



STATE OF INDIANA

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July 28, 2008

Jeffory House
DOC #159896
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 08-FC-169; Alleged Violation of the Access to Public Records Act by the Madison County Detention Department

Dear Mr. House:

This advisory opinion is in response to your formal complaint alleging the Madison County Sheriff's Department ("Department"), which operates the Madison County Detention Center, violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records, namely your medical records maintained by the Department. A copy of the Department's response to your complaint is enclosed for your reference. In my opinion the Department violated the APRA by providing an untimely response to your request and by failing to include a statement of the specific exemption or exemptions withholding all or part of the public record.

BACKGROUND

In your complaint you allege you requested by letter dated May 23, 2008 a copy of your medical records maintained by the Department. The Department denied your request by sending your request to you with a brief handwritten note at the bottom indicating the following: "These items are property of the Sheriff. The [sic] can be released to another Dr. or via subpoena – not public records. Denied by Andy Williams, Jail Commander." The postmark for the response from the Department is June 24, 2008. You filed this complaint on July 9. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Department responded to the request by letter dated July 25 from A. Howard Williams, Legal Deputy for the Department. The Department contends that access to medical history by a patient is permitted by HIPAA upon presentation of a properly executed form authorizing the release of confidential medical history. The Department contends it is unfortunate the Jail Commander did not articulate the process by which you could obtain the records. The Department further contends it has no access to medical records, which are maintained by the medical care provider. The Department contends it

cannot release medical records unless it has a properly executed release form but then indicates the Sheriff will have the medical care provider mail a copy of your medical file directly to your attention. Further, the Department indicates it will waive mailing or copying fees in this matter.

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 a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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 facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). The Department did not address the issue of date of response. You allege you mailed the request on May 23, and you provide evidence the response was postmarked on June 24. Assuming three business days for mailing time, the Department should have received your request on or about May 28. Certainly June 24 is well outside the seven days allowed for response, and as such the response was untimely under the APRA.

When an agency denies access to a request the agency received in writing, the denial must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record. *See* I.C. § 5-14-3-9(c). Here, the Department only indicated the records are "property of the Sheriff." Setting aside the issue regarding to whom public records actually belong, this response from the Department is insufficient under the APRA because it does not contain a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record. As such, it is my opinion the Department violated I.C. § 5-14-3-9 in its response.

In the Department's response to the complaint, the Department claims HIPAA prohibits disclosure of the medical records absent a signed release. I would advise the Department that this statement is certainly more appropriate than the statement made in the initial response, but it is my opinion it still does not include a statement of the specific exemption; the specific HIPAA provision(s) prohibiting disclosure absent a waiver would be most appropriate. While I remain somewhat confused regarding the Department's contention it does not have access to medical records but will have them sent to you, I trust the Department is now working to produce records in response to your request or provide you with a more detailed statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record.

Finally, I would note to the Department that the Indiana Court of Appeals has added to the definition of public record those records created for or on behalf of a public agency. See *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005). I do not have enough information here to determine definitively whether the records at issue are public records of the Sheriff's Department, but to the extent they were created for or on behalf of the Department, it would be inappropriate for the Department to deny access to the records on the basis the records are not physically kept in the Department's offices.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: A. Howard Williams, Legal Deputy, Madison County Sheriff's Office