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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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ELIZABETH C. DEPOMPEI,  
*Complainant,*

v.

CLARK COUNTY CORONER'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
18-FC-100

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the Clark County Coroner's Office ("Coroner") violated the Access to Public Records Act.<sup>1</sup> The Coroner failed to file a response to the complaint despite an invitation to do so. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

by the Office of the Public Access Counselor on July 20, 2018.

## **BACKGROUND**

Elizabeth C. DePompei (“DePompei”), digital editor for the *News and Tribune*, contends that the Clark County Coroner’s Office (“Coroner”) violated the Access to Public Records Act (“APRA”) by failing make certain public records available for inspection and copying.

On July 6, 2018, DePompei requested the following from the Coroner via email:

[A] copy of the coroner’s report and death certificate for Bryan Njoroge, found deceased in Clarksville from [an] apparent self-inflicted gunshot wound on June 9.

The next day, Clark County Coroner Billy Scott emailed a response to DePompei suggesting that she refer her questions to Detective Ray Hall with the Clarksville Police Department, but did not reference the records request.

On July 9, 2018, De Pompei sent another email to the Coroner where she agreed to refer her questions to the detective, but restated her request for a copy of the Coroner’s records that must be released pursuant to statute. DePompei included citations to APRA and three other statutes<sup>2</sup> that govern what information a county coroner must release for public inspection and copying.

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<sup>2</sup> Ind. Code § 36-2-14-18; Ind. Code § 36-2-14-6; and Ind. Code § 36-2-14-10.

That same day the Coroner responded that he needed to “find out if [he] can give [the requested records] out yet because of a possible investigation.” On July 10, 2018, the Coroner followed up with DePompei by stating that he spoke with Detective Hall and Hall was waiting to hear back from the military about whether the records she requested could be given out. The Coroner also stated that he would just wait to hear from them.

As a result, DePompei filed a formal complaint with this Office. She contends that the Coroner must make the requested records available for public inspection and copying, and that the records cannot be withheld pending an investigation being conducted by another public agency.

The Coroner did not file an answer with this Office in response to DePompei’s complaint, despite being invited to do so. The Coroner did eventually provide DePompei with the requested records, however, it remains unclear whether that was prompted by the complaint or by some other happenstance. In any event, the Coroner only released the records after seeking “permission” from local law enforcement.

## ANALYSIS

The primary issue in this case is whether the Clark County Coroner's Office violated the Access to Public Records Act by failing to make the coroner's report and death certificate associated with a particular decedent available for inspection and copying.

### 1. Cooperation from Public Agencies

As a preliminary matter, this opinion will address the Coroner's failure to submit an answer to this Office after receiving notice of the formal complaint against it. Indiana Code section 5-14-5-5 expressly states that a "public agency *shall* cooperate with the [Public Access] Counselor in any investigation or proceeding under this chapter" (emphasis added). Indeed, the chapter referenced in that statute is the one that governs the formal complaint procedure administered by this Office. In other words, public agencies must work with this Office in any formal complaint investigation or proceeding.

Here, the Coroner failed to provide a response to the allegations raised by DePompei in her formal complaint despite receiving notice and an invitation to do so by this Office. Plainly enough, doing nothing falls short of the cooperation mandated by the legislature.

The Coroner should be mindful going forward that cooperating with this Office necessarily requires—*at minimum*—a response to the allegations raised in a formal complaint. Otherwise, this Office will presume that the agency does not dispute a complainant's allegations. This Office will not

form and present arguments on behalf of an agency that does not file an answer to a complaint.

Equally problematic for the Coroner is that this case is not the first time the agency has failed to respond to a formal complaint filed with this Office.<sup>3</sup>

After all, it makes sense to respond to a formal complaint because failing to respond to a claim that the agency fails to respond is one of the most efficient methods of strengthening a complainant's argument. Moreover, APRA provides a cause of action and judicial remedies for public access violations. *See* Ind. Code § 5-14-3-9.

The providing of responsive records without an accompanying report of such to this Office does not excuse an agency's duty to cooperate.

## **2. The Access to Public Records Act (“APRA”)**

The Access to Public Records Act (“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.” Ind. Code § 5-14-3-1. The Clark County Coroner's Office is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Coroner's public records during regular business hours. Ind. Code § 5-14-3-3(a).

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<sup>3</sup> *See Opinion of the Public Access Counselor*, 16-FC-286, (2016).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a).

In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

### **3. Disclosure of Coroner's Records**

Under Indiana law, when a county coroner investigates a death, the agency is required to make the following information available for public inspection and copying:

- (1) the name, age, address, sex, and race of the deceased;
- (2) the address where the dead body was found, or if there is no address the location where the dead body was found and, if different, the address where the death occurred, or if there is no address the location where the death occurred;
- (3) the agency to which the death was reported and the name of the person reporting the death;
- (4) the name of the public official or government employee present at the scene of the death; and the name of the person pronouncing the death.

*See* Ind. Code § 36-2-14-18(a). Autopsy information is limited to the date of the autopsy, the name of the person who performed the autopsy, where the autopsy was performed,

and a conclusion to the probable cause, manner, and mechanism of death.<sup>4</sup> Also, the coroner must report the location to which the body was removed, the person who determined the location to which the body was to be removed, and the authority under which it was removed.<sup>5</sup>

Lastly, the coroner's office must make available for inspection and copying the coroner's certificate of death, as well as the investigatory report and verdict. *See* Ind. Code § 36-2-14-18(a)(7).

Notably, this information must be made available within 14 days after the completion of the autopsy report, or, if applicable, any other report including a toxicology report requested by the coroner as part of the coroner's investigation, whichever is completed last. *See* Ind. Code § 36-2-14-18(h).

This Office is not aware of a legal authority that permits a county coroner in Indiana to disregard APRA and the disclosure requirements under Title 36 of the state code based on the deceased's military status. Indeed, the Coroner made no such argument or suggestion.

As a result, the Coroner must comply with APRA and the statutes under Title 36 concerning disclosure of certain information and should have done so upon the initial request and not waited for another agency's "permission."

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<sup>4</sup> Ind. Code § 36-2-14-18(a)(5)(A), to -(C).

<sup>5</sup> Ind. Code § 36-2-14-18(a)(6).

## CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Clark County Coroner's Office has violated the Access to Public Records Act by failing to act autonomously in providing the records and for failing to respond to this Office.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt  
Public Access Counselor