
OPINION OF THE PUBLIC ACCESS COUNSELOR

VICTORIA FATER,
Complainant,

v.

EVANSVILLE CITY/VANDEBURGH COUNTY JOINT
DEPARTMENT OF CENTRAL DISPATCH,
Respondent.

Formal Complaint No.
19-FC-23

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Evansville City-Vanderburgh County Joint Department of Central Dispatch violated the Access to Public Records Act.¹ Deputy Director Leslie Buckman responded on behalf of the agency. In accordance with Indiana Code

¹ Ind. Code §§ 5-14-3-1 to -10

§ 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on March 11, 2019.

BACKGROUND

This case involves a dispute about public records related to dispatch records.

Victoria Fater (“Complainant”), a reporter with the *Evansville Courier & Press*, hand-delivered a public records request to Evansville City-Vanderburgh County Joint Department of Central Dispatch (“Central Dispatch”). The agency did not respond within twenty-four hours as is required by law but did respond in seven days.

The response was in the form of a denial in that Central Dispatch stated “I am not allowed to release audio without the permission of the responding agency.” Fater requested a statutory citation for the denial but was not given one.

Upon receipt of the complaint, this office immediately forwarded a copy of the complaint to Central Dispatch. The response did not cite a statutory exemption to disclosure and was significantly dismissive in tone of both the complaint and the Complainant.

The Public Access Counselor took it upon himself to follow up and extend Central Dispatch the courtesy of inviting a valid legal response to the complaint. While more conciliatory, Central Dispatch doubled down on the argument that permission was needed from an agency in order to produce 911 audio.

It should be noted that the agency eventually released the audio after Fater filed the complaint – a fact confirmed through independent research and not from advisement from the parties. Nevertheless, the issue warrants analysis.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana 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. Ind. Code § 5-14-3-1. Further, 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.” *Id.* There is no dispute that the Evansville City/Vanderburgh County Joint Department of Central Dispatch (“Central Dispatch”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Therefore, unless otherwise provided by statute, any person may inspect and copy the Central Dispatch’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. Specifically, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a).

While this office does not subscribe to an inflated sense of self-importance, the process of government transparency certainly cannot be overstated. Central Dispatch has proved to be dismissive of these complaints in the past and continued to do so in the current instance. This does not bode well in justifying its underlying actions.

First, Central Dispatch is mistaken in that it has seven days to respond to an in-person request. Under APRA, it must respond (i.e., acknowledge receipt of the request) within twenty-four hours of receiving the request or the request is considered denied as a matter of law. *See* Ind. Code § 5-14-3-9(b)(2).

Second, dispatch centers in Indiana are public agencies unto themselves. While they may serve other agencies – law enforcement, ambulance, fire, etc. – their records are exclusively and solely under their own custody and jurisdiction. *See Opinion of the Public Access Counselor*, 17-FC-167 (2017).

A dispatch center is not a law enforcement agency. It has its own bureaucracy and hierarchy and is often under the County Board of Commissioners rather than the sheriff's office or municipal police department. Therefore a dispatch center cannot claim, for example, the investigatory records exception to disclosure. Nor can it withhold a record on behalf of another agency without a statutory basis or a court order.

Calls to dispatch are public record. When 911 audio is so sensitive as to warrant nondisclosure, it is the responsibility of a law enforcement agency to convince a court that a protective order should be issued to shield it from public access. A law enforcement agency does not have the authority to

unilaterally compel another agency to withhold public records from disclosure. Likewise, while a dispatch center may extend the courtesy of notification of a public records request to the responding agency, it does not need “permission” to release it. At most, it may withhold the record for a reasonable time to allow the law enforcement agency to attempt to obtain a court order preventing release.

Furthermore, Indiana Code section 5-14-3-9 mandates that a denial of a records request must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record.

Public records are presumed to be disclosable unless an exception applies. There was no applicable citation given, nor was there a circumstance warranting the denial, such as a court order. Central Dispatch would be well served to keep this in mind going forward.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Evansville City/Vanderburgh County Joint Department of Central Dispatch violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the right.

Luke H. Britt
Public Access Counselor