
OPINION OF THE PUBLIC ACCESS COUNSELOR

JULIA M. CHRISTENSEN,
Complainant,

v.

WESTCHESTER PUBLIC LIBRARY BOARD,
Respondent.

Formal Complaint No.
17-FC-264

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Westchester Public Library Board (“Board”) violated the Open Door Law¹ (“ODL”). The Library responded on December 4, through director Leea Yelich. 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 November 17, 2017.

¹ Ind. Code §§ 5-14-1.5-1 to -8

BACKGROUND

Julia M. Christensen (“Complainant”) filed a formal complaint against the Westchester Public Library alleging the Board violated the state’s Open Door Law (“ODL”). Christensen claims the Board met in an executive session without proper public notice.

On October 19, 2017, the Library Board held a properly noticed executive session at 7:00 p.m. Following the private meeting, a special public Board meeting was to be held at 8:30. Christensen contends that the Board held an additional executive session at 9:00 p.m. During that meeting, the Board allegedly took the action of supporting the firing of an employee. In support of her claim, Christensen obtained surveillance footage of the Board leaving the second meeting at approximately 11:30 p.m.

Christensen also alleges that the arrangement of the meeting location is insufficient for the general public and for any disability accommodations.

The library’s director, Leea Yelich, responded to the complaint by explaining the timeline of the executive session and the meeting. Specifically, Yelich contends that when it became apparent that the executive session would go long, the Board suspended the session so the members could go into the public meeting space and cancel the special meeting. Afterward, the Board resumed the executive session and re-scheduled the public meeting for five days later.

As for the accommodation issue, the Board contends it has held its meetings in the same location for forty-four years, and the meetings are typically sparsely attended. Neither

party suggests an accommodation was ever requested, much less denied. The meeting in question may have been unusually crowded due to the subject matter of the potential termination of an employee.

ANALYSIS

The public policy of the Open Door Law (“ODL”) is 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* Ind. Code § 5-14-1.5-1. Simply put, unless an exception applies, 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* Ind. Code § 5-14-1.5-3(a).

The public may, however, be excluded from certain meetings, such as executive sessions. *See* Ind. Code § 5-14-1.5-6.1(b). Notably, a public agency may hold an executive session only in the specific instances set out by statute. *Id.* What is more, a public agency must provide notice of any executive session 48 hours prior to the meeting. Ind. Code § 5-14-1.5-5(a). The notice must include date, time, and place of the meeting. Ind. Code § 5-14-1.5-4(a). In addition, the notice of an executive session *must* also state the subject matter of the meeting *by reference to the specific statutory instance* or instances for which the meeting may be held. Ind. Code § 5-14-1.5-6.1(d) (emphasis added).

Here, the Library Board met in executive session to discuss the job performance evaluation of an individual employee. It appears as if the public meeting could very well result in a

termination decision and therefore was more heavily attended than usual.

In accordance with Indiana Code section 5-14-1.5-6.1(e), a governing body may not conduct an executive session during a meeting and a meeting may not be recessed and reconvened with the intent of circumventing the Open Door Law.

There is no indication the Board intended to prejudice the public by canceling the regularly scheduled meeting and hold bookending executive sessions. Rather, the original session simply went long and interfered with the start of the public portion of the meeting. The Board simply opened and immediately adjourned the public meeting and resumed the executive session. No substantive issues were discussed between commencement and adjournment nor were any votes taken.

While the narratives provided to this Office are not entirely clear – and the situation may have been handled with a bit more finesse – there is no element of obfuscation or inappropriate action as it pertains the executive session based upon the information provided. Furthermore, there is also no information to indicate the Board had advance knowledge of a larger crowd to necessitate a larger meeting room.

As for the issue of disability access, Indiana Code section 5-14-1.5-8(d) states a public agency may not hold a meeting at a location that is not accessible to an individual with a disability. Here, Christensen does not suggest the location itself is inaccessible to anyone with a disability, but rather the room was *arranged* in a manner that does not technically meet ADA standards. Furthermore, Christensen does not suggest the Board denied anyone with a disability access or

the ability to observe and record the meeting due to a deficiency in the *location* of the meeting.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Westchester Public Library has not violated the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor