



## **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 15<sup>th</sup>, 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](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.

/s/ Benjamin D. Horvath  
State of Indiana #37299-71  
Special Counsel, The Thomas More Society  
Horvath Legal Services, LLC  
2307 Edison Road - Floor #3  
South Bend, IN 46615  
Tel. 574-315-2920  
[bdhorvath@comcast.net](mailto:bdhorvath@comcast.net)

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*\*pro hac vice forthcoming*

# EXHIBIT 1



**From:** Jackie Appleman <[appleman@voicesforlife.com](mailto:appleman@voicesforlife.com)>  
**Sent:** Monday, October 16, 2023 4:15 PM  
**To:** Becker, Angela <[ABecker2@health.in.gov](mailto:ABecker2@health.in.gov)>  
**Subject:** Public Records Request

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

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Hi Angela,

I am submitting a formal public record information request for the following:

I am requesting copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from August 1 2023- August 31 2023.

I am requesting copies of the original Abortion Facility Inspection Reports submitted for all Indiana abortion facilities from August 1 2023 - August 31 2023.

I am requesting aggregated data of the original Abortion Complication Reports as submitted by the abortion doctors for Abortion Complication in Indiana from August 1 2023 - August 31 2023.

I am requesting all new abortion facility license applications submitted August 1 - August 31 2023.

I am requesting all abortion facility license renewal applications submitted August 1 - August 31 2023.

Thanks,  
Jackie

# **EXHIBIT 2**

## Public Records Request - August 2023

1 message

Becker, Angela <ABecker2@health.in.gov>  
To: Jackie Appleman <appleman@voicesforlife.com>

Fri, Oct 20, 2023 at 12:50 PM

Good afternoon Jackie.

I'm writing in response to your public records request seeking the following:

1. Termination of Pregnancy Reports from August 1 2023- August 31 2023.

This item is pending review by our Vital Records data team. I will provide an update on or before November 9, 2023, if you have not received the final report by this date.

2. Abortion Facility Inspection Reports from August 1 2023- August 31 2023.

After contacting our Acute Care Division, it has been determined that we do not have any records responsive to this item of your request

3. Aggregated data of the original Abortion Complication Reports as submitted by the abortion doctors from August 1 2023- August 31 2023.

The IDOH does not compile statistical reports on a monthly basis so it does not have records responsive to your request. IDOH will make its Abortion Complications statistical reports available when they are complete.

4. New abortion facility license applications submitted August 1 2023- August 31 2023.

After contacting our Acute Care Division, it has been determined that we do not have any records responsive to this item of your request.

5. Abortion facility license renewal applications submitted August 1 2023- August 31 2023.

After contacting our Acute Care Division, it has been determined that we do not have any records responsive to this item of your request.

Sincerely,

**Angela Becker** | *Public Records Coordinator*

Office of Legal Affairs  
office: 317-232-3119 • fax: 317-234-6278

# **EXHIBIT 3**

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## 11,08.2023 Update: Public Records Request - August 2023 TPRs

1 message

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**Becker, Angela** <ABecker2@health.in.gov>  
To: Jackie Appleman <appleman@voicesforlife.com>  
Cc: "MacKinnon, Kelly" <KMacKinnon@health.in.gov>

Wed, Nov 8, 2023 at 2:36 PM

Good afternoon Jackie.

I'm writing to provide an update on your public records request seeking Termination of Pregnancy Reports from August 1 2023- August 31 2023. Our Vital Records department is actively working to fulfill your request. I will provide an update on our progress on or before November 22, 2023, if you have not received the final report by this date. We have responded to all other items of your request below.

Sincerely,

**Angela Becker** | *Public Records Coordinator*

Office of Legal Affairs  
office: 317-232-3119 • fax: 317-234-6278

[abecker2@health.in.gov](mailto:abecker2@health.in.gov)

[health.in.gov](http://health.in.gov)



**Indiana**  
Department  
of  
**Health**



**Confidentiality Statement:** This message and any attachments may be confidential. If you are not the intended recipient, please 1) notify me immediately; 2) do not forward the message or attachment; 3) do not print the message or attachment; and 4) erase the message and attachment from your system.

# **EXHIBIT 4**

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## 11.22.2023 Update: Public Records Request - August 2023 TPRs

3 messages

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**Becker, Angela** <ABecker2@health.in.gov>  
To: Jackie Appleman <appleman@voicesforlife.com>

Wed, Nov 22, 2023 at 2:56 PM

Good afternoon Jackie.

I'm writing to provide an update on your public records request seeking Termination of Pregnancy Reports from August 1 2023- August 31 2023. Our Vital Records department is trying to respond to a high volume of public records requests as quickly as possible. I will provide an update on our progress on or before December 15<sup>th</sup>, if you have not received the final report by this date. We have responded to all other items of your request below.

Sincerely,

**Angela Becker** | *Public Records Coordinator*

Office of Legal Affairs  
office: 317-232-3119 • fax: 317-234-6278

[abecker2@health.in.gov](mailto:abecker2@health.in.gov)

[health.in.gov](http://health.in.gov)



**Indiana**  
Department  
of  
**Health**



# **EXHIBIT 5**



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## UPDATE: Request for TPRs

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**Becker, Angela** <ABecker2@health.in.gov>  
To: Jackie Appleman <appleman@voicesforlife.com>

Fri, Jan 12, 2024 at 3:19 PM

Good afternoon Jackie.

*Due to the impact of legislative changes in SEA 1 (SS), individual terminated pregnancy reports submitted to IDOH after August 1, 2023 are no longer releasable through public records request.*

*The records are withheld pursuant to IC 5-14-3-4(a)(9), which declares medical records confidential.*

*Below is a link to an informal opinion from the Indiana public access counselor that provides more information.*

<https://www.in.gov/pac/files/informal/23-INF-15.pdf>

Sincerely,

**Angela Becker** | *Public Records Coordinator*

Office of Legal Affairs  
office: 317-232-3119 • fax: 317-234-6278

[abecker2@health.in.gov](mailto:abecker2@health.in.gov)

[health.in.gov](http://health.in.gov)



**Indiana**  
Department  
of  
**Health**



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# **EXHIBIT 6**



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room  
W470

Indianapolis, Indiana 46204-2745

Telephone: (317)234-0906

Fax: (317)233-3091

1-800-228-6013

[www.IN.gov/pac](http://www.IN.gov/pac)

December 19, 2023

Kelly MacKinnon  
Chief Legal Counsel  
Indiana Department of Health  
2 North Meridian Street  
Indianapolis, IN 46204

VIA EMAIL: [KMacKinnon@health.in.gov](mailto:KMacKinnon@health.in.gov)

**RE: 23-INF-15; Terminated pregnancy reports**

Dear Ms. MacKinnon,

This informal opinion addresses the issue of access to terminated pregnancy reports. Based on a statutory change in 2022, terminated pregnancy reports require more robust information than in prior iterations of the law. Toward that end, the Indiana Department of Health (IDOH) has concerns about confidentiality and whether the report should be withheld in their entirety under the Access to Public Records Act.

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that "(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." Ind. Code § 5-14-3-1. The Indiana Department of Health is a public agency for purposes of APRA; and therefore, subject to the law's requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy IDOH's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Notably, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a), to -(b). This inquiry involves the intersection of APRA and statutes regarding medical records.

## 2. Terminated pregnancy reports

A special legislative session in 2022 outlawed abortion in Indiana except for in a few emergency circumstances.<sup>1</sup> For legal procedures, Indiana law requires a physician who provides an authorized abortion to file a form with IDOH.<sup>2</sup> This form calls for over 30 categories of information to be reported, including but not limited to, demographic data and patient medical history.

Your inquiry concerns the release of this form in its entirety. Given that the report is populated with information that could be reverse engineered to identify patients—especially in smaller communities—you argue that the required quarterly reports<sup>3</sup> should suffice in terms of satisfying any disclosure and transparency considerations.

This office agrees.

APRA declares patient medical records created by a provider confidential. Ind. Code §5-14-3-4(a)(9). While the form is created by a provider pursuant to a statutory reporting requirement, there is no question that the information contained therein is part of a patient medical record. Stated differently, the creation of the form is an immediate consequence of a medical service. Without the provider-patient relationship, the form would not exist.

It follows that IDOH should treat the form with the same confidentiality considerations as any other patient medical record. Even if the report could be qualified as something other than a medical record (e.g., an administrative reporting document), the statute itself seems to imply that the form is non-public. Subsection (e) mandates IDOH “compile a *public* report” providing aggregate statistics on a quarterly basis. Implicitly, this suggests the individual forms are non-public.

Insofar as pinpoint redactions are concerned, it is true that APRA requires separation and release of disclosable versus non-disclosable material.<sup>4</sup> This requires an agency to separate and withhold confidential information but disclose the remainder. This provision hinges on the practicality of the exercise. Courts will mandate separation when disclosable materials are not inextricably linked to confidential materials.<sup>5</sup> Here, however, the entirety of the form is a medical record. Separation and redaction would defeat the statutory purpose of the confidentiality requirement declaring “patient medical records”

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<sup>1</sup> Public Law 179-2022(ss)

<sup>2</sup> Ind. Code § 16-34-2-5.

<sup>3</sup> Ind. Code § 16-34-2-5(d).

<sup>4</sup> Ind. Code § 5-14-3-6.

<sup>5</sup> *Unincorporated Operating Div. of Indiana Newspapers, Inc. v. Trustees of Indiana University*, 787 N.E.2d 893, 914 (Ind.Ct.App.2005).

non-disclosable. Medical records as monolithic documents can be withheld in their entirety.

This position is also consistent with the Indiana Medical Licensing Board's recent finding that disclosure of even partial and seemingly non-identifiable information by medical providers can lead to legal consequences.<sup>6</sup>

### **CONCLUSION**

Based on the foregoing, it is the opinion of this office that terminated pregnancy forms submitted in accordance with Indiana Code section 16-34-2-5 should be withheld from disclosure in their entirety.



Luke H. Britt  
Public Access Counselor

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<sup>6</sup> In the matter of the license of Caitlin Bernard, M.D., 2022 MLB 0024.

# **EXHIBIT 7**

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## Public Records Request - September

2 messages

**Jackie Appleman** <appleman@voicesforlife.com>  
To: abecker2@health.in.gov

Mon, Nov 6, 2023 at 10:09 AM

Hi Angela,

I am submitting a formal public record information request for the following:

I am requesting copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from September 1 2023- September 31 2023.

I am requesting copies of the original Abortion Facility Inspection Reports submitted for all Indiana abortion facilities from September 1 2023 - September 30 2023.

I am requesting aggregated data of the original Abortion Complication Reports as submitted by the abortion doctors for Abortion Complication in Indiana from September 1 2023 - September 30 2023.

I am requesting all new abortion facility license applications submitted September 1 - September 30 2023.

I am requesting all abortion facility license renewal applications submitted September 1 - September 30 2023.

Thanks,  
Jackie



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### Jackie Appleman

Chief Operating Officer

✉ appleman@voicesforlife.com

☎ 574-850-1017

🌐 voicesforlife.com

📍 2307 Edison Rd. #301  
South Bend, IN 46615

# **EXHIBIT 8**



**From:** Jackie Appleman <appleman@voicesforlife.com>  
**Sent:** Wednesday, December 13, 2023 2:35 PM  
**To:** Becker, Angela <ABecker2@health.in.gov>  
**Subject:** Public Record Request

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Hi Angela,

I am submitting a formal public record information request for the following:

I am requesting copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from October 1 2023- October 31 2023.

I am requesting copies of the original Abortion Facility Inspection Reports submitted for all Indiana abortion facilities from October 1 2023 - October 31 2023.

I am requesting aggregated data of the original Abortion Complication Reports as submitted by the abortion doctors for Abortion Complication in Indiana from October 1 2023 - October 31 2023.

I am requesting all new abortion facility license applications submitted October 1 - October 31 2023.

I am requesting all abortion facility license renewal applications submitted October 1 - October 31 2023.

<https://mail.google.com/mail/u/0/?ik=d14c316d0c&view=pt&search=all&permthid=thread-f:1785741321671369110&siml=msg-f:1785741321671369110&siml=...> 2/4

2/2/24, 10:56 AM

Voices for Life Mail - October 2023 TPRs

Thanks,  
Jackie



**Jackie Appleman**

Chief Operating Officer

appleman@voicesforlife.com

574-850-1017

voicesforlife.com

2307 Edison Rd. #301  
South Bend, IN 46615

# **EXHIBIT 9**

**From:** Jackie Appleman <[appleman@voicesforlife.com](mailto:appleman@voicesforlife.com)>  
**Sent:** Monday, January 8, 2024 12:36 PM  
**To:** Becker, Angela <[ABecker2@health.in.gov](mailto:ABecker2@health.in.gov)>  
**Subject:** Public Record Request

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

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Hi Angela,

Hi Angela,

I am submitting a formal public record information request for the following:

I am requesting copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from November 1st - 30th 2023.

I am requesting the original Abortion Complication Reports data as submitted by the abortion doctors for Abortion Complication in Indiana from November 1 2023 - November 30th 2023.

Additionally, I am still awaiting public data that was requested on 10/16/23, 11/6/23, and 12/13/23.

