



STATE OF INDIANA

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January 21, 2015

Mr. Greg Ullrich
C/o Health and Hospital Corporation
Via email

Re: Informal Inquiry 14-INF-34; Death Certificates

Dear Mr. Ullrich,

This is in response to your informal inquiry regarding the Indiana Supreme Court's ruling in *Evansville Courier & Press v. Vanderburgh County Health Department*, 17 N.E.3D. 922 (Ind. 2014). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-1.5-1 *et seq.* and other controlling authorities.

BACKGROUND

In October, 2014, the Indiana Supreme Court issued a ruling in *Evansville Courier & Press v. Vanderburgh County Health Department*, 17 N.E.3D. 922 (Ind. 2014) declaring unequivocally that cause of death on certificates of death are public record to be disclosed upon request. The Indiana State Department of Health ("ISDH") collects information on State Form 10110 ("Form"). Created pursuant to Ind. Code § 16-37-3-3(a), the Form includes a section concerning personally identifiable health information including, but not limited to, diseases, injuries or complications which directly caused the death; significant conditions contributing to death; whether a female decedent was pregnant at or near the time of death; and the manner of death.

The Health Insurance Portability and Accountability Act ("HIPAA") prohibits the release of individually identifiable health information of a decedent for 50 years following the death of the individual. Your inquiry seeks to obtain an answer on whether protected health information is disclosable in light of the Indiana Supreme Court's October ruling.

DISCUSSION

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* Ind. Code § 5-14-3-1. Indiana State and local departments of health are public agencies for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the agencies’ non-confidential public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

Local health departments in Indiana must provide public access to certificates of death. In *Evansville Courier & Press v. Vanderburgh County Health Department*, Justice Massa opined:

In our society, death is an intimate and personal matter. We recognize that public disclosure of the details of a decedent’s death may cause pain to his family and friends. We are also mindful of the importance of open and transparent government to the health of our body politic. Our General Assembly has considered these competing interests and, insofar as we can determine, concluded that the public interest outweighs the private.

Id. at 1019.

At odds with the Supreme Court’s decision is the Federal Regulation found at 45 CFR § 164.508(a)(1) which states that personal health information of a decedent must be kept confidential no less than fifty years after death (See also 45 CFR 160.103 paragraph (2)(iv)). While the Court in *Evansville* considered cause of *death*, it did not address other *health* information.

State Form 10110 solicits both “Immediate Cause (Final Disease or Condition Resulting in Death)”, and “Conditions, If Any, Leading to the [Immediate] Cause... (“Disease or Injury That Initiated the Events Resulting in Death)”.

While not stated explicitly in any authority of which I am aware, it can be reasonably construed cause of death and the factors leading to death could be considered mutually exclusive. For example, if a carrier of HIV/AIDS was to die from complications from pneumonia, the pneumonia is the immediate cause of death, but not HIV/AIDS. The immune disorder would be a contributing factor but not the cause of death.

In order to comply with the HIPAA rule and also heed the ruling in *Evansville*, it may be prudent for local health departments to redact portions of documentation entered on State Form 10110 indicating “Disease or Injury That Initiated the Events Resulting in Death”.

Please do not hesitate to contact me with any other questions.

Best Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor