

March 10, 2008

Mara Snyder
Indiana Department of Homeland Security
302 West Washington Street; Room E246
Indianapolis, Indiana 46204

Re: Your informal inquiry

Dear Ms. Snyder:

This is in response to your informal inquiry dated February 25, 2008. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write on behalf of the Indiana Department of Homeland Security (“DHS”). Pursuant to the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3), DHS is a public agency. I.C. § 5-14-3-2. Your inquiry relates to data DHS receives, specifically fire data from fire departments and emergency medical services data from EMS providers. The data includes the name, address and specific medical information, including death, of persons involved in a fire or EMS run. The issue you present is whether DHS may send that information to the National Fire Administration/Federal Management Agency and to an Indiana university doing research on EMS runs. The research is being conducted on behalf of the National Highway Traffic Safety Administration.

Ind. Code § 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the APRA. One such exception to disclosure requires an agency to withhold, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery, patient medical records and charts created by a provider. I.C. § 5-14-3-4(a)(9). For the purposes of the APRA, “provider” has the meaning set forth in I.C. § 16-18-2-295(b), which includes “[a]n employer of a certified emergency medical technician, a certified emergency medical technician-basic advanced, a certified emergency medical technician-intermediate, or a certified paramedic.” I.C. § 16-18-2-295(b)(5).

For the purposes of the APRA, a fire department is only considered a provider if the fire department is an employer of one of the health care professionals listed in I.C. § 16-18-2-295(b)(5), since there is no provision in I.C. § 16-18-2-295(b) listing a fire department,

firefighter, or other fire department personnel as a “provider.” As such, the APRA does not prohibit the disclosure of patient medical records and charts created by a fire department if the department does not employ an EMT or other individual listed in I.C. § 16-18-2-295(b)(5).

If a fire department employs any of the medical professionals listed in I.C. § 16-18-2-295(b)(5), the department is a provider for the purposes of the APRA. Similarly, the EMS providers supplying DHS with information are providers under the same provision. As a provider, neither the EMS provider nor the fire department may disclose patient medical records and charts unless a state or federal statute requires access. I.C. § 5-14-3-4(a)(9).

Regarding the issue you raise related to fire department records, the U.S. Fire Administration requires any entity which is requesting a fire grant under federal law to submit a National Incident Reporting System report for each emergency response made by the fire department to the state fire marshal’s office; the state fire marshal’s office must in turn send each report to the U.S. Fire Administration. 15 USCS § 2229 *et seq.* One required field is reporting firefighter casualty information, including the name of the firefighter as well as the description of physical harm. Pursuant to federal law (*See* 15 USCS § 2229(b)(5)), this information must be submitted to the U.S. Fire Administration in order to receive federal fire grant monies. It is my opinion that this is information required to be disclosed pursuant to a federal statute as contemplated by I.C. § 5-14-3-4(a). As such, it is my opinion DHS does not violate the APRA by disclosing to the U.S. Fire Administration only the information required to be disclosed on the application, which was created pursuant to 15 USCS § 2229(b)(5).

Regarding the second part of your question, state statute allows the Emergency Medical Services Commission, which is staffed by the DHS, to review any pre-hospital or ambulance rescue report record regarding an emergency patient that is utilized or compiled by an emergency services provider. I.C. § 16-31-2-11(b). The statute further indicates that the records shall remain confidential and “may be used solely for compiling data and statistics.” *Id.* The exception to confidentiality is listed in subsection (d) and makes accessible to the public the following information contained in the ambulance or rescue report:

- (1) The date and time of the request for ambulance services.
- (2) The reason for the request for assistance.
- (3) The time and nature of the response to the request for ambulance services.
- (4) The time of arrival at the scene where the patient was located.
- (5) The time of departure from the scene where the patient was located.
- (6) The name of the facility, if any, to which the patient was delivered for further treatment and the time of arrival at that facility.

I.C. § 16-31-2-11(d).

Here, you inquire whether DHS may contract with a state university to review the data collected pursuant to the foregoing provisions. The university would then provide a report about the efficacy of pre-hospital care. You indicate the only way to track the continuity of care is to follow the information using the patient’s name. The commission statute addresses the commission’s oversight of study projects, but that subsection addresses studies of new patient

care techniques and new ambulance service systems (*See* I.C. § 16-31-2-11(c)), so I understand it is not applicable here.

Subsection (b) does, however, indicate that the records received by the commission shall remain confidential and may be used solely for the purpose of compiling data and statistics. I.C. § 16-31-2-11(b). Further, the use of data or statistics is subject to I.C. 4-1-6, the Fair Information Practices Act (“FIPA”). I.C. § 16-31-2-11(b). Neither the APRA nor the FIPA prevent an agency from contracting with an outside vendor or university to review data or provide reports about the data. Rather, the APRA prevents the *disclosure* of confidential information. It is my opinion that contracting with an outside entity to review and report on the data maintained by an agency does not constitute disclosure.

Both the APRA and the FIPA, though, contain provisions requiring a receiving public agency (e.g. the state university) to maintain the confidentiality of the record. I.C. §§ 5-14-3-6.5, 4-1-6-8.5(2). Based on the foregoing provisions, it is my opinion that DHS may contract with a state university for the review and reporting of data. Further, if a federal statute requires DHS to provide the information to the National Highway Traffic Safety Administration, I.C. § 5-14-3-4(a) would allow disclosure for that reason as well. In either case, DHS must take care to follow the parameters established by FIPA for the handling of the confidential information.

Please do not hesitate to contact me if I can provide any further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor