

October 24, 2007

Herbert A. Bogard III  
302 Whitson Drive  
Vincennes, Indiana 47591

*Re: Your informal inquiry regarding the Marion County Coroner's Office*

Dear Mr. Bogard:

This is in response to your informal inquiry dated July 13, 2006. I apologize for the delay in the response. I took office July 1 of this year and am currently endeavoring to address the backlog of informal inquiries. Your inquiry concerns records you have requested from the Marion County Coroner's Office.

#### BACKGROUND

You filed a formal complaint with this office on July 13, 2006. Because your complaint was untimely filed under Indiana Code §5-14-5-7(a), the previous counselor converted it to an informal inquiry to be answered pursuant to I.C. §5-14-4-10(5). In your complaint, you alleged you had been requesting case files from the Marion County Coroner's Office ("Coroner") for several months at the time you filed your complaint. Specifically, you requested from the Coroner a copy of "all records including any photos, video recordings, audio recordings, investigator notes, interviews, Coroner's Inquests, documents, etc." pertaining to the death of your son on January 14, 2005.

It is my understanding from the documents you attached to your complaint that the Coroner agreed to provide you with certain records, like the Coroner's Verdict, confirmation of a specimen being held at a lab, autopsy photos, and recordings. But the Coroner denied access to other items you requested using the investigatory records exception in the Access to Public Records Act ("APRA")(Ind. Code 5-14-3).

#### 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.

Indiana 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 APRA. A “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. I.C. §5-14-3-2.

Among the records that are confidential under section 4 of the APRA and may not be disclosed by a public agency are a photograph, a video recording or an audio recording of an autopsy. I.C. §5-14-3-4(a)(11). In addition, a public agency may at its discretion withhold “investigatory records of law enforcement agencies.” 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.” I.C. §5-14-3-2(h). The Coroner is a law enforcement agency when he acts pursuant to the Autopsy Statute. *Althaus v. The Evansville Courier*, 615 N.E.2d 441, 445 (Ind. Ct. App. 1993). There is no provision in the APRA providing that the investigatory records exception may be invoked only when the investigation is ongoing; it may be applied to investigatory records even after an investigation is closed and regardless of whether charges are filed or a determination is made that a crime has been committed. As such, the Coroner did not violate the APRA by denying you access to records compiled in the course of the investigation of a crime.

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, the probable manner of death, and the probable mechanism of death must be disclosed. I.C. §36-2-14-18(a)(5). A full copy of the autopsy report is not required to be disclosed, pursuant to I.C. §36-2-14-18(c).

The information required to be disclosed under I.C. §36-2-14-18 should be available for inspection and copying in the Coroner’s office during regular business hours. If a person is entitled to a copy of a public record under this chapter and the public agency has reasonable access to a machine capable of reproducing the public record, the public agency must provide at least one copy of the public record to the person. I.C. §5-14-3-8(e). So the Coroner should provide you with a copy of the information required to be disclosed under I.C. §36-2-14-18 at your request for such.

If you still seek a death certificate, the local health department is required to provide a certification of death upon request by any person if the health officer is satisfied the applicant has a direct interest in the matter or the health officer determines the certificate is necessary for the determination of personal or property rights or for compliance with state or federal law. I.C. §16-37-1-8.

Because the Coroner is not required to disclose his investigatory records, the Coroner did not violate the APRA in failing to send you the records you requested. Except for the

information required to be disclosed under I.C. §36-2-14-18 which should be available at the Coroner's office during regular business hours, the information you seek is nondisclosable at the agency's discretion, as outlined above.

Best regards,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal  
Public Access Counselor