



# STATE OF INDIANA

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June 11, 2013

Mr. James A. Carr  
DOC 202871  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 13-FC-165; Alleged Violation of the Access to Public Records Act by the Fulton County Coroner*

Dear Mr. Carr:

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

## BACKGROUND

In your formal complaint, you allege that on two separate occasions, you submitted a written request for records to the Coroner. As of June 6, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any response from the Coroner. You specifically sought a memorandum of understanding between the Coroner and Fulton County Prosecutor ("Prosecutor") that is cited in the Indiana Coroner's Handbook and a copy of all billing information for a specific autopsy performed by the Coroner in November 2006.

In response to your formal complaint, Mr. Beeker advised that all billing information regarding the November 2006 autopsy has been forwarded to you. Further, the Coroner has no document in its possession that is responsive to your request for a memorandum of understanding between the Coroner and the Prosecutor.

## 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 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). 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, the Coroner acted contrary to the requirements of section 9(b) of the APRA when it failed to respond in writing within seven (7) days of the receipt of your written request.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the 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...”). However, the APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(h). Here, Mr. Beeker has advised that a copy of the requested billing information has been forwarded to you. Further, the Coroner does not maintain a record responsive to your request for a memorandum of understanding between the Coroner and the Prosecutor. It is my opinion that the Coroner did not violate the APRA by failing to produce a record that does not exist.

#### CONCLUSION

Based on the foregoing reasons, it is my opinion that the Coroner acted contrary to the requirements of section 9(b) of the APRA when it failed to respond to your written request within seven (7) days of receipt. As to all other issues, it is my opinion that the Coroner has not violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage'.

Joseph B. Hoage  
Public Access Counselor

cc: Darin Beeker