



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 25, 2008

Meredith Thompson
1455 Cherry Tree Road
Avon, Indiana 46123

Re: *Formal Complaint 08-FC-228; Alleged Violation of the Access to Public Records Act by the Hendricks County Health Department*

Dear Ms. Thompson:

This advisory opinion is in response to your formal complaint alleging the Hendricks County Health Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Department's response to the complaint for your reference. In my opinion the Department violated the APRA.

BACKGROUND

You allege that on September 29 you appeared at the Department's office and asked for copies of your grandparents' birth records. You allege you were given copies of typed cards of information extracted from the birth records you are seeking. You inquired whether these were the only available records, and you were told the staff member who could answer the question was out of the office. You also obtained from the Indiana State Department of Health ("ISDH") copies of additional birth records.

You returned to the Department office on October 15 and inquired whether the Department still maintained the original records and asked to obtain a copy of those records. You allege that on October 21 a staff member of the Department telephoned you and indicated the Department still maintains the original record books but that you could not obtain a copy of the records because each page contained more than one record and the Department would have to block out the information related to other individuals.

The Department responded to the complaint by letter dated November 10 from Health Officer David Hadley. The Department contends the ISDH maintains all birth certificates. Further, the Department contends that the index card copies you received are the records the Department maintains for genealogy purposes. The Department contends that you cannot inspect the record books because they contain some information which may be confidential pursuant to state statute. Finally, the Department contends that copying pages of the books is labor intensive for Department staff members.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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 the APRA. I.C. § 5-14-3-3(a).

Here, the Department has not contended the information you seek is confidential or otherwise nondisclosable. Access to the records must be granted unless the Department can bear the burden of proof to sustain the denial of access. See I.C. § 5-14-3-1. The Department can only do so if the records you seek have been declared confidential under I.C. § 5-14-3-4.

The Department contends the record books may contain information which is confidential pursuant to state statute. The Department is required under the APRA to separate the disclosable from nondisclosable information and make the disclosable portions available to you. *See* I.C. § 5-14-3-6. In other words, the Department must do exactly what it eventually did – provide you copies of the disclosable information you seek directly from the record books. The APRA does not allow an agency to deny access to records on the basis that doing so would be too labor intensive for the agency staff. Nothing in the APRA provides a timeline when the records must be produced, and so this office has said the records must be produced in a reasonable period of time, considering the facts and circumstances. The agency must regulate any material interference with the regular discharge of duties. I.C. § 5-14-3-7(a). But the agency may not deny access on the basis that providing access is too labor intensive.

It is my understanding the Department has now provided you copies of the entries in the record books. While the Department initially violated the APRA by denying you access, it has now satisfied the duty under the APRA relative to your request.

CONCLUSION

For the foregoing reasons, it is my opinion the Department violated the APRA by denying you access to the disclosable information contained in the record books.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: David Hadley, Hendricks County Health Department