Best,  
Jackie



**Jackie Appleman**

Chief Operating Officer

✉ [appleman@voicesforlife.com](mailto:appleman@voicesforlife.com)

☎ 574-850-1017

🌐 [voicesforlife.com](http://voicesforlife.com)

📍 2307 Edison Rd. #301  
South Bend, IN 46615

# **EXHIBIT 10**



**Voices For Life**  
**2307 Edison Rd. – Floor #3**  
**South Bend, IN 46615**

January 22, 2024

Kelly MacKinnon  
Chief Legal Counsel  
Indian Department of Health  
2 North Meridian Street  
Indianapolis, IN 46204

Luke H. Britt  
Public Access Counselor  
State of Indiana  
402 West Washington Street  
Indianapolis, IN 46204

Re: Informal Opinion Regarding Terminated Pregnancy Reports

Dear Ms. MacKinnon & Mr. Britt:

I am writing as the Vice President of Voices For Life’s Board of Directors. This letter is written in response to your respective offices’ categorical refusal to release regular terminated pregnancy reports (TPRs). This decision is deeply troubling as such reports have historically been provided to any individual or organization who have requested them. It is only through public disclosure that numerous instances of apparent illegality have been discovered through independent review.

This decision to categorically exclude TPRs from public disclosure is unprecedented, particularly considering such reports were provided throughout the first three quarters of 2023. Even with the passage of SEA1, public records law did not prevent release of TPRs. The decision to prevent disclosure of TPRs contravenes the basic purpose of Indiana public access laws. Further, the refusal to satisfy the public records request by redacting potential private information indicates an unwillingness to disclose information which has been repeatedly provided for public disclosure.

We request a prompt review and resolution to the concerns raised in this letter within the next thirty (30) days. Our organization is prepared to take additional legislative and administrative steps to ensure this information is provided, to further our own organization’s mission and interest of the broader public. Thank you in advance for your cooperation.

Sincerely,

Benjamin D. Horvath  
Licensed Attorney, State of Indiana (#37299-71)

# **EXHIBIT 11**



**OFFICE OF THE PUBLIC ACCESS COUNSELOR  
FORMAL COMPLAINT**

State Form 49407 (R7 / 4-23)

**OFFICE OF THE PUBLIC ACCESS COUNSELOR**

Indiana Government Center South  
402 West Washington Street, Ste. W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317) 234-0906  
E-mail: [pac@opac.in.gov](mailto:pac@opac.in.gov)  
[www.IN.gov/pac](http://www.IN.gov/pac)

**INSTRUCTIONS:** This form is to be used only when filing complaints under Indiana Code 5-14-5. All information provided is disclosable under the Access to Public Record Act. **PLEASE TYPE OR PRINT.**

**FOR OFFICE USE ONLY**

Date received (month, day, year)	Complaint number	Date due (month, day, year)
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**COMPLAINANT INFORMATION**

Name (last, first, middle initial)  
**Horvath, Benjamin D.**

Address (number and street) <b>2307 Edison Rd. - Floor #3</b>	City <b>South Bend</b>	State <b>IN</b>	ZIP code <b>46615</b>
Telephone number <b>(574 ) 315-2920</b>	Fax number <b>(574 ) 635-5102</b>	E-mail address <b>bdhorvath@comcast.net</b>	

**INFORMATION ABOUT PUBLIC AGENCY DENYING ACCESS**

Name of public agency  
**Indiana Department of Health**

Address (number and street) <b>2 North Meridian Street</b>	City <b>Indianapolis</b>	State <b>IN</b>	ZIP code <b>46204</b>
Telephone number <b>(317 ) 233-1325</b>	Fax number <b>(317 ) 234-6278</b>	E-mail address <b>abecker2@health.in.gov</b>	

Name of elected / appointed official or presiding officer responsible for the denial  
**Angela Becker**

**COMPLAINT (Check all that apply.)**

- |   |  |
|---|--|
| <input type="checkbox"/> <b>Open Door Law Violation</b> | <input checked="" type="checkbox"/> <b>Access to Public Records Act Violation</b>      |
| <input type="checkbox"/> Executive Session              | <input checked="" type="checkbox"/> Denial of Access <input type="checkbox"/> Copy Fee |
| <input type="checkbox"/> Notice                         | <input checked="" type="checkbox"/> Denial of Electronic Access                        |
| <input type="checkbox"/> Other: _____                   | <input type="checkbox"/> Other: _____  |

**IMPORTANT**

Date denied access to public record (month, day, year) <b>January 8th, 2024</b>	Date notified of denial of access to meeting (month, day, year) <b>January 12th, 2024</b>
--	--

Please describe denial of access to meeting or public records below. Attach additional sheets if necessary. (Required)

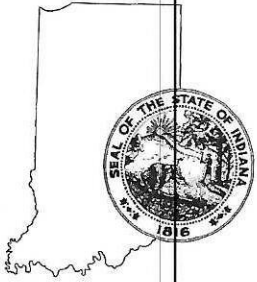
Denied access to Terminated Pregnancy Reports (TPRs) for the months of September, October, November 2023 - based on new interpretation of I.C. 5-14-3-4(a)(9) I am filing this complaint on behalf of the non-profit corporation Voices For Life, Inc, which regularly received such reports for the first seven (7) months of 2023

PLEASE ATTACH COPIES OF ANY WRITTEN DENIAL OR DOCUMENTATION CONCERNING DENIAL.

Signature 	Date (month, day, year) <b>FEB. 1<sup>st</sup> 2024</b>
---------------	--

# **EXHIBIT 12**





# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
Toll Free: 1-800-228-6013  
Email: [pac@opac.in.gov](mailto:pac@opac.in.gov)  
Website: [www.IN.gov/pac](http://www.IN.gov/pac)

February 19, 2024,

Benjamin D. Horvath  
2307 Edison Road, Floor #3  
South Bend, Indiana 46615

**Re: Formal Complaint Against the Department of Health**

Dear Benjamin D. Horvath:

We are in receipt of your formal complaint alleging violation of the Access to Public Records Act by the Department of Health (DOH). Your complaint was received by this office, February 01, 2024.

We are unable to accept your complaint because it was not filed within the set timeframe. Pursuant to Ind. Code § 5-14-5-7(a), a formal complaint must be filed within thirty (30) days of a denial. Complaints filed beyond thirty (30) days are untimely and will be returned. In the instance of your formal complaint, references a denial taking place in the September, October, and November of 2023. Therefore, this complaint would have been better suited to have been submitted in September, October, November, or December 2023 rather than February 2024.

Additionally, it is the burden of the complainant to provide all the necessary information including the basis for your complaint along with other information. In the case of your complaint, it failed to meet requirements because it was missing the initial request and the denial from the agency.

In the future, you must provide a copy of your initial request for records and copies of any correspondences that you may have sent to or received from the agency regarding your request. Our office will not assume any claims made in the narrative and will not process any complaint without all proper documentation.

Insofar as your narrative is concerned, based on your January 22, 2024 letter, it appears that you are aware of the Informal Advisory Opinion 23-INF-15. This informal position statement is not binding and only provides a statutory framework and recommendations and is consistent with previous guidance issued regarding personal health information.



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745

Telephone: (317)234-0906

Fax: (317)233-3091

Toll Free: 1-800-228-6013

Email: [pac@opac.in.gov](mailto:pac@opac.in.gov)

Website: [www.IN.gov/pac](http://www.IN.gov/pac)

Even still, the public access counselor entertains opposing arguments, however, they must be buttressed with legal authority. While your arguments of prior release of the documents is well taken, prior practice does not set precedent, especially in light of new laws, cases, administrative rulings, and factual scenarios.

Included with this letter is a copy of your formal complaint. Should you have any concerns or inquiries, please feel free to contact our office.

Sincerely,

**Luke H. Britt**  
Public Access Counselor  
[www.in.gov/pac](http://www.in.gov/pac)



OFFICE OF THE PUBLIC ACCESS COUNSELOR  
FORMAL COMPLAINT

State Form 49407 (R7 / 4-23)

RECEIVED

FEB 01 2024

OFFICE OF THE PUBLIC ACCESS COUNSELOR

Indiana Government Center South  
402 West Washington Street, Ste. W470  
Indianapolis, Indiana 46204-2745

Telephone: (317) 234-0906  
E-mail: [pac@opac.in.gov](mailto:pac@opac.in.gov)  
[www.IN.gov/pac](http://www.IN.gov/pac)

INSTRUCTIONS: This form is to be used only when filing complaints under Indiana Code 5-14-5.  
All information provided is disclosable under the Access to Public Record Act. PLEASE TYPE  
OR PRINT.

FOR OFFICE USE ONLY

Date received (month, day, year)

Complaint number

Date due (month, day, year)

COMPLAINANT INFORMATION

Name (last, first, middle initial)

Horvath, Benjamin D.

Address (number and street)

2307 Edison Rd. - Floor #3

City

South Bend

State

IN

ZIP code

46615

Telephone number

(574 ) 315-2920

Fax number

(574 ) 635-5102

E-mail address

bdhorvath@comcast.net

INFORMATION ABOUT PUBLIC AGENCY DENYING ACCESS

Name of public agency

Indiana Department of Health

Address (number and street)

2 North Meridian Street

City

Indianapolis

State

IN

ZIP code

46204

Telephone number

(317 ) 233-1325

Fax number

(317 ) 234-6278

E-mail address

abecker2@health.in.gov

Name of elected / appointed official or presiding officer responsible for the denial

Angela Becker

COMPLAINT (Check all that apply.)

Open Door Law Violation

- Executive Session
- Notice
- Other: \_\_\_\_\_

Access to Public Records Act Violation

- Denial of Access  Copy Fee
- Denial of Electronic Access
- Other: \_\_\_\_\_

IMPORTANT

Date denied access to public record (month, day, year)

January 8th, 2024

Date notified of denial of access to meeting (month, day, year)

January 12th, 2024

Please describe denial of access to meeting or public records below. Attach additional sheets if necessary. (Required)

Denied access to Terminated Pregnancy Reports (TPRs) for the months of September, October, November 2023 - based on new interpretation of I.C. 5-14-3-4(a)(9) I am filing this Complaint on behalf of the non-profit corporation Voices For Life, INC., which regularly received such reports for the first seven (7) months of 2023

PLEASE ATTACH COPIES OF ANY WRITTEN DENIAL OR DOCUMENTATION CONCERNING DENIAL.

Signature

Date (month, day, year)

FEB. 1<sup>st</sup>, 2024

# **EXHIBIT 13**



Voices For Life, Inc.  
2307 Edison Road – Floor #3  
South Bend, IN 46615

March 15, 2024

Public Access Counselor  
Luke H. Britt  
Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745

Re: Formal Complaint Against the Department of Health

Dear Luke H. Britt:

We are in receipt of your letter in response to Voices For Life's Formal Complaint, sent on February 19, 2024. Enclosed please find the response to your letter expressing your inability to accept our complaint filed against the Department of Health.

I write in response to your claim our Complaint was filed after the thirty-day deadline to file a complaint. The denial of Terminated Pregnancy Reports (TPRs) was not received until January 12, 2024. This denial covered outstanding public records requests, which asked for TPRs for August, September, October, and November 2023. A copy of all requests and this one denial is included with this letter.

Our Formal Complaint was timely, as it was filed within the thirty-day window of receiving a denial. We did not receive a denial of the September, October, and November 2023 requests until January 12, 2024.

While your point is taken that precedent does not set the legal standard for disclosing documents, there has been no change in the State's public records, of which I am aware, which would allow the State to treat TPRs as exempt from public disclosure. Enforcement of the State's abortion laws did begin in August 2023, but I am not unsure how this law's enforcement would affect the State's interpretation of a public records request.

The basis of the State's position appears to rest on its novel interpretation of "patient medical records" (I.C. 5-14-3-9). While the terminated pregnancy report is indeed made pursuant to a statutory reporting requirement, abortion reporting requirements have been in place for decades and generally accessible via public records requests.

I have uncovered no statutory or legal authority which defines "patient medical record" that would exempt the State from releasing the information contained in our requests. Considering the State's treatment of TPRs as non-exempt from public disclosure for years prior to this novel interpretation of I.C. 5-14-3, it seems inconsistent to now claim such records are exempt from disclosure.

We respectfully request a review of our timely Formal Complaint, as well as a response to this Complaint and advisory opinion regarding the PAC's treatment of "patient medical record," as exempted in I.C. 5-14-3. It is our organization's position we are entitled to reports, with whatever redaction or information necessary to convey this information.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben D. Horvath". The signature is stylized and cursive.

