

JURISDICTION AND VENUE

5. This action arises from IDOH's refusal to provide records to Voices For Life under the Access to Public Records Act ("APRA"), Indiana Code ("I.C.") § 5-14-3 *et. seq.*

6. This Court has jurisdiction over the subject matter of this lawsuit and over the Defendants under APRA, I.C. § 5-14-3-9(e).

7. Venue is proper in Marion County pursuant to I.C. § 5-14-3-9(e), which provides that "[a] person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public records." I.C. § 5-14-3-9(e). Venue is proper under Ind. Tr. R. 75(A)(5)&(8) because this venue is authorized by I.C. § 5-14-3-9(e), and the principal office of the IDOH is located in Marion County.

FACTUAL ALLEGATIONS

8. Indiana law requires every health care provider who performs a surgical abortion or provides, prescribes, administers, or dispenses an abortion inducing drug for the purposes of inducing an abortion, to report the performance of the same on a form submitted to IDOH on a monthly basis. I.C. § 16-34-2-5(a).

9. The form is commonly referred to as a Termination of Pregnancy Report ("TPR").

10. The purpose of the TPR is "the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law." I.C. § 16-34-2-5(a).

Voices for Life's Requests For TPRs.

11. For decades, pro-life organizations like Voices For Life requested TPRs from IDOH, which were routinely disclosed by IDOH as public records. The requesting organizations inspected the records for apparent violations of health and safety standards among abortion providers.

12. Voices For Life has requested TPRs from IDOH since about November 2022. It has done so to effectuate the statutory policy supporting the submission of TPRs, viz. to safeguard maternal life and health and to assure that abortions are done only in accordance with law.

13. Until October 2023, IDOH routinely supplied TPRs on request to Voices For Life, and redacted potential patient identifying information.

14. On October 16, 2023, Voices For Life submitted a written request for August 2023 TPR records to IDOH under APRA. **Exhibit 1.**

15. On October 20, 2023, IDOH wrote back that the request was “pending review” and a further response would be forthcoming on or before November 9, 2023. **Exhibit 2.**

16. On November 8, 2023, IDOH wrote again, saying that “[o]ur vital records department is actively working to fulfill your request.” It indicated further that IDOH would “provide an update on our progress on or before November 22, 2023, if you have not received the final report by this date.” **Exhibit 3.**

17. On November 22, 2023, IDOH responded again, stating that “[o]ur Vital Records department is trying to respond to a high volume of public records requests as quickly as possible.” IDOH said it would “provide an update on our progress on or before December 15th, if you have not received the final report by this date.” **Exhibit 4.**

18. IDOH did not respond again with respect to the Plaintiff’s requests for August 2023 TPRs until January 12, 2024. On that date IDOH stated that “individual terminated pregnancy reports submitted to IDOH after August 1, 2023 are no longer releasable through public records request.” It stated further that “The records are withheld pursuant to I.C. § 5-14-3-4(a)(9), which declares medical records confidential.” **Exhibit 5.**

19. The response linked the Public Access Counselor’s December 19, 2023 informal opinion, 23-INF-15, which asserted that TPRs were patient medical records exempt from disclosure under I.C. § 5-14-3-4(a)(9). **Exhibit 6.**

20. Voices For Life had also requested TPRs filed in September, October, and November 2023. **Exhibit 7** (request dated Nov. 6, 2023); **Exhibit 8** (request dated Dec. 13, 2023); and **Exhibit 9** (request dated Jan. 8, 2024). These requests were effectively denied on January 12, 2024. **Exhibit 5.**

21. On January 22, 2024, Voices For Life asked IDOH and the Public Access Counselor to review its policy change. **Exhibit 10.**

22. On February 1, 2024, Voices For Life filed a formal complaint with the Public Access Counselor. **Exhibit 11.**

23. On February 19, 2024 the Public Access Counselor declined to entertain the formal complaint, claiming it was untimely and otherwise defective. **Exhibit 12.**

24. On March 15, 2024, Voices For Life responded to the Public Access Counselor's denial letter pointing out that the stated basis for the denial of its request for reconsideration was erroneous and unjustified. **Exhibit 13.**

Attorney General Rejects The Claim That TPRs Are Patient Records.

25. On April 11, 2024, Indiana Attorney General Todd Rokita issued an Official Opinion 2024-2. **Exhibit 14.** In it he rejected the Public Access Counselor's informal opinion (23-INF-15) asserting that TPRs are patient medical records exempt from disclosure under I.C. § 5-14-3-4(a)(9), and set forth reasons why TPRs are not exempt from disclosure under the APRA on the theory they are patient records. These include:

- That until December 19, 2023, TPRs were available to the public continuously for decades without a contention that they are exempt patient medical records (p.2);
- That no personal identifying information of a patient is contained in the records (p.9);
- That any identified risk of disclosure of the identity of a patient in special cases could be relieved through appropriate redactions rather than withholding the entire TPR (pp.8-9);
- That TPRs are not patient medical records and are disclosable under the APRA (p.4);
- That exemption of TPRs from disclosure impedes the ability of the Office of Attorney General to perform its statutory duties of investigating provider complaints (p.8).

