

January 18, 2005 Complaint Regarding Denial of Medical Information by the White River Township Fire Department

January 18, 2005

*Sent Via Facsimile*

Ms. Blythe Richards  
The Daily Journal  
Johnson County, Indiana

*Re: Informal Inquiry Response; Denial of Medical Information by the White River Township Fire Department*

Dear Ms. Richards:

This is in response to your inquiry regarding whether you are entitled to information regarding the identity of the driver of a vehicle who was treated at the scene of a motor vehicle accident. The White River Township Fire Department in Johnson County ("Department") treated the individual prior to his transport to an area hospital by a private ambulance service under contract to the White River Township Fire Department. I am authorized to provide this response to you under IC 5-14-4-10(5), because you have raised a question under the Access to Public Records Act ("APRA").

In response to your request for information regarding the driver of the vehicle, the Department informed you that it could not release the name of the driver or any other medical information about him because it was protected from disclosure under HIPAA (referring, I assume, to the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164, commonly known as the HIPAA Privacy Regulation, or just "HIPAA"). Since receiving your request for assistance, I have been in contact with counsel for the Department, Trisha Leminger. Ms. Leminger claimed that the Department was a covered health care provider, treatment provider and/or business associate under HIPAA. She also pointed to the Access to Public Records Act, Ind.Code 5-14-3-4 to support denial of the record.

Because I find support for the denial of the record under state law, I will not discuss or offer any opinion on the applicability of HIPAA to the Department.

Any person may inspect and copy the public records of a public agency, unless the record is excepted from disclosure under section 4 of APRA. IC 5-14-3-3(a). IC 5-14-3-4(a) sets out

eleven categories of records that may not be disclosed. Among the confidential records are those that are “patient medical records and charts created by a provider, unless the patient gives written consent under Indiana Code 16-39.” IC 5-14-3-4(a)(9).

Whether the Department may rely on this provision turns upon two questions: 1) whether the Department is a provider for purposes of IC 16-39; and 2) how “patient medical records and charts” is defined. In relevant part “provider” means [for purposes of IC 16-39] 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. IC 16-18-2-295. According to Ms. Leminger, the Department employs one or more of these professionals as part of its first responder service, and those individuals were deployed in response to the accident for which you are seeking information.

With respect to the definition of “patient medical record and chart,” APRA does not define these terms. However, a state law of general applicability defines “medical record” as written or printed information possessed by a provider [as defined in IC 16-18-2-295] concerning any diagnosis, treatment, or prognosis of the patient, unless otherwise defined. IC 1-1-4-5(6). Hence, a record containing written or printed information concerning any diagnosis, treatment, or prognosis of a patient, and created by the Department as an employer of the above-mentioned professionals (hence, a provider-created record), is a confidential record under IC 5-14-3-4(a)(9). From the information I have been given by Ms. Leminger, I believe that the information you are seeking regarding the identity of the driver who was injured, contained in a medical record created by the Department, may not be disclosed by the Department. Disclosure of this record by the Department or its contractor may run afoul of IC 5-14-3-10(a).

I note that certain limited information is required to be disclosed to a person upon request with respect to emergency ambulance services that are provided by or under a contract with an entity that is a public agency for purposes of IC 5-14-3. If contained in a pre-hospital ambulance rescue or report record regarding an emergency patient, the following information must be made available for inspection and copying:

- (1) The date and time of the request for ambulance services.
- (2) The reason for the request for assistance.
- (3) The time and nature of the response to the request for ambulance services.
- (4) The time of arrival at the scene where the patient was located.
- (5) The time of departure from the scene where the patient was located.
- (6) The name of the facility, if any, to which the patient was delivered for further treatment and the time of arrival at that facility.

The name of the patient being transported is not included in the information above. However, I believe this provision is applicable to the Department even though it does not transport patients to the hospital. “Emergency ambulance services” means the transportation of emergency patients by ambulance and the administration of basic life support to emergency patient before or during the transportation. IC 16-18-2-107. The individual in question was transported to the hospital by Rural Metro ambulance service under contract to the Department, a public agency. Hence, any of the above information contained in a pre-hospital rescue or report

record must be disclosed. You have stated that you believe you have been given this information by the Department.

To summarize, the Department may not disclose the medical record that it created as a result of the assistance it rendered to the driver involved in a motor vehicle accident<sup>1</sup> because it is confidential under IC 5-14-3-4(a)(9).

Please feel free to call me if you have any questions regarding this response.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Trisha Leminger

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<sup>1</sup> Motor vehicle accident reports are available for inspection and copying under IC 9-26-2-3.