



STATE OF INDIANA

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January 23, 2013

Ms. Lindsay Machak and Marisa Kwiatkowski
601 W. 45th Avenue
Munster, Indiana 46321

Re: Formal Complaint 12-FC-367; Alleged Violation of the Access to Public Records Act by the LaPorte County Coroner's Office

Dear Ms. Machak and Kwiatkowski:

This advisory opinion is in response to your formal complaint alleging the LaPorte County Coroner's Office ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your formal complaint you provide that on June 27, 2012, you submitted a written request for records to the Coroner seeking child death records from LaPorte County from July 2008 through June 30, 2011. You allege that John Sullivan, Coroner of LaPorte County, agreed to fulfill the request. On September 11, 2012, Mr. Sullivan informed you that he would deliver the records to you or you could choose to pick them up. Since September 11, 2012, the Coroner has failed to respond to any of your inquiries regarding the status of your request and attempts to communicate via certified mail have been returned as unclaimed. You have yet to receive any records in response to your request.

In response to your formal complaint, Mr. Sullivan telephoned our office on January 3, 2013 and indicated that all records responsive to your request would be provided. No written response to your formal complaint was filed.

ANALYSIS

The public policy of the APRA states that "(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." *See* I.C. § 5-14-3-1. The Coroner is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Coroner's public records during regular business hours unless the records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Here, you submitted your original request for records on June 27, 2012, to which the Coroner ultimately produced records in response on approximately January 3, 2013. During the pendency of your request, the Coroner indicated in September that the records would be delivered, which never occurred. Further, the Coroner failed to respond to your inquiries that followed regarding the status of your request. Only upon filing a formal complaint with the Public Access Counselor's office were the records ultimately produced. Although I am not aware of how many records were ultimately produced in response to your request, in previously working with similar requests, the records that have been produced cannot be considered vast nor is there an excessive amount of redaction required prior to disclosure. As such, it is my opinion that the Coroner failed to comply with the requirements of section 3(b) of the APRA in providing all records that

were responsive to your request in a reasonable period of time. As the Coroner has now produced all records that are responsive to your request, I hope that this is in satisfaction of your formal complaint.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Coroner failed to comply with the requirements of section 3(b) of the APRA in providing all records that were responsive to your request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: John Sullivan, LaPorte County Coroner