Benjamin D. Horvath  
State of Indiana, Licensed Attorney (#37299-71)



**OFFICE OF THE PUBLIC ACCESS COUNSELOR**  
**FORMAL COMPLAINT**  
 State Form 49407 (R7 / 4-23)

RECEIVED

FEB 01 2024

OFFICE OF THE PUBLIC ACCESS COUNSELOR  
 Indiana Government Center South  
 402 West Washington Street, Ste. W470  
 Indianapolis, Indiana 46204-2745  
 Telephone: (317) 234-0906  
 E-mail: [pac@opac.in.gov](mailto:pac@opac.in.gov)  
[www.IN.gov/pac](http://www.IN.gov/pac)

PUBLIC ACCESS COUNSELOR

**INSTRUCTIONS:** This form is to be used only when filing complaints under Indiana Code 5-14-5. All information provided is disclosable under the Access to Public Record Act. **PLEASE TYPE OR PRINT.**

**FOR OFFICE USE ONLY**

Date received (month, day, year)	Complaint number	Date due (month, day, year)
----------------------------------	------------------	-----------------------------

**COMPLAINANT INFORMATION**

Name (last, first, middle initial)  
**Horvath, Benjamin D.**

Address (number and street) 2307 Edison Rd. - Floor #3	City South Bend	State IN	ZIP code 46615
Telephone number (574 ) 315-2920	Fax number (574 ) 635-5102	E-mail address bdhorvath@comcast.net	

**INFORMATION ABOUT PUBLIC AGENCY DENYING ACCESS**

Name of public agency  
**Indiana Department of Health**

Address (number and street) 2 North Meridian Street	City Indianapolis	State IN	ZIP code 46204
Telephone number (317 ) 233-1325	Fax number (317 ) 234-6278	E-mail address abecker2@health.in.gov	

Name of elected / appointed official or presiding officer responsible for the denial  
**Angela Becker**

**COMPLAINT (Check all that apply.)**

- |  |  |
|--|--|
| <input type="checkbox"/> Open Door Law Violation | <input checked="" type="checkbox"/> Access to Public Records Act Violation             |
| <input type="checkbox"/> Executive Session       | <input checked="" type="checkbox"/> Denial of Access <input type="checkbox"/> Copy Fee |
| <input type="checkbox"/> Notice                  | <input checked="" type="checkbox"/> Denial of Electronic Access                        |
| <input type="checkbox"/> Other: _____            | <input type="checkbox"/> Other: _____  |

**IMPORTANT**

Date denied access to public record (month, day, year) January 8th, 2024	Date notified of denial of access to meeting (month, day, year) January 12th, 2024
---	---

Please describe denial of access to meeting or public records below. Attach additional sheets if necessary. (Required)

Denied access to Terminated Pregnancy Reports (TPRs) for the months of September, October, November 2023 - based on new interpretation of I.C. 5-14-3-4(a) (9). I am filing this complaint on behalf of the non-profit corporation Voices For Life, Inc., which regularly received such reports for the first seven (7) months of 2023.

PLEASE ATTACH COPIES OF ANY WRITTEN DENIAL OR DOCUMENTATION CONCERNING DENIAL.

Signature 	Date (month, day, year) FEB. 1 <sup>st</sup> , 2024
---------------	--

10\_20\_23 Aug TPR Request.pdf

Share

2/24/24 11:05 AM

Voices for Life Mail - Public Records Request - August 2023



Jackie Appleman <appleman@voicesforlife.com>

Public Records Request - August 2023

1 message

Becker, Angela <ABecker2@health.in.gov>  
To: Jackie Appleman <appleman@voicesforlife.com>

Fri, Oct 20, 2023 at 12:50 PM

Good afternoon Jackie,

I'm writing in response to your public records request seeking the following:

- 1 Termination of Pregnancy Reports from August 1 2023- August 31 2023.

This item is pending review by our Vital Records data team. I will provide an update on or before November 9, 2023. If you have not received the final report by this date

- 2 Abortion Facility Inspection Reports from August 1 2023- August 31 2023.

After contacting our Acute Care Division, it has been determined that we do not have any records responsive to this item of your request.

- 3 Aggregated data of the original Abortion Complication Reports as submitted by the abortion doctors from August 1 2023- August 31 2023.

The IDOH does not compile statistical reports on a monthly basis so it does not have records responsive to your request. IDOH will make its Abortion Complications statistical reports available when they are complete.

- 4 New abortion facility license applications submitted August 1 2023- August 31 2023.

After contacting our Acute Care Division, it has been determined that we do not have any records responsive to this item of your request.

- 5 Abortion facility license renewal applications submitted August 1 2023- August 31 2023.

After contacting our Acute Care Division, it has been determined that we do not have any records responsive to this item of your request.

Sincerely,

Angela Becker | Public Records Coordinator

Office of Legal Affairs  
office: 317-232-3119 • fax: 317-234-6278

https://mail.google.com/mail/u/0/?ik=dl&ik=316d9&view=pr&search=all&permuted\_thread=11780293960853453835&siml=msg.11780293960853453835

1/4

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11\_13\_23 Sept TPR Request.pdf

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2:24 10:59 AM

Voices for Life Mail - Public Records Request - September



Jackie Appleman <appleman@voicesforlife.com>

**Public Records Request - September**

2 messages

Jackie Appleman <appleman@voicesforlife.com>

Mon, Nov 6, 2023 at 10:09 AM

To: abecker2@health.in.gov

Hi Angela,

I am submitting a formal public record information request for the following.

I am requesting copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from September 1 2023- September 31 2023.

I am requesting copies of the original Abortion Facility Inspection Reports submitted for all Indiana abortion facilities from September 1 2023 - September 30 2023.

I am requesting aggregated data of the original Abortion Complication Reports as submitted by the abortion doctors for Abortion Complication in Indiana from September 1 2023 - September 30 2023.

I am requesting all new abortion facility license applications submitted September 1 - September 30 2023.

I am requesting all abortion facility license renewal applications submitted September 1 - September 30 2023.

Thanks,  
Jackie



**Jackie Appleman**

Chief Operating Officer

appleman@voicesforlife.com

574-850-1017

voicesforlife.com

2307 Edison Rd. #301  
South Bend, IN 46615

Becker, Angela <ABecker2@health.in.gov>

Mon, Nov 13, 2023 at 12:41 PM

To: "appleman@voicesforlife.com" <appleman@voicesforlife.com>

Good afternoon Jackie.

I'm writing in response to your public records request seeking the following:

- 1. Termination of Pregnancy Reports from September 1 2023 - September 30 2023.

[https://mail.google.com/mail/u/0/?ik=01431689&view=pr&search=all&permthid=blaced\\_a15901618615621590114&siml=msg\\_a12632897048153500821&siml=1-3](https://mail.google.com/mail/u/0/?ik=01431689&view=pr&search=all&permthid=blaced_a15901618615621590114&siml=msg_a12632897048153500821&siml=1-3)

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12\_19\_23 Oct TPR Request.pdf

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2:24 10:56 AM

Voices for Life Mail (October 2023 TPR)



Jackie Appleman <appleman@voicesforlife.com>

October 2023 TPRs

4 messages

Becker, Angela <ABecker2@health.in.gov>  
To: "appleman@voicesforlife.com" <appleman@voicesforlife.com>

Tue, Dec 19, 2023 at 2:53 PM

Good afternoon Jackie.

I'm writing to acknowledge your public records request, received by the Indiana Department of Health on December 13, 2023. You seek the following information:

- Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from October 1 2023- October 31 2023

This item is pending review by our Vital Records data team

- Copies of the original Abortion Facility Inspection Reports submitted for all Indiana abortion facilities from October 1 2023 - October 31 2023.

Effective August 21, 2023, SEA 1 eliminated the state licensure of abortion clinics. Therefore, all abortion clinic licenses issued by the IDOH have been rendered void and abortion clinics are no longer permitted to provide abortions under any circumstances

- Aggregated data of the original Abortion Complication Reports as submitted by the abortion doctors for Abortion Complication in Indiana from October 1 2023 - October 31 2023.

The IDOH does not compile statistical reports on a monthly basis so it does not have records responsive to your request. IDOH will make its Abortion Complications statistical reports available when they are complete. Quarterly and annual reports are posted online at <https://www.in.gov/health/vital-records/vital-statistics/terminated-pregnancy-reports/>

- Copies of all new abortion facility license applications submitted October 1 - October 31 2023.

Effective August 21, 2023, SEA 1 eliminated the state licensure of abortion clinics. Therefore, all abortion clinic licenses issued by the IDOH have been rendered void and abortion clinics are no longer permitted to provide abortions under any circumstances

- Copies of all abortion facility license renewal applications submitted October 1 - October 31 2023.

Effective August 21, 2023, SEA 1 eliminated the state licensure of abortion clinics. Therefore, all abortion clinic licenses issued by the IDOH have been rendered void and abortion clinics are no longer permitted to provide abortions under any circumstances

Sincerely

https://mail.google.com/mail/u/0/?ik=dl&316d0&view=pt&search=all&permethid=thread-11785741321671369110&siml=msg-11785741321671369110&siml= 1/4

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1\_12\_24 Nov TPR Request.pdf

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2/2/24 10:55 AM

Voices for Life Mail - Public Record Request - November 2023



Jackie Appleman <appleman@voicesforlife.com>

**Public Record Request - November 2023**

6 messages

Becker, Angela <ABecker2@health.in.gov>  
To "appleman@voicesforlife.com" <appleman@voicesforlife.com>

Fri, Jan 12, 2024 at 8:37 AM

Good morning Jackie.

I'm writing to acknowledge your public records request received by the Indiana Department of Health (IDOH) on January 8, 2024. You seek the following information:

- 1 I am requesting copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from November 1st - 30th 2023.

*This item is pending review by our Vital Records data team*

- 2 I am requesting the original Abortion Complication Reports data as submitted by the abortion doctors for Abortion Complication in Indiana from November 1 2023 - November 30th 2023.

*The IDOH does not compile statistical reports on a monthly basis so it does not have records responsive to your request. IDOH will make its Abortion Complications statistical reports available when they are complete. Quarterly and annual reports are posted online at <https://www.in.gov/health/vital-records/vital-statistics/terminated-pregnancy-reports/>*

2023 Q3 Complications Report

2023 Q3 Report

Please be aware that IDOH has launched a new APRA Portal that is rolling out across all in.gov agencies per the Governor's office. Moving forward, external requests for records are being responded to from a centralized portal that can be found online at <https://in.accessgov.com/health-apra>. From this page, please follow the instructions to "Submit a request form" and your request will be responded to accordingly. Any responsive records from this agency will be provided via the Portal.

Sincerely,

**Angela Becker** | Public Records Coordinator

Office of Legal Affairs  
office: (317) 232-3119 • fax: (317) 234-6278  
abecker2@health.in.gov  
health.in.gov

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2/24/24 10:12 AM

Voices for Life Mail - UPDATE: Request for TPRs



Jackie Appleman <appleman@voicesforlife.com>

**UPDATE: Request for TPRs**

Becker, Angela <ABecker2@health.in.gov>  
To: Jackie Appleman <appleman@voicesforlife.com>

Fri, Jan 12, 2024 at 3:19 PM

Good afternoon Jackie,

*Due to the impact of legislative changes in SEA 1 (SS), individual terminated pregnancy reports submitted to IDOH after August 1, 2023 are no longer releasable through public records request.*

*The records are withheld pursuant to IC 5-14-3-4(a)(9), which declares medical records confidential.*

*Below is a link to an informal opinion from the Indiana public access counselor that provides more information.*

<https://www.in.gov/pac/files/informal/23-INF-15.pdf>

Sincerely,

Angela Becker | Public Records Coordinator

Office of Legal Affairs  
office: 317-232-3119 • fax: 317-234-6278

abecker2@health.in.gov

health.in.gov



**Confidentiality Statement:** This message and any attachments may be confidential. If you are not the intended recipient, please 1) notify me immediately, 2) do not forward the message or attachment, 3) do not print the message or attachment, and 4) erase the message and attachment from your system.

<https://mail.google.com/mail/u/0/?ui=2&ik=316d0&view=pr&search=all&permmsgid=msg.f.1787917271828839417&siml=msg.f.1787917271828839417>

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# **EXHIBIT 14**



**TODD ROKITA**  
ATTORNEY GENERAL

April 11, 2024

**OFFICIAL OPINION 2024-2**

The Honorable Andy Zay  
Indiana Senate  
200 West Washington Street  
Indianapolis, Indiana 46204

**RE: Nondisclosure of Terminated Pregnancy Reports**

Dear Senator Zay:

You requested an opinion from the Office of the Indiana Attorney General (OAG) regarding whether Terminated Pregnancy Reports (TPRs) are confidential and subject to public disclosure.

**QUESTION PRESENTED**

Are TPRs disclosable pursuant to the Indiana Access to Public Records Act (APRA)?

**BRIEF ANSWER**

APRA presumptively provides for disclosure of public records. Its exception for “medical record” does not encompass TPRs. Although the term “medical record” is not defined, its ordinary meaning and context indicate that the term refers to confidential patient records maintained by providers for diagnosis, treatment, and prognosis. TPRs do not fall into that category. TPRs are reports submitted to a public agency for purposes of evaluating compliance with state statutes governing abortion. The purpose and intentions of the TPR statutes would be frustrated if the form was confidential and non-disclosable in its entirety. To the extent there may be any information that could reasonably identify a pregnant woman who received an abortion, the agency may redact that information and still disclose the record to fulfill the TPR’s statutory purpose.

**BACKGROUND**

A TPR is a report that must be submitted by a health care provider to the Indiana Department of Health (IDOH) each time an abortion is performed. Ind. Code § 16-34-2-5. The purpose and function of TPRs are twofold: “the improvement of maternal health and life through

the compilation of relevant maternal life and health factors and data, and...**to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law.**” Ind. Code § 16-34-2-5(a) (emphasis added). Subsection 5(a) continues by enumerating the specific information to be collected on the form. For many years, members of the public have requested copies of TPRs for various reasons, and the OAG has also requested them as part of its investigatory and licensing processes, including complaints about health care providers. To the best of the OAG’s knowledge, IDOH has never expressed to this office or another requestor that the TPRs are confidential and must be withheld from disclosure.

