



STATE OF INDIANA

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December 20, 2014

Ms. Kelly L. Khuri
4819 Salem Noble Rd.
Jeffersonville, IN 47130

Re: Formal Complaint 14-FC-279; Alleged Violation of the Access to Public Records Act by the Clark Memorial Hospital

Dear Ms. Khuri,

This advisory opinion is in response to your formal complaint alleging Clark Memorial Hospital ("CMH") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* General Counsel, Ms. Pamela K. Thompson, Esq., responded to your complaint, a copy of which is attached for your reference. 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 November 17, 2014.

BACKGROUND

Your complaint alleges the Clark Memorial Hospital violated the Access to Public Records Act by denying producing records responsive to your request.

On or about October 27, 2014, you submitted a public records request to the CMH seeking minutes of the CHM Board of Trustees Finance Committee. You were told they do not keep those minutes.

You also requested a detailed breakdown for the past six (6) years of financial information. The raw data had already been provided to you. CMH declined to produce any records responsive to your request.

CMH responded to your request by explaining that the Board of Trustee finance committee does not keep minutes and strategy related to that particular committee is discussed in executive session. Because executives session minutes do not necessarily detail specific narrative elements of discussions, those minutes only make cursory reference to the subject matter. CMH also argues that a detailed breakdown of the

financial information does not exist and the raw data is the only document responsive to your request.

ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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. Clark Memorial Hospital 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 CMH’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).

As for the minutes of the finance committee meetings, your complaint raises more Open Door Law consideration than APRA. CMH has not provided any explanation of whether the committee is a separate governing body under Ind. Code § 5-14-1.5-2(b)(3). In large part it depends on how the committee was formed. CMH’s response states “rather the [finance committee’s] discussions which are strategic in nature are presented and discussed at the executive session of the Board of Trustees (BOT) which is allowed under Indiana law.”

This statement is problematic as CHM has not identified a statutory justification for holding a closed-door executive session. Only subject matter enumerated in Ind. Code § 5-14-1.5-6.1. Strategy discussions of finance committees are not listed under section 6.1. The executive sessions regarding that specific subject matter is prohibited by the Open Door Law.

As for the detailed breakdown of financial information you seek, a public agency does not have to create a record or answer questions in order to satisfy a public records request. If a document does not exist, it does not have to be created in order for it to be disclosed. Requesting a “detailed breakdown” of an existing document is asking CMH to create an entirely new public record – something they are not obligated to do under the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, the Clark Memorial Hospital has not violated the Access to Public Records Act; however, it has violated the Open Door Law by holding unauthorized executive sessions. As an Open Door Law violation was not part of your formal complaint, the expressed violation should not be considered an administrative remedy for judicial review.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Pamela Thompson, Esq.