



STATE OF INDIANA

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September 8, 2011

Mr. Howard L. Steele
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 11-FC-195; Alleged Violation of the Access to Public Records Act by the Marion County Coroner's Office

Dear Mr. Steele:

This advisory opinion is in response to your formal complaint alleging the Marion County Coroner's Office ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Coroner, as of today we have not received a response.

BACKGROUND

In your complaint, you allege that on July 6, 2011 you submitted a written request to the Coroner for the autopsy report performed on Thomas Reeves in March 1980. Included in your request were copies of the photos from the crime scene where the Mr. Reeves was found. As of August 9, 2011, the date you filed your complaint with the Public Access Counselor's Office, you have not received a response from the Coroner.

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. The Coroner 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 the Coroner's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt,

the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Under the APRA, a public agency may in its discretion withhold “investigatory records of law enforcement agencies.” *See* 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.” *See* I.C. §5-14-3-2(h). Moreover, a coroner satisfies the definition of a law enforcement agency for purposes of the APRA when, among other things, the coroner acts pursuant to I.C. § 36-2-14-6 (the Autopsy Statute). Accordingly, documents compiled pursuant to the conditions listed in the Autopsy Statute are investigatory records falling within the investigatory records exception, I.C. §§ 5-14-3-2, 5-14-3-4(b)(1). Under the investigatory records exception, it is within the coroner's discretion to release or withhold them. *See Althaus v. The Evansville Courier*, 615 N.E. 2d 441 (Ind.Ct.App. 1993).

Notwithstanding the investigatory records exception, when a coroner investigates a death, the coroner is required to make available for inspection and copying certain information including the written report regarding the verdict on the death under consideration as required under I.C. § 36-2-14-10 as well as certain information when an autopsy is preformed, including probable cause, probable manner, and probably mechanism of death. *See* I.C. § 36-2-14-18. These specific requirements exist notwithstanding the general provisions regarding investigatory records in the APRA. To the extent there is a conflict between the two, the specific provisions under Ind. Code § 36-2-14-18 control pursuant to Ind. Code § 5-14-3-4(a)(1). *See Opinion of the Public Access Counselor 10-FC-7*. However, a full copy of the autopsy report is not required to be disclosed pursuant to I.C. §36-2-14-18(c). *See Informal Opinion of the Public Access Counselor 10-INF-3* (available at <http://www.in.gov/pac/informal/files/10-INF-3.pdf>). Also, I.C. § 5-14-3-4(a)(11) provides that a photograph, video recording, or audio recording of an autopsy may not be disclosed by a public agency.

Without the benefit of a response from the Coroner, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Because the Coroner has not provided a justification for withholding the records at issue here, it is my opinion that the Coroner has failed to sustain its burden.

If the Coroner cannot justify withholding the records under the APRA, I encourage the Coroner to release the records to you as soon as possible. To the extent the Coroner persists in its denial of access following the issuance of an advisory opinion

from this office and you believe the Coroner to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Coroner violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Marion County Coroner