This changed on December 19, 2023, when the Public Access Counselor (PAC), Luke Britt, at the request of the Chief Legal Counsel at IDOH, released an informal opinion to IDOH’s Chief Legal Counsel declaring TPRs as medical records and therefore, opining that the agency could withhold them “in their entirety”.<sup>1</sup> In other words, TPRs would no longer be available for public inspection. The PAC opinion, issued at the request of IDOH, appears to be an abrupt change in policy and practice by IDOH.

### **Relevant Statutes**

*Ind. Code § 5-14-3-1* reads in relevant part:

[I]t is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government [...] This chapter shall be liberally construed to implement this policy . . .

*Ind. Code § 5-14-3-2(r)* reads in relevant part:

“Public record” means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

*Ind. Code § 5-14-3-3(a)* reads in relevant part:

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 this chapter. [...]

---

<sup>1</sup> PAC Informal Opinion, 23-INF-15, Dec. 19, 2023, p.3; available at: <https://www.in.gov/pac/files/informal/23-INF-15.pdf>.

*Ind. Code § 5-14-3-4(a)* reads in relevant part:

The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, 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:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- [...]
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.

*Ind. Code § 5-14-3-6(a)* reads in relevant part:

If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying.

*Ind. Code § 16-18-2-168(a)* reads in relevant part:

“Health records”, for purposes of IC 16-39, means written, electronic, or printed information possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient, including such information possessed or maintained on microfiche, microfilm, or in a digital format. The term includes mental health records and alcohol and drug abuse records.

*Ind. Code § 16-34-2-5(a)* reads in relevant part:

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 shall report the performance of the abortion or the provision, prescribing, administration, or dispensing of an abortion inducing drug on a form drafted by the state department, the purpose and function of which shall be 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. [...]

*Ind. Code § 16-34-2-5(b)* reads in relevant part:

The health care provider shall complete the form provided for in subsection (a) and shall transmit the completed form to the state department, in the manner specified



on the form, within thirty (30) days after the date of each abortion. However, if an abortion is for a female who is less than sixteen (16) years of age, the health care provider shall transmit the form to the state department and separately to the department of child services within three (3) days after the abortion is performed.

## ANALYSIS

### **TPRs are not patient medical records and are disclosable pursuant to APRA**

#### **APRA**

Indiana’s public policy is “that all persons are entitled to full and complete information regarding the affairs of government...” and APRA is “liberally construed to implement this policy.” Ind. Code § 5-14-3-1. APRA is intended to “ensure Hoosiers have broad access to most government records” and courts “apply a presumption in favor of disclosure.” *Evansville Courier & Press v. Vanderburgh County Health Dept.*, 17 N.E.3d 922, 928-29 (Ind. 2014). With the exceptions listed in section 4 of the chapter, APRA declares that “[a]ny person may inspect and copy the public records<sup>2</sup> of any public agency” during the agency’s regular business hours. Ind. Code § 5-14-3-3(a). Such exceptions include records declared confidential by state or federal law, or a rule adopted by an agency with specific statutory authority to classify certain records as confidential, as well as “patient medical records and charts created by a provider” unless the patient provides written consent. Ind. Code § 5-14-3-4(a)(1), (2), (3), and (9). If a public record contains both disclosable and non-disclosable material, the public agency must “separate” the disclosable material and make it available for public inspection. Ind. Code § 5-14-3-6(a).

#### ***Patient medical records***

As noted *supra*, the PAC’s informal advisory opinion, 23-INF-15, summarily declared TPRs are medical records and because medical records are confidential under state law, this would mean that TPRs are no longer available for public inspection. This also means that the OAG cannot readily obtain TPRs for investigatory purposes.

The PAC reasons that because the TPR is created by a provider as a result of a medical service, the TPR is therefore clearly a patient medical record:

APRA declares patient medical records created by a provider confidential. Ind. Code § 5-14-3-4(a)(9). While the form is created by a provider pursuant to a statutory reporting requirement, there is no question that the information contained therein is part of a patient medical record. Stated differently, the creation of the form is an immediate consequence of a medical service. Without the provider-patient relationship, the form would not exist.

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<sup>2</sup> APRA broadly defines a public record as “any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.” Ind. Code § 5-14-3-2.

It follows that IDOH should treat the form with the same confidentiality considerations as any other patient medical record.<sup>3</sup>

The Indiana Code does not define the term “patient medical records and charts created by a provider.” Ordinarily, however, the term “medical record” refers to records that contain a patient’s medical information and are created for the purpose of providing treatment to that patient. For example, Merriam-Webster defines “medical record” as “a record of a patient’s medical information (as medical history, care or treatments received, test results, diagnoses, and medications taken).”<sup>4</sup> The National Institutes of Health (NIH) declares that medical records “offer information on diagnoses, procedures, lab tests, and other services” and “used to track events and transactions between patients and health care providers.”<sup>5</sup>

That understanding is consistent with the Indiana Code’s use of similar terms. Even though the Indiana Code does not define “medical record,” it does define the term “health records.” The health records statutes are located at Ind. Code art. 16-39. Ind. Code § 16-18-2-168(a) defines a health record as “written, electronic, or printed information possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient...”, similar to the NIH definition, *supra*. Ind. Code § 16-18-2-272(d) defines a patient for purposes of Ind. Code art. 16-39 as “an individual who has received health care services from a provider for the examination, treatment, diagnosis, or prevention of a physical or mental condition.”

The ordinary meaning of “medical record,” however, does not encompass any document that might contain information about a person’s health; simply because a record contains information relating to a medical procedure does not automatically mean it is a “patient medical record created by a provider.” Reports containing aggregated data about health events (births, deaths, infections, etc.) and documents reflecting social inquiries after a person’s health are not commonly understood to be “medical records.”

TPRs, unlike patient medical records, do not belong to the patient; providers do not have to obtain a patient’s informed consent before submitting a TPR. Nor are TPRs created by a provider for the purpose of tracking a patient’s diagnosis, treatment, or prognosis. TPRs do not even identify a specific patient on which the abortion was performed. Rather, TPRs are created and submitted so that others can evaluate *the provider’s* compliance with Indiana laws governing abortion. In a case regarding whether student-related information was an education record, the Indiana Court of Appeals noted that the United States Supreme Court had previously found that although peer-graded papers “contained information directly relating to a student and met the first requirement for an education record,” they were not “maintained” by the school or someone acting on its behalf. *Unincorporated Operating Div. of Indiana Newspapers, Inc., Indiana Corp. d/b/a The Indianapolis Star v. The Trustees of Indiana University*, 787 N.E.2d 893, 905 (2003) (citing *Owasso Indep. Sch. Dist. v. Falvo*, 534 U.S. 426 (2002)).

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<sup>3</sup> *Supra*, note 1, at p. 2.

<sup>4</sup> <https://www.merriam-webster.com/medical/medical%20record> (last accessed Mar. 26, 2024)

<sup>5</sup> NIH, *Course: Finding and Using Health Statistics*, <https://www.nlm.nih.gov/oet/ed/stats/03-200.html> (last accessed Mar. 26, 2024).

A similar parallel can be drawn to TPRs and the records at issue in the *Indianapolis Star* and *Falvo* cases. In other words, while TPRs may contain information related to medical care provided by a health care provider, that does not make it a patient medical record without more. The TPRs do not contain information directly identifying a patient. The receiving agency—IDOH—cannot directly determine a patient’s identity from the TPR. In the *Falvo* case, the students were more identifiable than a pregnant woman on a TPR because the records were peer graded. However, they were not maintained by the school, so it was not an educational record for purposes of the Family Education Rights and Privacy Act (FERPA). Similarly, in *Evansville Courier & Press v. Vanderburgh County Health Dept.*, the Indiana Supreme Court held that death records, with the cause of death stated, were not confidential and were therefore open to public inspection. 17 N.E.3d 922 (Ind. 2014). There, the Court distinguished between a certificate of death registration, which was confidential, and the certificate of death, which was not. *Id.* at p. 930. One critical distinction was the purpose of the two records:

As we read the statute, the General Assembly has drawn a distinction between a certificate of death, which is intended to record cause of death data for use by health officials, and a certification of death registration, which is intended to authenticate the death for the purpose of property disposition. The former is a public record, while the latter is confidential.

*Id.* The Court gave weight to the death certificate’s purpose of recording cause of death data as a reason for it to be public record, while at the same time acknowledging the intensely personal information contained therein:

In our society, death is an intimate and personal matter. We recognize that public disclosure of the details of a decedent’s death may cause pain to his family and friends. We are also mindful of the importance of open and transparent government to the health of our body politic. Our General Assembly has considered these competing interests and, insofar as we can determine, concluded that the public interest outweighs the private.

*Id.* at pp. 930-31. Importantly, the Court found that transparency in government operations was paramount and that the General Assembly had weighed the benefits and risks of declaring the document open to public inspection. The same can be said for TPRs—one purpose is to monitor for compliance with laws. If the TPR is confidential and the IDOH refuses to disclose it, even to the OAG or other enforcement officials, then it becomes impossible to ensure that providers are complying with our state laws.

Other terms confirm that APRA’s exclusion for medical records does not encompass every document reporting health-related information. Significantly, APRA requires records and charts to be “*patient* medical records and charts.” Ind. Code § 5-14-3-4(a)(1), (2), (3), and (9) (emphasis added). Put another way, the record must belong to a patient. APRA’s provision that otherwise medical records may be disclosed with a patient’s informed consent reflects the statute’s presumption that the records belong to the patient. Additionally, the exception requires the record to be “created by the provider.” Records containing health-related information created by other persons do not satisfy the statutory exclusion for patient medical records.

To summarize, the statutory exclusion requires records to (1) be a specific patient’s record, (2) be a medical record or chart, and (3) be created by the patient’s provider.

### ***TPRs***

As noted *supra*, TPRs serve two statutory purposes, to monitor maternal health and ensure compliance with Indiana’s pro-life laws:

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 shall report...on a form drafted by the state department, the purpose and function of which shall be 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

Ind. Code § 16-34-2-5(a). TPRs are submitted electronically to the IDOH, which then stores the individual records. Ind. Code § 16-34-2-5(e) requires the IDOH to compile a quarterly public report that includes statistics obtained from the TPRs for both the previous calendar quarter and the previous calendar years, with updated information for the calendar quarter that was submitted to the state department after the compilation of the statistics; it must also compile an annual report which is submitted to the federal Centers for Disease Control pursuant to subsection (f).

Statistical information provides an overview of general trends by the “collection, analysis, interpretation, and presentation of masses of numerical data.”<sup>6</sup> “Masses” of data compiled into a report gives the public an idea of the numbers of abortions and what types of abortions are performed in the state, but it provides no insight into whether providers are complying with abortion laws when performing such procedures. Information contained directly in the TPR itself can provide such insight, including reporting dates, the age of the fetus at the time of abortion, whether the pregnant woman sought the abortion as a result of abuse or trafficking, and the age of the pregnant woman (which may help indicate possible child sexual abuse). A quarterly or annual report will not provide information on an individual abortion procedure, so it would be impossible to monitor compliance with pro-life laws merely with one of those reports.

For example, in the quarterly TPR report for October 1-December 31, 2023, five (5) pregnancies were terminated when the fetus was at or over 21 weeks’ gestational age, accounting for just under 11% of total abortions performed for that quarter; twenty-two (22), or just under 48%, were terminated when the fetus was between 14-20 weeks’ gestational age.<sup>7</sup> Eleven (11) nonsurgical (medical) abortions were performed on pregnant women whose fetus’s post-fertilization age was over eight (8) weeks, accounting for over half (52%) of the nonsurgical abortions in that quarter<sup>8</sup> and in contravention of state law:

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<sup>6</sup> Definition of “statistics”, <https://www.merriam-webster.com/dictionary/statistics> (last accessed Jan. 18, 2024).

<sup>7</sup> *October 1-December 31, 2023, Terminated Pregnancy Report*, issued Feb. 29, 2024; available at: <https://www.in.gov/health/vital-records/files/CY2023Q4-TPR-Report.pdf>. (last accessed Apr. 4, 2024).

<sup>8</sup> *Id.*

...under this article, an abortion inducing drug may not be dispensed, prescribed, administered, or otherwise given to a pregnant woman after eight (8) weeks of postfertilization age.

Ind. Code § 16-34-2-1(a)(1). While members of the public can see from the quarterly reports that multiple violations of Indiana's pro-life laws may have occurred, as of December 2023, no one can confirm whether such violations occurred and by whom. Ind. Code § 25-1-7-2 grants the OAG the authority to "receive, investigate, and prosecute complaints concerning regulated occupations." This includes physicians, which are regulated pursuant to Ind. Code art. 25-22.5. Ind. Code § 16-34-2-7 makes performing an unlawful abortion a criminal offense.

**Classifying TPRs as patient medical records would make them contrary to their function and purpose under Indiana law**

The inability to receive TPRs as a matter of course impedes the ability of the OAG to perform its statutory duties of investigating provider complaints. As previously stated, TPRs are not patient medical records for a multitude of reasons. Looking at the definition of a "health record" under Indiana law, the classification of a record as a "health record" appears dependent upon three distinct points: an individual sought medical care (a patient), someone provided such services (the provider), and the provider documented the service and maintains possession of such documentation (record). This classification is dependent upon the content of the record and the relationship of the patient to the individual possessing and maintaining the record, not upon how many documents of the same type may be in the possession of the provider or the receiving entity.

