



STATE OF INDIANA

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March 13, 2015

Ms. Michelle Cobourn-Baurley
Shelbyville, Indiana

Re: Informal Inquiry 15-INF-07; Insurance Subrogation

Dear Ms. Cobourn-Baurley:

This is in response to your informal inquiry regarding insurance carriers in subrogation. Your inquiry seeks determination as to whether the Indiana law allows disclosure of a minor's name if that child's name is required to commence a recovery suit. Pursuant to Ind. Code § 5-14-13-1, I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions Indiana Code

You request that this Office clarify if an insurance carrier, who pays for the insured's damages, caused by a third party, is a 'victim' entitled to disclosure of the police records for the purpose of commencing a lawsuit. Generally, under the Access to Public Records Act (APRA), investigatory records can be withheld at the discretion of the law enforcement agency, Ind. Code § 5-14-3-4(b)(1). However, Ind. Code § 31-39-2-13 allows for a victim to obtain a child's name if there is probable cause the child committed the act and that child's name is required for the purposes of commencing suit.

To my knowledge, Indiana law is silent as to whether a third party with subrogation rights has standing to file an access request on behalf of an insured individual. While the APRA favors access, privacy considerations are also of importance and should be balanced against it. There are public policy interests which are not always fully compatible with unrestricted access. Indeed, unrestricted access to certain information could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. *Orbitz v. Ind. Dep't of State Revenue*, 997 N.E.2d 98 (Ind. Tax Ct. 2013)

Here, a carrier with rights of subrogation is acting as an agent of the victim and should be allowed to view the requested records under Indiana law. In the eyes of this office, it is no different than a power of attorney or any other instrument granting agent status to a third party.

In response to your other question, as to whether you are entitled to access to this information as a member of the general public, the APRA grants broad deference to law enforcement agencies to refuse disclosure when to do so is within their discretion. The APRA does not mandate disclosure to you as a public agency generally; however, it does allow disclosure in this case.

Please do not hesitate to contact me with any other questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor