



**STATE OF INDIANA**  
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February 15, 2013

Mr. Chad M. Farrell  
DOC 128294  
1946 W U.S. Highway 40  
Greencastle, Indiana 46135

*Re: Formal Complaint 13-FC-51; Alleged Violation of the Access to Public Records Act by the Allen County Coroner*

Dear Mr. Farrell:

This advisory opinion is in response to your formal complaint alleging the Allen County Coroner ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Michael Burris, Chief Investigator, responded in writing on behalf of the Coroner. His response is enclosed for your reference.

#### BACKGROUND

In your formal complaint, you allege that on January 14, 2013 you submitted a written request for records to the Coroner for "all reports including but not limited to the death certificate, autopsy report, incident report, and all other reports involving the death of my 18-year old nephew Chase Logan Farrell." You provide that as of February 15, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any response from the Coroner.

In response to your formal complaint, Mr. Burris advised that the death certificate is issued by the Board of Health and not released by the Coroner. The autopsy report is confidential pursuant to I.C. § 36-2-14-10. The incident report would be the police report which Mr. Burris provided is also not released by the Coroner. The Allen County Coroner's Verdict ("Verdict Form") is a public record and is available upon the receipt of a written request and payment of the \$25.00 fee. The relevant Allen County Code is enclosed for your reference. Mr. Burris further noted as the uncle to the decedent, you are not considered to be the legal next of kin.

#### 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 in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven 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. If the Coroner failed to respond to your written request within seven (7) days of its receipt, it acted contrary to section 9(b) of the APRA.

A public agency may in its discretion withhold “investigatory records of law enforcement agencies.” *See* I.C. §5-14-3-4(b)(1). Records exempt under the “investigatory records” exception include any record “compiled in the course of the investigation of a crime.” *See* I.C. §5-14-3-2(h). A coroner who receives an investigatory record from a law enforcement agency shall treat the investigatory record with the same confidentiality as the law enforcement agency would treat the investigatory record. *See* I.C. § 36-2-14-18(b). Moreover, a coroner satisfies the definition of a law enforcement agency for purposes of the APRA when, among other things, the coroner acts pursuant to I.C. § 36-2-14-6 (the Autopsy Statute). A coroner performs the duties required by I.C. § 36-2-14-6 when investigating the death of an individual who “has died from violence; has died by casualty; has died when apparently in good health; has died in an apparently suspicious, unusual, or unnatural manner; or has been found dead.” *See* I.C. § 36-2-14-6(a). Accordingly, documents compiled pursuant to the conditions listed in the Autopsy Statute are investigatory records falling within the investigatory records exception, I.C. §§ 5-14-3-2(h), 5-14-3-4(b)(1). Under the investigatory records exception, it is within the coroner's discretion to release or withhold them. *See Althaus v. The Evansville Courier*, 615 N.E. 2d 441 (Ind. App. 1993). Thus the Coroner would not have violated the APRA by denying your request for investigatory records pursuant to I.C. § 5-14-3-4(b)(1) and I.C. § 36-2-14-18(b).

Notwithstanding the investigatory records exception, certain information is required to be disclosed when a coroner investigates a death. Under I.C. § 36-2-14-18, certain information from the investigation of the death, including the name, age, address, sex and race of the deceased, among other things, must be disclosed. Also, information regarding the autopsy, limited to the date, the person who performed the autopsy, where the autopsy was performed, and a conclusion as to the probable cause of death, probable manner of death, and the probable mechanism of death must be disclosed. I.C. §36-2-14-18(a)(5). However, a full copy of the autopsy report is not required to be disclosed pursuant to I.C. §36-2-14-18(c) unless the request is received by the parent of the decedent, adult child of the decedent, next of kin of the decedent, or an insurance

company investigating a claim arising from death of the individual upon who which the autopsy was performed. *See* I.C. § 36-2-14-18(c). As the uncle of the decedent, the Coroner would be prohibited from disclosing a full copy of the autopsy report to you.

Here, the Coroner has advised that the Verdict Form, which I infer contains the requisite information required to be provided under I.C. § 36-2-14-18(a), is available upon the receipt of your written request and payment of the \$25.00 fee. As the Coroner has now received your written request, upon receipt of the payment of \$25.00 the Verdict Form will be provided to you.

Photographs, videotapes, and audio recordings of an autopsy are confidential, unless access to the records is required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a)(11). Pursuant to I.C. § 5-14-3-4(a)(1), a public agency is prohibited from disclosing records declared confidential pursuant to state statute. Thus, the Coroner would be prohibited from disclosing to you photographs, videotapes, or audio recordings from the autopsy of the decedent.

As to your request for a copy of the death certificate, the Coroner has provided that record is maintained by the Board of Health. The Coroner would not violate the APRA by not maintaining a record that is responsive to your request. Accordingly, you should submit a request for a copy of the certification of death to the Board of Health. I would note however that pursuant to I.C. § 16-37-1-8, a local health officer shall provide a certification of death upon request by any person only if the health officer is satisfied that the applicant has a direct interest in the matter or the health officer determines that the certificate is necessary for the determination of personal or property rights or for compliance with state and federal law. From what you have provided, it is likely that the local health officer would be prohibited from providing you with a copy of the certification of death. However, from the death certificate, the local health officer must make a permanent record containing the following: name, sex, age, place of death, residence, decedent's residential addresses from the two years prior to death, and Social Security number. This record must be available to the public, except for the Social Security number, which is confidential. *See* I.C. § 16-37-3-9.

## CONCLUSION

For the foregoing reasons, it is my opinion if the Coroner failed to respond to your written request within seven (7) days of its receipt, it acted contrary to section 9(b) of the APRA. As to all other issues, it is my opinion that the Coroner did not violate the APRA in response to your request.

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 distinct "H".

Joseph B. Hoage  
Public Access Counselor

cc: Michael Burris