



STATE OF INDIANA

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October 25, 2010

Mr. Michael J. Shepard
DOC # 181080
Putnamville Correctional Facility
1946 W. U.S. Hwy. 40
Greencastle, IN 46135

Re: Formal Complaint 10-FC-221; Alleged Violation of the Access to Public Records Act by Evansville-Vanderburgh County Joint Central Dispatch

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging Evansville-Vanderburgh County Joint Central Dispatch ("Central Dispatch") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Central Dispatch's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that Central Dispatch violated the APRA by (1) redacting certain information from records it produced to you; (2) failing to answer ten questions regarding the general functions of the agency; (3) failing to respond to additional requests that you made for various records, including 911 recordings, event notes addenda, and run cards; and (4) "failing to redact private information referencing a juvenile in the Event Notes Section of Event ID # 2009-0009158 thereby revealing full name, DOB, description and address. [sic]"

In response to your complaint, Assistant City Attorney Joshua Mastison denies that Central Dispatch violated the APRA. He states that the redacted information is exempt from disclosure as investigatory records of a law enforcement agency. With regard to the series of questions posed by you, Mr. Mastison argues that nothing in the APRA requires a public agency to respond to each and every question and inquiry of every citizen other than through the production of public records. He notes that Central Dispatch attempted to send you additional records responsive to your request, but the records were lost as a result of your move to another facility. He claims that Central

Dispatch has attempted to respond to all of your requests and provide you with everything you are entitled to under the APRA.

ANALYSIS

The public policy of the 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.” I.C. § 5-14-3-1. Central Dispatch is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy Central Dispatch’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Mr. Mastison claims that the event notes records were redacted because the withheld information is nondisclosable under the investigatory records exception to the APRA. The investigatory records exception provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. I.C. § 5-14-3-4(b)(1). An investigatory record is “information compiled in the course of the investigation of a crime.” I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations. Moreover, it does not apply only to an investigation where a crime was charged or an investigation where it was adjudicated that a crime was indeed committed. Instead, the exception applies to all records compiled during the course of the investigation of a crime, even where a crime was not ultimately charged, and even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* Based on these standards and Mr. Mastison’s representations regarding the nature of the redacted information, it is my opinion that Central Dispatch did not violate the APRA by withholding the redacted information.

With regard to your allegation that Central Dispatch violated the APRA by failing to answer the ten questions that you submitted, nothing in the APRA requires public agencies to answer generalized inquiries. The APRA applies to the required production of existing records, but public agencies need not create new records to answer a requester’s questions. *See Opinion of the Public Access Counselor 01-FC-60*.

As to your allegation that Central Dispatch refused to respond to another request from you for records such as 911 recordings and event notes, Mr. Mastison states that Central Dispatch attempted to respond to your request but could not due to your relocation to another facility. I note that my office has also attempted to send you numerous pieces of correspondence recently that have returned as undeliverable due to a change in address. In the future, if you have pending complaints with this office or pending requests with another agency, I would encourage you to send a notification of

your new address to ensure that responses and other communications reach you. In any event, Central Dispatch did not violate the APRA if it responded to the address you originally provided.

Finally, I do not have sufficient information to determine whether or not Central Dispatch violated the APRA or another law by releasing information pertaining to juveniles. It is unclear what specific law you believe was violated. Moreover, not all juvenile information is confidential under all circumstances. *See* I.C. § 5-14-3-5. Under the APRA, public employees and officials are subject to criminal penalties for knowingly or intentionally releasing confidential information. *See* I.C. § 5-14-3-10. Accordingly, you should refer your allegations to the local law enforcement agency or prosecutor for further investigation if you believe such a crime was committed. However, because you have provided no documentation to support your claim that Central Dispatch knowingly or intentionally disclosed classified information, and because nothing else before me indicates that such a disclosure occurred, I cannot find that Central Dispatch violated section 10 of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that Central Dispatch did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Joshua Mastison