APRA requires the separation of confidential material from disclosable material if a record contains both, yet the PAC declares the TPRs to be patient medical records and as "monolithic documents" that "can be withheld in their entirety."<sup>9</sup> However, the PAC's own interpretation is not in the spirit of APRA, which leans in favor of disclosure and statutorily requires a state agency to separate out non-disclosable material:

APRA permits redaction in that it specifically mandates separation of disclosable from non-disclosable information contained in public records containing both. I.C. § 5-14-3-6(a). Therefore, if a public record contains some information which qualifies under an exception to public disclosure, instead of denying access to the record as a whole, public agencies must redact or otherwise separate those portions of the record which would otherwise render it non-disclosable.

*The Indianapolis Star*, 787 N.E.2d at 907-08. In this case, the Trustees of Indiana University implored the court to make entire documents non-disclosable because some of the document contained confidential information. However, the court disagreed, noting APRA's requirements:

The question remains as to what to do with this combination of factual matters and deliberative materials. The Trustees would have us declare an entire document non-disclosable based upon the fact that it contains some speculative material or

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<sup>9</sup> *Supra*, note 1, at p.3.

expressions of opinion. ... However, section 6 of APRA requires a public agency to separate discloseable from non-discloseable *information* contained in public records. I.C. § 5-14-3-6(a). ***By stating that agencies are required to separate “information” contained in public records, the legislature has signaled an intention to allow public access to whatever portions of a public record are not protected from disclosure by an applicable exception.*** ... Instead, we agree with the reasoning of the United States Supreme Court in *Mink*...that those factual matters which are not inextricably linked with other non-discloseable materials, should not be protected from public disclosure. Consistent with the mandate of APRA section 6, any factual information which can be thus separated from the non-discloseable matters must be made available for public access.

*Id.* at pp. 913-14 (emphasis added). The PAC reads this passage to declare that separation of documents “hinges on the practicality of the exercise. Courts will mandate separation when disclosable materials are not inextricably linked to confidential materials,” citing the *Indianapolis Star* case as support. However, reading the passage in context indicates that the court actually requires disclosure of materials once the confidential material is separated, or redacted, from the document, unless the agency can demonstrate there is no “separable, factual information” in the document. *Env’t Prot. Agency v. Mink*, 410 U.S. 73, 93 (1973). That is not the case with TPRs, which are not documents that identify a patient. Even if there were some fields that the agency has reasonable grounds to believe could be used to identify a patient through “reverse engineering,” those fields could be redacted from the document and make the rest of the TPR disclosable. It is disingenuous at best to argue that there is no “separable, factual information” available in TPRs that can be separated from any data the IDOH alleges may be “reverse engineered” to identify a patient. *See The Indianapolis Star*, 787 N.E.2d at pp. 907-08 (“In other words, with all identifying information redacted from the student disciplinary records, they no longer “contain[ed] information directly related to a student” or “personally identifiable information” of a student.”). Unlike the claims of the PAC and the IDOH, it seems that courts are loathe to withhold documents in their entirety if there is a possibility of redaction:

Therefore, we instruct the trial court upon remand to review the Reed materials and redact or otherwise separate any portion of these documents which might contain information that could identify any present or former students in violation of the confidentiality mandated by FERPA. In such a way, the *Star* would have access, albeit limited by redaction, to the materials it seeks pursuant to APRA, and the Trustees would protect the privacy of student information in accordance with FERPA. The Trustees claim that such redaction is impossible, in that the interviews by their very nature will give away the identity of the students involved. However, as discussed above, there are several examples in the document log which belie this argument.

*The Indianapolis Star*, 787 N.E.2d at p. 909.

The IDOH is the state’s public health agency, whose stated mission is “To promote, protect, and improve the health and safety of all Hoosiers.”<sup>10</sup> However, even though it receives TPR submissions from providers, the IDOH does not monitor or enforce violations of TPR statutes, although Indiana law requires the agency to license and regulate hospitals. Ind. Code art. 16-21. There is no indication the agency routinely monitors the TPRs themselves to determine if a violation of Indiana’s laws has occurred. Consequently, other enforcement agencies must augment and enforce those laws, and fulfill the IDOH’s stated mission to “protect...Hoosiers.” One statutory purpose of a TPR is to “monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law.” Ind. Code § 16-34-2-5(a). Like annual death reports, quarterly and annual TPR reports do not provide the same level of detail as an actual death certificate or TPR. For instance, from July 1-September 30, 2023, there were seven (7) nonsurgical (medical) abortions performed on pregnant women whose fetus’s post-fertilization age was over eight (8) weeks.<sup>11</sup> Individual TPRs obtained before their reclassification as patient medical records indicates that during that same time period, two (2) of the fetuses had a post-fertilization weeks age of eighteen (18) weeks (twenty (20) weeks gestational age) and one had a post-fertilization age of fifteen (15) weeks (seventeen (17) weeks gestational age); two of those were born alive and later died. Without individual TPRs, it is not possible to investigate the provider of such abortions to ascertain compliance with Indiana’s laws.

Like death certificates, TPRs are public records open to public inspection for the purposes of government transparency. Like death certificates, the existence of annual reports based on information contained therein does not “implicitly...suggest the individual [TPR] forms are non-public.”<sup>12</sup> The TPRs can be redacted to balance the privacy concern regarding the pregnant woman who received an abortion, the public’s right to inspection of public records, and the need of enforcement agencies to review these documents to monitor compliance with laws or investigate complaints and allegations that such laws were violated.

## CONCLUSION

Ind. Code § 16-18-2-168(a) defines a health record as “written, electronic, or printed information possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient...” for purposes of Ind. Code art. 16-39. TPRs are not patient medical records; they are public records that are open to public inspection pursuant to APRA. Had the legislature intended to classify TPRs as confidential, it could have done so. It did not. To classify the TPR as otherwise would inhibit the statutory intentions of the form explicitly provided for in statute. To the extent there may be any information that could reasonably identify a pregnant woman who received an abortion, the agency can redact that information and still disclose the record to fulfill the TPR’s statutory intention.

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<sup>10</sup> See IDOH website, available at: <https://www.in.gov/health/directory/office-of-the-commissioner/about-the-agency/mission-and-vision/> (last accessed Mar. 27, 2024).

<sup>11</sup> *July 1-September 30, 2023, Terminated Pregnancy Report*, issued Dec. 29, 2023; available at: <https://www.in.gov/health/vital-records/files/CY2023Q3-TPR-Report.pdf>. (last accessed Apr. 4, 2024).

<sup>12</sup> *Supra*, note 1, at p.2.

Sincerely,

A handwritten signature in black ink that reads "Todd Rokita". The signature is fluid and cursive, with the first name "Todd" and last name "Rokita" clearly legible.

Todd Rokita  
Attorney General of Indiana

William H. Anthony, Chief Counsel, Advisory  
Christopher M. Anderson, Asst. Chief Counsel  
Hilari A. Sautbine, Supervising Dep. Attorney General



# **EXHIBIT 15**

OFFICE OF THE ATTORNEY GENERAL  
STATE OF INDIANA



302 W. WASHINGTON ST. 5TH FLOOR  
INDIANAPOLIS, IN 46204-2770  
January 29, 2024

**Via Hand Delivery**

**TODD ROKITA**  
ATTORNEY GENERAL

The Honorable Eric J. Holcomb  
Governor of Indiana

The Honorable Rodric Bray  
Senate President Pro Tempore  
Indiana Senate

The Honorable Todd Huston  
Speaker of the House  
Indiana House of Representatives

Re: Termination of Pregnancy Reports – IDOH misclassification as medical records

Dear Governor Holcomb, Senate President Pro Tempore Bray, and Speaker Huston,

On December 19, 2023, the Public Access Counselor (“PAC”) issued a publicly available [opinion](#) at the request of the Indiana Department of Health (“IDOH”) that Termination of Pregnancy Reports (“TPRs”) were no longer publicly available documents, but rather confidential medical records. IDOH has since denied my office the right to access those reports. It has also since denied my office and the public access to the Abortion Complications Reports, based upon the same PAC analysis.

The opinion is wrong and based on faulty logic as concluded by my office’s internal legal analysis, which we can formalize in an official opinion at your request. More importantly, the faulty opinion has created an enforcement vacuum when combined with IDOH’s erroneous reliance on it.

**Without the public being able to review the reports, no member of the public can file a licensing complaint against an abortion provider with my office. Without such a complaint, a licensing enforcement action against an abortion provider cannot be initiated because state statute currently requires a complaint as an initial prerequisite (among others) to a licensing investigation. Nearly 100 percent of the licensing complaints received on abortion providers are from the public based upon information found in the TPRs.**

**Furthermore, Indiana’s new pro-life law that the General Assembly passed and the Governor signed into law during the last special session limits abortions to hospitals only. The General Assembly has given IDOH the authority to investigate hospitals for compliance with the pro-**

**life laws. If such investigations have been done, it is not obvious or public. Both the PAC and IDOH leadership are the sole appointments of the Governor.**

Obviously, this situation should be expeditiously resolved so that there is proper oversight over providers— both hospitals and physicians— and Indiana’s law is fully enforced. One of the stated purposes of the TPRs is to require publicly available reports so that providers of abortions are held accountable and follow the law.

...the purpose and function of [the Termination of Pregnancy Reports] shall be 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.**

Ind. Code § 16-34-2-5

With the legislature currently in session, it can make clear that these reports are not medical records and must be released. Proper redactions can be made under current law to protect patient privacy so there is no need for legislative change on that point. Alternatively, you can remove the requirement that investigations by my office be third party-complaint based (since the public now has no information upon which to base a complaint) and remove the limitation of IDOH as the sole investigator of hospitals by authorizing my office to perform such duties as well— like we do for nearly all other professions and industries.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Rokita".

Todd Rokita  
Indiana Attorney General

# **EXHIBIT 16**

OFFICE OF THE ATTORNEY GENERAL  
STATE OF INDIANA



302 W. WASHINGTON ST. 5TH FLOOR  
INDIANAPOLIS, IN 46204-2770

**TODD ROKITA**  
ATTORNEY GENERAL

February 13, 2024

**Via Hand-Delivery**

The Honorable Liz Brown  
State Senator-District 15  
Indiana Senate  
200 W. Washington St.  
Indianapolis, IN 46204

The Honorable Chris Jeter  
Representative-District 88  
Indiana House of Representatives  
200 W. Washington St.  
Indianapolis, IN 46204

Re: Misguided Opinion by Public Access Counselor and Misclassification by IDOH

Dear Senator Brown and Representative Jeter,

On December 19, 2023, the Public Access Counselor (“PAC”) issued a publicly available [opinion](#) at the request of the Indiana Department of Health (“IDOH”) that incorrectly concluded Termination of Pregnancy Reports (“TPRs”) were no longer publicly available documents, but rather confidential medical records. IDOH has since denied my office—and the public—the right to access those reports. Based upon the same PAC analysis, it has also denied my office—and the public—access to the Abortion Complications Reports (“ACRs”). **As described in more detail below, Indiana’s pro-life laws became unenforceable as of mid-December due to the faulty PAC opinion and IDOH’s erroneous reliance on it, as well as IDOH’s failure to enforce compliance with pro-life laws against hospitals.** On January 29, 2024, I sent a letter similar to this one to Governor Holcomb, Senate President Pro Tempore Bray, and Speaker Huston. However, at the halfway mark of this session, no committee or floor action has occurred to remove the enforcement barriers.

**To be clear, without the public being able to review TPRs and ACRs, no member of the public can file a licensing complaint against an abortion provider with my office. Without a complaint by a third party, a licensing enforcement action against an abortion provider cannot be initiated because state statute currently requires such a third-party complaint as a prerequisite (among others) to a licensing investigation. Nearly 100 percent of the licensing**

**complaints received on abortion providers are from the public based upon information found in what you intended to be publicly available TPRs.**

**Furthermore, Indiana's new pro-life law that the General Assembly passed, and the Governor signed into law during the last special session limits abortions only to hospitals. The General Assembly has given IDOH the authority to investigate hospitals for compliance with the pro-life laws. If hospital investigations or enforcement actions have been undertaken by IDOH, they are not obvious or public. Both the PAC and IDOH leadership are the sole appointments of the Governor.**

Obviously, this situation should be expeditiously resolved so that proper oversight exists over providers—both hospitals and physicians—and so that Indiana's law is fully enforced. The TPR law's purpose is to require publicly available reports so that providers of abortions are held accountable and follow the law.

...the purpose and function of [the Termination of Pregnancy Reports] shall be 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.**

Ind. Code § 16-34-2-5.

To be sure, the PAC opinion is wrong and based on faulty logic as concluded by my office's internal legal analysis, which we can formalize in an official opinion at your request. With the legislature currently in session, you can make clear that these reports are not medical records and must be released. Although IDOH can make proper redactions under current law to protect patient privacy, expressly codifying what information must be made public will stop foreseeable future delays from IDOH around this point.

