



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 10, 2012

Jeff Wiehe
The Journal Gazette
600 W. Main Street
Fort Wayne, Indiana 46802

Re: Formal Complaint 12-FC-235; Alleged Violation of the Access to Public Records Act by the Noble County Coroner

Dear Mr. Wiehe:

This advisory opinion is in response to your formal complaint alleging the Noble County Coroner ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Dr. Terry Gaff, Noble County Coroner, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Coroner on August 2, 2012. As of August 16, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Coroner has failed to respond to your request.

In response to your formal complaint, Dr. Gaff advised that although he remembers speaking with you regarding your request, he only recently received your written submission and formal complaint filed with the Public Access Counselor's Office. Your request was submitted to an incorrect address and was only recently forwarded to the Coroner by the Noble County Auditor's Office. All records that were responsive to your request were provided with Dr. Gaff's response. Dr. Gaff further noted that the information that was sought would also be available from the Vital Records Department of the Noble County Board of Health.

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* I.C. § 5-14-3-1. The Coroner is a public agency for the purposes of the APRA. *See* 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. *See* 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). The seven-day time period does not commence until the public agency is in receipt of the request for records. 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.

Here, you provided that your request was submitted to the Coroner on August 2, 2012. In response, the Coroner advised that you submitted your request to an incorrect address and that the office had only recently been forwarded your request by the Noble County Auditor. The Coroner did not provide in its response to your formal complaint the exact date on which it received your written request. As the burden is on the Coroner to establish that it complied with the requirements of the APRA, it is my opinion that it acted contrary to the requirements of section 9 of the APRA in responding to your written request for records. However, as the Coroner has now provided all records that are responsive to the request, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Coroner acted contrary to the section 9 of the APRA by failing to respond in writing to your request within seven days of its receipt.

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: Dr. Terry Gaff