



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

August 26, 2014

Ms. Karen Schefmeyer
c/o Howard Park/East Bank Neighborhood Association
300 S. St. Louis Blvd.
South Bend, IN 46617

Re: Formal Complaint 14-FC-153 & 167 (consolidated); Alleged Violation of the Access to Public Records Act by the South Bend Public Transportation Corporation

Dear Ms. Schefmeyer,

Please allow this letter to serve as acknowledgement of your complaints against the City of South Bend and the South Bend Public Transportation Corporation. Please be advised you have not identified any violations of the Open Door Law in your complaint and an advisory opinion will not be published.

"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. See Ind. Code § 5-14-1.5-2(c). You have not identified any governing body of the City which would fall under the scope of the Open Door Law. City employees are not governing bodies, as they are not appointed or elected as a collective representative body of a public agency.

As for the Transpo board, they are a public governing body subject to the Open Door Law. They appear to be funded by taxpayer money and they do exercise an executive function and /or legislative of the local government. The Open Door Law, however, only applies to a *majority* of a governing body. If a non-majority meets to discuss an issue behind closed doors, they may do so. You have not alleged a serial meeting violation which would be prohibited if certain conditions are met. From the materials provided, however, it appears serial meetings were also not conducted.

It seems as if your primary contention is the fact that Transpo board members are meeting to conduct Transpo business and excluding other members. This not an issue contemplated by the Open Door Law, but rather is a matter of local governance. The Public Access Counselor does not weigh in on such issues. Only when a majority of a group meets to conduct public business must a meeting be open to the public and notice is required. Non-quorums might run the risk of having their decisions overturned, but

again, that is a local issue. Even if all of your complaints were timely under Ind. Code § 5-14-5-7, I cannot conclude a violation exists.

I do take exception to the assertion by the City that an advisory committee cannot be a governing body subject to the Open Door Law. Ind. Code § 5-14-1.5-2(b)(3) clearly states the Open Door law applies to 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. There is no indication, however, that the advisory group was appointed directly. In fact, you have provided an email from a City employee which appears to solicit their participation. Therefore the advisory group's meetings are not public meetings under the Open Door Law and minutes are not required.

Finally, while you allude to an Access to Public Records Act violation in regard to the RFP process, you do not provide any information regarding an actual request for information, only an email from the Controller stating the details of the bids were not yet public. It does not appear a denial ever occurred for a request for public records.

I am copying both the City and the Transpo's counsel on this letter in order to fully inform them of my interpretation of this matter. While I decline to publish a formal opinion, I am more than happy to serve as a resource or a mediator in this or any other dispute over access.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Paul E. Singleton; Jamie C. Woods