Alternatively, you can remove the current requirement that investigations by my office be based solely on third party-complaints (since the public now has no information upon which to base a complaint) and remove the limitation of IDOH as the sole investigator of hospitals by authorizing my office to perform such duties as well—like we do for nearly all other professions and industries. This list is not meant to be comprehensive, as I am sure there could be additional ways to solve the problem.

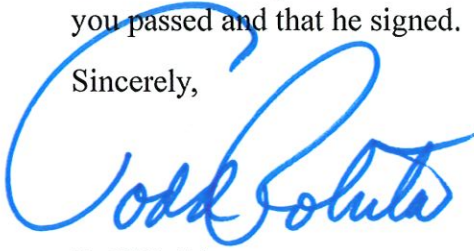
As a separate but related point, you need to provide an enforcement mechanism for the IDOH when it ignores deadlines and other statutory requirements pertaining to the dissemination of TPRs and ACRs. State agencies work for the people, and as lawmakers directly elected by those same people, you should not allow unelected bureaucrats to simply ignore the laws you pass as has routinely been my observation since holding my current office. I am told the behavior is similar to past behavior going back years.

As with many legislators and many pieces of legislation, my staff has offered you constitutional legal analysis, suggestions based on our experience in the field, amendments to the TPR that could

be made, and anything else for which you have asked. I have instructed my staff to make your requests the top priority.

Quite simply, if the General Assembly wants the pro-life laws that you passed enforced at all, legislative action that debunks and works around the misguided PAC opinion must be undertaken now and made effective immediately upon sine die. Additionally, you should install an accountability mechanism for IDOH. In the absence of legislative clarity, the Governor can remove IDOH leadership and the PAC counselor and replace them with individuals who respect the laws you passed and that he signed.

Sincerely,



Todd Rokita  
Indiana Attorney General

Cc: Eric Holcomb  
Rodric Bray  
Todd Huston

# **EXHIBIT 17**



# Request for Public Records

4/12/2024 8:45:07 PM

## Introduction

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Your request will be reviewed to determine if we have the information you are seeking and if the information is releasable. This process can take some time depending on the scope of your request. You can track the progress of your request through the portal.

Please note that your APRA filing is a matter of public record and will be displayed in the log of all requests that have been filed with the agency, [which you can find here](#).

## REQUEST FOR PUBLIC RECORDS

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### Requestor Information

**Full Name:** Benjamin Horvath

**Phone Number:** (574) 315-2920

**Email Address:** bdhorvath@comcast.net

**Company / Organization Name:** Voices For Life, Inc.

### Address

**Address Line 1:** 2307 Edison Road

**Address Line 2:** Floor #3

**City:** South Bend

**State:** Indiana

**Zip:** 46615

I am making this request on behalf of another person.

### Request for Public Records

Pursuant to Indiana's Access to Public Records Law (IC 5-14-3 et. seq.), I would like to request the following information or inspect the following public records.

**Detailed request for public records:** In light of Attorney General's Advisory Opinion (2024-2), which details why TPRs should be available for public inspection, I am re-submitting the following requests. Insofar as requests would violate privacy concerns, please redact all patient information: Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from August 1 2023- August 31 2023. Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations

in Indiana from September 1 2023- September 30 2023. Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from October 1 2023- October 31 2023. Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from November 1 2023- November 30 2023.

**Requestor's Signature Attestation:**

I attest that by checking this box it qualifies as a digital signature.

**Date:** 4/12/2024

# **EXHIBIT 18**

Angela Becker <[abecker2@health.in.gov](mailto:abecker2@health.in.gov)>

4/22/2024 1:54 PM

## CLARIFICATION: APRA portal response

To [bdhorvath@comcast.net](mailto:bdhorvath@comcast.net) <[bdhorvath@comcast.net](mailto:bdhorvath@comcast.net)>

---

Good afternoon, Benjamin.

**Detailed request for public records:** In light of Attorney General's Advisory Opinion (2024-2), which details why TPRs should be available for public inspection, I am re-submitting the following requests. Insofar as requests would violate privacy concerns, please redact all patient information: Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from August 1 2023- August 31 2023. Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from September 1 2023- September 30 2023. Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from October 1 2023- October 31 2023. Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from November 1 2023- November 30 2023

You should have received the following response **CORRECTION** via the centralized APRA portal: Terminated pregnancy reports are medical records declared confidential pursuant to IC 5-14-3-4(a)(9). For that reason, IDOH cannot release individual terminated pregnancy reports through a public records request. Changed from Confidential - Patient medical records: Patient medical records have been withheld pursuant to IC§16-39-1-3.

Sincerely,

**Angela Becker** | *Public Records Coordinator*

Office of Legal Affairs

office: 317-232-3119 • fax: 317-234-6278

[abecker2@health.in.gov](mailto:abecker2@health.in.gov)

[health.in.gov](http://health.in.gov)



**Confidentiality Statement:** This message and any attachments may be confidential. If you are not the intended recipient, please 1) notify me immediately; 2) do not forward the message or attachment; 3) do not print the message or attachment; and 4) erase the message and attachment from your system.

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- image002.png (284 Byte)
- image003.png (382 Byte)
- image004.png (510 Byte)
- image005.png (642 Byte)

# **EXHIBIT 19**

# Request for Public Records

4/19/2024 10:38:32 AM

## Introduction

---

Your request will be reviewed to determine if we have the information you are seeking and if the information is releasable. This process can take some time depending on the scope of your request. You can track the progress of your request through the portal.

Please note that your APRA filing is a matter of public record and will be displayed in the log of all requests that have been filed with the agency, [which you can find here](#).

## REQUEST FOR PUBLIC RECORDS

---

### Requestor Information

**Full Name:** Benjamin Horvath

**Phone Number:** (574) 315-2920

**Email Address:** bdhorvath@comcast.net

**Company / Organization Name:** Voices For Life, Inc.

### Address

**Address Line 1:** 2307 Edison Road

**Address Line 2:** Floor #3

**City:** South Bend

**State:** Indiana

**Zip:** 46615

I am making this request on behalf of another person.

### Request for Public Records

Pursuant to Indiana's Access to Public Records Law (IC 5-14-3 et. seq.), I would like to request the following information or inspect the following public records.

**Detailed request for public records:** - Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from December 1, 2023 to December 30, 2023 - Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from January 1 2024- January 31 2024 - Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from February 1 2024- February 29, 2024 - Copies of the original Termination of

Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from March 1 2024- March 31 2024 I would refer you to the Office of Attorney General's (OAG) advisory opinion on this matter (2024-2), which rejected the position these reports should be treated as exempt from public disclosure.

**Requestor's Signature Attestation:**

I attest that by checking this box it qualifies as a digital signature.

**Date:** 4/19/2024

# **EXHIBIT 20**



Angela Becker <[abecker2@health.in.gov](mailto:abecker2@health.in.gov)>

4/22/2024 2:37 PM

## 2nd CLARIFICATION: APRA portal response

To [bdhorvath@comcast.net](mailto:bdhorvath@comcast.net) <[bdhorvath@comcast.net](mailto:bdhorvath@comcast.net)>

---

Hello again, Benjamin.

**Detailed request for public records:-** Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from December 1, 2023 to December 30, 2023 - Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from January 1 2024- January 31 2024 - Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from February 1 2024- February 29, 2024 - Copies of the original Termination of Pregnancy Reports as submitted by the abortion doctors for terminations in Indiana from March 1 2024- March 31 2024 I would refer you to the Office of Attorney General's (OAG) advisory opinion on this matter (2024-2), which rejected the position these reports should be treated as exempt from public disclosure.

I've detected another response error: [You should have received the following response CORRECTION via the centralized APRA portal: Terminated pregnancy reports are medical records declared confidential pursuant to IC 5-14-3-4\(a\)\(9\). For that reason, IDOH cannot release individual terminated pregnancy reports through a public records request. Changed from Confidential - Patient medical records: Patient medical records have been withheld pursuant to IC§16-39-1-3.](#)

Sincerely,

**Angela Becker** | *Public Records Coordinator*

Office of Legal Affairs

office: 317-232-3119 • fax: 317-234-6278

[abecker2@health.in.gov](mailto:abecker2@health.in.gov)

[health.in.gov](http://health.in.gov)



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- image002.png (284 Byte)
- image003.png (382 Byte)
- image004.png (510 Byte)
- image005.png (642 Byte)

# **EXHIBIT 21**



**VOICES FOR LIFE, INC.  
2307 EDISON ROAD – FLOOR #3  
SOUTH BEND, IN 46615**

**April 19, 2024**

**Office of the Public Access Counselor  
c/o Luke Britt  
Indiana Government Center South  
402 West Washington Street, Suite W470  
Indianapolis, Indiana 46204**

**Indiana Department of Health  
c/o Angela Becker  
2 N. Meridian St.  
Indianapolis, IN 46204**

Re: Request for a Formal Advisory Opinion on Status of Terminated Pregnancy Reports (TPRs) Following Attorney General’s Advisory Opinion (OAG 2024-2)

Dear Mr. Britt:


I write on behalf of Voices For Life, Inc., a pro-life, non-profit corporation that routinely requests Terminated Pregnancy Reports (TPRs) under the Access to Public Records Act (APRA) because several recent requests have been denied based upon your opinion 23-INF-15. On April 11<sup>th</sup>, 2024, the Office of Attorney General released an advisory opinion (OAG 2024-2), that considered and rejected the position that terminated pregnancy reports (TPRs) are “personal medical records” exempt from public disclosure under APRA for the reasons stated in 23-INF-15. The opinion reads in relevant part:

TPRs are not patient medical records; they are public records that are open to public inspection pursuant to APRA. Had the legislature intended to classify TPRs as confidential, it could have done so. It did not. To classify the TPR as otherwise would inhibit the statutory intentions of the form explicitly provided for in statute. To the extent there may be any information that could reasonably identify a pregnant woman who received an abortion, the agency can redact that information and still disclose the record to fulfill the TPR’s statutory intention.

The OAG opinion considers arguments for treating TPRs as “patient medical records” and demonstrates that they are erroneous. Accordingly, we request a reconsideration of 23-INF-15 and a promulgation of a new opinion which states that TPRs are public records that must be produced under APRA.

We ask that you reconsider and revise your opinion promptly so that Voices For Life's pending and future requests for TPRs are honored as required by APRA, and we can avoid the need to file suit in order to obtain access to these public records.

Sincerely,

A handwritten signature in black ink, appearing to read "Bj Horvath". The signature is fluid and cursive, with a large initial "Bj" and a stylized "Horvath" that ends in a long horizontal stroke.

Benjamin D. Horvath  
State of Indiana (Licensed Attorney #37299-71)  
P: 574-315-2920      E: [bdhorvath@comcast.net](mailto:bdhorvath@comcast.net)

# **EXHIBIT 22**

Luke Britt <[lbritt@opac.in.gov](mailto:lbritt@opac.in.gov)>

4/24/2024 5:18 PM

## RE: Correspondence from Voices For Life\_4.19.24

To Benjamin Horvath <[bdhorvath@comcast.net](mailto:bdhorvath@comcast.net)> • Angela Becker <[abecker2@health.in.gov](mailto:abecker2@health.in.gov)>

---

Hello Mr. Horvath,

Thank you for your letter. After due reconsideration, my determination remains consistent with my Informal Inquiry Response from December 2023. The Access to Public Records Act as written does not appear to leave room for subjectivity in this context. That stated, should the legislature change the law to expressly differentiate terminated pregnancy reports from patient medical records, so too will my position change.

Best,

Luke H. Britt

Indiana Public Access Counselor

317-233-9435

---

**From:** Benjamin Horvath <[bdhorvath@comcast.net](mailto:bdhorvath@comcast.net)>

**Sent:** Friday, April 19, 2024 3:16 PM

**To:** Britt, Luke <[LBritt@opac.in.gov](mailto:LBritt@opac.in.gov)>; Becker, Angela <[ABecker2@health.in.gov](mailto:ABecker2@health.in.gov)>

**Subject:** Correspondence from Voices For Life\_4.19.24

**\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\***

---

Please see the attached correspondence sent on behalf of Voices For Life, Inc. We have also sent a hard copy of this letter to each recipient listed via mail.

