



# STATE OF INDIANA

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August 19, 2009

George Wright  
7640 East Hurst Road  
Pekin, Indiana 47165

*Re: Formal Complaint 09-FC-165; Alleged Violation of the Access to Public Records Act by Washington County Memorial Hospital*

Dear Mr. Wright:

This advisory opinion is in response to your formal complaint alleging Washington County Memorial Hospital ("Hospital") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Hospital's response to the complaint is enclosed for your reference. It is my opinion the Hospital is not subject to the APRA.

## BACKGROUND

You allege that you sent to the Hospital by facsimile transmission on June 29, 2009 a request for access to records maintained by the Hospital. You further allege that in a telephone conversation on July 14, Melissa Richardson of the Hospital indicated that your request would be denied. You filed the present complaint on July 21 (postmarked July 15). You requested priority status for the complaint but did not allege any of the circumstances for priority status as provided in 62 IAC 1-1-3, so priority status was not granted.

The Hospital responded to the complaint by letter dated July 27 from attorney Andrew Wright. The Hospital contends that after a merger effective June 4, 2009, the public agency ceased to exist. All assets, liabilities, and contract rights and obligations were transferred to the non-profit corporation Critical Access Health Services Corp. The Hospital further contends that even if the public agency did still exist, the information you seek is confidential pursuant to I.C. § 5-14-3-4(a)(1) and I.C. § 16-22-2.5-2.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-

14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The question here is whether the Hospital is a public agency. There is no question it was a public agency prior to June 4, 2009. As a public agency, the Hospital then had a duty to retain public records in accordance with I.C. 5-15 and to provide access to records in accordance with the APRA. If the Hospital now is no longer a public agency, that is it does not qualify as a public agency under any of the definitions of public agency found in I.C. § 5-14-3-2(m), the Hospital is not subject to the APRA and is not required to provide access to its records.

To the extent you seek records of the Hospital which were created, received, retained, maintained or filed by or with the Hospital prior to June 4, 2009, the question would be how and where those records must be retained according to records retention laws and an approved retention schedule. This is a subject area outside the purview of this office. I would direct those questions to the Indiana Commission on Public Records.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Hospital is not a public agency subject to the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Andrew Wright