

May 14, 2007

Teresa L. Torres
9111 Broadway, Suite A
Merrillville, IN 46410

*Re: Formal Complaint 07-FC-95; Alleged Violation of the Open Door Law by the
Indiana Council on Independent Living*

Dear Ms. Torres:

This is in response to your formal complaint alleging that the Indiana Council on Independent Living (“ICOIL”) violated the Open Door Law.

BACKGROUND

You allege that the March 17, 2007 meeting of the ICOIL was held without public notice of the changed location. The location was changed allegedly because the security guard cleared the room in the middle of the meeting due to a disturbance caused by a member of the public who would not desist from interrupting the meeting. The council chair announced that the meeting, which you term a “facilitated discussion”, would be reconvened at another location several miles away, but the public would not be allowed to attend.

You also allege that you were not informed of the cancellation of the April 17 meeting although you are a member of the ICOIL. You then happened upon a posting at the website of the Indiana Family and Social Services Administration that showed that a meeting of the ICOIL would be held on Tuesday, April 17, a date that differs from the regularly scheduled monthly meetings held the second Wednesday of each month. When you inquired of the council chair as to how the decision had been made to deviate from the regular meeting schedule, she informed you that the decision had been made by the majority of the council after they had relocated the March meeting.

Finally, you claim that the council chair has a practice of allowing public comment only when she chooses to based on who is in the audience rather than establishing a consistent policy or practice that affords equal opportunity.

I sent a copy of your complaint to the ICOIL. Carol Baker, Assistant Director of the Bureau of Rehabilitation Services, submitted a response on behalf of the ICOIL. Ms. Baker averred that the management of the facility asked the ICOIL to leave the building after a member of the public continued to interrupt the training session. At that, the ICOIL decided to meet at the Indianapolis Resource Center for Independent Living. The address of the changed location was posted on a flip chart and directions to the Center were left in the original meeting place for the public. Ms. Baker stated that the meetings are open to the public but “the regularly scheduled meeting did not occur due to the change in location. Therefore no regularly scheduled meeting was held March 17.” Also, no meeting was held on April 17 due to the same circumstances.

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. Ind. Code 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. IC 5-14-1.5-3(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. IC 5-14-1.5-2(c). “Official action” means to 1) receive information; 2) deliberate; 3) make recommendations; 4) establish policy; 5) make decisions, or 6) take final action. IC 5-14-1.5-2(d).

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. Ind. Code 5-14-1.5-5(a). Public notice shall be given by the governing body of a public agency by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. In addition, the governing body shall deliver 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). In addition, a state agency (as defined in Indiana Code 4-13-1-1) shall provide electronic access to the notice. IC 5-14-1.5-5(b)(2). Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. IC 5-14-1.5-5(c).

If a meeting is to be reconvened at a different location, notice of the new location is not required where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda. IC 5-14-1.5-5(a).

It is difficult to discern the ICOIL's answer to your complaint that the March 17 meeting was reconvened in a different location and closed to the public. Ms. Baker stated that no regular meeting occurred on March 17 because of the change in location, yet there is no evidence to indicate that a majority of the ICOIL were not gathered at the Indianapolis Resource Center for the purpose of taking official action on public business. The training session/facilitated discussion would meet the definition of official action under IC 5-14-1.5-2(d). If the ICOIL reconvened the meeting in accordance with IC 5-14-1.5-5(a) by announcing the new location at the original meeting and recording the reconvened meeting in the minutes or memoranda, then no notice was required of the new location. However, the meeting at the new location should have been open to the public. If it was not, the ICOIL violated the Open Door Law.

Your allegation that the decision to change the April monthly meeting to Tuesday, April 17 must have occurred behind closed doors was not directly addressed in ICOIL's response. If a majority of the ICOIL gathered to discuss a new meeting date for April and failed to post notice, then this meeting violated the Open Door Law. Any meeting that is different from the regularly scheduled meetings would be subject to a 48-hour notice requirement, but if the April 17 meeting did not occur, the ICOIL did not violate the Open Door Law by failing to post the notice.

Finally, you argue that the council chair does not adhere to a set policy of allowing or disallowing public comment at meetings. Public comments are not required in the Open Door Law. Whether or not a public agency exercises its discretion in a fair and equitable manner is a matter beyond the scope of the Office of the Public Access Counselor.

Sincerely,

Karen Davis
Public Access Counselor

cc: Carol Baker