



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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July 20, 2015

Ms. Rosalie A. Jacobs
P.O. Box 330
Kingsford Heights, IN 46346

Re: Formal Complaint 15-FC-195; Alleged Violation of the Open Door Law and the Access to Public Records Act by the Town of Kingsford Heights

Dear Ms. Jacobs,

This advisory opinion is in response to your formal complaint alleging the Town of Kingsford Heights violated the Open Door Law (“ODL”) Ind. Code § 5-14-1.5-1 *et. seq* and the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq*. Kingsford Heights has responded to your complaint via Mr. Alan J. Sirinek, Esq. His response is enclosed for your review. 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 22, 2015.

BACKGROUND

Your complaint dated June 22, 2015, alleges the Town of Kingsford Heights (“Town”) violated the Open Door Law by holding an executive session on Wednesday, May 27, 2015, without 48-hours notice and by taking final action during the session. You also allege the Town of Kingsford Heights violated the Access to Public Records Act by failing to make the memorandum minutes of the executive session held on May 27, 2015 available to you in a timely manner.

Counsel admits the Town violated the Open Door Law by failing to provide proper notice of the Executive Session held on May 27, 2015, due to the incumbent Clerk/Treasurer being new to her position and unaware of the Open Door Law.

In response to the failure to take final action at a public meeting, Counsel contends any decision made by the Town Council involving personnel, including but not limited to corrective action or termination from employment and the corresponding reason for the same, is privileged information between the employer and employee, and therefore not a violation of Open Door Law.



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In response to the alleged APRA violation, Counsel acknowledges the Town unintentionally violated the law by failing to have the memorandum minutes of the Executive Session. Counsel cites a misunderstanding with the Clerk/Treasurer as a reason for the failure and assures that memorandum minutes will be available for Executive Sessions from now on.

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 Town of Kingsford Heights is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1).

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 I.C. § 5-14-1.5-5.

On May 27, 2015, the Town held an Executive Session without 48-hours notice. However, the Town states the lack of notice was due to a training issue, and not likely to occur in the future now that the Clerk/Treasurer has been made aware of the notice requirement. Nevertheless, a violation has occurred.

The ODL states that final action, such as termination of an employee, must occur at a public meeting. See Ind. Code § 5-14-1.5-6.1(c). The Town Council stated that decisions regarding personnel are privileged information between employer and employee. While the Town Council can hold an executive session to discuss the performance of an employee, the final action, or voting to terminate, must be done in a public meeting. If the position is such that the employer may terminate an employee without board approval, a vote does not have to occur. If the employee’s terms of employment dictate the employee only be removed by vote, the vote must take place in public. The information provided does not make that distinction. I would disagree in part, however, with the Town’s assertion that employee relations are ‘privileged’. It depends on the nature of the employment relationship. See also Ind. Code § 5-14-3-47(b)(8)(C) as to what information about an employee’s termination must be made public.

The ODL also states that memorandum minutes of the Executive Session should be taken, and under APRA should be made accessible to the public within a reasonable



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amount of time. See Ind. Code § 5-14-1.5-4(c). The requirements for executive session meetings are heightened under Ind. Code § 5-14-1.5-6.1(d):

The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public are modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

The Town acknowledges inadvertently violating this requirement -again, due to a training error for their new Clerk/Treasurer. Counsel assures the Town will take corrective action and will be in compliance with public access requirements.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Town of Kingsford Heights has violated the Access to Public Records Act and Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read "LHB", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. Alan J. Sirinek, Esq.