



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

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

January 13, 2012

Seth I. Slabaugh
345 S. High Street
Muncie, Indiana 47305

Re: Formal Complaint 11-FC-313; Alleged Violation of the Access to Public Records Act by the Indiana Board of Animal Health

Dear Mr. Slabaugh:

This advisory opinion is in response to your formal complaint alleging the Indiana Board of Animal Health ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Greg L. Haynes, Director of Legal Affairs, responded on behalf of the Board to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on or about November 28, 2011 you submitted a request to the Board to view certain veterinary medical records. The Board denied your request on November 29, 2011 in writing pursuant to I.C. § 5-14-3-4(a)(1), citing I.C. § 25-38.1-4-5.5(d) and I.C. § 25-38.1-4-5.5(e)(8) which declares veterinary medical records confidential. You cite to I.C. § 25-38.1-4-5.5(e)(9) that allows that veterinary medical records may be released by the Board, without written client authorization, when in the judgment of the state veterinarian the disclosure is necessary or helpful in advancing animal health or protecting public health. You allege that the state veterinarian improperly denied or ignored your request despite the law allowing the information be released if it would be helpful to protect the public health, which you believe would apply to your request.

In response to your formal complaint, Mr. Haynes provided that your request sought access to Certificates of Veterinary Inspection ("CVI"). A CVI is used to document the health status of an animal. The document must be prepared and signed by a licensed veterinarian. 345 IAC 1-1.5-2(a)(1)(C); 9 CFR 160.1; 9 CRP 161.4. In certain cases, CVI's are filed with state animal health officials. In Indiana, the state animal health official is the Board and its agent, the State Veterinarian. I.C. § 15-17-3; I.C. § 15-17-4.

The APRA prohibits a public agency from disclosing records that are declared confidential by state statute. I.C. § 5-14-3-3(a)(1). CVI's are classified as "veterinary medical records" pursuant to I.C. § 25-38.1-4-5.5(b). State law declares veterinary medical records confidential under I.C. § 25-38.1-4-5.5(d). A person may not furnish a veterinary medical record to a third person without the written authorization of the owner of the animal. I.C. § 25-38.1-4-5.5(d). Accordingly, the general rule is that CVI's on file at the Board may not be disclosed.

The CVI that Mr. Slabaugh requested was sent to the Board from various veterinarians. A veterinarian's distribution of CVI's to a government agency without the animal owner's permission is authorized under statute. However, the statute also declares that such distribution does not destroy the confidentiality of the veterinary medical records. Veterinary medical records remain confidential once filed with an agency. I.C. § 25-38.1-4-5.5(e)(8). The General Assembly further recognized that there are many situations where confidential veterinary records on file at an agency may need to be released. The statute specifically authorizes the state veterinarian to disclose records when the state veterinarian determines that disclosure will be necessary or helpful in advancing animal health and public health programs. I.C. § 25-38.1-4-5.5(e)(9).

A public agency may allow access to confidential records only if access to the records is specifically required by state or federal statute or is ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a); I.C. § 25-38.1-4-5.5(e)(2). The state veterinary medical records statute authorizes but does not require the state veterinarian to release confidential veterinary medical records. I.C. § 25-38.1-4-5.5(e)(9). The statute places the responsibility for deciding whether or not to release confidential veterinary medical records explicitly with the state veterinarian. The state veterinarian denied access to the records sought by Mr. Slabaugh in compliance with the statute. The Board complied with all requirements of the section 9 of the APRA in denying his request.

A person may release confidential veterinary medical records "for statistical and scientific research, if the information is abstracted in a way as to protect the identity of the animal and the client." I.C. § 25-38.1-4-5.5(e)(3). Pursuant to the statute, the Board recently provided to Mr. Slabaugh a summary of abstract numbers and types of animals from the certificates that he requested.

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 Board 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 Board'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 24 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 (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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. Here, the Board responded to your request within the timelines provided by section 9 of the APRA.

One category of nondisclosable public records consists of records declared confidential by a state statute. *See* I.C. § 5-14-3-4(a)(1). I.C. § 25-38.1-4-5.5(d) provides:

Except as provided in subsection (e) or upon written authorization of the client, an animal's veterinary medical record and medical condition is confidential, and may not be:

- (1) furnished to; or
- (2) discussed with any other person than the client or other veterinarians involved in the care or treatment of the animal.

In addition, I.C. § 25-38.1-4-5.5(e)(8) states:

An animal's veterinary medical records and medical condition may not be furnished without written client authorization under the following circumstances:

- (8) To the School of Veterinary Medicine at Purdue University, the animal disease diagnostic laboratory, or a state agency or commission. However, an animal's veterinary medical records remain confidential unless the information is disclosed in a manner allowed under this section.

There is no dispute amongst the parties that the records sought are confidential. I.C. § 25-38.1-4-5.5(e)(9) allows that veterinary medical records may be released by the Board, without written client authorization, when in the judgment of the state veterinarian the disclosure is necessary or helpful in advancing animal health or protecting public health. The discretion to release the veterinary medical records pursuant to I.C. 25-38.1-4-5.5(e)(8) is reserved to the judgment of the state veterinarian. Here, the state veterinarian has declined to make the requested records available pursuant to section (e)(8). Accordingly, it is my opinion that the Board did not violate the APRA in denying your request for confidential information or when the state veterinarian declined to produce the information pursuant to I.C. § 35-38.1-4-5.5(e)(8).

CONCLUSION

For the foregoing reasons, it is my opinion that the Board did not violate the APRA.

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 "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Gary L. Haynes