26. Attorney General Rokita held a press conference announcing and explaining his Opinion. https://www.facebook.com/watch/live/?ref=watch_permalink&v=400676912911104. (Attorney General Rokita's remarks begin at the 11:40 mark).

27. In communications to the Governor and individual legislators, Attorney General Rokita made clear that without public access to TPRs, his office would be unable to enforce Indiana's new abortion law. **Exhibit 15, Exhibit 16.**

28. Despite the Attorney General’s communications to elected leaders, neither the State General Assembly nor the Governor’s Office took action to address this lack of enforcement power.

Voices for Life Renews Requests for TPRs Based on The Attorney General’s Opinion

29. On April 12, 2024, Voices for Life renewed its request for TPRs for each month during the period from August through November 2023 in light of the Attorney General’s opinion. **Exhibit 17.** On April 22, 2024, IDOH again denied this request on the grounds that TPRs were patient records. **Exhibit 18.**

30. On April 19, 2024, Voices for Life requested TPRs for each month during the period from December through March 2024. **Exhibit 19.** On April 22, 2024, IDOH again denied this request on the grounds that the TPRs are patient records. **Exhibit 20.**

31. On April 19, 2024, Voices For Life requested that the Public Access Counselor reconsider and revise his opinion that TPRs are patient records exempt from disclosure. **Exhibit 21.** On April 24, 2024, the Public Access Counselor refused this request. **Exhibit 22.**

32. I.C. § 5-14-3 requires IDOH to provide the public “full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.”

33. Further, I.C. § 5-14-3 places the burden of proof on the department in denying a request and states that an ambiguity as to whether or not to disclose information should generally be resolved in favor of the requesting party, with appropriate redactions in produced information to protect against potential disclosure of private information.

34. IDOH’s refusal to comply with Voices For Life’s access to public records requests for TPRs violates APRA and must be corrected by this Court.

35. Public Access Counselor Opinion 23-INF-15 notes that IDOH, in its request for an opinion as to whether filed TPRs are exempt from disclosure, argued that any duty under APRA to release TPRs should be deemed satisfied by IDOH’s release of quarterly reports which aggregate data from individual TPRs. **Exhibit 6** at p.2, par.2. IDOH’s argument is without merit because aggregated data does not give the detail required to determine whether a particular abortion may have been performed illegally, nor does it identify the licensed professional (or

licensed medical facility) responsible for performing the abortion. Compare **Exhibit 23** (individual TPR format) with **Exhibit 24** (quarterly TPR report released by IDOH).

36. The statutory purposes giving rise to the requirement to fill out and file TPRs are: the “improvement of maternal health and life” and the assurance that abortions are performed “only under authorized provisions of law.” I.C. § 16-34-2-5(a). TPRs can be used in furtherance of these purposes only if they are available to the public and OAG through APRA requests. Anonymous quarterly reports are not an effective substitute.

37. IDOH’s refusal to provide access to TPRs deprives private citizens of their role in petitioning the Attorney General to investigate cases that suggest a termination of pregnancy was unlawful. Complaints by members of the public are a condition precedent to the Attorney General’s exercise of his lawful authority. **Exhibit 14** at pp.7-8; see also I.C. § 25-1-7-2—I.C. § 25-1-7-5 (authorizing the Attorney General to investigate complaints concerning regulated occupations).

38. IDOH’s refusal to disclose TPRs is an urgent problem. This is underscored by the Attorney General’s statement in his Opinion that a review of the aggregated data in the quarterly TPR report for Oct. 1 through Dec. 31, 2023 shows probable cause to believe that some abortions performed during this period may have been unlawful, but that the lack of individual TPR data prevents the OAG from investigating them. AG Opinion Letter, **Exhibit 14** at pp.7-8.

39. Because it frustrates needed investigation into potentially unlawful abortions, IDOH’s refusal to disclose TPRs to Plaintiffs places human lives at risk. It also frustrates Voices For Life’s mission to protect the lives of mothers and the unborn. These results of the Public Access Counselor’s Informal Opinion are the opposite of what the statute intends in mandating creation and filing of TPRs. The Court must not allow this situation to continue.

WHEREFORE, Plaintiff Voices For Life respectfully requests that this Honorable Court:

1. Declare that IDOH is required to satisfy public requests for TPRs under APRA;
2. Order the IDOH to provide full and complete access to Plaintiff's requests for TPRs; and
3. Award such other relief as the Court deems just and proper, including reasonable attorney fees and costs.

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**pro hac vice forthcoming*