



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 7, 2015

Rita Ward
1025 East Co. Road 550 South
Winslow, IN 47598

Re: Formal Complaint 15-FC-241; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Department of Health

Dear Ms. Ward,

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Department of Health ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department responded via Joseph Harrison, Jr., Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 19, 2015.

BACKGROUND

Your complaint dated August 11, 2015 alleges that Vanderburgh County Department of Health violated the Access to Public Records Act by failing to provide the records you requested.

On November 25, 2014 you requested to inspect and make notes of death certificates. The Vanderburgh County Health Officer, Dr. Spear, informed you that you would be provided records; however, they would be subject to a \$15 charge. You are seeking to inspect the cause of death and make an abstract of those records as opposed to obtaining an actual copy. You also note that under Indiana Senate Bill 528, passed and made into law on July 1, 2015, death certificates are public records.

On August 31, Department responded via counsel. Counsel asserts a different reading of SB 528, stating that you are not entitled to a certified copy of death records because the records contain sensitive information. You may review non-certified copies of death records free of charge. Further, if you wish to have a monthly death report, you merely need to request such a report to receive one free of charge.



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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 Ind. Code § 5-14-3-1. The Vanderburgh County Health Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s disclosable, public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The Indiana State Department of Health (“ISDH”) establishes an electronic death registry system pursuant to Ind. Code § 16-37-1-3.1 which enables final attending physicians and funeral directors to certify cause of death to the local health department (see subsection (e)). Under subsection (f), the local health department then submits the information to the ISDH repository.

All of this is done electronically and is identified by Ind. Code § 16-37-3-5 as a certificate of death. Ind. Code § 16-37-1-10(b) states that a fee – mutually exclusive from the APRA fee schedule – may be charged to a requester for a certificate of death. This expressly applies to inspection *and* copying.

It appears as if the Department has the capability to generate non-certificate public records from the registry in the form of “death listing reports”. These reports would not be certificates and therefore subject to the \$.10 copy fee under Ind. Code § 5-14-3-8 and a fee could not be charged for inspection.

Ultimately, you take exception to the Department charging a \$13 fee for a non-certified copy of a certificate of death, however, Ind. Code § 16-37-1-10(b) is clear that the APRA’s fee-structure does not apply to certificates of death. Instead, Ind. Code § 16-20-1-27 states that the fees charged for the records “may not exceed the cost of services provided.”

The Department states the following:

As noted above, if Ms. Ward would like to have a monthly death report from the Vanderburgh County Health Department, which includes causes of death for person who pass away in Vanderburgh County, she will be sent such report upon



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request and, free of charge by my client. Also, if Ms. Ward would like to review and inspect non-certified copies of death certificates who pass away in Vanderburgh County, she is more than welcome to come to the Vanderburgh County Health Department to review such non-certified copies of death certificates.

It appears as if the Department is more than willing to satisfy your request for information and even generate reports from the registry for you. Vanderburgh County Ordinance 2.40.020 sets the fee for non-certified copies of death records at \$13.

In order for the ordinance to control, the Department has to show that the fee set by the statute is a reasonable calculation of cost of services provided. However, the Department has not stated why it believes the fee is a reasonable calculation. Further, this Office is not aware of every matter that justifies additional fees. Without further information, this Office cannot opine as to whether the fee charged is excessive.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Joseph Harrison, Jr., Esq.