
OPINION OF THE PUBLIC ACCESS COUNSELOR

THOMAS TROUT
Complainant,

v.

VIGO COUNTY SHERIFF AND DISPATCH CENTER
Respondent.

Formal Complaint No.
21-FC-42

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Vigo County Sheriff and Dispatch Center violated the Access to Public Records Act.¹ Vigo County Prosecutor Terry Modesitt submitted a response on behalf of the County. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code § 5-14-3-1-10.

by the Office of the Public Access Counselor on April 8, 2021.

BACKGROUND

This case involves a dispute over access to 911 dispatch recordings.

On March 16, 2021, Thomas Trout (Complainant) delivered a public records request to the Vigo County Sheriff's Office (VCSO) seeking the following:

Copies of any and all public records and call recordings that pertain to a call for service at the Vigo County Sheriff's office made on March 7, 2021. The call was made between 8:00 pm and 10:30 pm and the caller requested service to 6734 N. Sprucewood St. Terre Haute, IN 47805.

While delivering his records request, Trout spoke with several people from the Sheriff's Office. Trout asserts that he was asked repeatedly why he was requesting the records, and the Chief Deputy seemingly gave the impression that if Trout did not answer why he was seeking the records, they could not disclose them. Trout contends he was also told that he would need to subpoena the records if he wished to review them. During a separate conversation with the Chief of Operations, Trout was told that the Sheriff's Office does not release 911 recordings. Following this interaction, Trout filed a formal complaint on April 8, 2020.

Upon receiving the complaint, this office investigated the matter further and found that the Vigo County Dispatch Center never received a copy of Trout's request. It was addressed to both the Dispatch Center and the Sheriff's Office, however, the Sheriff responded.

Presumptively, this was the result of some clerical mistake given that both offices are in the same building. While attempting to contact the Dispatch Center to inquire about Trout's request, Vigo County Prosecutor Terry Modesitt and the Sheriff's attorney contacted this office to discuss the situation and followed up by email as a response to the formal complaint.

Modesitt contends the county was hesitant to release any records to Trout for public safety reasons. While dispatch centers are not law enforcement agencies, due to the precedent set by *Carroll County v. Hasnie*, 148 N.E.3d 996 (Ind. Ct. App. 2020), law enforcement agencies seemingly have the ability to project that discretion on non-law enforcement agencies. The reasoning behind the county's decision is concern that Trout has requested the information of who called the VCSO so that he could potentially confront that person.

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 Vigo County Sheriff's Office and the Vigo County Dispatch Center are public agencies 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 the county's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a); -(b).

2. Trout's request

Part of the confusion surrounding this case stems from dispatch and the Sheriff's office being in the same building. While this is not unusual, Trout seemed concerned that his request was not being received by dispatch and the Sheriff's office was running interference.

While this office has long recognized that dispatch and law enforcement agencies (along with fire and ambulance) are distinct and mutually exclusive entities, the holding in *Carroll County E911 v. Hasnie*² complicates matters further.

In *Carroll County E911*, the court held that law enforcement agencies could apply its discretion to withhold investigatory records to documents and recordings not in their possession even if the custodian agency was non-law enforcement and the record was not created as part of an investigation.

This office recognizes dissonance between the statute as-written and the holding of the case. Nevertheless, *Carroll County E911* is binding precedent and it will be applied accordingly.

The county prosecutor clarified the situation in an email dated May 5, 2021, explaining that the Sheriff was not running interference between the requester and dispatch, but

² 148 N.E.3d 996 (Ind. Ct. App. 2020).

was actually using his discretion to shield disclosure of an otherwise disclosable record.

3. 911 calls generally

It bears mentioning that 911 calls are not inherently law enforcement records. They are created as part of a call for assistance to a non-law enforcement agency and not compiled (initially at least) as part of a criminal investigation. The *Carroll County E911* court recognizes this much.

Therefore, a blanket policy by a Sheriff's Office or municipal police department requiring a subpoena or blocking access to any call is inappropriate. On those rare occasions where a call might be an impediment to an investigation or public safety, law enforcement may step in, but that should be the exception and not the rule. If the General Assembly wanted to exempt all 911 calls from disclosure – as other states have – it would do so. As of the writing of this opinion, it has not.

In any event, no public record should be barred from access because a requester fails to state the purpose for the request. *See* Ind. Code § 5-14-3-3(a). Moreover, otherwise disclosable public records never need a subpoena to access. Unless there is active litigation, it is unclear from whom or how a subpoena would be obtained by the public.

While it is difficult to say exactly what transpired at the Sheriff's office between Trout and the office staff, it appears the interaction may have contributed to the filing of the complaint. This office encourages the Sheriff's office to be mindful of these considerations.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Vigo County Sheriff and dispatch center did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor