



STATE OF INDIANA

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July 21, 2008

Mark Taylor
Post-Tribune
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Via electronic mail transmission

Re: Informal Inquiry 08-INF-27 regarding death certificate information

Dear Mr. Taylor:

This is in response to your informal inquiry dated July 15, 2008 which I received July 16, 2008. You write to inquire about death certificate information. You inquire what information relating to a death certificate maintained by the local health department should be made available for inspection and copying pursuant to the Access to Public Records Act ("APRA")(Ind. Code 5-14-3). Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You are searching for information relating to an individual who died shortly after transfer to another medical facility to a Merrillville hospital. When you attempted to obtain the information from the local health department, you were told you could not inspect death certificates because of sensitive information, like social security numbers, contained therein. You inquire what information related to a death certificate and maintained by the local health department you should be able to inspect and copy.

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 local health department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the local health 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).

While the APRA is a statute of general application, Indiana law contains many provisions containing guidance regarding specific records. The local health department is required to 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 or federal law. I.C. § 16-37-1-8. The local health department is required, though, to maintain a permanent record of death events in the county:

(a) The local health officer shall, from the stillbirth and death certificates, make a permanent record of the:

- (1) name;
- (2) sex;
- (3) age;
- (4) place of death;
- (5) residence; and
- (6) for a death certificate only:

(A) residence addresses of the deceased during the two (2) years before the death; and

(B) Social Security number; of the deceased.

(b) The records shall be open to public inspection. Except as provided in this subsection, the Social Security number is confidential and may not be disclosed to the public.

I.C. § 16-37-3-9.

The APRA provides that when a public record contains disclosable and nondisclosable information, the agency must, upon request, separate the disclosable data and make it available for inspection and copying. I.C. § 5-14-3-6. Here, the social security number is confidential pursuant to I.C. § 5-14-3-4(a)(12) as well as I.C. § 16-37-3-9(b). But the remainder of the record must be available for inspection and copying, pursuant to I.C. § 16-37-3-9(b), I.C. § 5-14-3-3, and I.C. § 5-14-3-6. So while the local health department must not provide you access to the death certificate, the local health department must disclose the permanent record, except that the social security number must be kept confidential.

You indicate the local health department requires the name of the deceased before you will be allowed to inspect the record. A request for inspection or copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21 and 00-FC-15* for two examples. Former Counselor Hurst wrote the following in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for *information* may in many circumstances meet this requirement, when the public agency

does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party's request. *Opinion of the Public Access Counselor 04-FC-38* (2004), available at <http://www.in.gov/pac/advisory/files/04-FC-38.pdf>.

Here, you do not know the name of the deceased, but you know the approximate date, or at least a date range. You have requested access to inspect the local health department's permanent record required to be maintained by I.C. § 16-37-3-9. While I do not know how the agency's permanent record is maintained, it seems reasonable that a portion of the permanent record could be retrieved by date or date range or city of death. If, for instance, you requested the permanent record for all deaths recorded from June 2008, and the agency could retrieve those records based on those parameters, the agency would be required to provide those records for inspection. The agency would be required to maintain as confidential the social security numbers. What I generally advise agencies who receive a request to inspect records which contain some nondisclosable information is to make a copy of the record, redact the nondisclosable information, allow the requester to inspect the record, and then take back the record either to maintain in the agency's files for future requests or to discard. The requester may certainly purchase the copy at the fee established by the local fiscal body.

CONCLUSION

For the foregoing reasons, it is my opinion the agency is not required to perform research to determine which record you seek but must make the permanent record available if it can sort and retrieve the record based on the parameters you provide (e.g. approximate date, place of death, etc.).

Best regards,



Heather Willis Neal
Public Access Counselor