



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 23, 2016

Ms. Laurie Morrison
432 Melrose Drive
New Whiteland, Indiana 46184

Re: Formal Complaint 16-FC-79; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Town of New Whiteland Town Council

Dear Ms. Morrison:

This advisory opinion is in response to your formal complaint alleging the Town of New Whiteland Town Council ("Town") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. Seq. and the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Town has responded via counsel, Mr. J. Lee Robbins. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaints received by the Office of the Public Access Counselor on April 7, 2016.

BACKGROUND

Your complaint dated April 6, 2016 alleges the Town of New Whiteland Town Council violated the Access to Public Records Act by failing to acknowledge your records request. You also allege the Town of New Whiteland Town Council violated the Open Door Law by changing meeting locations without proper notice.

On April 5, 2016, the Town conducted a meeting one hour later than advertised on the town website; however, you contend the notice posted at the door of the Town Hall was improper because you believe the notice should have been at the utility building.

On April 7, 2016 you hand-delivered a records request to a secretary at the Town Hall, but contend you did not receive an acknowledgement within 24-hours.

On April 19, 2016 the Town responded. The Town contends the notice was proper because notice was posted at the Town Hall, which is the Town's principal office. The Town contends its actions regarding your records request were proper because the Town did not deny you access.

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

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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 state in your complaint you hand-delivered your request to a secretary. With regard to in-person delivery of records requests, this Office has held on numerous occasions an in-person delivery which is accepted in-person by agency staff could be considered an acknowledgment simultaneous with your request. There is not necessarily a statutory need for follow-up correspondence, as you insist, because you are already aware your request was received. Best practice would dictate you receive a written receipt of your request. This is not required by law – an acknowledgement can be oral – but, it is good customer service to follow-up with a written acknowledgment. I recommend the Town implement this practice going forward. In any case, you received a timely production of the video recordings you sought within ten (10) calendar days of the request.

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 Indiana Code § 5-14-1.5-1*. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See Indiana Code § 5-14-1.5-3(a)*.

A majority of a governing body which gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. *See Indiana Code § 5-14-1.5-5(a)*.

Public notice shall be given by the governing body of a public agency as follows: The governing body of a public agency shall give public notice by posting a copy of the notice **at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.** *Indiana Code § 5-14-1.5-5(b)(1)*.

The Town has stated its principal office is the Town Hall. There is no requirement under the ODL that additional notices be placed at the location of the meeting, as long as the Town Hall notice indicates where the meeting is to be held. Therefore, as long as the Town had a notice at the Town Hall, it has met its obligation under the ODL.

The Town has also stated it placed notice of the time change at the Town Hall. The Town website conspicuously states all meetings are to be held at 5:00 p.m., unless otherwise noticed. The physical notice at the Town Hall indicated the time change. It was appropriately posted at least 48-hours in advance of the meeting giving interested members of the public the opportunity to attend at 6:00 p.m., instead of 5:00 p.m. Based on the information provided, it does not appear as if the time of the meeting was changed in order to subvert the Open Door Law or cause undue confusion.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Town of New Whiteland Town Council has not violated the Access to Public Records Act nor 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

Cc: Mr. J. Lee Robbins, Esq.