



STATE OF INDIANA

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October 11, 2016

Ms. Sarah Ausbrook
820 Axtell Avenue
Washington, Indiana 47501

Re: Formal Complaint 16-FC-224; Alleged Violation of the Access to Public Records Act by the Daviess County Ambulance Advisory Board

Dear Ms. Ausbrook:

This advisory opinion is in response to your formal complaint alleging the Daviess County Ambulance Advisory Board ("Board"), violated the Open Door Law, Indiana Code § 5-14-1.5-1 et. seq. The Board has responded via Mr. Grant Schwartzentruber, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 6, 2016.

BACKGROUND

Your complaint dated September 6, 2016, alleges the Daviess County Ambulance Advisory Board violated the Open Door Law by holding a meeting less than 48 hours after notice was posted.

On Wednesday, August 31, 2016 at approximately 1:05 p.m., notice was given of a Board meeting to take place on Friday, September 2, 2016 at 8:00 p.m. This was sent to you via email as well. Additionally, no agenda was given for the meeting.

In its response, the Board concedes the meeting took place less than 48 hours after meeting was posted, but argues the oversight was unintentional and not so far removed from actual compliance to be a problem. The reason for the oversight was due to the Board not fully understanding whether it was a public governing body required to follow the Open Door Law requirements.

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 Indiana 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 Indiana Code § 5-14-1.5-3(a). Indiana Code § 5-14-1.5-5(a) states “[p]ublic notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

The 48-hour notice requirement for a public gathering is certainly a critical element of the Open Door Law. In this case, it appears as if notice was only given approximately 42-hours in advance. Based on the information provided, it does not appear as if members of the public were substantially prejudiced by the shortcoming, however, *it is a violation nonetheless*. Because this Board is fairly new, it does not appear to be a systemic problem. The Board is hereby placed on notice it should be technically compliant with notice requirements going forward. In fact, my recommendation is that any final action taken at the September 2, 2016 meeting be re-ratified at the next properly noticed meeting in order to meet legal requirements.

As for the agenda, a governing body does not have to post an agenda unless it uses one during a public meeting. See Indiana Code § 5-14-1.5-4. The Board should be mindful of this requirement as well if it chooses to utilize an agenda during further meetings. Based on discussions with the Board’s attorney, I am confident the Board will refine its practices going forward based upon these recommendations.

Please do not hesitate to contact me with any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Grant Schwartzenruber, Esq.