



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 16, 2010

Hallie Greider, CCE, CD (DONA)
137 Union Street
Fort Wayne, IN 46802

Re: Informal Inquiry 10-INF-3; Records of the Allen County Coroner's Office

Dear Ms. Greider:

This is in response to your informal inquiry regarding your request to the Allen County Coroner's Office ("Coroner"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion regarding the Coroner's refusal to release copies of the 2009 Sudden Unexplained Infant Death Investigation Report Forms ("SUIDIRF's").

BACKGROUND

According to your informal inquiry, you requested in writing that the Coroner release to you copies of the SUIDIRF's. You later received an email response from the Coroner the following day denying your request and claiming that the SUIDIRF forms are not available for disclosure. The denial stated that the forms you requested were part of the investigative record and contain medical records which are not obtainable pursuant to I.C. § 36-2-14-18 as part of the autopsy report.

After the denial, you sent a letter to this office. In your letter you conceded that the Coroner was correct in stating that certain documents are obtainable under I.C. § 36-2-14-18(c). You also claimed that under I.C. § 36-2-14-18 each item listed under that section is listed separately and that each item has its own section within the Indiana Code: medical records and charts (I.C. § 5-14-3-4(a)(9)); investigatory records (I.C. § 5-14-3-4(b)(1)); and autopsy reports (I.C. § 36-2-14-18(c)). You contend that the Coroner appears to believe that the SUIDIRF forms should be grouped together and not discoverable because of I.C. § 36-2-14-18(c). You further contend that if the Coroner believes the SUIDIRF forms are medical records, they are not protected by I.C. § 36-2-14-18(c) and they are also not protected if the Coroner believes they are investigatory records.

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 is to provide the information.” I.C. §5-14-3-1. The Coroner is clearly a public agency for the purposes of APRA. I.C. §5-14-3-2. As such, the Coroner’s public records shall be disclosed upon request unless the records are excepted from disclosure under section 4 of the APRA. I.C. § 5-14-3-3(a).

Under the APRA, a public agency may in its discretion withhold “investigatory records of law enforcement agencies.” 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.” I.C. §5-14-3-2(h). 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). 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, 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.Ct.App. 1993).

Under the APRA provision, the investigatory records exception may be invoked at the discretion of the public agency. As such, the Coroner did not violate the APRA by denying you access to records created in the course of an autopsy. You argue in your request letter that the SUIDIRF forms were not created in the course of a criminal investigation. While the records in this particular instance were not created during the course of a criminal investigation, the law of Indiana does not require that a coroner perform a death investigation solely for the purposes of a criminal investigation. 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.” I.C. § 36-2-14-6(a). Again, when a coroner performs a death investigation pursuant to I.C. § 36-2-14-6, the materials the coroner collects are investigatory records for the purpose of the APRA. *Althaus v. The Evansville Courier*, 615 N.E.2d 441, 446 (Ind.Ct.App. 1993).

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 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).

The information required to be disclosed under I.C. § 36-2-14-18 should be available for inspection and copying the Coroner's office during regular business hours. Here, the records that are the subject of the nondisclosure and your complaint are autopsy reports requested by the Coroner for the instances of infant deaths. Autopsy reports are expressly declared confidential per state statute and may not be released except to certain persons and entities. I.C. § 36-2-14-18(c)(d). Because you did not establish yourself entitled to these reports under the confidentiality provisions for autopsy reports as contained in state statute, the Coroner cannot be held to be in violation of APRA for failing to disclose the records. The only persons eligible to receive the autopsy reports are the next of kin, an insurance company having an interest, or law enforcement official or prosecutor. I.C. § 36-2-14-18.

If you wish to obtain further information from the SUIDIRF forms to properly inform the public on the existence of infant deaths in Allen County due to unsafe sleeping practices and the fact that there is a high number of these cases in your area, I would suggest that you review I.C. §31-33-24-6 and I.C. §31-33-25-6(a)(1). Under I.C. §31-33-24-6, "a county may establish a county fatality review team to review the death of a child that is sudden, unexpected, or unexplained." If Allen County in particular, elects not to establish a county child fatality review team, the county may join with one or more other counties that have not established a county child fatality team and form a regional child fatality review team. On the other hand, under I.C. §31-33-25-6(a)(1), "if the county where the child dies not have a local child fatality review team or if the local child fatality review team requests a review of the child's death by the statewide committee, a statewide child fatality review committee may be established to review a child's death that is sudden, unexpected, or unexplained." Perhaps one of these entities may be able to offer you assistance.

Because the Coroner is not required to disclose his investigatory records, the Coroner did not violate the APRA in failing to send you the records you requested. Except as to the information required to be disclosed under I.C. § 36-2-14-18 which should be available at the Coroner's office during regular business hours, the information you seek is nondisclosable at the Coroner's discretion.

CONCLUSION

For the foregoing reasons, it is my opinion that the Coroner did not violate the APRA. If I can be of additional assistance, please do not hesitate to contact me.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Allen County Coroner's Office