

February 8, 2005

Greg Holderbaum
c/o Concerned Citizens of Burlington
P.O. Box 253
Burlington, IN 46915

*Re: Formal Complaint 05-FC-10; Alleged Violation of the Open Door Law by the
Burlington Town Council*

Dear Mr. Holderbaum:

This is in response to your formal complaint alleging that the Burlington Town Council (“Council”) violated the Open Door Law by meeting without posting notice. I find that the Burlington Town Council did not violate the Open Door Law.

BACKGROUND

You allege in your formal complaint that on January 7, 2005, at approximately 10:00 a.m., Council members Wayne Swain and Norman McGill were meeting at town hall in Burlington with Tammy Dyer, the Town’s Clerk-Treasurer, in attendance as well. I take it from the context of your allegations that you observed the two members speaking with each other and with Tammy Gill, from which you infer that the two council members were discussing Town business.

I sent a copy of your complaint to the Town. The Town’s legal counsel Florence Anne Briggs responded in writing, providing verified statements of the two council members and Clerk-Treasurer Dyer. To summarize their statements, Mr. Swain and Mr. McGill arrived at different times at the town hall office of the Council. At some point during the late morning of December 7, 2004, Council members Swain and McGill spoke to one another about the bad weather that the area had been experiencing. This conversation ensued with a resident of the town who was present as well. Nothing in their statements indicates that the Council members spoke about anything other than the bad weather. Also, each avers that there was no meeting held on December 7. According to the town attorney, the Burlington Town Council has three members.

I have enclosed a copy of the Town's response for your reference.

ANALYSIS

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. Ind.Code 5-14-1.5-3(a). A "meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include a social or chance gathering not intended to avoid the Open Door Law. IC 5-14-1.5-2(c). "Official action" means to receive information; deliberate; make recommendations; establish policy; make decisions; or take final action. IC 5-14-1.5-2(d). "Public business" is defined as any function upon which the public agency is empowered or authorized to take official action. IC 5-14-1.5-2(e). "Deliberate" means a discussion which may reasonably be expected to result in official action. IC 5-14-1.5-2(i).

These many definitions lead me to conclude that no violation of the Open Door Law occurred on December 7, assuming the statements of the Council members and Clerk-Treasurer are accorded veracity, and assuming that no other matters were discussed other than those appearing in their statements.

It appears that a gathering of a majority of the Council occurred on December 7, since two of the three Council members were in the same office and spoke to one another. Potentially, a meeting could have occurred had the Council members been gathered to take official action upon public business. However, the topic of discussion was reportedly the bad weather, which would not be public business of the Council (contrasted with a discussion of the Town Council's response to the bad weather, which may well be public business).

On this record, which includes your sole allegation that the Council members were seen in the town hall together for about 45 minutes, and which includes the verified statements that disclaim any discussion of public business, I cannot conclude that the Town Council violated the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that Burlington Town Council did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Florence Anne Briggs