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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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PATRICIA BOCK,  
*Complainant,*

v.

NASHVILLE TOWN COUNCIL,  
*Respondent.*

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Formal Complaint No.  
17-FC-170

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Nashville Town Council (“Council”) violated the Open Door Law<sup>1</sup> (“ODL”). The Commission responded by and through Counsel James T. Roberts on July 30, 2017. The response is enclosed for review. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 12, 2017.

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<sup>1</sup> Ind. Code §§ 5-14-1.5-1 to -8.

## BACKGROUND

Patricia Bock (“Complainant”) contends that the Nashville Town Council violated the ODL by providing improper public notice of, and taking final action in an executive session.

On May 15, 2017, the Council held an executive session to discuss strategy with respect to threatened litigation. Bock contends that no litigation was actually threatened specifically in writing.

A planned development in the area known as *Firecracker Hill* set off a rift between the Town of Nashville and the Brown County Water Utility as to which utility would service the development. The Brown County Water Utility—through its attorney—sent a letter to the Town expressing its unequivocal view that it should be the utility servicing the new development.

On May 15, 2017, the Council claims it held an executive session in order to develop strategy to defend any action that may be brought by the Brown County Water Utility.

The Town denies that an ODL violation has occurred. Specifically, it responded to the formal complaint alleging that it considers the letter to be a threat of litigation. It also considers the filing of a petition to the Indiana Utility Regulatory Commission (“IURC”) for the establishment of an exclusive service territory to be litigation, which it subsequently filed. Ultimately, the Brown County Water Utility indeed filed a lawsuit on June 20, 2017.

## ANALYSIS

It is the intent of the Open Door Law (“ODL”) that 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. Subsection 6.1 of the ODL provides an exception that allows public agencies to conduct executive sessions, which are meetings closed to the public in order to discuss strategies with respect to certain specified topics.

The General Assembly has carved out an exception authorizing an executive session for the purpose of taking official action on strategy with respect to pending litigation or litigation specifically threatened in writing. *See* Ind. Code § 5-14-1.5-6.1(b)(2)(B). Given the context and tone of the letter sent from the Brown County Utility—and the fact it came from the Utility’s attorney—it can be reasonably be interpreted as a threat of litigation. While this Office scrutinizes executive sessions strictly, I believe it is reasonable under the circumstances to assume litigation was forthcoming.

Therefore, while I do conclude the executive session was justified, I do take exception to the portion of the Town’s response which declares “litigation” to include “any administrative proceeding under State law.” The ODL—under subsection 6.1(b)(2)(B)—expressly uses the language “any administrative *law* proceeding.” While a small semantic difference, a great distinction is implicated. Under the Town’s definition, any application for licensure or permit, request for assistance, grant application, or submission for approval to any governmental entity would be considered litigation. This is not so. While a petition for approval before the IURC

is an administrative function, it is not an administrative law proceeding. An administrative law proceeding is an appeal of a state agency action—under Ind. Code § 4-21.5-1 et seq.—or other non-judicial *adversarial* proceeding. While this does not affect the ultimate conclusion in this case, it bears mentioning.

### CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor the Town of Nashville did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', with a stylized flourish extending from the bottom.

Luke H. Britt  
Public Access Counselor