



STATE OF INDIANA

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March 2, 2016

Ms. Ruth Riehle
8626 East CR 1100 North
Sunman, Indiana 47041

Re: Formal Complaint 16-FC-14; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Town of Sunman

Dear Ms. Riehle:

This advisory opinion is in response to your formal complaint(s) alleging the Town of Sunman ("Sunman") violated the Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 et. seq. and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 et. seq. The Town has responded via Mr. John Kellerman, 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 January 28, 2016.

BACKGROUND

Your complaint dated January 28, 2016 alleges the Town of Sunman violated the Access to Public Records Act by failing to provide the records you requested and violated the Open Door Law by conducting an executive session without proper notice.

You sought from the Town Attorney a map of the Town so that you could see the official boundaries of the Town. The Town provided you with a map which you assert is inadequate. You also contend an unnoticed executive session took place when the Town Attorney swore in the new Town Board members.

On February 5, 2016 the Town responded via Mr. Kellerman. The Town notes the map you were provided was obtained from the Ripley County Surveyor and there appears to be no other detailed map. The Town also contends there is no ODL violation, because the purpose of the gathering was merely to administer an oath, which is permitted under Ind. Code 5-14-1.5-2(c)(7).

ANALYSIS

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 Sunman 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 disclosable 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).

In its response, the Town has stated it does not possess a more detailed map. Under the APRA, an agency is not obligated to provide a record where one does not exist. The Town has provided you with the copy of the map it obtained from the County. Therefore, the Town has met its duty under the APRA. This Office does not have jurisdiction to opine on whether a Town or surveyor is required to keep a detailed map.

It is the intent of the Open Door Law (ODL) that 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).

Under Ind. Code § 5-14-1.5-2(c), a “meeting” is defined as “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” There are several exceptions to this definition. You have alleged and the Town has confirmed the purpose of the gathering was to administer oaths to the new Town Board members. Ind. Code § 5-14-1.5-2(c)(7) exempts the administration of oaths from the definition of meeting. Therefore, there was no violation under the Open Door Law.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Town of Sunman has not violated the Access to Public Records Act nor the Open Door Law.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. John Kellerman, Esq.