



# STATE OF INDIANA

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July 23, 2012

Ms. Marian Rita Ward  
1025 East Co. Road 550 South  
Winslow, Indiana 47598

*Re: Formal Complaint 12-FC-169; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Health Department*

Dear Ms. Ward:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Health Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Joseph H. Harrison, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you alleged that on June 6, 2012, you submitted a written request to inspect and copy records maintained by the Department under I.C. § 16-37-3-3 for the month of May 2012. On June 13, 2012, Mr. Harrison denied your request in writing pursuant to I.C. § 16-37-1-8 and 16-37-1-10. You cite to a 1998 Advisory Opinion issued by the Attorney General which concludes that with the exception of records prepared by the local health officer under I.C. 16-37-3-9(d), death certificates and information from death certificates are disclosable public records."

In response to your formal complaint, Mr. Harrison advised that it was his understanding that the Indiana death registration system is an electronic web based system under control of the Indiana Department of Health. The physician last in attendance upon the deceased or the person in charge of interment shall file a certificate of death with the local health officer of the jurisdiction in which the death occurred via the Indiana death registration system. The Department has access to copies of the official certificate of death for those persons who have passed away in Vanderburgh County.

Pursuant to I.C. § 16-37-1-8 and I.C. § 16-37-1-10, in order to obtain a copy of the certificate of death, the applicant seeking such certificate must have a direct interest in the matter or the information must be necessary for the determination of a personal or property right or for the compliance with state or federal law. Regardless, pursuant to

I.C. § 16-37-3-9, the local health officer shall from the death certificate make a permanent record containing the following: name, sex, age, place of death, residence, residence address of the deceased during the last two (2) years of the decedent's life, and social security number. The records shall be open to public for inspection purposes, except that the social security number shall be kept confidential.

You were advised that so long as you could satisfy the requirements of I.C. 16-37-1-10, you could receive a certificate of death for a particular person who passed away in May of 2012 in Vanderburgh County. You were further advised that if you could not meet the statutory requirements to obtain a death certificate, the Department was denying your request for copies of the requested certificates of death. Notwithstanding such denial, you were informed that you were welcome to visit the Health Department during its regular business hours to view, inspect, and copy any records maintained by the Department pursuant to I.C. § 16-37-3-9.

#### 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 Department 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 Department'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 include information regarding how or when the agency intends to comply. Here, the Department responded to your written request to inspect and copy in writing within seven (7) days of the receipt of your request. As such, it is my opinion that the Department complied with the requirements of section 9 of the APRA.

As to the substance of your request, you sought “copies of records created under I.C. § 16-37-3-3 maintained by the Vanderburgh County Health Department for the month of May, 2012.” I.C. § 16-37-3-3 provides the following:

Sec. 3. (a) The physician last in attendance upon the deceased or the person in charge of interment shall file a certificate of death or of stillborn with the local health officer of the jurisdiction in which the death or stillbirth occurred. The local health officer shall retain a copy of the certificate of death.

(b) Notwithstanding subsection (a), beginning January 1, 2011, for a death occurring after December 31, 2010, the physician last in attendance upon the deceased or the person in charge of interment shall use the Indiana death registration system established under I.C. 16-37-1-3.1 to file a certificate of death with the local health officer of the jurisdiction in which the death occurred.

Thus, the Department receives from the physician that was last in attendance upon the deceased or the person in charge of internment, a certificate of death or of stillborn. The local health officer is required to maintain a copy of the certificate of death. You have sought copies of all records maintained by the Department pursuant to I.C. § 16-37-3-3 for May of 2012.

The Department cited to I.C. § 16-37-1-8 and I.C. § 16-37-1-10 in denying your request for access the certificates of death or stillborn for those persons in Vanderburgh County in May of 2012. I.C. § 16-37-1-8 provides that:

Sec. 8. (a) Except as provided in subsection (c), a local health officer shall provide a certificate of birth, death, or stillbirth registration upon request by any person only if:

- (1) the health officer is satisfied that the applicant has a direct interest in the matter;
- (2) 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; and
- (3) the applicant for a birth certificate presents at least one form of identification.

I.C. § 16-37-1-10 provides that:

Sec. 10. (a) Except as provided in subsection (b), the records and files of the division of the state department concerning vital statistics are subject to this article and rules of the state department. Data contained in the records and files may be disclosed only as follows:

- (1) The state registrar shall permit inspection of the records or issue a certified copy of a certificate or part of a certificate only if the state registrar is satisfied of the following:
  - (A) That the applicant has a direct interest in the matter recorded.
  - (B) That the information is necessary for the determination of personal or property right or for the compliance with state or federal law.

The state registrar's decision is subject to review by the state department or a court under this section.

- (2) The state department may permit the use of data contained in vital statistical records for research purposes only, but no identifying use may be made of the data.
- (3) In any extraordinary case that the state registrar determines is a direct tangible and legitimate public interest.
  - (b) The birth record of an adopted child remains subject to the confidentiality provisions of IC 31-19 regarding the release of adoption information.

The Department has provided that the Indiana death registration system is an electronic web based system under control of the Indiana Department of Health. The Department has access to copies of the official certificate of death for only those persons who passed away in Vanderburgh County.

