
OPINION OF THE PUBLIC ACCESS COUNSELOR

RYAN MARTIN
Complainant,

v.

INDIANA DEPT. OF CORRECTION,
Respondent.

Formal Complaint No.
21-FC-100

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana Department of Correction violated the Access to Public Records Act.¹ IDOC Legal Services filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 15, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to “In Custody Death Reporting Forms” from the Indiana Department of Correction (IDOC).

On May 27, 2021, Ryan Martin (Complainant), a reporter with the *IndyStar*, filed a public records request with the IDOC seeking “In Custody Death Reporting Forms” for nine counties during specific years. Martin followed up with IDOC through email three times over the next month regarding the request.

On July 7, 2021, IDOC denied Martin’s request. IDOC indicated that the counties maintain the records locally and directed him to request the records locally.

The same day, Martin emailed IDOC in response to the denial. Martin took exception to that response and reiterated he was seeking the information directly from IDOC. He also noted that IDOC failed to cite a specific statute upon which a denial was justified.

Six days later, IDOC responded by indicating that counties were not actually required to submit the form and even if it did, offender private medical information is confidential and the records would be shielded from disclosure under the IDOC administrative rule 210 IAC 1-6-2(2).

Martin reasons that the requirement to submit the forms is irrelevant; if IDOC is in receipt of the form, it is a disclosable public record and redact sensitive material. Martin filed a formal complaint with this office on July 19, 2021.

IDOC argues that the denial was justified because IDOC does not have a statutory obligation to create the form, nor is there an affirmative duty for the counties to fill it out and submit it in the event of an in-custody death. It also considers the form as part of the offender's medical information and nondisclosable.

Notably, IDOC does not deny the forms exist or that it was in fact received, only that it is not required to do so.

ANALYSIS

1. The Access to Public Records Act

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 Indiana Department of Correction (IDOC) 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 IDOC's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

2. Martin's request

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request, but the law does not require an agency to create a

record pursuant to a request. With few exceptions, if a record does not exist, an agency one does not need to craft one in order to satisfy a requester.

Here, the form in question is labeled as an “In Custody Death Reporting Form.” It is a notification mechanism for sheriffs and jails to report inmate death information to IDOC upon the conclusion of a death investigation. IDOC acknowledges that an agency staff member created the form as a courtesy for counties so they know what information to provide IDOC. The form calls for little actual medical information other than a few questions at the bottom.

As noted above, IDOC did not and has not explicitly denied it has the forms Martin requested from the counties in question. If it does not, and indeed counties are not required to send them, IDOC would not be required to create or collect them to satisfy Martin’s request.

If, however, IDOC does have the forms, it cannot simply pass public records responsibility to the counties as a matter of course. This may be the case for some requests; however, Martin has had difficulty confirming reliable information from the counties. As IDOC is the clearinghouse for the forms that are submitted, he contends IDOC is the best agency for responsive records.

This office agrees under these circumstances. If the forms do not exist, so be it. IDOC does not bear responsibility for proving the existence of a negative. But IDOC does not make that argument here. Instead, it claims the forms would be too difficult to retrieve “due to the wide variety in which this information is received.” Either there’s a form or there

isn't for the counties in question. Martin has not asked for any compilation or aggregation of information.

Alternatively, IDOC claims the forms are part of an offender's medical information and cites 210 IAC 1-6-2(2)(A) & (3)(A), which exempts offender medical information and diagnostic-classification reports as restricted.

After review of the In Custody Death Reporting Form, very little of the content appears to be restricted under those rules. The portion that is can easily be redacted. Even so, "[c]ertain information normally considered restricted or confidential may be considered unrestricted information if there is a compelling public interest in disclosure." 210 IAC 1-6-2(1). In custody death would presumably be of public interest in certain circumstances.

In any case, a coroner's report, disclosable under Indiana Code section 36-2-14-18 would contain much of the information on the reporting form, including a conclusion as to the probable cause of death; the probable manner of death; and the probable mechanism of death.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana Department of Correction must release the In Custody Death Reporting Forms if they have been provided to the IDOC from the counties in question.



Luke H. Britt
Public Access Counselor