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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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AISHAH HASNIE,  
*Complainant,*

v.

CARROLL COUNTY E-911  
*Respondent.*

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Formal Complaint No.  
17-FC-167

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Carroll County E-911 (“E-911”) violated the Access to Public Records Act<sup>1</sup> (“APRA”). The Agency responded to the complaint through Cassi Lane. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 10, 2017.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## **BACKGROUND**

Aishah A. Hasnie (“Complainant”), an anchor and reporter for WXIN-TV, filed a formal complaint alleging that Carroll County E-911 violated the APRA by improperly denying her access to disclosable records.

On June 13, 2017, Hasnie mailed a records request to Carroll County E-911 seeking:

Any 911 recordings related to the November  
2016 fatal house fire in Flora.

Three days later, Cassi Lane—Lead Communicator at Carroll County E-911—denied Hasnie’s request. Lane stated that prior to the denial she referred the request to the Carroll County Sheriff’s Department and the Prosecuting Attorney and was advised to inform the Complainant that the fire was still under investigation; and therefore those agencies were exercising discretion to withhold the 911 recordings under APRA’s investigatory records exception.

As a result of the denial, Hasnie filed a formal complaint against Carroll County E-911 alleging an APRA violation. Carroll County E-911 responded to the complaint through Lead Communicator Cassi Lane who invited this office to direct any requests for information or explanation of the response to the Prosecuting Attorney Robert Ives. In addition, Lane attached a letter that Prosecutor Ives sent her—at the request of the Carroll County Commissioners’ attorney—stating his opinion on the request.

In the letter, Prosecutor Ives stated that the 911 recordings should be withheld under APRA's discretionary *investigatory records* exception for the following reasons:

The 2016 fatal fire in Flora, Indiana is still under criminal investigation;

911 calls which relate to incidents under criminal investigations are investigatory records...;

When receiving 911 calls which lead to criminal investigations, [Carroll County E-911] is a law enforcement agency as defined in I.C. 5-14-3-2.

The complaint in this case has been filed against Carroll County E-911, not the Prosecutor's Office. Even so, the agency has expressly adopted the Prosecutor's response to the complaint to "verify the basis" of the agency's denial of the records request.

### ANALYSIS

The Access to Public Records Act ("APRA") states that it is the public policy 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.<sup>2</sup> Toward that end, providing the people 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."<sup>3</sup> Carroll County E-911 is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and

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<sup>2</sup> Ind. Code § 5-14-3-1.

<sup>3</sup> *Id.*

copy the agency's public records during regular business hours unless the records are not subject to disclosure under APRA's mandatory or discretionary exemptions. *See* Ind. Code §§ 5-14-3-4(a) and (b).

The crux of this case is whether withholding the 911 recordings as *investigatory records* complies with APRA. Notably, the burden of proof for nondisclosure of a public record is on the public agency responsible for the denial. Ind. Code § 5-14-3-1. In other words, it is up to Carroll County E-911 to show why the 911 calls at issue here are investigatory records and exempt from disclosure at the discretion of the agency.

To be sure, the investigatory records of law enforcement agencies or private university police departments may be withheld from disclosure at the discretion of a public agency. *See* Ind. Code § 5-14-3-4(b)(1). Under APRA, *investigatory record* means information compiled in the investigation of a crime. Ind. Code § 5-14-3-2(i).

Here, Carroll County E-911 claims—through the opinion of the Prosecutor—that nondisclosure is appropriate because when it receives 911 calls that lead to criminal investigations it becomes a law enforcement agency under APRA; the fire is under criminal investigation; and therefore, the records may be withheld as *investigatory records* of a law enforcement agency. The Prosecutor even alludes to this Office declaring 911 calls as being unequivocally non-disclosable investigatory records. As stated below, this is not the case.

Under APRA, the term law enforcement agency means:

an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission.

Ind. Code § 5-14-3-2(q)(6). Carroll County E-911 argues that it is a law enforcement agency under APRA because it receives 911 calls which sometimes lead to criminal investigations. In *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*,<sup>4</sup> the Indiana Supreme Court held that APRA's plain language dictates that in order for an entity to be a "law enforcement agency" for purposes of APRA, the entity must be (1) "of any level of government; and (2) it must engage in the law enforcement functions identified (investigation, apprehension, arrest, or prosecution of alleged criminal offenders)."

Undoubtedly, Carroll County E-911 is an agency "of any level of government" as contemplated by APRA. Yet, there is some doubt that the agency engages in the law enforcement functions identified in APRA. The primary function of Carroll County E-911—like most similar entities—is the dispatch of medical, fire, and law enforcement services in an area. In this case, the agency argues that when it receives 911 calls that ultimately result

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<sup>4</sup> 62 N.E.3d 1192, 1197 (Ind. 2016).

in criminal investigations that it becomes a law enforcement agency under APRA for purposes of withholding 911 calls.<sup>5</sup>

The plain language of APRA and the holding of the Indiana Supreme Court in *ESPN*, do not support the claim that Carroll County E-911 is a law enforcement agency under APRA. I agree. The upshot of the agency's argument would allow any E-911 dispatch agency to masquerade as a law enforcement agency for the purpose of withholding records of those calls that *eventually* materialize into criminal investigations. This would be at odds with the plain language of APRA and the Indiana Supreme Court's interpretive holding in *ESPN*.

Even if Carroll County E-911 was a law enforcement agency under APRA, the investigatory record exception does not apply unless the information at issue *is compiled in the investigation of a crime*. Critically, not all information compiled by law enforcement is pursuant to the investigation of a crime.

For instance, it is not always clear at the time a 911 call is made—or received—whether a crime will be investigated at all. This seems even more likely to be the case—although not always—with a 911 call for a structure fire. Moreover, the Prosecutor has not stated that the 911 calls have been compiled for prosecutorial or investigatory purposes. While the Prosecutor may have the discretion to direct another agency to withhold, he must show that it is actually

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<sup>5</sup> Similarly, the Carroll County Board of Commissioners is not a law enforcement agency with the discretion to invoke the investigatory records exception absent a law enforcement agency credibly directing them to do so.

compiled in the course of an investigation and that some harm would come to the efficacy of the investigation if the calls went public.

Simply put, 911 calls are generally disclosable public records. *See* Opinion of the Public Access Counselor 17-FC-67. Indeed, there are some exceptions that would permit these calls to be withheld. Nevertheless, Carroll County E-911 has not indicated or even suggested that the 911 calls at issue here have enough—if any—law enforcement-sensitive information to justify nondisclosure.

The current and prior Public Access Counselors have provided regularly published guidance regarding 911 calls as investigatory records. Consider the following from former PAC Heather O'Neal in Opinion of the Public Access Counselor 08-FC-64:

It is my opinion that as a general premise, 911 tapes are part of the daily record of activity. It is conceivable that many 911 calls are taken and handled in a routine matter and often do not involve an alleged crime or lead to an investigation of criminal activity. It is my opinion that those 911 tapes are presumed to be public records subject to disclosure under the APRA. See I.C. § 5-14-3-3.

**CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that Carroll County E-911 violated 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