death in any form is a public record if held by the Department. The question is whether it is a public record *subject to disclosure*.

Despite our conversations, it remains a bit unclear to me exactly which records you seek to inspect in addition to what has been provided. It appears the Department has provided you the opportunity to inspect the records they maintain. To clarify, however, all of the items listed in Ind. Code § 16-37-3-9 are disclosable to the public under Subsection (b) of that Code provision.

Muddying the waters a bit is the unresolved Indiana Court of Appeals case regarding public inspection of the actual death certificate. Ind. Code § 16-37-1-8 provides that the local health department, may only release a copy of the death certificate if the health officer is satisfied the requester has a direct interest in the matter or if the certificate is necessary for the determination of property rights or for compliance with state or federal

law. This would give the Department the discretion to define what it believes is a direct interest. If the record you seek is the death certificate (which seems to have been already disclosed to you), then it is permissible to be released by the Department if the health officer makes a subjective determination you have a direct interest. Legitimate genealogical fact-finding undertakings would seem to rise to the level of direct interest, but as the legislature has not defined it directly (nor have the Courts ruled on it), I cannot compel the Department to make that decision.

CONCLUSION

For the foregoing reasons, the Howard County Health Department has not violated the Access to Public Records Act, however, I encourage both parties make best efforts to work to resolve the situation in the most amicable way possible.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Karen Johnson