



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

ALEXIS GRAY

Complainant

v.

CITY OF FORT WAYNE

Respondent

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17-FC-67

ADVISORY OPINION

May 2, 2017

This advisory opinion is in response to your formal complaint alleging the City of Fort Wayne ("City") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 *et. seq.* The City responded to the complaint via Ms. Malak Heiny, Esq. Her response is enclosed for review. Pursuant to 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 March 16, 2017.

BACKGROUND

The complaint dated March 16, 2017 alleges the City has violated the APRA by not providing the Complainant with documents requested.

On or about March 14, 2017, Complainant request a copy of a 911 call for an identified case. The City responded by exercising its discretion to withhold the call under the investigatory records exception to disclosure pursuant to Ind. Code § 5-14-3-4(b)(1). Complainant argues the invocation of the statute was unnecessary and arbitrary.

The City responded to the complaint arguing the application of the statute was appropriate under the circumstances.



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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." *See Indiana Code § 5-14-3-1*. The City of Fort Wayne is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(m)(1)*. Accordingly, any person has the right to inspect and copy the City's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Investigatory records of law enforcement agencies may be withheld from disclosure under Indiana Code § 5-14-3-3(b)(1). There are a myriad of reasons the police may choose to exercise its discretion under this statute including protecting the integrity of an investigation, the expectation of privacy and the preservation of public safety considerations.

Prior public access counselors have provided 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*.

...

While other states have also addressed the issue of the release of 911 tapes, none who have addressed it have investigatory record exceptions as broad as the APRA's. And in states whose courts have allowed the tapes to be excepted from disclosure, the issue surrounding 911 tapes is the issue of personal privacy of the caller or the victim, which is not addressed in the APRA. It is my opinion 911 tapes may be withheld from disclosure as investigatory records of a law enforcement agency when the agency can sustain the burden of proof of nondisclosure.



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My opinion on the matter is similar to Ms. O'Neal's. While certainly not all 911 calls should be withheld under the investigatory records exemption, there could possibly be extenuating circumstances warranting its application. It is difficult to say, based on the information provided, whether this particular call should be released. At this time, I will defer to the law enforcement agency's discretion, with the caveat that the call should only be held if it jeopardizes an investigation, an expectation of privacy, or if its release presents a legitimate public safety issue.

Regards,

A handwritten signature in black ink, appearing to read "LHB", written in a cursive style.

Luke H. Britt
Public Access Counselor

Distribution:

Ms. Malak Heiny, Esq.