



STATE OF INDIANA

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May 2, 2011

Mr. David M. Burks-Bey
DOC#: 872875
5501 South 1100 West
Westville, IN 46391

Re: Formal Complaint 11-FC-85; Alleged Violation of the Access to Public Records Act by the Indiana Department of Health

Dear Mr. Burks-Bey:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Health ("DOH") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, it is my opinion that DOH did not violate the APRA.

BACKGROUND

In your complaint, you allege that DOH violated the APRA by failing to respond to your request for access to a certificate of death. You state that the record you seek relates to the death of your mother.

In response to your complaint, Director of Legal Affairs Preston Black states that your request was denied because you did not satisfy the legal requirements necessary to obtain a death certificate. Mr. Preston explains that you "failed to 1) show direct interest in the information, 2) submit the required search fee, or 3) provide the required identification" based on Ind. Codes 16-37-1-10(a), 16-37-1-11(a), and 16-37-1-7. Mr. Black also explained that a Vital Records Supervisor investigated your records request after you filed a complaint with this office. Mr. Black contends that a Vital Records Mail Clerk recognized your request and responded to it by sending you correspondence informing you of the legal requirements for obtaining a death certificate. Mr. Black's response is included for your reference.

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. DOH does not dispute that it constitutes a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy DOH’s public records 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).

Under the APRA, a request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. If an agency denies a request that was submitted in writing, the agency must issue its denial in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record along with the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Here, it is the policy of DOH to respond to a vital records request within one or two days after they are received. If DOH responded to your request with one or two days after receipt, then DOH did not violate the APRA.

Under the APRA, an agency may require a request to be made in writing or on a form provided by the agency. I.C. §5-14-3-3(a). Pursuant to state law, the Indiana State Department of Health has prescribed a form to be completed when making a request for a death certificate. This request form requires the requester to provide a copy of identification before the request can be processed. Ind. Code I.C. § 16-37-1-11. To obtain a copy of a death certificate, the certificate’s purchaser must have a direct interest in the matter or the information must be necessary for the determination of a personal or property right or for the compliance with state or federal law. I.C. § 16-37-1-10. It is unclear from your complaint whether or not you have completed this form and filed it with the Indiana Department of Health. According to Mr. Black and the response provided to you by DOH staff, you have not yet supplied such form.

The APRA also provides that -- notwithstanding other provisions within section 8 of the APRA -- a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. I.C. § 5-14-3-8(f). Each search for a death record is \$8.00 pursuant to I.C. § 16-37-1-11. A certified copy of the death record is included with this search fee.

CONCLUSION

For the foregoing reasons, it is my opinion that the DOH did not violate the APRA if DOH responded to your request within one or days after receiving it. The DOH also did not violate the APRA when it required your completing a form to make a request

for a certified copy of a death record. I trust that DOH will supply you with the requested form upon receipt of the required documentation and applicable fee.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Preston Black