



STATE OF INDIANA

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March 19, 2008

Kim Amrhien
Marion County Health Department

Via electronic mail to kamrhien@hhcorp.com

Re: Your informal inquiry

Dear Ms. Amrhien:

This is in response to your informal inquiry dated March 13, 2008. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write on behalf of the Marion County Health Department ("Department"). Pursuant to the Access to Public Records Act ("APRA")(Ind. Code 5-14-3), the Department is a public agency. I.C. § 5-14-3-2. Your inquiry relates to records maintained in the Vital Records division of the Department. You inquire which records related to birth and death should be made available for public inspection and copying. You indicate that by statute certain records are open to inspection. Your inquiry is which records not specifically deemed accessible to the public by statute should be made available for inspection and copying.

Ind. Code § 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the APRA. Section 4 contains a list of records which are required to be withheld from disclosure and records which may be withheld from disclosure at the discretion of the agency. I.C. § 5-14-3-4. You indicate that state statute requires certain birth and death records to be open to inspection. You inquire about any birth and death records not specifically required by statute to be open to inspection.

Generally, we start with the premise that all public records created, received, retained, maintained, or filed by or with a public agency are subject to inspection and copying. I.C. §§ 5-14-3-3, 5-14-3-2(m). In other words, unless a record about which you inquire is specifically exempt from disclosure, it must be made available upon request for inspection and copying. The APRA contains several exceptions to disclosure. Of the mandatory exceptions (records which may not be disclosed by the agency absent a state or federal state or court order requiring disclosure), the following might apply to the records about which you inquire:

- (1) Those declared confidential by state statute . . .
- (3) Those required to be kept confidential by federal law . . .
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under I.C. 16-39 . . .
- (12) A Social Security number contained in the records of a public agency.
I.C. § 5-14-3-4(a).

Because I do not have information listing all the various records maintained by the Department, I cannot say definitively which records might fall under which exception. To the extent any of these or other exceptions listed in subsection 4(a) apply, those records would be required to be withheld from disclosure. It should be noted that a public record that is classified as confidential, except adoption records, shall be made available for inspection and copying seventy-five years after the creation of the record. I.C. § 5-14-3-4(d).

Subsection 4(b) contains a list of records which may be withheld from disclosure at the discretion of the agency. I do not find any specific exceptions in subsection 4(b) which I believe would apply to vital records. To the extent the Department believes records may be withheld pursuant to subsection 4(b), the Department would bear the burden of proof to sustain the denial if the denial were challenged in a court action. I.C. § 5-14-3-9(f).

Finally, it is important to note that the APRA is a statute of general application. To the extent there exist specific statutes related to the records maintained by the Department and those statutes address public inspection, those statutes would supersede the general provisions of the APRA.

Please do not hesitate to contact us if we can provide further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor