

November 5, 2007

Paul Czupryn  
3560 South 850 West  
San Pierre, Indiana 46374

*Re: Formal Complaint 07-FC-331; Alleged Violation of the Open Door Law by the  
Terre Haute Police Department Merit Commission*

Dear Mr. Czupryn:

This is in response to your formal complaint alleging the Terre Haute Police Department Merit Commission (“Commission”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by failing to provide proper notice for an executive session. I am also at this time addressing your informal inquiry requests submitted on the same date as this formal complaint. I have enclosed the Commission’s response to your complaint for your reference. It is my opinion the Commission did not violate the Open Door Law.

#### BACKGROUND

In your complaint you allege the Commission scheduled an executive session for October 17, 2007. You further allege the Commission did not provide notice of the meeting at either the office of the agency, because there is no office, or the location where the meeting was to be held. You further allege that no notice was provided to the media regarding the meeting. You were notified of the meeting and attended the meeting with your attorney. The topic of the meeting was your removal from the list of candidates for hire by the Commission. You filed your complaint on October 29, 2007. You requested priority status for the complaint pursuant to 62 IAC 1-1-2, indicating you intend to file an action in court under the ODL. Because you indicate you intend to file an action in court, I am issuing this opinion within seven days of receipt pursuant to I.C. §5-14-5-10.

You have also requested an informal opinion regarding previous meetings of the Commission. You allege the Commission held executive sessions on August 15, 2007 and August 22, 2007 and a special meeting on August 22, 2007. You allege there was no posted notice for the two executive sessions. Regarding the special meeting, you allege the notice was posted at City Hall, which is not where the office of the Commission nor the meetings of the Commission are located. You were in attendance at the August 15 meeting. You were not in

attendance at the August 22 executive session, but you were planning to attend the August 22 special meeting, which was cancelled close to the scheduled start time.

The Commission responded to your complaint by letter dated November 2 from attorney Mark Hassler. Mr. Hassler explains that the Commission is responsible for the hiring, firing, promotion and substantive discipline for members of the Terre Haute Police Department. Your name was placed on the hiring list for the Department by September 2, 2006 action of the Commission. In late July 2007, the Commission received information regarding your appointment to and subsequent resignation from the Indiana State Police Recruit Academy. The Commission contends this new information was the basis for the Commission's concern regarding your future employment.

The Commission indicates you attended the regular meeting of the Commission on August 15, 2007, at which time you were questioned regarding your departure from the Indiana State Police Academy. After hearing your responses, the Commission scheduled an executive session on August 22 to conduct a more detailed interview. The Commission contends that notice was posted, copies of the notice were sent to the requesting media, and correspondence was sent to your attorney. Just prior to the start of the meeting, your attorney indicated he had a scheduling conflict and would be at least an hour late. In addition, one of the members of the Commission was admitted to the hospital. For those reasons, the meeting was cancelled.

A new executive session was scheduled for October 17, 2007. The Commission contends the meeting was conducted pursuant to Ind. Code. §5-14-1.5-6.1(b), to receive information about and interview prospective employees. The Commission submitted an affidavit of Lynn Adams, who is responsible for creating and posting public notice of the Commission. Ms. Adams affirms that she prepared notice for the meeting, sent notice to the media, and posted the notice on a public board at City Hall, which serves as the principal office of the Commission. The Commission has provided to me copies of the various notices. The Commission affirms the attendance at the meeting as you indicated; in attendance were the commissioners, Mr. Hassler, your attorney, and you.

Following the executive session, the Commission held its regular meeting. At that meeting, a motion was made to remove you from the current hiring list. Notice of such was sent to you through your attorney.

The Commission further contradicts claims made by you that the Commission has been the subject of numerous lawsuits regarding its meetings and hiring practices.

#### ANALYSIS

It is the intent of the Open Door Law 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. I.C. §5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, 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. I.C. §5-14-1.5-

3(a). Executive sessions may only be conducted for the enumerated instances listed in the ODL. I.C. §5-14-1.5-6.1.

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. §5-14-1.5-2(c).

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 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. §5-14-1.5-5(a). Notice shall be given by posting a copy of the notice at the principal office of the public agency or at the building where the meeting is to be held if no principal office exists and by delivering to the news media who submit an annual request for notices by January 1. I.C. §5-14-1.5-5(b)

A person denied the right to attend any public meeting of a public agency in violation of I.C. §5-14-1.5 or any other right conferred by I.C. §5-14-1.5 or any other statute or rule governing access to public meetings may file a formal complaint with the counselor or may make an informal inquiry. I.C. §5-14-5-6.

Here, you make several allegations regarding notice for meetings held by the Commission. You filed your complaint specifically regarding the October 17 executive session. You were invited to and attended that meeting. As such, it is my opinion you do not have standing to file a formal complaint or make an informal inquiry under I.C. §5-14-5-6. Regarding that meeting, though, it is my opinion the Commission did not violate the notice provision of the ODL. The Commission has provided an affidavit of the person responsible for preparing notice, indicating notice was posted at the principal office of the Commission in addition to being delivered to the news media who had requested such notice. If the principal office of the Commission is indeed at City Hall as Mr. Hassler indicates, I see no violation of the ODL.

Regarding the August 15 meeting, the Commission again indicates it provided notice of the meeting, which was a regular meeting of the Commission rather than an executive session. The Commission did not provide an affidavit of such, which is to be expected since the Commission’s response was intended to address only your complaint regarding the October 17 meeting. But the Commission does indicate proper notice was provided for the meeting. If the notice was posted similarly to that posted for the October 17 meeting, I again see no violation of the ODL.

Regarding the meetings scheduled for August 22, I understand that again the Commission contends notice was posted for the meetings. Nothing in the ODL prohibits an agency from cancelling a scheduled meeting, even a few minutes after the scheduled start time. I understand one of the two reasons the meeting was cancelled was because your attorney had a scheduling conflict. In addition, a member of the Commission had been hospitalized. Certainly these are acceptable reasons for postponing a meeting.

CONCLUSION

For the foregoing reasons, it is my opinion the Commission did not violate the Open Door Law.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Mark Hassler, Attorney, Terre Haute Police Department Merit Commission  
George Ralston, Chief, Terre Haute Police Department