
OPINION OF THE PUBLIC ACCESS COUNSELOR

JACOB HARPER,
Complainant,

v.

LAPORTE COUNTY HEALTH DEPARTMENT,
Respondent.

Formal Complaint No.
20-FC-93

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaints alleging the LaPorte County Health Department violated the Access to Public Records Act.¹ Laura M. Nirenberg, counsel for the department filed a response with this office. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 10, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to certain death records related to COVID-19.

On May 26, 2020, Jacob Harper (Complainant) requested the following from the LaPorte County Health Department (Department):

[a] list of decedents...cause and manner of death (and the results of a coronavirus test, if one was performed), date/time of death, location of death.

The Department responded that privacy laws prevented the release of the information.² Harper formalized his request on June 2. On July 8, 2020, the Department officially denied his request.

Two days later Harper filed a formal complaint with this office alleging the denial is a violation of the Access to Public Records Act. Specifically, Harper contends that a 2014 decision by the Indiana Supreme Court³ makes the information he requested available to the public and he takes exception to the agency's denial.

In response, the Department contends that it properly denied Harper's request. The agency bases its argument on the difference between permanent record, which is disclosable, and a certification of death, which must be accompanied with

² Harper also alleges that the acknowledgement of his request was non-compliant with the law, however, that portion of the Access to Public Records Act was amended by Executive Order 20-04 to a "reasonable time."

³ *Evansville Courier & Press v. Vanderburgh County Health Department*, 17 N.E.3d 922 (2014).

a prerequisite of standing. In sum, only a person deemed eligible by the local health officer may receive cause of death information.

ANALYSIS

The key issue in this complaint is whether the Access to Public Records Act and Title 16 of the Indiana Code allows access to cause of death information.

1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

The Access to Public Records Act (APRA) says “(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.” *Id.*

There is no dispute that the LaPorte County Health Department is a public agency for the purposes of the APRA; and thus, subject to the law’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless otherwise provided by statute, any person may inspect and copy the Department’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both mandatory and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)-(b).

1. Death Records

Under Indiana law, “certificates of death” and “certificates of death registration” are separate and distinct documents. Accordingly, these documents are treated differently with regard to public access.

In *Evansville Courier & Press v. Vanderburgh Cty. Health Dep’t*, the Indiana Supreme Court agreed with a previous holding of the Indiana Court of Appeals that our legislature intended a distinction be made between a “certificate of death” and a “certificate of death registration.” Justice Massa, writing for the court, observed:

As we read the statute, the General Assembly has drawn a distinction between a certificate of death, which is intended to record cause of death data for use by health officials, and a certification of death registration, which is intended to authenticate the death for the purpose of property disposition. The former is a public record, while the latter is confidential.

17 N.E.3d 922, 930 (Ind. 2014). Based on this holding, “certificates of death” are disclosable public records under the Access to Public Records Act. Conversely, “certificates of death registration” are considered confidential under APRA; and thus, nondisclosable to the public at large.

1.1 Indiana’s death record system

In *Evansville Courier & Press*, the Indiana Supreme Court also explored the state’s process for creating and maintaining a certificate of death. Justice Massa observed the following:

Indiana's death record system begins with the death certificate, which contains data used to generate a variety of other records. A certificate of death is created pursuant to Indiana Code section 16-37-3-3(a), which provides:

The physician last in attendance upon the deceased or the person in charge of interment shall file a certificate of death or of stillbirth with the local health officer of the jurisdiction in which the death or stillbirth occurred. The local health officer shall retain a copy of the certificate of death.

It must include the decedent's cause of death as certified by the attending physician or local health officer. Ind.Code §§ 16-37-3-5,-6(b). Since January 1, 2011, the person filing the death certificate must use a state-created electronic database, the Indiana Death Registration System, to file a certificate of death with the local health officer of the jurisdiction in which the death occurred. Ind.Code 16-37-3-3(b); *see also* Ind.Code § 16-37-1-3.1 (establishing the Indiana Death Registration System).

Once the death certificate is filed, the local health officer must use the information thereon to "make a permanent record" that does not include the cause of death. Ind.Code § 16-37-3-9(a). The permanent record, with the exception of the decedent's Social Security number, "shall be open to public inspection." Ind.Code § 16-37-3-9(b). The local health officer must also report the death to the Indiana State Health Department within five days. Ind.Code § 16-37-1-3.1(e).

17 N.E.3d 922, 925-926 (Ind. 2014)(internal quotations omitted). Additionally, the court distinguished death certificates from a “certificate of death registration:”

Finally, upon request of a qualifying individual, the local health officer shall provide a certification of birth, death, or stillbirth registration. Ind.Code § 16-37-1-8(a). The requesting party must demonstrate he has a direct interest in the matter and the certificate is necessary for the determination of personal or property rights or for compliance with state or federal law. *Id.* Depending on the requesting party’s preference, the local health officer has the discretion to include or omit information concerning the cause of death. Ind.Code § 16-37-1-8(d).

Id. at 926. Thus, “certificates of death registration” are only available to those individuals that meet the criteria set out in Indiana Code section 16-37-1-8(a). No such requirement is in place for the public to access “certificates of death” created in accordance with Indiana Code section 16-37-3-9(b) because these permanent records are open to the public.

Here, the Department’s analysis only focuses on that final step – justifiably so as the statutes are byzantine at best. This is not an indictment on the Department’s legal work. It is certainly an opaque issue. The Department’s response, however, omits the first document created in the process, which our supreme court differentiates as mutually exclusive and disclosable.

The certificates of death therefore are not confidential like the certificates of death registration, and a requester does

not have to have special standing to obtain the initial certificate. Likewise cause of death information is likewise disclosable consistent with our supreme court's opinion that the public interest in cause of death outweighs private considerations. 17 N.E.3d at 930-931.

As a final note, the Department also suggests that cause of death determinations are deliberative and possibly nondisclosable under APRA.

Indeed, under APRA, an agency has discretion to withhold the following from public disclosure:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Ind. Code § ~~5-14-3-4~~(b)(6). Even so, once a cause of death is documented in accordance with Indiana Code sections ~~16-37-3-5~~ and 6, however, the cause of death ceases to be speculative and becomes a determination and the outcome of a decision. The decision has already been made and it becomes a set result. The Department may not rely on APRA's deliberative materials exception to prevent disclosure.

CONCLUSION

The statutes as enacted by the legislature and interpreted by the Indiana Supreme Court distinguish between a certificate of death and a certificate of death registration.

A certificate of death registration is confidential and only available to certain individuals in certain circumstances as set out by Indiana Code Section 16-37-1-8(a). To access a certificate of death registration the requesting party must demonstrate the following: (1) a direct interest in the matter; and (2) the certificate is necessary for the determination of personal or property rights or for compliance with state or federal law.

Certificates of death—less the decedent's social security number—is a public record and open to inspection and copying in accordance with APRA.

Therefore, the Department may legally release the cause of death information.



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