Sincerely,

### **Benjamin D. Horvath**

Licensed Attorney, State of Indiana (37299-71)

Notre Dame Law School, Class of 2021

**P:** (574) 315-2920    **E:** [bdhorvath@comcast.net](mailto:bdhorvath@comcast.net)

**CONFIDENTIALITY STATEMENT:** *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.*

# **EXHIBIT 23**

## Begin State File Number 002901

STATE_FILE_NUMBER	TERMINATION_LOCATION	POT_CITY	POT_COUNTY	PATIENT_AGE	MARRIED
002901	PLANNED PARENTHOOD OF MERRILLVILLE 8645 CONNECTICUT STREET MERRILLVILLE INDIANA 46410	Merrillville	Lake	024	Unmarried
DATE_OF_TERM	EDUCATION	SEX_OF_FETUS	MULTIFETAL_PREG	RACE	HISPANIC
20230531	Associate's degree (e.g. AA, AS)	Unknown	1	White	No, not Spanish/Hispanic/Latino
REASON_FOR_ABORTION	REASON_FOR_ABORTION_CODE	LIVE_BIRTHS_LIVING	LIVE_BIRTHS_DECEASED	SPONTANEOUS_TERMINATIONS	INDUCED_TERMINATIONS
Not Applicable		None	None	None	None
PREV_TERM_YEARS	FETUS_BORN_ALIVE	FETUS_SURVIVAL_TIME	FETUS_VIABLE	MEDICAL_REASON	PATHOLOGICAL_EXAM
	No				No
PATHOLOGICAL_EXAM_RESULTS	PREEXISTING_MEDICAL_CONDITIONS	COMPLICATIONS	COMPLICATIONS_OTHER	MATERNAL_DEATH	PRIMARY_PROCEDURES
				No	(Nonsurgical) Mifepristone,(Nonsurgical) Misoprostol
PRIMARY_PROCEDURES_OTHER	PRIM_INSTRUCTIONS_PROVIDED	PRIM_PAT_SIGNED	PRIM_POST_FERT_20_PLUS	PRIM_BEST_OPPOR_SURVIVE	PRIM_FETUS_VIABLE_AVERT
	Yes.	Yes.	Not Applicable	Not Applicable	
SECOND_DOC_IF_APPL	ADDITIONAL_PROCEDURES	ADDITIONAL_PROCEDURES_OTHER	ADD_INSTRUCTIONS_PROVIDED	ADD_PAT_SIGNED	ADD_POST_FERT_20_PLUS
ADD_BEST_OPPOR_SURVIVE	ADD_FETUS_VIABLE_AVERT	LAST_MENSES_DATE	ESTIMATED_GESTATION_WEEKS	POST_FERTILIZATION_WEEKS	HOW_DETERMINED
		99999999	09	07	Ultrasound
HOW_DETERMINED_OTHER	CONSENT_WAIVER	NOTIFICATION_WAIVER	FETAL_ABNORMALITY	CONGENITAL_ANOMALY	DIAGNOSIS_CONFIRMED
	No	No	Unknown	No	
PRENATAL_DIAGNOSTIC	TERM_AS_RESULT_OF	PHYSICIAN	PHYSICIAN_ADDRESS	FATHER_AGE	APPROX_FATHER_AGE
	None	GITTLER, MANDY	8645 CONNECTICUT STREET MERRILLVILLE INDIANA 46410	.	024
DCS_REPORT_DATE	DATE_RECEIVED_IDOH	TP_FORM_MAP_NUMBER			
.	20230601	03			

End State File Number 002901



# **EXHIBIT 24**

**February 29, 2024**

**Division of Vital Records**



**October 1 – December 31, 2023  
Terminated Pregnancy Report**



**Indiana  
Department  
of  
Health**



# Terminated Pregnancy Report

Indiana Department of Health

Division of Vital Records

**Lindsay M. Weaver, MD, FACEP**

*State Health Commissioner*

**Eric Hawkins**

*State Epidemiologist*

**Robert Davis**

*Chief Data Officer*

**Larry K. Ervin**

*State Registrar*

**Report Prepared by:**

**Division of Vital Records**

**Acknowledgments:**

**Office of Data Analytics**

**Lisa Stoner**

*Graphic Designer, Office of Public Affairs*

The purpose of this report is to present information from the fourth quarter of 2023 (October 1, 2023, through December 31, 2023) (the “reporting quarter”) on terminated pregnancy reports as required by Indiana law. Indiana Code § 16-34-2 et seq. requires that all terminated pregnancies in Indiana be reported to the Indiana Department of Health’s (IDOH) Division of Vital Records within 30 days of termination.

## KEY FINDINGS

Number of Terminations Performed, Q4 of Each Year 2019-2023		
Year	Total Count	Indiana Resident Count (%)
Q4 of 2019	1765	1,663 (94.22%)
Q4 of 2020	1841	1,735 (94.24%)
Q4 of 2021	1979	1,860 (93.99%)
Q4 of 2022	1724	1,398 (81.09%)
Q4 of 2023	46	46 (100%)

Weeks of Gestation at Time of Termination, Q4 of 2023	
Weeks	Count (%)
≤8 weeks	10 (21.74%)
9-13 weeks	9 (19.57%)
14-20 weeks	22 (47.83%)
≥21 weeks	5 (10.87%)
<b>Total</b>	<b>46 (100%)</b>

Procedure Type Used to Terminate Pregnancy, Q4 of 2023	
Procedure Type	Count (%)
Nonsurgical	21 (45.65%)
Surgical	25 (54.35%)
<b>Total</b>	<b>46 (100%)</b>

# Table of Contents



- List of Tables and Figures 5
- Introduction 6
- Methodology 7
- Results 9
  - Trends in Indiana 9
  - Demographic Information of Women Receiving Terminations 10
    - Age 10
    - Race and Ethnicity 11
    - Education 12
    - Marital Status 12
  - Pregnancy History of Women Receiving Terminations 13
  - Medical Information of Women Receiving Terminations 14
    - Gestational Age 14
    - Procedure Type 14
    - Procedure Type by Facility 16
    - Reason for Abortion 16
    - Additional Information 17
- Limitations 18
- References 19

## **LIST OF TABLES**

Table 1.	Timeliness of Submission of Terminated Pregnancy Reports, Q4 of 2023
Table 2.	Rate of Reported Terminations Among Indiana Residents of Childbearing Age Occurring, Q4 of 2023 and the Previous Four Years
Table 3:	Number of Women Obtaining Terminations by Month, Q4 of 2023
Table 4.	Age Distribution of Women Who Obtained Terminations, Q4 of 2023
Table 5.	Race and Ethnicity of Women Who Obtained Terminations, Q4 of 2023
Table 6.	Marital Status of Women Who Obtained Terminations, Q4 of 2023
Table 7.	Education Level of Women Who Obtained Terminations, Q4 of 2023
Table 8.	Pregnancy and Termination History of Women Obtaining Terminations, Q4 of 2023
Table 9.	Weeks of Gestation at Time of Termination, Q4 of 2023
Table 10.	Number of Terminations by Procedure Type, Q4 of 2023
Table 11.	Number of Terminations by Weeks of Gestation and Procedure Type, Q4 of 2023
Table 12.	Number of Medical (Nonsurgical) Terminations by Post-Fertilization Age and Procedure Type, Q4 of 2023
Table 13.	Terminations Reported by Facility, Q4 of 2023
Table 14.	Reason for Abortion, Q4 of 2023
Table 15.	Additional Information, Q4 of 2023

## **LIST OF FIGURES**

Figure 1.	Terminations Reported in Indiana, Q4 of Each Year 2019-2023
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## INDIANA REPORTING REQUIREMENTS

Reporting requirements regarding terminated pregnancies are governed by Indiana Code § 16-34-2 et seq.,<sup>(4)</sup> which can be found [online at the Indiana General Assembly's website](#).

Terminated pregnancy complications are collected separately from terminated pregnancy reports and have separate quarterly reports.

Table 1 shows the number of reports that met or did not meet the time reporting threshold under Indiana law. For women who were 16 years of age or older at the time of their termination, a report is required to be filed with IDOH within 30 days. For women who were under 16 years of age at the time of their termination, a report is required to be filed with both IDOH and the Indiana Department of Child Services within three days.

<b>Table 1. Timeliness of Submission of Terminated Pregnancy Reports, Q4 of 2023</b>	
<b>Women 16 Years of Age or Older Report to IDOH</b>	<b>Count (% of Total Reported to IDOH)</b>
Reported within 30 days	44 (95.65%)
Reported after 30 days	1 (2.17%)
<b>Women Under 16 Years of Age Report to IDOH</b>	
Reported within 3 days	1 (2.17%)
Reported after 3 days	0 (0.00%)
<b>Total Reported to IDOH</b>	<b>46 (100%)</b>
<b>Women Under 16 Years of Age Report to DCS</b>	<b>Count (%)</b>
Reported within 3 days	1 (100%)
Reported after 3 days	0 (0.00%)
<b>Total Reported to DCS</b>	<b>1 (100%)</b>

## METHODS

This report includes analyses of certain demographic information provided by patients and medical information collected from reports. Self-reported demographic information collected in the report includes age, marital status, education level, race and ethnicity, ZIP code of residence, county of residence, and state of residence. Some information collected on terminated pregnancy reports is not represented in this quarterly report because of the potential for patient identification.

Medically relevant information collected from the patient and reported to IDOH also includes the patient's number of previous live births of children who are still living, the number of previous live births of children who are deceased, the number of previous spontaneous terminations (i.e., miscarriages), and the number of previously induced terminations (excluding the termination being reported). Patients are asked to list the years of previous spontaneous and induced terminations, and the date last normal menses began.

Other medical information collected on reports regarding the termination is provided by the physician. This information includes:

- Date of termination
- Whether a pathological exam was performed
- Estimate of the gestational age and post-fertilization age
- The method used to estimate or determine gestational age and post-fertilization age
- Type of procedure
- Fetus delivered alive
- Complications of the termination
- Reason for termination

Additional information collected includes the name of the facility where the termination was performed, the city or town where the termination occurred, the county where the termination occurred, the physician's full name, address, and signature, and the age of the father, if known.

## MEASURES

The categorization of data is based on CDC standards.<sup>(3)</sup> Physicians report both the post-fertilization age and gestational age of the fetus, but the two are calculated differently. Gestational age measures the age of the fetus from the first day of the mother's last menstrual period, whereas post-fertilization age measures the age of the fetus from the actual date of conception or fertilization. Since fertilization generally occurs about two weeks after the first day of the last menstrual period, the gestational age is typically about two weeks greater than the post-fertilization age. For instance, if a fetus is 10 weeks by gestational age, its post-fertilization



age is approximately 8 weeks. The Indiana Code refers to post-fertilization age, but gestational age is more commonly used in epidemiological analyses. Both measures are represented in this report.

## **ANALYTIC PROCEDURES**

Data was pulled from the IDOH DRIVE (Database Registration for Indiana's Vital Events) system using Structure Query Language (SQL). To ensure data accuracy, the dataset was checked for potential errors and duplicates using patient identification numbers and date of termination. SAS Statistical Software 9.4 was used to calculate counts and percentages. Graphs were made using Microsoft Excel.

## TRENDS IN INDIANA

Figure 1 depicts the number of terminations reported in Indiana and the number of terminations reported by Indiana residents, comparing the reporting quarter to the same quarter in previous years.

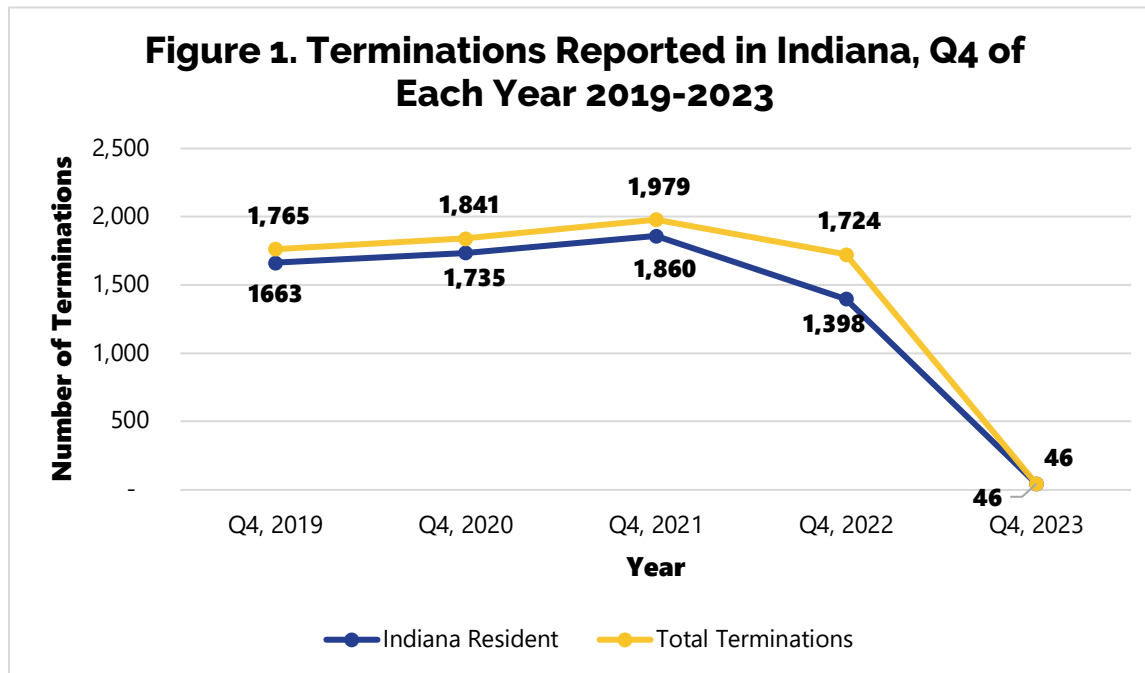


Table 2 shows the percentage of Indiana residents of childbearing age who terminated a pregnancy in the reporting quarter and provides comparative data from the same quarter in previous years.

<b>Table 2. Rate of Reported Terminations Among Indiana Residents of Childbearing Age Occurring, Q4 of 2023 and the Previous Four Years</b>			
<b>Year</b>	<b>Count</b>	<b>Population Est.<sup>†</sup></b>	<b>Rate<sup>*</sup></b>
Q4, 2019	1663	1,310,454	1.3
Q4, 2020	1735	1,314,073	1.3
Q4, 2021	1860	1,328,151	1.4
Q4, 2022	1398	1,333,576	1.1
Q4, 2023	46	1,333,576**	0.03

\*Rate is per 1,000. (Indiana had terminations in age ranging from 13-51 years).  
 \*\*A single-year estimate for this age and gender group is not yet available.  
 †Population estimates of females aged 15-44 that were Indiana residents during specified year <sup>5</sup>

Table 3 provides a breakdown by month of the number of terminations that occurred in Indiana in the reporting quarter.

