



# STATE OF INDIANA

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July 10, 2014

Ms. Wanda Jones, Esq.  
P.O. Box 1759  
Nashville, IN 47446

*Re: Formal Complaint 14-FC-124; Alleged Violation of the Open Door Law and Access to Public Records Act by the Town of Nashville*

Dear Ms. Jones,

This advisory opinion is in response to your formal complaint alleging the Town of Nashville ("Town") 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 Town has responded via Counsel James Roberts, Esq. His response is enclosed 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 10, 2014.

## BACKGROUND

Your complaint dated June 10, 2014, alleges the Town of Nashville ("Town") violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

This controversy has a rich and complex history. This very issue has been explored in *Advisory Opinion 14-FC-109*, however, there is more information attached to your current complaint than was contained in the prior documentation. As indicated below, the new information has changed my determination in *Advisory Opinion 14-FC-109* and the Opinion will not be rescinded, but the ultimate determination will be reversed and *Advisory Opinion 14-FC-109* is hereby incorporated by reference.

To avoid confusion, I will give a brief background of this issue rather than cite all of its detail and intricacies. The Town of Nashville is currently in the process of attempting to procure a grant award from the Indiana Office of Community and Rural Affairs. This award is known as the Stellar Community designation and will fund one or more eligible projects submitted as part of the grant application. The Town of Nashville is one of a handful of potential recipients of the award.

As part of the application process, a Stellar Community Committee (“Committee”) was formed. It appears as if this Committee was the entity with the responsibility of coordinating application efforts. If successful, the award would be given to the community as a whole, however, and not to the Committee itself; the funding is given to the Town of Nashville and Brown County for future expenditures.

With regard to *Advisory Opinion 14-FC-109*, you filed a formal complaint with my Office to determine if the Stellar Community Committee was a governing body as contemplated by the Open Door Law. I ultimately concluded they were not. Additional evidence has come to light which suggests my initial conclusion may have been erroneous. My determination was based upon the Town’s assertion the Committee was exclusive comprised of volunteers and they were not appointed in any manner by the presiding officer of a governing body. In short, they were not operating as a delegation or sub-committee of another public agency. They were simply an association of concerned citizens, even though many of its members happened to be public officials. The prior opinion was issued on June 23, 2014.

Your contention is the Committee, if determined to be a governing body subject to the ODL, has not acted consistently with the provisions of the ODL. Additionally, you have requested a number of documents from the Committee; you have received a good portion of them, however, it is unclear if you have or have not received all of the records requested. Furthermore, you contend you have been directed by the Town to direct all of your future public records requests to the town attorney, Mr. Roberts, while others have not been asked to do so.

## **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).

My decision to reverse my prior conclusion is based, in part, on the Stellar Community application filed by Brown County and the Town of Nashville. These two governmental units jointly filed a letter of intent to the Office of Community and Rural Affairs on government letterhead. In that letter, signed by President of both the Nashville Town Council and the President of the Brown County Board of Commissioners, it is explicitly stated the Town and County has “chosen” the Stellar Community Committee. This indicates the Committee was not formed organically by a group of volunteers as was suggested in the Town’s response to *Formal Complaint 14-FC-109*.

Because the presiding officers of the executive body chose/appointed/designated the members of the Committee, it is a governing body. Under Ind. Code § 5-14-1.5-2(b), a governing body is:

- (2) [two] or more individuals who are:
  - (1) a public agency that:
    - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
    - (B) takes official action on public business;
  - (2) the board, commission, council, or other body of a public agency which takes official action upon public business; or
  - (3) **any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.**

Emphasis added.

Additionally, all disseminated materials from the Office of Community and Rural Affairs insinuates the responsibility to file applications rests with the local government itself and not a voluntary association of interested citizens. The municipality receives and expends the funds, not a volunteer committee. Clearly, the Committee is exercising an executive function of local government and taking official action of public business.

Turning to your records request, 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 Town of Nashville 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 Town’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 the request has been received and information regarding how or when the agency intends to comply.

Because I have determined the Committee to be a governing body of the Town, they are subject to the APRA as well as the ODL. You are entitled to the records you seek as long as they do not fall into an excepted category as discretionary or confidential.

As to the method of making a request, the APRA does not prohibit a public agency from requesting a public records inquiry be directed to a particular town official. In this instance, given the history of contention between you (or your clients) and the Town, it is not unreasonable to ask you to direct your requests to the Town's attorney. This could simply be to attempt to safeguard against or mitigate any threat of litigation or complaints and is deemed reasonable under the circumstances. I do not believe it to be discriminatory in any way other than the fact you are not similarly situated as other requesters because of the recent circumstances surrounding your requests to the Committee and the Town.

You also contend the method of production of many of the public records you seek was a significant obstacle in reviewing the information. You were directed to a password-protected website and given a thumb drive with the records on them. You contend they were difficult to use and would prefer paper copies. While electronic production of records is reasonable (and often preferred), the technology used should not be so complicated to the point of being challenging to use. You are entitled to at least one copy of each record you seek. While "copy" is defined broadly to include electronic reproduction (See Ind. Code § 5-14-3-2(b)), the copy should be viable.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Town of Nashville Stellar Community Committee is a governing body of a public agency subject to both the Open Door Law and the Access to Public Records Act. Therefore, they shall ensure every effort to comply with those laws and act accordingly.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Mr. James Roberts, Esq.