

April 12, 2004

Mr. David J. Stach
Parkview Health System
Fort Wayne, Indiana 46845-1700

*Re: 04-FC-41; Alleged Violation of the Access to Public Records Act by the
Whitley County Coroner*

Dear Mr. Stach:

This is in response to your formal complaint alleging that the Whitley County Coroner's Office (Coroner) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied your request for autopsy reports. For the reasons set forth below, it is my opinion that the Coroner did not deny you access to records in violation of the APRA.

BACKGROUND

On August 13, 2003, you submitted a written request for death records to the Coroner. Your request sought access to records of anyone whose place of death was Parkview Whitley Hospital from January 1, 2002 through July 31, 2003. The request sought the "Coroner's verdict" and the "Coroner's report" for each death. The request cited Indiana Code 5-14-3-3 and Indiana Code 36-2-14-10 as support for the requested disclosure. The Coroner responded in writing enclosing four pages of information compiled on 10 deaths. The information included for each person deceased their name, age, sex, race, place of death, date of death, cause of death and manner of death. The information also included the place of the autopsy and the identity of the person performing the autopsy. The Coroner expressly declined to produce the autopsy reports, citing Indiana Code 36-2-14-18 as the statutory basis for that nondisclosure.

On February 13, 2003, you made a second written request for records. In this request you challenged the Coroner's interpretation of the Indiana law cited in support of the prior nondisclosure, and again requested the autopsy reports for each death occurring at Parkview Whitley Hospital for the period January 1, 2002, through July 31, 2003, as sought in the earlier request. The Coroner responded that no further information would be forthcoming.

This complaint followed.

ANALYSIS

The public policy of the APRA is set forth in the preamble to that statute, and states:

[I]t is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing 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.

IC 5-14-3-1. In enacting the APRA and the broad policy supporting access to public records, the Indiana General Assembly at the same time acknowledged and determined that public policy required that certain records were appropriate to be maintained as confidential. Indeed, Indiana Code 5-14-3-4 sets forth thirty-one (31) instances in which the public agency must or may withhold disclosure of public records (IC 5-14-3-4), and Indiana Code 5-14-3-3(a) subjects access to public records to the exemptions as set forth in that section (IC 5-14-3-3(a)). Even the preamble acknowledges that some public records are not subject to disclosure. *See* 5-14-3-1 (“This chapter shall be liberally construed to implement this policy and place the *burden of proof for the nondisclosure of a public record* on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.”) (Emphasis added).

Indiana Code 5-14-3-4(a) sets forth the exemptions to disclosure that are mandatory. That is to say, if the information sought by a request for records falls within one of the exemptions set forth therein, the public agency does not have discretion; it “may not” disclose the records “unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery.” IC 5-14-3-4(a). One of the mandatory exemptions to disclosure is for those records that are declared confidential by state statute. IC 5-14-3-4(a)(1).

Here, the records that are the subject of the nondisclosure and your complaint are the “autopsy report[s] requested by the coroner” for persons who died at Parkview Whitley Hospital. Autopsy reports are expressly declared confidential by state statute, and may not be released except to certain persons and entities. IC 36-2-14-18(c), 18(d). Because you do 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 the APRA for failing to disclose them. Indeed, the Coroner had no discretion to disclose these reports under state statute.

That said, certain limited information compiled from death records is public information subject to disclosure. This information includes (1) the name, age, address, sex, and race of the deceased; (2) the address or location where the deceased was found; (3) the name of the agency to which the death was reported and the name of the person reporting the death; (4) the name of any public official or governmental employee present at the scene of the death and the name of the person certifying or pronouncing the death; (5) information regarding an autopsy (requested

or performed) limited to the date, the person who performed the autopsy, where the autopsy was performed, and a conclusion as to the probable cause, manner and mechanism of death; (6) the location to which the body was removed, the person determining the location to which the body was removed, and the authority under which the decision to remove the body was made; and (7) the coroner's verdict and coroner's report (as defined in Indiana Code 36-2-14-10). IC 36-2-14-18(a). The verdict stating the cause of death and the coroner's "report" limited to "an accurate description of the deceased person, his name if it can be determined, and the amount of money and other property found with the body" are subject to inspection and copying under IC 5-14-3-3. IC 36-2-14-10(a). Here, the Coroner released limited information subject to these mandatory disclosure requirements. While the information provided did not include all of the information set out in these provisions¹, I do not read your complaint to challenge the nondisclosure of those missing pieces of information. To the extent that the omitted information noted below is part of the Coroner's records, that information is subject to disclosure under the APRA and other state law.

CONCLUSION

For the reasons set forth above, I find that the Coroner did not violate the APRA when it denied your request for autopsy reports.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Ronald Shoda

¹ Missing from the production was the name of the agency to which the death was reported and the name of the person reporting the death, the name of any public official or governmental employee present at the scene of the death and the name of the person certifying or pronouncing the death, and the location to which the body was removed, the person determining the location to which the body was removed, and the authority under which the decision to remove the body was made.