



STATE OF INDIANA

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May 17, 2010

Mr. Dan Stockman
The Journal Gazette
600 W. Main Street
P.O. Box 88
Fort Wayne, IN 46801

Re: Formal Complaint 10-FC-97; Alleged Violation of the Access to Public Records Act by the Three Rivers Ambulance Authority

Dear Mr. Stockman:

This advisory opinion is in response to your formal complaint alleging the Three Rivers Ambulance Authority ("TRAA") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*, by denying you access to public records. A copy of TRAA's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on January 14, 2010, you made a request to TRAA for "[a]ny and all reports, documents, files, transcripts, logs, after-action reports, testimonies, diaries, memos, depositions or records related to the EMS call at 9717 Prince Ct., Ft. Wayne, on October 20, 2009." On January 15, 2010 you received a response from TRAA informing you that your request was denied. On March 5, 2010, you filed an appeal to TRAA's decision. In that appeal, you noted that TRAA was required to produce certain information under Ind. Code § 16-31-2-11(d), which applies to information contained in pre-hospital ambulance rescue reports and details information therein that is to be made public upon request.

In response to your appeal, TRAA sent you a letter requesting clarification. You responded by saying that "[w]e are NOT asking for your client to compile or create a document containing 'the date and time of the request for ambulance services, the reason for the call, the time and nature of the response, the time of arrival at the scene, the departure and the name of the facility.' We are asking for copies of existing TRAA documents containing that information, which the law requires TRAA to provide.... In other words, we want every document which contains the information that IC 16-31-2-11(d) says must be made public." You went on to list the requirements in your letter:

- (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.

Id. On March 18, 2010 TRAA produced and sent you the requested document with the redactions. According to TRAA, the information produced (i.e., not redacted) was the information you requested pursuant to Ind. Code § 16-31-2-11(d). On April 1, 2010, you sent a second written response appealing TRAA's decision to deny you access to the records requested. You alleged that the redacted document sent by TRAA failed to comply with APRA. You stated that "[t]here is nothing in state law that allows [TRAA] to withhold the information [TRAA] redacted." You also noted that "[w]e find it difficult to believe that an ambulance run that resulted in a disciplinary case against a crew member resulted in '*just one three-page document*' and that there are '*no other records*' in [TRAA's] possession responsive to our request."

My office forwarded a copy of your complaint to TRAA for a response. On behalf of TRAA, Bruce O. Boxberger, attorney, responded with a detailed letter summarizing TRAA's view of the facts and Mr. Boxberger's position that TRAA cooperated with your requests and complied with the APRA. Mr. Boxberger notes that TRAA's original denial complied with Ind. Code § 5-14-3-9(c) because it stated that the denial was in writing and included the name and title of the person responsible for the denial as well as statements of the specific exemptions authorizing the withholding of certain information.

Mr. Boxberger notes that in response to your first appeal and your clarification letter, TRAA supplied you with a redacted Prehospital Care Report Summary. He further states that information left un-redacted was the information that you had requested under Ind. Code § 16-31-2-11(d). He claims that the redacted document is the only public record related to the EMS call at 9717 Prince Court that TRAA could provide. Pursuant to Ind. Code § 16-31-2-11(b), the redacted information is "confidential" and not subject to disclosure, even in response to an APRA request. Thus, TRAA provided you with information it is permitted to and obligated to disclose under state law. Regarding your second appeal, Mr. Boxberger notes that after you specified redacted information that you claim TRAA is required under law to disclose such as names of responding crew members who moved the patient to the ambulance, vitals, times, and the narrative history for the call, TRAA provided you with a redacted report that included that information. Mr. Boxberger maintains that that record is the only record TRAA has that is responsive to your request.

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. TRAA does not dispute that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy TRAA’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, TRAA claims that it provided you with the public record you requested with the information it was required to and only permitted to disclose under the APRA. Pursuant to Ind. Code § 16-31-2-11(d), it appears TRAA provided you with all disclosable information. Based on my review of the Prehospital Care Report Summary, TRAA complied with the disclosure requirements of Ind. Code § 16-31-2-11(d).

With regards to the redacted information, Ind. Code § 16-31-2-11(b) provides the following:

“The commission may review any pre-hospital ambulance rescue or report record regarding an emergency patient that is utilized or compiled by an emergency ambulance service employing paramedics, emergency medical technicians-intermediate, emergency medical technicians, or emergency medical technicians-basic advanced. ***However, except as provided in subsection (d), those records shall remain confidential and may be used solely for the purpose of compiling data and statistics....***”

Id. (emphasis added). Thus, any information contained in the pre-hospital ambulance reports that is not listed in subsection (d) is confidential and not subject to disclosure. Although you requested the information under the APRA, the information is excepted under subsection 4(a)(1) of the APRA, which states that “those public records declared confidential by state statute may not be disclosed by a public agency.” Because Ind. Code § 16-31-2-11(d) is an applicable state statute, TRAA may not disclose the redacted information.

Finally, you allege that TRAA failed to comply with Ind. Code § 5-14-3-9(c), which sets forth the requisite elements of a public agency’s denial of a party’s initial request for access to public records. Here, the denial was in writing and included the name and title of the person responsible for the denial. The denial also included statements of the specific exemption authorizing the withholding of all or part of the public record. Thus, TRAA properly denied your request under the APRA.

That said, the APRA requires public agencies to separate and/or redact the nondisclosable information in public records in order to make the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a). Although TRAA ultimately redacted the reports and produced disclosable information to you, they did not do so in response to your initial request, which sought access to “[a]ny and all reports, ... logs, ...

or records related to the EMS call at 9717 Prince Ct., Fort Wayne, on October 20, 2009.” In my opinion, that request was specific enough to identify the report that TRAA ultimately produced because TRAA has acknowledged that it is the only record that exists pertaining to that EMS call. Because TRAA had no basis for withholding the information required to be disclosed under Ind. Code § 16-31-2-11(d), in my opinion TRAA should have produced a redacted form of that record in response to your initial request.

Finally, if TRAA possesses no other records responsive to your request, TRAA did not violate the APRA by failing to produce additional records in response to your request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

CONCLUSION

For the foregoing reasons, it is my opinion that TRAA initially violated the APRA by failing to produce to you the non-confidential portions of your requested record but complied with the APRA in its subsequent response. TRAA has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Bruce O. Boxberger