
OPINION OF THE PUBLIC ACCESS COUNSELOR

MARIA FLORA,
Complainant,

v.

BOONE COUNTY CENTRAL COMMUNICATION,
Respondent.

Formal Complaint No.
19-FC-40

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Boone County Central Communication violated the Access to Public Records Act.¹ Attorney Robert V. Clutter filed an answer to the complaint on behalf of the agency. 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 May 13, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This complaint involves a dispute over redactions to dispatch reports generated by the Boone County Central Communications agency (“BCCC”).

The *Lebanon Reporter* has a standing request to the BCCC for all participating agencies’ dispatch reports.

On or about May 3, 2019, Boone County Sheriff Mike Nielsen ordered the narratives be removed from all county and municipal agencies’ call reports that come through the BCCC.

On May 9, 2019, the Sheriff ordered that only the calls involving the Boone County Sheriff’s Office (“BCSO”) would be released, with portions or the entirety of the narrative redacted.

This apparently came as a result of the *Lebanon Reporter* publishing sensitive information about an investigation. To obtain other agencies’ reports, the requester would need to target each agency individually.

The Complainant takes exception to the redactions in the reports as well as the Sheriff providing only the BCSO reports but no other agencies’ reports that go through dispatch.

The Sheriff acknowledges these facts and argues the actions are appropriate based upon the sensitive information in Call for Service reports.

ANALYSIS

The primary issue in this case is what obligation a dispatch center has in releasing dispatch reports.

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 says “(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 Boone County Central Communication 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). So, unless otherwise provided by statute, any person may inspect and copy the BCCC’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a).

Still, APRA contains both mandatory and discretionary exceptions to the general rule of disclosure. *See generally* Ind. Code § 5-14-3-4.

2. Flora's Complaint

The crux of Flora's complaint is Sheriff Nielsen's policy that requires a requestor seeking to inspect or copy "Call for Service Reports" to make the request directly to the responding or investigating agency.

As a preliminary matter, it is important to distinguish between a law enforcement daily log and the "Call for Service Reports" generated by computer aided dispatch ("CAD") software, which are at issue in this complaint.

2.1 Daily Log or Record

Under APRA, law enforcement agencies are required to create, maintain, and disclose a daily log or record that lists suspected crimes, accidents, or complaints that includes the following information:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and

(D) a general description of any injuries, property, or weapons involved.

Ind. Code § 5-14-3-5(c). The record containing the information must be created within 24 hours after the suspected crime, accident, or complaint has been reported to the agency. *Id.*

That means each agency is responsible for creating and maintaining its daily log or record in accordance with APRA.

For instance, in Boone County, there will be—or should be—a daily log or record for each law enforcement agency (i.e., Boone County Sheriff's Office; Lebanon Police Department; Zionsville Police Department; Whitestown Police Department; etc.) available for inspection and copying upon request in accordance with APRA.

The Sheriff is not responsible for creating daily logs or records for any other agency. Each agency is on its own to create and maintain its daily log or record.

Even so, it appears that some agencies may use Call for Service Reports as their daily log and so long as the Call for Service records contains the requisite information, it would be an acceptable method of logging requests for assistance.²

It should be emphasized that daily log records are not considered to be investigatory records and are not able to be withheld at the discretion of a law enforcement agency. The

² It's worth mentioning that ambulance run logs are governed by a separate statute, Indiana Code section 16-31-2-11(d), and limits disclosure of personally identifiable information.

information contained in a daily log is unequivocally disclosable.

2.2 CAD-Generated Call for Service Reports

The information received by a BCCC dispatcher during a call for service is captured by computer aided dispatch (“CAD”) software in what the agency refers to as a Call for Service Report (“CSR”). Dispatch forwards the information to the units responding to a call.

The Sheriff previously provided all CSRs generated by the BCCC to the *Lebanon Reporter*.

This office cannot agree with the Sheriff’s position that the individual agencies manage access to dispatch records created or maintained by the BCCC. For purposes of APRA, the BCCC is a distinct public agency. *See* Ind. Code § 5-14-3-2(q)(2)(A).

Furthermore, under APRA, the BCCC is not a law enforcement agency.

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). In *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1197 (Ind. 2016), 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)."

Indeed, the BCCC 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 the BCCC—like most similar entities—is the dispatch of emergency medical, fire, and law enforcement services in response to 911 calls for the area.

The plain language of APRA and the holding of the Indiana Supreme Court in *ESPN*, do not support the claim that BCCC is a law enforcement agency under APRA. I agree.

Just like audio recordings or transcripts of 911 calls are disclosable public records and not law enforcement investigatory records, so too are CSRs.

In the event that a CSR or a 911 call record is so sensitive from an investigatory perspective that the document absolutely *must* be withheld to preserve the integrity of that investigation, the BCCC would need to obtain injunctive relief from a trial court in the form of a protective order on that

record. So, the BCCC may not unilaterally withhold information because it lacks the independent discretion under APRA to do so.

These situations are outliers, as evidenced by a single incident identified by the parties. One incident in what is presumably a longstanding practice should not be considered so systemic as to upset normal protocols. These outliers can be managed on a case-by-case basis without placing an unreasonable encumbrance on the BCCC.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the prior method of giving un-redacted Call for Service Reports to the media is not so burdensome of a task to be impractical when only a select few calls will ever be so sensitive as to necessitate redaction.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor