



**STATE OF INDIANA**  
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September 6, 2012

Anthony E. Jarana  
1427 W. 86<sup>th</sup> Street, #404  
Indianapolis, Indiana 46260

*Re: Formal Complaint 12-FC-214; Alleged Violation of the Access to Public Records Act by the Henry County Coroner*

Dear Mr. Jarana:

This advisory opinion is in response to your formal complaint alleging the Henry County Coroner ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Coroner. As of today's date, we have yet to receive a response.

#### BACKGROUND

In your formal complaint, you allege that on two occasions in June of 2012 you made contact with the Coroner by telephone and left messages requesting certain records maintained by the agency. On June 25, 2012, you spoke with Mr. Stacey Guffey and provided detailed information regarding your request and re-submitted your previous request. Mr. Guffey stated that he would return your call, however you allege that he failed to do so.

On June 25, 2012, you submitted a written request for records to the Coroner. In the request, you asked Mr. Guffey to provide the information or send written notice of a denial. You provide that the Coroner has never responded in writing to your request. You sent an additional written request on July 12, 2012, and again, you failed to receive a written response from the Coroner. Mr. Guffey subsequently contacted you by telephone and advised you to stop contacting the agency or submitting requests for records. Mr. Guffey stated he "knew" that you had been informed by Tony Ciriello of ISCA that your requests were not proper. You have since spoken with Mr. Ciriello who assured you that he was contact Mr. Guffey and clarify what records should be provided. As of August 8, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you still have yet to receive any response from the Coroner.

## 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 Coroner 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 Coroner’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 twenty-four 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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, you submitted a written request for records to the Coroner on June 25, 2012 and July 12, 2012, to which the Coroner failed to respond in any fashion. As such, it is in my opinion that the Coroner violated section 9 of the APRA in failing to timely respond to your requests.

Without the benefit of a response from the Coroner, to your original request for records or formal complaint, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. As the Coroner has not provided a justification for withholding the records at issue here, it is my opinion that it has failed to sustain its burden under the APRA.

As a way of reference for all parties regarding records generally maintained by a Coroner, a public agency may in its discretion withhold “investigatory records of law enforcement agencies.” *See* 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.” *See* 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. 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 cause of death, 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). See *Opinion of the Public Access Counselor 10-INF-3 and 2007-INF-Marion County Coroner* (<http://www.in.gov/pac/informal/files/MarionCountyCoroner.pdf>)

#### CONCLUSION

For the foregoing reasons, it is my opinion the Coroner violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Henry County Coroner