



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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July 28, 2015

Mr. Joe C. Lawless
1796 North County Road 250 West
Greencastle, Indiana 46135

Re: Formal Complaint 15-FC-192; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Putnam County Convention and Visitor's Bureau

Dear Mr. Lawless,

This advisory opinion is in response to your formal complaint alleging the Putnam County Convention and Visitor's Bureau ("Visitor's Bureau") violated the Open Door Law, Ind. Code § 5-14-1.5-1 *et. seq.* and the Access to Public Records Act ("APRA"), § 5-14-3-1 *et. seq.* The Visitor's Bureau has responded to your complaint via counsel, Mr. Glen D. Bowman, Esq. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 19, 2015.

BACKGROUND

Your complaint dated June 22, 2015, alleges the Putnam County Convention and Visitor's Bureau violated Open Door Law and the Access to Public Records Act by failing to post a notice on the door and denying access, respectively.

On June 6, 2015, you requested the minutes and original agenda from a May 26, 2015 Visitor's Bureau meeting. You also requested at that time memoranda and minutes of an "executive meeting" on June 4, 2015 and the minutes of the officer meeting on June 4, 2015. The email was sent to cbc@coveredbridgecountry.com. The email was usually monitored by the staff at the Visitor's Bureau. But, because of issues with the administration of the board, the staff was placed on paid administrative leave at the May 26, 2015 meeting. Your wife was the executive director of the Visitor's Board. She was on paid administrative leave at the time the email was sent. Before the May 26, 2015 meeting and before being placed on administrative leave, she distributed agendas at the meeting on behalf of the Visitor's Bureau.



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Besides the removal of the staff, the board was in upheaval and a new board with old and new members met for the first time on May 26, 2015.

Your wife was removed from her position at a June 16, 2015 meeting after discussion in an executive session. You did not get a response until June 19, 2015, though a board member recovered access to the email on June 10, 2015. You also complained because an agenda was not posted outside a June 16, 2015 meeting.¹

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 Ind. Code § 5-14-3-1. The Putnam County Convention and Visitor’s Board is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Bureau’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

You sent your formal complaint to this Office on June 19, 2015 and sent the request on June 6, 2015. This exceeds the seven (7) day requirement to respond to the request and so the request is considered denied. In this case, the person who would have been most likely to respond to the request was not in a position to respond, because she was on administrative leave pending termination. According to the Bureau, “officers for the Tourism Commission were compelled to step in and conduct operations.” However, a board member did get access to the account on June 10, 2015, though it appears he did not respond to the email.

¹ Any subsequent issue filed after the submission of your June 19, 2015 complaint would need to be addressed with a new filing in order to give the agency an opportunity to respond.



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While the Visitor's Bureau improperly denied your request, it has since responded to your complaint and included the information you asked for. The board member with access to the email should have acknowledged the request, and then fulfilled the request in a time frame reasonable for the circumstances, per the APRA statute. It appears, however, the board intended to fulfill your request though it did not acknowledge it.

The ODL requires public notice of date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meetings at least 48 hours prior to the meeting, excluding Saturdays, Sundays, and legal holidays. See Ind. Code § 5-14-1.5-5.

You state there was no posted agenda of the June 16, 2015 on the front door; however, it appears as if you obtained one. According to Ind. Code § 5-14-1.5-4(a), a governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. It appears as if the notice was properly posted, however, it remains undetermined *where* the agenda was posted. Whether it was distributed prior to the meeting or made available on a table or posted on a front door is irrelevant as long as the agendas are placed in a manner that is conspicuously available to the public.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Putnam County Convention and Visitor's Bureau Board violated the Access to Public Records Act by failing to respond to your request within seven (7) days. However, the Board does not appear to have violated the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor



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