



STATE OF INDIANA

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April 15, 2009

Dorothy Boissy
9720 North 700 West
Demotte, Indiana 46310

Re: Formal Complaints 09-FC-78; Alleged Violation of the Access to Public Records Act by the Keener Township Trustee

Dear Ms. Boissy:

This advisory opinion is in response to your formal complaint alleging the Keener Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Trustee's response to the complaint is enclosed for your reference. It is my opinion the Trustee has not violated the APRA so long as the Trustee has disclosed or will disclose upon receipt of a reasonably particular request the information required to be disclosed by I.C. § 16-31-2-11(d).

BACKGROUND

You allege that on February 27, 2009 you went to the Trustee's office to request ambulance run reports as well as reports from "Pro-Claim" regarding ambulance service invoices. You indicate the report the Trustee gave you does not show the amount of unpaid accounts. You allege the Trustee has denied you access to records. Your complaint was postmarked on March 13, and my office received it on March 17.

The Trustee responded to the complaint by letter dated March 26. The Trustee contends the information you requested regarding run reports is actually "dispatch information" instead of information contained in the run reports. The Trustee contends that if you had requested the dispatch information, she would have provided it to you but does have concerns about disclosing the information because the community is so small that she fears disclosure of even some of the information could indicate which patient was treated when. Regarding the Pro-Claim invoices, the Trustee contends she does not receive a record containing the specific item you seek, the outstanding amounts owed. But the Trustee explains that if you use the information contained in the records she has already provided you, you can add and subtract to determine the outstanding balance. The Trustee contends that if you are requesting patient billing statements, those are required to be maintained as confidential pursuant to the Health Insurance Portability and Accountability Act of 1998 ("HIPAA").

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The Trustee is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Trustee during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

An agency may not disclose records declared confidential by state statute or required to be kept confidential by federal law unless access to those records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a)(1) and (3). The Department asserts that HIPAA requires protected health information to be kept as confidential.

Effective in April 2003, the Standards for Privacy of Individually Identifiable Health Information (commonly called "HIPAA" or "the Privacy Rule") provides that protected health information may not be used or disclosed except as permitted or required by the Privacy Rule. 45 CFR § 164.502(a). Further, a public agency may not disclose a "patient medical record and chart created by a provider, unless the patient gives written consent under Indiana Code 16-39." I.C. § 5-14-3-4(a)(9). "Provider" has the meaning set forth in I.C. § 16-18-2-295(a). As an employer of a certified emergency medical technician, a certified emergency medical technician-basic advanced, a certified emergency medical technician-intermediate, or a certified paramedic, the Township (specifically, the Emergency Services Department) is a provider for the purposes of Indiana law. As such, the Trustee may not disclose a patient medical record or protected health information (created by the Emergency Services Department) absent a state or federal law or order of the court requiring disclosure. See I.C. § 5-14-3-4(a).

Indiana law defines which information in a pre-hospital ambulance rescue or report record is public record under the APRA and as such is required to be disclosed upon request.

The following information, if contained in a pre-hospital ambulance rescue or report record regarding an emergency patient, is public information and must be made available for inspection and copying under IC 5-14-3:

- (1) The date and time of the request for ambulance services.
- (2) The reason for the request for assistance.
- (3) The time and nature of the response to the request for ambulance services.
- (4) The time of arrival at the scene where the patient was located.
- (5) The time of departure from the scene where the patient was

located.

(6) The name of the facility, if any, to which the patient was delivered for further treatment and the time of arrival at that facility.

I.C. § 16-31-2-11(d).

It is my opinion based on the HIPAA Privacy Rule, I.C. § 5-14-3-4(a)(9), and I.C. § 16-31-2-11(d) that the Trustee may not disclose any patient medical information beyond that required to be disclosed by I.C. § 16-31-2-11(d). As such, it is my opinion the Trustee did not violate the APRA by denying you access to patient billing information.

The Trustee contends you requested the run reports when the information you seek is actually contained in the dispatch information. It would be my advice that you request access to the dispatch information and that the Trustee provide you with the information required to be provided by I.C. § 16-31-2-11(d).

Regarding your allegation that the Trustee has not provided you with a record showing the total outstanding balances, the Trustee contends she does not maintain such a record. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. It is my opinion the Trustee has not violated the APRA by failing to provide you a record which does not exist.

CONCLUSION

For the foregoing reasons, it is my opinion the Trustee has not violated the APRA so long as the Trustee has disclosed or will disclose upon receipt of a reasonably particular request the information required to be disclosed by I.C. § 16-31-2-11(d).

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Diana Haberlin, Keener Township Trustee