In support of your request, you have submitted an advisory opinion issued by the Office of the Attorney General that provided that aside from the exception set forth in I.C. § 16-37-3-9(d), the death certificate and information from the death certificate are disclosable public records. *See Official Opinion 98-01; Office of the Attorney General.* The opinion also provided that “. . .the local health officer clearly has discretion in deciding who receives the official document that constitutes the certificate of death registration.” *Id.*

Since 1998, the Public Access Counselor’s Office has issued a series of opinions regarding access to death related records. Counselor Davis provided the following in a 2006 opinion:

I also write to guide you to other types of information regarding a person’s death. The Coroner has indicated that the death certificate has been filed with and is available in the local health department. 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. IC 16-37-1-8. However, the local health department is required to maintain a permanent record of death events in the county. IC 16-37-3. From the death records, the local health department must maintain and disclose to the public upon request the name, sex, age, place of death, residence, and previous residence for the two years preceding the death of the deceased. IC 16-37-3. To receive this record, you must request it from the local health department. *See Opinion of the Public Access Counselor 06-FC-42.*

Counselor Neal provided in a 2007 opinion:

To obtain a copy of a death certificate, the purchaser must have a direct interest in the matter or the information must be necessary for the determination of a personal or property right or for the compliance with

state or federal law. I.C. §16-37-1-10. The local health officer shall from the death certificate make a permanent record containing the following: name, sex, age, place of death, residence, residence address during the last two year's of the decedent's life, and Social Security number. This record shall be open to public exception except that the Social Security number shall be kept confidential. I.C. §16-37-3-9.

The APRA requires disclosure of public records unless they are confidential or otherwise non-disclosable under the APRA. I.C. §5-14-3-3. Records declared confidential by state statute are excepted from disclosure under I.C. §5-14-3-4(a). Here, I.C. § 16-37-3-9 restricts access to the particular records you request, copies of certificates of death, to a person with a direct interest in the matter or when the information is necessary for the determination of a personal or property right or for compliance with state or federal law. I.C. §16-37-1-10. It is my understanding you seek these records for informational purposes and that your request does not fall into either of those two categories. As such, the Board is correct in denying you access to the copies you seek. *See Opinion of the Public Access Counselor 07-FC-232.*

Counselor Kossack in a 2010 advisory opinion stated:

To obtain a copy of a death certificate, the certificate's purchaser must have a direct interest in the matter or the information must be necessary for the determination of a personal or property right or for the compliance with state or federal law. I.C. § 16-37-1-10. The local health officer shall from the death certificate make a permanent record containing the following: name, sex, age, place of death, residence, residence address during the last two year's of the decedent's life, and social security number. This record shall be open to public exception except that the social security number shall be kept confidential. I.C. § 16-37-3-9.

When a coroner investigates a death, the corner is required to make available for inspection and copying certain information including the written report regarding the verdict on the death under consideration as required under I.C. § 36-2-14-10 as well as certain information when an autopsy is preformed, including probable cause, probable manner, and probably mechanism of death. I.C. § 36-2-14-18. These specific requirements exist notwithstanding the general provisions regarding investigatory records in the APRA. To the extent there is a conflict between the two, the specific provisions under Ind. Code § 36-2-14-18 control pursuant to Ind. Code § 5-14-3-4(a)(1). *See Opinion of the Public Access Counselor 10-FC-7.*

The Indiana Department of Health provides the following guidance regarding who may purchase a death certificate:

Indiana law (IC 16-37-1-10) specifically requires a purchaser of a birth or death certificate to have a direct interest. A direct interest is defined as a documented personal financial or legal interest in the record, or immediate kinship (parent, grandparent, or adult sibling) to the person named on the record. <http://www.in.gov/isdh/20243.htm>

From my review of the applicable opinions and other cited authorities, it is my opinion that the certificates of death are discloseable public records. However, the certificates may only be disclosed to those that qualify under I.C. § 16-37-1-8 and/or I.C. § 16-37-1-10. As applicable here, you requested “copies of records created under I.C. 16-37-3-3 maintained by the Department for the month of May, 2012.” The Department has advised that for the time period requested, it maintains access to copies of the official certificate of death for any person who passed away in Vanderburgh County via the Indiana death registration system. From the Department’s response, it would appear that the certificates of death are the only records that are responsive to your request. The Department advised that if you could meet the statutory requirements of I.C. § 16-37-1-8 and I.C. § 16-37-1-10, a copy of the death certificate would be provided to you. Thus, to the extent that you can show that you have a direct interest in the matter or the death certificate is necessary for the determination of personal or property right or for compliance with state or federal law, it is my opinion that the Department would be required under I.C. § 16-37-1-8 to provide you with a copy of the respective death certificate. As provided by the Department, information required to be open to the public pursuant to I.C. § 16-37-3-9 is available for your review and inspection during the Department’s regular business hours.

#### CONCLUSION

For the foregoing reasons, it is my opinion that if you are unable to meet the requirements of I.C. § 16-37-1-8, the Department would not have violated the APRA in denying your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with a large initial "J" and a distinct "H" and "oage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Joseph H. Harrison