

March 27, 2006

Michael Jent  
#973821  
Wabash Valley Correctional Facility  
P.O. Box 2222  
Carlisle, IN 47838

*Re: Formal Complaint 06-FC-42; Alleged Violation of the Access to Public Records Act by the Delaware County Coroner*

Dear Mr. Jent:

This is in response to your formal complaint alleging that the Delaware County Coroner (“Coroner”) violated the Access to Public Records Act by refusing to provide you with a copy of an autopsy report. I find that the Coroner did not violate the Access to Public Records Act by refusing to give you a copy of the full autopsy report.

#### BACKGROUND

You complain in your formal complaint to the Office of the Public Access Counselor, filed February 24, 2006, that the Coroner has denied you access to an autopsy report for Alejandra Gutierrez, and “all information regarding the autopsy.” The Coroner, in response to your complaint, wrote that the death investigation of the deceased is ongoing, involves multiple agencies including the Coroner, Delaware County Prosecutor, and the Delaware County Sheriff, among other agencies. The Coroner stated that the records you seek are exempt under Indiana Code 5-14-3-4(b)(1) as investigatory records. According to the Coroner, the death certificate has been filed with and is maintained by the local health department, and the information required to be made public under Indiana Code 36-2-14-18 has been released and is available for inspection and copying in the Coroner’s Office. A copy of the Coroner’s complaint response is enclosed for your reference.

## ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). Among the records that are confidential under section 4 of the APRA and may not be disclosed by a public agency are a photograph, a video recording or an audio recording of an autopsy. IC 5-14-3-4(a)(11). In addition, a public agency may in its discretion withhold "investigatory records of law enforcement agencies." IC 5-14-3-4(b)(1). Records that are exempt under the "investigatory records" exception include a record "compiled in the course of the investigation of a crime." IC 5-14-3-2(h). The Coroner is a law enforcement agency when he acts pursuant to the Autopsy Statute. *Althaus v. The Evansville Courier*, 615 N.E.2d 441, 445 (Ind. Ct. App. 1993).

Notwithstanding the investigatory records exception, certain information is required to be disclosed when a coroner investigates a death. Under IC 36-2-14-18, certain information from the investigation of the death, including the name, age, address, sex and race of the deceased, among other things, must be disclosed. Also, information regarding the autopsy, limited to the date, the person who performed the autopsy, where the autopsy was performed, and a conclusion as to the probable cause of death, the probable manner of death, and the probable mechanism of death must be disclosed. IC 36-2-14-18(a)(5). A full copy of the autopsy report is not required to be disclosed, pursuant to IC 36-2-14-18(c).

As the Coroner's response acknowledges, the information required to be disclosed under IC 36-2-14-18 is available for inspection and copying in the Coroner's office during regular business hours.

I also write to guide you to other types of information regarding a person's death. The Coroner has indicated that the death certificate has been filed with and is available in the local health department. The local health department is required to provide a certification of death upon request by any person only if the health officer is satisfied that the applicant has a direct interest in the matter or the health officer determines that the certificate is necessary for the determination of personal or property rights or for compliance with state or federal law. IC 16-37-1-8. However, the local health department is required to maintain a permanent record of death events in the county. IC 16-37-3. From the death records, the local health department must maintain and disclose to the public upon request the name, sex, age, place of death, residence, and previous residence for the two years preceding the death of the deceased. IC 16-37-3. To receive this record, you must request it from the local health department.

Because the Coroner is not required to disclose his investigatory records, the Coroner did not violate the Access to Public Records Act in failing to send you the full autopsy report and "all other information regarding the autopsy." The information you seek is either confidential or nondisclosable in the agency's discretion, as outlined above. The information that is required to be disclosed under IC 36-2-14-18 may be obtained from the Coroner's office during regular

business hours. The local health department should disclose its permanent record on the death of Alejandra Gutierrez, if you request it.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Delaware County Coroner did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: James D. Clevenger, Jr.