

April 5, 2000

Mr. Ronald Simmons  
c/o Mr. John Emry  
62 West Jefferson Street  
Franklin, IN 46131-2311

Re: Advisory Opinion 00-FC-10      *Denial of Access to Public Records by the Hamilton County Sheriff's Department.*

Dear Mr. Simmons:

This is in response to your formal complaint, which was received on March 24, 2000. You have alleged that the Hamilton County Sheriff's Department ("Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3, by failing to respond to a public records request dated February 16, 2000. Captain R. Daniel Stevens, Jail Commander for the Department, responded in writing to your complaint in a letter dated March 29, 2000. A copy of his response is enclosed for your reference. It is my opinion that the Department denied you access to public records under the APRA when it failed to respond to your request within seven (7) days of receipt as required under Indiana Code section 5-14-3-9 and this denial is actionable under Indiana Code section 5-14-3-9 (d).

#### BACKGROUND

According to your complaint, in a letter dated February 16, 2000, you made a public records request to the Department for copies of your health records and provided a written authorization to release these records to your attorney, John Emry. You did not receive a response from the Department. On March 24, 1999, you filed a formal complaint with this Office, claiming that the Department denied you access to these public records in violation of the APRA.

In his response, Captain Stevens admitted that the Department did not respond to your request in a timely manner. He explained that the jail nurse has been operating short of staff since February 1, 2000 and has not been able to keep up with the correspondence. As soon as the Department received the formal complaint, however, the jail nurse prepared and sent a response to your request.

#### 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." Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

Generally, health records of a person, even those created by a public agency, are not disclosable unless the person provides written consent to disclose them. Ind. Code §5-14-3-4(a)(9). Indiana Code section 16-39-1-3 provides that a person may request access to his or her own health records from a health care provide.<sup>1</sup> In the present case, you signed a written authorization to the Department to release your health records to your attorney.

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it is my opinion that the Department failed to respond to your written request of February 16, 2000 within seven (7) days after receipt, which constituted a denial that is actionable under Indiana Code section 5-14-3-9. Since the filing of your formal complaint, however, the Department has produced the public records you requested.

## CONCLUSION

It is my opinion that the Hamilton County Sheriff's Department failed to respond within the time period required under Indiana Code section 5-14-3-9(b) to your February 16, 2000 public records request, and that failure to respond constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Capt. R. Daniel Stevens, HCSD

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1 In this case, the Department employs a nurse who would be a provider as defined at Indiana Code section 16-18-2-295.