

August 14, 2006

*Sent Via Facsimile*

Brenda Wadkins  
504 N. Jefferson Street  
Silver Lake, IN 46982

*Re: Formal Complaint 06-FC-122; Alleged Violation of the Open Door Law and the  
Access to Public Records Act by the Town of Silver Lake*

Dear Ms. Wadkins:

This is in response to your formal complaint alleging that the Town of Silver Lake (“Town”) violated the Open Door Law and the Access to Public Records Act.

#### BACKGROUND

Your complaint sets out four allegations. The first regards the Access to Public Records Act. You had requested notices to newspapers, agendas, and meeting minutes for the May 15 and May 31 meetings. You complain that you received many of the records that you requested in your June 26 request, but the Town omitted a notice to the Fort Wayne Journal Gazette and the May 31 executive session minutes.

As for your Open Door Law allegations, you state that 1) the notice to the Times-Union for the May 31 executive session was not faxed until 9:29 on May 30 and the notice did not say whether the executive session was at 6:30 a.m. or p.m. In addition, it was “missing vital information” and was not published; 2) the May 30 notice faxed to the Times-Union did not reference a specific enumerated instance for which an executive session may be held, and you believe the discussion should have been in a public meeting; and 3) the two employees who were hired by the Town in June 2006 should have been hired in a public meeting.

I sent a copy of your complaint to the Town Clerk Treasurer, Angela Glass. Ms. Glass’s response is attached for your reference. Ms. Glass did not send the minutes of the executive

session because she believed that those are not public; she only needed to provide what the meeting was about, and those documents were given to you. There was no notice to the Fort Wayne Journal Gazette because that newspaper is not a local one to which she would send a notice.

With respect to the other allegations, Ms. Glass confirmed that the notice to the Times-Union was not sent timely, but the late notice was an anomaly. Ms. Glass contends that the executive session notice was sufficiently specific. She stated that the executive sessions were for contract negotiations with Multi-Township EMS. The sessions were in regards to some remodeling expenses and fees that needed to be put into a contract format.

With respect to the employment decisions, the deputy clerk was hired by Ms. Glass and did not need the approval of the Town Council. Ms. Glass did not defend the Council's decision to hire a part-time person in an executive session, and Ms. Glass stated that her efforts to persuade the Town Council to vote on the hiring of the part-time person in a public meeting were not heeded. However, the Town Council now knows that it cannot vote on any measure in executive session, and she apologized for the Council's voting in the executive session.

## ANALYSIS

The intent and purpose of the Open Door Law is that "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." Ind. Code § 5-14-1.5-1. The provisions of the Open Door Law are to be "liberally construed with the view of carrying out its policy." IC 5-14-1.5-1. The Town Council is a governing body subject to the Open Door Law. IC 5-14-1.5-2(b)(2). Therefore, all meetings of the Town Council "must be open at all times for the purpose of permitting members of the public to observe and record them." IC 5-14-1.5-3 (emphasis added).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. IC 5-14-1.5-5(a). Public notice shall be given by posting a copy of the notice at the principal office of the public agency holding the meeting, and by delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. IC 5-14-1.5-5(b). There is no requirement in the Open Door Law that the media publish the notice of a meeting or an executive session.

Notice of an executive session must state, in addition to the date, time, and place of the meeting, the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b) of IC 5-14-1.5-6.1. IC 5-14-1.5-6.1(d). A final action must be taken at a meeting open to the public. IC 5-14-1.5-6.1(c). A final action means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. IC 5-14-1.5-2(g). A governing body may hold an executive session only for the purposes enumerated under section 6.1 of the Open Door Law.

The governing body shall keep memoranda for all meetings and executive sessions. IC 5-14-1.5-4(b); IC 5-14-1.5-6.1(d). For executive sessions, the requirements in section 4 of the Open Door Law for memoranda and any minutes being made available to the public is modified in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes that no subject matter was discussed in the executive session other than the subject matter specified in the public notice. IC 5-14-1.5-6.1(d).

With respect to your allegations that you were denied the notice of the meetings sent to the Fort Wayne Journal Gazette, since no notice was sent to that newspaper, it was not a denial of access when you did not receive a copy of the notice. Ms. Glass states that she did not send a notice to the Journal Gazette because the local paper is not the Journal Gazette. However, the issue with respect to the Open Door Law is whether the Journal Gazette sent a request for notices of the Town to the Town by January 1, 2006. If any media notified the Town that it wanted to receive such notices, it is irrelevant that the media is not local, since the Open Door Law does not limit media notices to only local media outlets. I have no information regarding whether the Journal Gazette sent the Town a request for notices, so I make no finding with respect to whether the Town violated the Open Door Law in this respect. There is no requirement that notice of a meeting or executive session be published in a newspaper; hence, I find that the Town did not violate the Open Door Law with respect to this allegation of your complaint.

The Town did violate the Open Door Law *if* it failed to maintain memoranda of the executive session or failed to disclose the memoranda to you. Although the memoranda are different than that required for a public meeting, memoranda must be kept during the meeting and are to be made available within a reasonable time after the meeting ends. *See* IC 5-14-1.5-4(c). If you complain that you did not receive minutes because the document you received did not meet the requirements of IC 5-14-1.5-4(b) where it omitted the general substance of the matters proposed, discussed, or decided, then your complaint is without merit.

The Town admits that it did not timely provide notice of its May 31 executive session to the Times-Union. This was a violation of the Open Door Law. More concerning than the untimely notice, however, is the fact that the notice did not state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b) of IC 5-14-1.5-6.1. No citation appears in the notice, and the notice recites that the Town Council “will have an executive session...to hold contract negotiations with Multi-Township EMS.” This purpose is not one for which an executive session may be held. Therefore, the executive session of May 31 was held in violation of the Open Door Law. Contract negotiations with bargaining adversaries must be held in a public meeting.

Ms. Glass stated that she hired the deputy clerk herself. If the Town Council did not gather to hire the deputy clerk, no violation of the Open Door Law could occur. However, Ms. Glass acknowledges that the Town Council did discuss hiring the part-time employee during a closed executive session, and even voted to hire the individual. Although a governing body may receive information about and interview prospective employees in an executive session, *see* IC 5-14-1.5-6.1(b)(5), any final action must occur in a public meeting.

## CONCLUSION

For the foregoing reasons, I find that the Town of Silver Lake violated the Open Door Law when it held an executive session for contract negotiations and when it voted to hire an employee. In addition, the Town was required to send notice of its meeting to the Times-Union at least 48 hours in advance of the May 31 meeting.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Angela Glass