

April 23, 2008

Lynne Christiansen
Records Clerk, Warsaw Police Department
lchristiansen@warsawpd.org

Re: Your informal inquiry

Dear Ms. Christiansen:

This is in response to your informal inquiry received April 10, 2008. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write on behalf of the Warsaw Police Department (“Department”). Pursuant to the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3), the Department is a public agency. I.C. § 5-14-3-2. Your inquiry relates to a copy of a death certificate sent to the Department from the Allen County Coroner. The death certificate relates to a death investigated by the Department. Your question is whether the death certificate is releasable from the Department.

Ind. Code § 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the APRA.

‘Public record’ means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

I.C. § 5-14-3-2(m).

As I understand it, the Department has received a signed, unrecorded copy of the death certificate from the Allen County Coroner. The issue of disclosure of death certificates and autopsy reports has been addressed by my predecessor in *Opinion of the Public Access Counselor 06-FC-42*. I am including a copy of that opinion with this opinion. I.C. § 36-2-14-18 requires a coroner to make certain information regarding a death investigation available for inspection and copying. Further, I.C. § 16-37-1-8 provides that the local health department, to

which the coroner sends the death certificate, may only release a copy of the death certificate if the health officer is satisfied the requester has a direct interest in the matter or if the certificate is necessary for the determination of property rights or for compliance with state or federal law. Neither provision addresses the duty of a police department as it relates to receiving a copy of the death certificate.

The APRA requires that a public agency that receives a confidential public record from another agency shall maintain the confidentiality of the record. I.C. § 5-14-3-6.5. While I.C. § 16-37-1-8 applies to local health departments and does not specifically declare the record confidential, it certainly limits the disclosure of the record, thus making it confidential as it relates to any requester who does not have a direct interest in the matter. While this provision does not apply to law enforcement agencies, it is my opinion that I.C. § 5-14-3-6.5 and I.C. § 16-37-1-8 work together to prohibit the Department from disclosing the death certificate.

Further, even if the record is not confidential, it is likely excepted from disclosure at the discretion of the Department if it was compiled during the course of the investigation of a crime. The investigatory records exception, found at I.C. § 5-14-3-4(b)(1), provides that investigatory records of law enforcement agencies are excepted from disclosure at the discretion of the agency. An investigatory record is information compiled during the course of the investigation of a crime. I.C. § 5-14-3-2(h). A record maintains its status as an investigatory record even after the investigation is completed and even when it is determined no crime was committed or if no criminal charges are brought. As such, if the Department received this death certificate during the course of the investigation of a crime, it is an investigatory record which the Department exercise its discretion to withhold from disclosure.

Please do not hesitate to contact us if we can provide further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor