



STATE OF INDIANA

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October 28, 2008

Captain Rita Reith
Public Information Officer
Indianapolis Fire Department
555 North New Jersey Street
Indianapolis, Indiana 46204

Re: Informal Inquiry 08-INF-41 regarding Indianapolis Fire Department

Dear Captain Reith:

This opinion is in response to your informal inquiry dated October 22, 2008. You write on behalf of the Indianapolis Fire Department ("Department") to inquire about records maintained by the Department to which access is frequently requested pursuant to the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). You inquire whether the identity of victims must be released when medical care is provided by the Department. Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You indicate that you are seeking clarification regarding the Department's duty to disclose records maintained by the agency. Specifically, you inquire whether the Department is required to provide to the news media the identity of a victim when medical care is provided.

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).

I have addressed the specific issue you have raised in *Opinion of the Public Access Counselor 08-FC-98*. In that opinion, a complainant contended the City of Fort Wayne denied access to victim information in violation of the APRA. My opinion regarding the issue was, in part, as follows:

I.C. § 5-14-3-5(c) requires an agency to maintain a daily log or record that lists suspected crimes, accidents, and complaints. Certain information is required to be maintained and made available for inspection and copying, including the name and age of any victim and a general description of any injuries. Generally, the statute is straightforward and requires access to the listed information.

But a mandatory exception to disclosure exists for patient medical records and charts created by a provider, unless the patient gives written consent under I.C. 16-29. *See* I.C. § 5-14-3-4(a)(9). Provider has the meaning set out in I.C. § 16-18-2-295(b), which includes, among others, an employer of a certified emergency medical technician, a certified emergency medical technician-basic advanced, a certified emergency medical technician-intermediate, or a certified paramedic. *Id.*

Former Public Access Counselor Karen Davis issued an advisory opinion regarding this same issue, whether the patient records created and maintained by a fire department may be disclosed, in an opinion issued January 18, 2005. I agree with the opinion of Counselor Davis set out in that opinion, both on the issue of whether the department is a provider and whether the records are patient medical records and charts. . . While I do not necessarily agree with Ms. Taylor that all first responders are providers under the statute, it is my opinion the Fort Wayne Fire Department is a provider under I.C. § 16-18-2-295(b) because the Department is an employer of a certified medical technician or a certified paramedic and as such may not release patient medical records unless consent is provided pursuant to I.C. 16-29.

While I.C. § 5-14-3-5 does require the daily log to contain certain information and requires an agency to make that information available for inspection and copying, I.C. § 5-14-3-5 is a statutory provision of general application. Because I.C. § 5-14-3-4(a)(9) specifically excludes the records at issue from disclosure and declares those records confidential and because I.C. § 5-14-3-10 provides that knowing or intentional disclosure of confidential information is a Class A misdemeanor, it is my opinion the City may not disclose the patient medical records and charts.
Opinion of the Public Access Counselor 08-FC-98.

It is my opinion, based on the information presented, that the issue you raise is identical to the issue presented in *Opinion 08-FC-98*. As such, it is my opinion that as a provider under I.C. § 16-18-2-295(b), the Department may not disclose information

contained in patient medical records the Department creates unless consent is provided pursuant to I.C. 16-29.

Please do not hesitate to contact our office if we can be of further assistance.

Best regards,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal
Public Access Counselor