



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

June 25, 2014

Mr. and Mrs. Barney and Sheila Beers  
110 Logan  
Argos, IN 46501

*Re: Formal Complaint 14-FC-118; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Argos Town Council*

Dear Mr. and Mrs. Beers,

This advisory opinion is in response to your formal complaint alleging the Argos Town Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. and the Open Door Law ("ODL") Ind. Code § 5-14-3-1 et. seq. The Council provided a response to your complaint via Mr. Derek Jones of the law firm of Jones Huff & Jones, attorneys for the Council. 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 June 2, 2014.

## BACKGROUND

Your complaints dated May 28, 2014 alleges the Argos Town Council violated the Open Door Law by scheduling Council meetings during your church services and violating your Constitutional right to free speech by not allowing members of the public to speak during meetings. Additionally, you allege the Council violated the Access to Public Records Act by not providing you a list of hazardous waste materials the State of Indiana prohibits from entering its borders. Your complaints have been consolidated for convenience.

Your first complaint alleges the Council schedules their meetings during your church's Wednesday night prayer meeting. This, you argue, precludes your attendance at the Council's meetings and therefore is a violation of your freedom of religion.

Your second Open Door Law complaint takes exception with the Council's policy on not providing a forum for public comments. This, you feel, also violates your First Amendment speech rights.

Your public access complaint references a list of hazardous materials published by the State of Indiana prescribing a prohibition on substances crossing state lines. You allege you were denied this list upon request and it is in the possession of a member of the Council.

The Council asserts in its response they are under no obligation to schedule their meetings around any church services. Additionally, the Council argues it has let you speak at several meetings, often at great length. Finally, the Council denies the possession of any list of hazardous materials and the documentation you reference in your complaint was the Town's Land Use and Development Code, which is freely available upon request.

### **DISCUSSION**

It is the intent of the Open Door Law (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 Ind. Code § 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 Ind. Code § 5-14-1.5-3(a).

The First Amendment of the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

This is applied to the State of Indiana and its local governments through the Fourteenth Amendment (No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States). While you are entitled to the free exercise of your religious preference, a public agency cannot possibly anticipate the schedules of the every congregation in its community. Based on the information provided, there is no plausible connection between your church-going habits and the Town of Argos Council. If an agency did schedule around a particular congregation or church, it would also be violating the First Amendment, as it would be endorsing the establishment of a specific religion.

As far as your claim that your right to free speech has been compromised, it has been the longstanding opinion of the Office of the Public Access Counselor that public agencies have the discretion to conduct their meetings in any manner they choose, as long as the public has the opportunity to observe and record their meetings. This does not include an obligation to open the floor to public comment. Factual dispute aside, the Council does not have to provide a forum for you to speak. Your First Amendment rights can be exercised through petitions, remonstrance, and your vote in the next local election.

Finally, if a councilmember is in possession of the list you reference, it is public record and must be disclosed upon release. 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 Argos Town Council 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 Council’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).

If the Council is not in possession of the list, however, it is not required to create or obtain a record to satisfy a public records request. You claim the councilmember referenced the publication of the list, but no evidence exists to suggest the list was in his possession at the time of the Council meeting wherein you requested it.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Town Council of Argos has not violated the Open Door Law or the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Derek Jones, Esq.