



# STATE OF INDIANA

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January 29, 2018

Ms. Tori Fater  
300 E. Walnut St.  
Evansville, IN 47720

*Re: Formal Complaint 17-FC-262*

Dear Ms. Fater,

Please be advised I am in receipt of the formal complaint filed against the Evansville/Vanderburgh County Central Dispatch ("Dispatch"). As I sometimes do, I am exercising my discretion to issue a letter as opposed to publishing a formal opinion on this matter. I am issuing a letter instead of an opinion because the City's response states that the City has produced the records you requested. However, I want to address two deficiencies with the Dispatch's denial of your request. The attorney for the City of Evansville is copied on this letter.

First, APRA provides that any denial must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record. See Indiana Code § 5-14-3-9(d). When you requested the 911 call, the Deputy Director denied your request only by stating that the call had not been released yet. The City's response acknowledged this by saying that the City's response on October 31 "contained an indication" that the denial was based on the investigatory records exemption—but this only occurred after you asked if the City was using the 911 call as a part of the investigation. I recommend that the City remind the Deputy Director of the Evansville/Vanderburgh County Central Dispatch that any denial of a record must contain the statutory authority for denying the request.

Secondly, as I discussed in a recent opinion (17-FC-167), the burden of proof for nondisclosure of a public record falls to the agency responsible for denying the request. If Dispatch is denying a record pursuant to the investigatory record exemption, Dispatch must demonstrate why the 911 call may be withheld under that exemption. This is a moot point now that the records have been provided to you, but the City should be aware of this standard.

Please do not hesitate to contact me with any questions.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name.

Luke H. Britt  
Public Access Counselor

Cc: Joshua A. Claybourn