



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

June 25, 2008

Virginia Perry  
6467 East Hadley Road  
Mooresville, Indiana

*Re: Formal Complaint 08-FC-147; Alleged Violation of the Access to Public Records Act by the Madison Township Fire Department*

Dear Ms. Perry:

This advisory opinion is in response to your formal complaint alleging the Madison Township Fire Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Department's response to the complaint for your reference. It is my opinion the Department has not violated the APRA.

## BACKGROUND

You allege that on May 23, 2008 you submitted a request to the Department for access to records. You allege that when you arrived to pick up the records on June 4 you found that portions of the records had been redacted. In a letter accompanying the complaint, you indicate the Department claimed the redacted portions of the records were excepted from disclosure pursuant to the federal HIPAA and I.C. § 16-31-2-11. You contend that this information had been provided to you in the past. You filed this complaint on June 5.

The Department responded to the complaint by letter dated June 12 from attorney Stephen Buschmann. The Department indicates that you requested "all Madison Township Log Run sheets for fire and ambulance runs for the period January 1, 2007 through and including December 31, 2007." The Department indicates that the run logs list information in five categories: 1. Incident number; 2. Type (EMS or Fire); 3. Date; 4. Location (Address of the run); 5. Description (a brief description of the run, entered by Madison Township personnel after the run is completed).

The Department indicates it redacted the information contained in columns 4 and 5. The Department contends that I.C. § 16-31-2-11 and the federal Health Insurance Portability and Accountability Act of 1998 ("HIPAA") require the Department to maintain this information as confidential.

Regarding your allegation that you have received the redacted information in the past, the Department contends that when you served as president of the Madison Township Board from 2002 to 2006, you were privy to confidential information maintained by the Township. The Department points out that as a public official you were required to maintain the confidentiality of that information.

## 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. The Department is clearly 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 the public records of the Department 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).

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 electronic mail) or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Contrary to your assertion, the Department was not required to produce the requested records within seven days. A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency.

An agency may not disclose records declared confidential by state statute or required to be kept confidential by federal law unless access to those records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a). The Department asserts that HIPAA requires protected health information maintained by a provider to be kept as confidential.

Effective in April 2003, the Standards for Privacy of Individually Identifiable Health Information (commonly called "HIPAA" or "the Privacy Rule") provides that protected health information may not be used or disclosed except as permitted or required by the Privacy Rule. 45 CFR § 164.502(a). Further, a public agency may not disclose a "patient medical record and chart created by a provider, unless the patient gives written consent under Indiana Code 16-39." I.C. § 5-14-3-4(a)(9). "Provider" has the meaning set forth in I.C. § 16-18-2-295(a). As an employer of a certified emergency medical technician, a certified emergency medical technician-basic advanced, a certified emergency medical technician-intermediate, or a certified paramedic, the Department is a provider for the purposes of Indiana law. As such, the Department may not disclose a patient medical record or protected health information absent a state or federal law or order of the court requiring disclosure. *See* I.C. § 5-14-3-4(a).

As the Department contends, Indiana law defines which information in a pre-hospital ambulance rescue or report record is public record under the APRA and as such are required to be disclosed upon request.

The following information, if contained in a pre-hospital ambulance rescue or report record regarding an emergency patient, is public information and must be made available for inspection and copying under IC 5-14-3:

- (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).

The Department's run logs contain information not listed in this provision, namely the address of the run and a description of the run. It is my opinion based on the HIPAA Privacy Rule, I.C. § 5-14-3-4(a)(9), and I.C. § 16-31-2-11(d) that the Department may not disclose any patient medical information beyond that required to be disclosed by I.C. § 16-31-2-11(d). As such, it is my opinion the Department did not violate the APRA by denying you access to this information.

Regarding your assertion that you have received the information in the past, the Department contends you were privy to certain confidential information in your capacity as president of the Township Board. As the Department asserts, a public agency that receives a confidential public record from another public agency shall maintain the confidentiality of the public record. I.C. § 5-14-3-6.5.

#### CONCLUSION

For the foregoing reasons, in my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Stephen Buschmann, Thrasher Buschmann Griffith & Voelkel, P.C.