



# STATE OF INDIANA

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May 10, 2016

Mr. Keith Hefner  
5694 County Road 14  
Garrett, Indiana 46738

*Re: Formal Complaint 16-FC-69; Alleged Violation of the Open Door Law by the City of Garrett*

Dear Mr. Hefner:

This advisory opinion is in response to your formal complaint(s) alleging the City of Garrett ("City") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 et. seq. The Council has responded to your complaint via counsel, Mr. J. Darrick Brinkerhoff, 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 March 25, 2016.

## **BACKGROUND**

Your complaint dated March 25, 2016 alleges the City of Garrett violated the Open Door Law by taking official action outside a public meeting.

On February 25, 2016, you were called to the City Annex, where Mayor Todd Fiantt and Councilman David Demske were present. You were handed a letter by the mayor, terminating your employment as Chief of Police. You contend this constituted an improper meeting by the Board of Public Works, because both Mayor Fiantt and Councilman Demske are members of the Board.

On April 15, 2016 the City responded. The City asserts there was no meeting because Councilman Demske was merely "a witness" and not acting as a member of the Board of Works. The City also states that it is not within the authority of the Board to remove the Chief of Police.

## **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)*.

“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).

A majority of a governing body which gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

City asserts Councilman Demske was not acting as a member of the Board and merely a witness to the Mayor’s action. The removal of the Chief of Police is not a function of the Board of Public Works. Unless there was a discussion about specific Board of Public Works business, the Open Door Law is not triggered. Your at-will employment is solely at the discretion of the Mayor and not the Board. Therefore, public business was not taken at the gathering and the provisions of the Open Door Law do not apply.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the City of Garrett has not violated the Open Door Law.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Mr. J. Darrick Brinkerhoff, Esq.