



STATE OF INDIANA

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December 16, 2009

Ms. Sonja Graf
6364 N. Kivett Road
Monrovia, IN 46157

Re: Formal Complaint 09-FC-269; Alleged Violation of the Access to Public Records Act by the Morgan County Emergency Management Agency

Dear Ms. Graf:

This advisory opinion is in response to your formal complaint alleging the Morgan County Emergency Management Agency (“EMA”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, my opinion is that the EMA did not violate the APRA.

BACKGROUND

In your complaint, you allege that the EMA violated the APRA by refusing to provide you with specific addresses for EMA emergency response runs. In response to your request, EMA provided you with other information such as the dates of each run, type of run, and the township within which the run occurred. Nevertheless, you allege that EMA’s refusal to provide you with specific addresses violated the APRA.

My office forwarded a copy of your complaint to EMA for a response. Attorney Peter R. Foley responded on behalf of EMA. His response is enclosed for your review. Mr. Foley concedes that it is subject to the APRA; it is an agency of Morgan County government, which operates an ambulance service in Morgan County. Mr. Foley maintains that EMA’s response to you was both timely and sufficient under the APRA. He cites to Ind. Code § 5-14-3-4(a)(1), (3), and (9) for his position that the addresses are nondisclosable under the APRA. He also notes Ind. Code § 16-31-2-11(d), which applies to information related to emergency ambulance services that must be made available for inspection and copying. Finally, Mr. Foley cites to the federal Health Insurance Portability and Accountability Act (“HIPAA”) for his position that the addresses are “personal health information” that is nondisclosable under section 4(a)(3) of the APRA.

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.” I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). EMA does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy EMA’s public records during regular business hours unless the records fall within one of the APRA’s exceptions to disclosure. I.C. § 5-14-3-3(a).

The APRA provides that an agency’s failure to respond to a written request within seven (7) days constitutes a denial of access. I.C. § 5-14-3-9(b). Under the APRA, a public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Here, EMA asserts that it responded to each of your requests within the appropriate time periods. Consequently, it is my opinion that EMA did not violate the APRA in that respect.

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)(3). EMA asserts that HIPAA requires protected health information maintained by a provider 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, EMA is a provider for the purposes of Indiana law. As such, EMA may not disclose a patient medical record or protected health information absent a state or federal law or order of the court requiring disclosure. *See* I.C. § 5-14-3-4(a).

Moreover, Indiana law defines which information in a pre-hospital ambulance report is public record under the APRA. The following information, if contained in a pre-hospital ambulance report regarding an emergency patient is public information and must be made available for inspection and copying under Ind. Code § 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). Addresses of the runs are not listed as public information in this provision. Based on the absence of address information in foregoing provision, the confidential nature of health information pursuant to the HIPAA Privacy Rule, and the effect of Ind. Code § 5-14-3-4(a)(9), it is my opinion that EMA 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 also my opinion that EMA did not violate the APRA by denying you access to the address information. I note that this opinion is consistent with Counselor Neal's reasoning and conclusion in *Opinion of the Public Access Counselor 08-FC-147*.

CONCLUSION

For the foregoing reasons, it is my opinion that EMA did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Peter R. Foley, Foley Foley & Peden