<b>Table 3: Number of Women Obtaining Terminations by Month, Q4 of 2023</b>	
<b>Month</b>	<b>Total Terminations (n = 46)</b>
October	12
November	16
December	18

## DEMOGRAPHIC INFORMATION OF WOMEN OBTAINING TERMINATIONS

Demographic information collected and analyzed for this report includes age, race, ethnicity, marital status, and education level of the women obtaining terminations in Indiana in the reporting quarter.

### AGE

Table 4 shows the age distribution of women who obtained terminations in the reporting quarter and the overall number of live births in Indiana for each age group in the reporting quarter.

Table 4. Age Distribution of Women Who Obtained Terminations, Q4 of 2023		
Age, years	Count (%)	Count of Live Births in Q4 2023
< 16	1 (2.17%)	40 (0.20%)
16-24	6 (13.04%)	4901 (25.01%)
25-34	23 (50.00%)	11658 (59.48%)
35-44	15 (32.61%)	2963 (15.12%)
≥ 45	1 (2.17%)	37 (0.19%)
<b>Total</b>	<b>46 (100%)</b>	<b>19599 (100%)</b>

\*\*Birth counts for 2023 are preliminary.

## RACE AND ETHNICITY

Table 5. Race and Ethnicity of Women Who Obtained Terminations, Q4 of 2023	
Race	Count (%)
White	27 (58.70%)
Black / African American	14 (30.43%)
Asian	1 (2.17%)
American Indian / Alaska Native	0 (0.00%)
Pacific Islander / Native Hawaiian	0 (0.00%)
Multiple Races	0 (0.00%)
Other	0 (0.00%)
Unknown	4 (8.70%)
<b>Total</b>	<b>46 (100%)</b>
Ethnicity	Count (%)
Non-Hispanic / Non-Latino	40 (86.96%)
Hispanic / Latino	4 (8.70%)
Ethnicity Unknown	2 (4.35%)
<b>Total</b>	<b>46 (100%)</b>

## EDUCATION AND MARITAL STATUS

<b>Table 6. Marital Status of Women Who Obtained Terminations, Q4 of 2023</b>	
<b>Marital Status</b>	<b>Count (%)</b>
Unmarried	28 (60.87%)
Married	18 (39.13%)
Divorced	0 (0.00%)
Separated	0 (0.00%)
<b>Total</b>	<b>46 (100%)</b>

<b>Table 7. Education Level of Women Who Obtained Terminations, Q4 of 2023</b>	
<b>Education Level</b>	<b>Count (%)</b>
8 <sup>th</sup> Grade or Less	1 (2.17%)
9 <sup>th</sup> to 12 <sup>th</sup> Grade, No Diploma	2 (4.35%)
High School Diploma or GED	6 (13.04%)
Some College Credit, No Degree	22 (47.83%)
Associate's degree	1 (2.17%)
Bachelor's Degree	6 (13.04%)
Master's Degree	1 (2.17%)
Doctoral or Professional Degree	1 (2.17%)
Unknown	6 (13.04%)
<b>Total</b>	<b>46 (100%)</b>

## PREGNANCY HISTORY OF WOMEN OBTAINING TERMINATIONS

Table 8 shows the pregnancy and termination history of women who obtained a termination in the reporting quarter. Four data points are represented. First, women were asked if they have had a previous live birth and, if so, how many of those children are still living. Second, women were asked if any of those children were now deceased. Third, women were asked if they had any previous spontaneous terminations, such as a miscarriage or other fetal death. Fourth, women were asked if they had any previously induced terminations.

<b>Table 8. Pregnancy and Termination History of Women Obtaining Terminations, Q4 of 2023</b>	
<b>Pregnancy History</b>	<b>Count (%)</b>
Previous Live Births Still Living	
0	15 (32.61%)
1	12 (26.09%)
2	12 (26.09%)
≥3	7 (15.22%)
Unknown	0 (0.00%)
<b>Total</b>	<b>46 (100%)</b>
Previous Live Births Now Deceased	
0	41 (89.13%)
1	2 (4.35%)
2	3 (6.52%)
≥3	0 (0.00%)
Unknown	0 (0.00%)
<b>Total</b>	<b>46 (100%)</b>
<b>Termination History</b>	<b>Count (%)</b>
Previous Spontaneous Terminations	
0	27 (58.70%)
1	12 (26.09%)
2	4 (8.70%)
≥3	3 (6.52%)
Unknown	0 (0.00%)
<b>Total</b>	<b>46 (100%)</b>
Previous Induced Terminations	
0	42 (91.30%)
1	3 (6.52%)
2	1 (2.17%)
≥3	0 (0.00%)
Unknown	0 (0.00%)
<b>Total</b>	<b>46 (100%)</b>

## MEDICAL INFORMATION OF WOMEN OBTAINING TERMINATIONS

### ESTIMATED GESTATIONAL AGE

Physicians report estimated gestation and post-fertilization age on all reports. The Indiana Code uses post-fertilization age as the legal metric for fetal age, whereas gestational age is used for epidemiological analysis. Table 9 shows the gestational age at the time of termination for the reporting quarter.

<b>Table 9. Weeks of Gestation at Time of Termination, Q4 of 2023</b>	
<b>Number of Weeks</b>	<b>Count (%)</b>
≤8 weeks	10 (21.74%)
9-13 weeks	9 (19.57%)
14-20 weeks	22 (47.83%)
≥21 weeks	5 (10.87%)
<b>Total</b>	<b>46 (100%)</b>

### PROCEDURE TYPE

Terminated pregnancies are classified as either medical (nonsurgical) or surgical. Table 10 shows the number of medical and surgical procedures used to terminate a pregnancy in the reporting quarter, and if the procedure type was medical, the type of medication used in the procedure.

<b>Table 10. Number of Terminations by Procedure Type, Q4 of 2023</b>	
<b>Procedure Type</b>	<b>Count (%)</b>
Medical (Nonsurgical)	
Utilizing Misoprostol and/or Mifepristone	15 (32.61%)
Utilizing Intracardiac Injections	6 (13.04%)
Surgical	25 (54.3%)
<b>Total</b>	<b>46 (100%)</b>

For the 15 termination procedures utilizing mifepristone and/or misoprostol:

- 12 reports indicated the patient received the manufacturer's instructions and signed the patient agreement;
- 1 report indicated the patient received the manufacturer's instructions but did not sign the patient agreement;
- 2 reports indicated the patient did not receive the manufacturer's instructions but signed the patient agreement.

Of the 6 procedures utilizing intracardiac injections, 4 listed a surgical dilation and evacuation as an additional procedure. The remaining 2 procedures did not list additional procedures.

Table 11 shows the number of terminations by procedure type and **weeks of gestation**, the measure most commonly used in epidemiological analysis.

<b>Table 11. Number of Terminations by Weeks of Gestation and Procedure Type, Q4 of 2023</b>	
<b>Procedure Type and Timeframe</b>	<b>Count (%)</b>
Medical (Nonsurgical)	
≤8 weeks	3 (6.52%)
>8 weeks <sup>1</sup>	18 (39.13%)
Surgical	
≤8 weeks	7 (15.22%)
>8 weeks	18 (39.13%)
<b>Total</b>	<b>46 (100%)</b>

Table 12 shows the number of medical (nonsurgical) terminations by **post-fertilization age**, the measure used in Indiana law.

<b>Table 12. Number of Medical (Nonsurgical) Terminations by Post-Fertilization Age and Procedure Type, Q4 of 2023</b>	
<b>Procedure Type</b>	<b>Count (%)</b>
Misoprostol and/or Mifepristone	
≤8 weeks	4 (19.05%)
>8 weeks	11 (52.38%)
Intracardiac Injections	
≤8 weeks	0 (0.00%)
>8 weeks	6 (28.57%)
<b>Total</b>	<b>21 (100%)</b>

<sup>1</sup> For a more detailed breakdown of medical (nonsurgical) terminations utilizing post-fertilization age, see Table 12.



## PROCEDURE TYPE BY FACILITY

Table 13 provides the number of terminations performed by each reporting facility in the reporting quarter.

Table 13. Terminations Reported by Facility, Q4 of 2023					
Facility Type	Facility	County	Medical	Surgical	Total
Acute Care Hospital	Community Hospital East	Marion	2 (4.35%)	0 (0.00%)	2 (4.35%)
	Community Hospital North	Marion	1 (2.17%)	0 (0.00%)	1 (2.17%)
	Dupont Hospital	Allen	1 (2.17%)	0 (0.00%)	1 (2.17%)
	Indiana University Health Methodist Hospital	Marion	0 (0.00%)	2 (4.35%)	2 (4.35%)
	Indiana University Health University Hospital	Marion	3 (6.52%)	5 (10.87%)	8 (17.40%)
	Parkview Regional Medical Center	Allen	1 (2.17%)	0 (0.00%)	1 (2.17%)
	Riley Health Maternity Tower	Marion	11 (23.91%)	10 (21.74%)	21 (45.65%)
	Sidney & Lois Eskenazi Hospital	Marion	2 (4.35%)	8 (17.39%)	10 (21.74%)
<b>Total</b>			<b>21 (45.65%)</b>	<b>25 (54.35%)</b>	<b>46 (100%)</b>

## REASON FOR ABORTION

Table 14 shows the number of terminations categorized by the reason for abortion. All terminations in the reporting quarter where the reason for abortion is listed as rape or incest occurred during the first 10 weeks of postfertilization age of the fetus.

Table 14: Reason for Abortion, Q4 of 2023	
Reason for Abortion	Total Count (%)
Lethal Fetal Anomaly	22 (47.83%)
Serious health risk/life of the pregnant woman	21 (45.65%)
Rape/Incest	3 (6.52%)
<b>Total</b>	<b>46 (100%)</b>

## ADDITIONAL INFORMATION

<b>Table 15: Additional Information, Q4 of 2023</b>	
<b>Metric</b>	<b>Total Count</b>
Number of Terminations Where the Fetus Was Born Alive	1
Number of Terminations Performed After 20 Weeks of Post-Fertilization Age	1
Number of Terminations Performed After 20 Weeks of Post-Fertilization Age Where a Second Attending Physician Was Present	1

The data in this report is taken only from terminated pregnancy reports submitted to the IDOH. If a termination occurs but is not reported to the IDOH Division of Vital Records, this data would not be captured in the report.

Demographic information and pregnancy history are self-reported by the patient, so incomplete or incorrect information may be reported by the patient and reflected in this report. Patients also can refuse to answer questions that are asked at hospitals and facilities. This results in unknown values when the provider is filling out the form.

The information contained in this report is a snapshot of the data held by IDOH on the report date. Providers can amend records after they are initially submitted to IDOH, and amendments submitted after the report date will not be reflected in this report. These amendments will be reflected in future reports published by IDOH.

Additionally, duplicate data entries can occur if a patient were to present to a different facility or see a different practitioner for follow-up treatment. If the follow-up practitioner is required to perform an additional procedure related to the termination, and he or she is unaware that a terminated pregnancy report has already been filed related to the termination, the practitioner or facility may file a second, duplicate report to document the additional procedure. This could artificially inflate the termination counts listed in this report. Education and recommendations are distributed and communicated to providers to mitigate these data entry errors.

Finally, since the launch of the DRIVE system in June 2022, data comparisons to previous years can be difficult because additional categorization options were made available in the reporting form. For example, the marriage categories — previously “married” and “unmarried” — now match what is currently collected for IDOH’s birth, death, and fetal death modules — “married,” “unmarried,” “separated,” and “divorced.” Additionally, the race and ethnicity categories have been expanded to include a more diverse population which reflects what the Centers for Disease Control and Prevention recommend for race and ethnicity categories.

- 1) Kortzmit K, Nguyen AT, Mandel MG, et al. Abortion Surveillance — United States, 2020. MMWR Surveill Summ 2022;71(No. SS-10):1–27. DOI: <http://dx.doi.org/10.15585/mmwr.ss7110a1>.
- 2) CDC Division of Reproductive Health Inquiry. Inquiry submitted 15 Apr 2015. Response received 29 Apr 2015.
- 3) MMWR. Surveillance summaries: Morbidity and mortality weekly report. Surveillance summaries Retrieved from [https://stacks.cdc.gov/gsearch?related\\_series=MMWR.%20Surveillance%20summaries%20%3A%20Morbidity%20and%20mortality%20weekly%20report.%20Surveillance%20summaries%20](https://stacks.cdc.gov/gsearch?related_series=MMWR.%20Surveillance%20summaries%20%3A%20Morbidity%20and%20mortality%20weekly%20report.%20Surveillance%20summaries%20)
- 4) Indiana Code. Retrieved from <https://iga.in.gov/laws/2023/ic/titles/16#16-34-2>
- 5) Single-Race Population Estimated, CDC WONDER Online Database, August 2021. Retrieved from <https://wonder.cdc.gov/single-race-population.html>