

May 2, 2003

Robert G. Beatty
#884923 33-1S
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: *Advisory Opinion 03-FC-24*; Alleged Denial of Access to Public Records by the Pulaski County Health Department.

Dear Mr. Beatty:

This is written in response to your formal complaint, which was received on April 11, 2003. You have alleged that the Pulaski County Health Department ("Health Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that the Health Department failed to respond to your request for access to public records. Dr. Rex A. Allman, County Health Officer responded to your request after we directed your complaint to the Health Department. A copy of the response we received, which appears to be the Health Department's actual response to your request, is enclosed for your reference. In addition, today the Department faxed to us a copy of the envelope that contained your request indicating that the Department received it on April 8, 2003.¹ A copy of this is also enclosed for your reference. For the reasons set forth below, it is my opinion that it appears that the Health Department did not deny you access to public records because they did respond within seven (7) days of receiving your request for access to public records.

BACKGROUND

According to your complaint, some time in March 2003 and approximately three (3) weeks prior to filing your complaint with this Office, you made a written request by mail to the Health Department. You asked for copies of death certificates or other proof of death, such as a burial permit, for two persons, John Louis Richert, who died September 20, 1995 and Mr. Preston F. Henry, who died on January 6, 1996. You did not receive any response from the Health Department so you signed and mailed your formal complaint on April 7, 2003.

In response to your complaint, we originally received only a copy of correspondence dated April 14,

2003 from Dr. Allman, apparently in response to your public records request. Dr. Allman provided you with a copy of a death certificate for John. L. Richert, but advised you that the Health Department has no public records, either of the death or the burial, for Preston Henry. Today, I received a telephone call from a staff person at the Department who indicated that they did not receive your request until April 8th and then responded on April 14th, which is within the seven (7) days required under the APRA. The Department then followed up with written evidence of this receipt.²

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 Health 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 to receive photocopies of the public records of the Health 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).

It is the responsibility of the public agency to respond to requests for access to 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. When a person makes a written request to a public agency, a denial occurs in one of two ways. First, a denial may occur when the person designated by the public agency as responsible for records release decisions refuses to permit inspection or copying. Ind. Code §5-14-3-9 (a). In the alternative, if seven (7) days elapse after the agency receives the request and there has been no response, this is also a denial. Id. Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county 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 Health Department did not deny you access because they appear to have responded within seven (7) days of receiving your public records request. If you made a request in March as you stated, then either that the Department never received that request or the time of mailing was delayed for some reason or another. In either event, the Department appears to have complied with the time for response under the APRA with respect to your request.

CONCLUSION

It is my opinion that the Pulaski County Health Department did not deny you access to public records with respect to your written request because the Department did respond within the time period required under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Dr. Rex A. Allman, MD w/o enclosure

¹ I had originally issued my Advisory Opinion 03-FC-24 to you on April 29, 2003. The Department had not, in the original written response to your complaint, included any information about when they actually received your request. While I am hesitant to amend any issued Advisory Opinion, the information provided is significant to my final opinion. For this reason, I have agreed to amend this Advisory Opinion and it supersedes the Advisory Opinion issued to you on April 29, 2003.

² It is important that public agencies, when responding to formal complaints include all relevant information in the original response unless there are circumstances that prevent this.