

September 6, 2001

Ms. Dee Ann A. Swick  
1602 Jennifer Road, Apt. #5  
Lexington, KY 40505

*Re: Advisory Opinion 01-FC-49; Alleged Denial of Access to Public Records by the LaGrange County Sheriff's Department.*

Dear Ms. Swick:

This is in response to your formal complaint, which was received on August 28, 2001. You have alleged that the LaGrange County Sheriff's Department ("Sheriff's Department,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a request for a copy of a mental evaluation performed on you while incarcerated at the LaGrange County Jail. Sheriff Greg Dheane responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the denial of your request for a copy of your evaluation was not proper under the APRA or Indiana Code section 16-39-2-4.

#### BACKGROUND

According to your complaint, on August 13, 2001 you sent a letter requesting a copy of the mental evaluation performed on you while you were incarcerated at the LaGrange County Jail in December 2000. On August 23, 2001, you received a response from the Sheriff's Department stating that you needed a subpoena in order to obtain these records. You then filed your formal complaint with this Office.

In response to your complaint, Sheriff Dheane responded to you directly in a letter dated August 29, 2001. After contacting this Office, Sheriff Dheane produced the requested records to you and enclosed them with his letter. His original denial was based on a recommendation by the local prosecuting attorney's office and he apologized for any inconvenience that denial caused you.

#### ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Sheriff's Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Sheriff's Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

A mental or physical examination of a person while in the possession of the Sheriff's Department is not only a public record, but also a health record.<sup>1</sup> The APRA recognizes that public agencies may possess health records on individuals and that generally, those records are confidential public records.

The following public records are excepted from [IC 5-14-3-3] and may not be disclosed by a public agency unless access to the record is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under Indiana Code chapter 16-39.

Ind. Code § 5-14-3-4(a)(9). Generally, if a request for access to a patient medical record is received by a public agency, then the agency may not release a copy without written consent of the patient, by court order or if another state or federal statute requires disclosure.

In this case, another state statute does require that the evaluation you sought be released to you, with only limited conditions on that disclosure. Indiana Code chapter 16-39 sets forth the conditions under which health records are to be released, and further provides that a

patient is entitled to inspect and copy the patient's own mental health record [unless] upon the advice of a physician . . . the information requested . . . is detrimental to the physical or mental health of the patient, or is likely to cause the patient to harm the patient or another person, the provider may withhold the information from the patient.

Indiana Code § 16-39-2-4. The evaluation, therefore, should have been released upon your request unless the Sheriff's Department, upon advice of a physician, deemed such release detrimental to you or to others.

In this case, the Sheriff's Department did not deny you access to the evaluation on the advice of a physician but rather on the advice of the local prosecuting attorney's office. It is my opinion that the denial of your request for a copy of the evaluation under the facts presented was not appropriate under the APRA or Indiana Code section 16-39-2-4. While this does not change my opinion on this denial, it is important to note that after receiving your formal complaint, the Sheriff's Department has released a copy of the evaluation to you.

## CONCLUSION

It is my opinion that the LaGrange County Sheriff's Department's denial of your request for access to a copy of your mental evaluation was not proper under the APRA and Indiana Code section 16-39-2-4.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Sheriff Greg J. Dheane, LCSD

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<sup>1</sup>"Health records", for purposes of IC 16-39, means written, electronic, or printed information possessed by a provider concerning any diagnosis, treatment, or prognosis of the patient. The term includes mental health records and alcohol and drug abuse records.' Ind. Code § 16-18-2-168(a). html>