



STATE OF INDIANA

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April 8, 2015

Ms. Lori L. Caldwell
811 E. 6th Street
Hobart, IN 46342

Re: Formal Complaint 15-FC-89; Alleged Violation of the Open Door Law by the Gary Police Civil Service Commission

Dear Ms. Caldwell,

This advisory opinion is in response to your formal complaint alleging the Gary Police Civil Service Commission ("Commission") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. Seq.* The Commission has responded to your complaint via Mr. Clorius Lay, Esq., Attorney for the Gary Police Civil Service Commission. 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 March 10, 2015.

BACKGROUND

Your complaint dated March 9, 2015 alleges the Gary Police Civil Service Commission violated the Open Door Law by failing to provide notice of an executive session held on February 27, 2015. When you approached Mr. Rinzer Williams, Esq., an attorney for the board, you were informed Mr. Williams was uncomfortable sending you notice via mail because there was no proof of delivery. You maintain you were sent annual notice of meetings and were provided notice of an executive session on April 2, 2015, but not the February 27, 2015 meeting.

The Commission contends your complaint was premature. Your complaint was submitted on March 9, 2015 the same day the Commission received a response to an earlier communication from this Office regarding the issue. Additionally, the Commission disagrees with the assertion you are media. The Commission claims the determination on your status as a member of the media occurred on March 9, 2015; therefore, counsel contends there was no violation of the ODL because it was unaware of your status as the press before the executive session was held on February 27, 2015.



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ANALYSIS

It is the intent of the Open Door Law (ODL) 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.

Notice requirements for executive sessions can be found at Ind. Code § 5-14-1.5-6.1(d) and must state the specific statutory authorization allowing the executive session forty-eight (48) hours in advance of the meeting.

As this Office's determination on your status occurred on March 9, 2015, the Commission asserts there was no violation of the ODL, because it was unaware of your status. The defense the Commission was 'unaware' of your status as a member of the media is a non-starter. The communication by this Office to the Commission on March 9, 2015 was not a 'determination' you were a member of the media. It was merely a reiteration of *Advisory Opinion 14-FC-240*. In that particular Opinion, I opined the Commission had violated the Open Door Law for failure to comply with Ind. Code § 5-14-1.5-5(b)(2). It states:

The governing body of a public agency shall give public notice by delivering notice to all news media which deliver an annual written request for the notices not later than December 31 for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

- (A) Depositing the notice in the United States mail with postage prepaid.
- (B) Transmitting the notice by electronic mail, if the public agency has the capacity to transmit electronic mail.
- (C) Transmitting the notice by facsimile (fax).

It is my understanding you historically held yourself out as a reporter covering the Commission. You have requested individualized notice as a member of the media in years past before December 31 of the prior year. And this Office has addressed your grievances against the Commission since at least 2006. (See generally, *Opinion of the Public Access Counselor 06-FC-54*). Regardless of the status of your news agency's masthead, the Commission was on notice you were a reporter and a member of the press. It matters not which media outlet you represent. If you ask before December 31 as a



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reporter, you are entitled to the notice at the address you provide. Apparently, you have asked for the notice to be sent to you at a specific address, however, the Commission deems it satisfactory to send it generally to the newsroom of the Chicago Tribune. You do not work out of the newsroom.

Ind. Code § 5-14-1.5-5(b)(2) does indeed give the Commission the option to transmit via facsimile, mail or email notice. The Commission's preferred method of service is facsimile transmission. This is problematic because you indicate you do not use a fax machine. Therefore, while it is acceptable for the Commission to select facsimile transmission as their preferred method, I encourage the Commission to reexamine that decision in a light most favorable to transparency. It should not be a substantial burden to email you instead of transmitting to you a facsimile notice.

Instead of making a determination as to a violation, I deem it more constructive to make a recommendation to the Commission. I recommend it would be best practice to email Ms. Caldwell a digital copy of the notice to an email address she provides. This action satisfies the notice requirement to the press and provides a digital paper trail for service.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Clorius Lay, Esq.