



# STATE OF INDIANA

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November 4, 2013

Ms. Tina M. Hall and M. Clarence L. Hall  
604 Utica-Sellersburg Rd.  
Utica, IN 47130

*Re: Formal Complaint 13-FC-290; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Utica Town Board*

Dear Mr. and Mrs. Hall,

This advisory opinion is in response to your formal complaint alleging the Utica Town Board ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board has responded to your complaint through Mr. Niles D. Driskell, Esq. His response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 3, 2013.

## BACKGROUND

Your complaint alleges the Utica Town Board violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(a). You also allege they are in violation of the Open Door Law, Code § 5-14-1.5 *et. seq.*; by holding meetings without public notice or the opportunity for members of the public to observe.

You allege that on September 10, 2013, you submitted to the Board a request for copies of minutes of the Zoning Board meetings from 1989 and 1997-2001. You were informed on September 18, 2013 that all minutes responsive to your request were made available to you with the exception of the minutes from 1989 and 1998 which could not be found.

On October 16, 2013, the Board, through Mr. Driskell, responded to your formal complaint contending your formal complaint lacked specificity to formulate a thorough response. Nonetheless, they deny there has been a violation of the APRA or the ODL.

## ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Utica Town Board is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Board’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The Board’s response indicates they provided over 300 pages of documentation for your inspection. In the acknowledgement of your request; however, the Clerk-Treasurer admits certain minutes of historical meetings could not be found. If the Board has not maintained those minutes, then they have not met their obligation under the retention schedules for local governments set forth by the Indiana Commission on Public Records found at [http://www.in.gov/icpr/files/county\\_general.pdf](http://www.in.gov/icpr/files/county_general.pdf).

The retention schedule states that minutes of meetings must be kept in perpetuity and are considered critical records under Ind. Code § 5-15-5.1-12. If they have been destroyed or lost, the Board is in violation of the APRA under Ind. Code § 5-14-3-4 and 7.

As to your allegation, that the Board violated the Open Door Law, it is the intent of the ODL 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. See I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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 I.C. § 5-14-1.5-3(a).

You allege in your complaint (and admitted by the Board), that Board members have been seen at local establishments together. According to the Board’s website, it appears as if there are five Board members. Your complaint states there have been three members seen at the local establishments together. This would constitute a majority and a quorum of the Board thereby triggering the Open Door Law. See Ind. Code § 5-14-1.5-2 (c).

You have not alleged in your complaint whether these gatherings are held to discuss official public business. If they are, then this is in violation of the Open Door Law under Ind. Code § 5-14-1.5-1 mandating that all meetings be held openly. Social gatherings of

members of a governing body; however, do not constitute a meeting falling under the purview of the ODL. See Ind. Code § 5-14-1.5-2(c)(1). These social gatherings should not include any discussion of any Board business. Although the evidence provided does not suggest any violation, the Board should be especially mindful of the appearance of a closed meeting when socializing.

#### CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Utica Town Board has violated the APRA regarding the destruction or loss of records, but has not violated the Open Door Law unless public business is discussed at the social gatherings you reference in your complaint.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

cc: Mr. Niles D. Driskell, Esq.