



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

September 29, 2014

Ms. Rhonda A. Greene
10130 W Suder Lane
Campbellsburg, IN 47108

Re: Formal Complaint 14-FC-192; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Washington County Assessor

Dear Ms. Greene,

This advisory opinion is in response to your formal complaint alleging the Washington County Assessor, Mr. Jason Cockerill, ("Assessor") violated the Access to Public Records Act ("APRA") and Open Door Law ("ODL"), Ind. Code § 5-14-3-1 *et. seq.* The Assessor has responded to your complaint; I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 29, 2014.

BACKGROUND

Your complaint dated August 25, 2014, alleges the Assessor, specifically the Washington County Property Tax Assessment Board of Appeals ("PTABOA") violated the ODL by failing to post proper notice of the PTABOA meeting either on or by the door of the meeting room. Additionally, your complaint alleges the Assessor violated APRA by (1) requiring you to shut off your camera and leave the room on multiple occasions during public hearings held on July 24 and July 30, 2014, and (2) by not providing redacted copies of "all confidential information discussed during the PTABOA proceedings on July 23 and July 24, 2014, and July 30 and July 31, 2014.

On September 9, 2014, the Assessor responded to your formal complaint. The Assessor claims he did not violate the APRA and ODL because notice of the PTABOA's annual session complied with Ind. Code § 6-1.1-28-6 and the documents you requested were provided within a reasonable time except for the information declared confidential by Ind. Code § 6-1.1-35-9.

ANALYSIS

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).

You describe a conversation with the Assessor wherein he states the PTABOA board is not subject to the Open Door Law. This is not the case. The PTABOA is a governing body as defined by Ind. Code § 5-14-1.5-2. A "governing body" includes 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. It is true entities such as the PTABOA are addressed elsewhere in the Indiana Code; however, those Code sections impose additional obligations and do not supplant the Open Door Law requirements.

Specifically, you claim no notice was posted at the place of the meeting. Public notice of the date, time, and place of any meeting, executive session, or any rescheduled or reconvened meeting of a public agency shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) prior to meeting. See Ind. Code § 5-14-1.5-5(a). Ind. Code § 6-1.1-28-6 places an additional notice burden by requiring a PTABOA board to place notice in two local newspapers. It is my opinion the Open Door Law notice is not relieved. All governing bodies should place conspicuous physical notice of the meeting at the place where the meeting is being held 48-hours in advance of the commencement of the meeting. The PTABOA Board is still in substantial, if not technical, compliance with the notice statutes and therefore I am not as concerned about this minor oversight.

I am concerned, however, with the PTABOA board's practice of closing the public hearing during the meeting itself so that confidential information can be shared. You characterize this action in your complaint as an APRA violation; however, it is more in line with an Open Door Law violation.

"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. Ind. Code 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14- 1.5-2(d).

As will be discussed below, the APRA states that a public agency may not disclose records that are "declared confidential by state statute." Ind. Code § 5-14-3-4(a)(1). Ind. Code § 6-1.1-35-9 imposes liability on the part of public official who disclose

confidential information. When read in conjunction with the Open Door Law it is clear that public officials should not be discussing confidential information in a public setting unless authorized. The Legislature has recognized the need for public officials to be able to discuss and receive confidential information. These discussions may take place in an executive session pursuant to Ind. Code § 5-14-1.5-6.1(b)(7). Please note that all executive sessions must also include a 48-hour notice.

The Assessor describes the PTABOA hearing process as a series of annual sessions taking place within about a week's time. The Assessor acknowledges the PTABOA board requested you to leave the room when confidential information was being presented. While the justification for meeting behind closed doors is sound, the execution of the closed-door session was contrary to the Open Door Law. Going in and out of a public meeting is not the correct way to address confidential information. The PTABOA board may meet in executive session to discuss and receive confidential information, but it must be pursuant to notice requirements. I encourage the County to address a better way to conduct their hearings in a manner consistent with Open Door Law requirements.

As to the Access to Public Records Act violation, 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 Washington County Assessor and the PTABOA are public agencies 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 Washington County'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).

The APRA states that a public agency may not disclose records that are "declared confidential by state statute." Ind. Code § 5-14-3-4(a)(1). Ind. Code § 6-1.1-35-9 provides the following regarding certain confidential information:

- (a) All information that is related to earnings, income, profits, losses, or expenditures and that is:
 - (1) Given by a person to:
 - (A) an assessing official;
 - (B) an employee of an assessing official; or
 - (C) an officer or employee of an entity that contracts with a board of county commissions or a county assessor under IC 6-1.1-36-12; or
 - (2) acquired by:
 - (A) an assessing official;
 - (B) an employee of an assessing official; or
 - (C) an officer or employee of an entity that contracts with a board of county commissioners or a county assessor under IC 6-1.1-35-12; in the performance of the person's duties; is confidential.

Clearly the PTABOA Board shall not disclose confidential information; however, you requested a redacted version of the records being discussed. If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying. See Ind. Code § 5-14-3-6. The Assessor should, within a reasonable time after request, make this information available to you.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Washington County Assessor violated the Access to Public Records Act and the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Marilyn S. Meighen, Esq.