



STATE OF INDIANA

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July 29, 2015

Mr. Jeffrey Bartlett
2102 Oakenwald Drive
Long Beach, IN 46360

Re: Formal Complaint 15-FC-197; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Town of Long Beach Building Commission

Dear Mr. Bartlett,

This advisory opinion is in response to your formal complaint, which alleges that the Town of Long Beach Building Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Commission responded to your complaint via Ms. Julie Paulson, Esq. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 23, 2015.

BACKGROUND

Your complaint dated June 20, 2015 alleges the Town of Long Beach Building Commission ("Commission") violated the Access to Public Records Act by failing to provide the records you requested. You also allege a violation of the Open Door Law, alleging the occurrence of an improperly noticed meeting.

You are concerned the construction being done violates town ordinances because it was improperly divided between lots and does not have the required parking spaces. You also contend that a secret meeting occurred at some point in time, between a previous building commissioner and a building inspector, "over the consumption of beers." You contend this was improper.

In February, you attempted to view the building plans for construction in Long Beach. You were told that the Town was busy because of an audit being performed by the State. On May 25, 2015, the Building Commissioner gave you a site plan, which you feel did not provide enough information. You claim the Commissioner prevented you from taking



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a photograph of the building plans. On June 4, 2015, you again requested to view building plans for construction and were denied.

On July 10, 2015, the Commission responded to your formal complaint. It notes while you were denied the ability to take digital photographs of the building plans, this was not an attempt to deny you access to records. The Building Commissioner merely wished to verify that members of the public were allowed to take photos before allowing you to do so.

The Commission also notes it did receive your June 4 2015 request. On June 10, 2015 your request was denied. However, on June 16, 2015 the Commission informed you that you were, in fact, allowed to review the documents. On June 20, 2015 you informed the Commission you would like to review the documents on June 29, 2015.

On June 17, 2015, the Commission learned the contractor considered the building plans trade secrets and therefore protected under the APRA. The contractor holds that, under 17 U.S.C.A. Sec. 106, only the contractor has the right to reproduce the building plans. Please note this was also the subject matter of the *Informal Opinion of the Public Access Counselor 15-INF-15*, recently published by this Office on July 21, 2015.

The Commission denies the alleged secret meeting was a violation of the ODL, because it did not involve a majority of members of the Building Commission. The Commission also raises questions of timeliness.

It also denies a violation of the APRA, stating no record exists of your requests prior to May 26, 2015, likely because those requests were oral and were not submitted on the Town's forms. Nevertheless, the Commission cites a lack of reasonable particularity for your May 26, 2015 request, which apparently only stated "2120 Lakeshore Dr. & 21116 Lakeshore Dr. New Construction Homes." Counsel notes these are not documents and it is impossible to determine what you are seeking with reasonable particularity.

ANALYSIS

The public policy of the Open Door Law states that "It is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed." See Ind. Code § 5-14-1.5-1.



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While your complaint indeed is untimely pursuant to Ind. Code § 5-14-5-7 because it was not filed within 30 days of the meeting, it bears discussion. You allege the meeting was between a previous building commissioner and a building inspector, “over the consumption of beers.” A meeting is defined by the Open Door Law as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. See Ind. Code § 5-14-1.5-2(c).

From the information provided, it does not appear a majority of the members of the Building Commission was present at the meeting you describe. An individual, or even a non-majority group of members, can meet to discuss public business without notice. Social gatherings are also exempt from the Open Door Law provided the intent of the gathering is not to subvert ODL provisions.

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 Long Beach Building Commission 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 Commission’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).

As I stated in *Informal Opinion of the Public Access Counselor 15-INF-15*, the contractor and the commission may have a valid legal argument that certain portions of the blueprints and floor plans may be exempt from disclosure as a trade secret. As indicated in that *Opinion*, certain requirements must be met before categorizing it as such and withholding the document. To the extent those requirements are met, they may be withheld. It is my understanding they were merely seeking my counsel on the matter before disclosure. (*See Informal Opinion 15-INF-15*) Now that they have my analysis, you should be able to obtain the documents you seek.

You have raised an interesting point in the interim, however. You submitted to this Office a link to Zillow.com with the interior shots and floor plans for the homes in question pictured. If accurate, this would seem to erode the prong of the trade secret statute requiring the holder of the intellectual property to keep the ‘secret’ safeguarded (Ind. Code § 24-2-3-2: a trade secret is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).



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In any event, you have made your request reasonably clear to the Commission at this point. I believe they are on notice as to what you are seeking. The information which would not fall under the trade secret statute should be made available to you for inspection and copying (and photographing on your device). To the extent anything truly remains a 'secret' under that definition, the Town may continue to withhold.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Julie Paulson, Esq.