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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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NATHON J. OWENS,  
*Complainant,*

v.

TOWN OF LAPEL,  
*Respondent.*

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Formal Complaint No.  
17-FC-185

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Town of Lapel (“Town”) violated the Open Door Law<sup>1</sup> (“ODL”). The Town responded to the complaint through attorney William Byer, Jr. His response is enclosed for review. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 4, 2017.

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<sup>1</sup> Ind. Code §§ 5-14-3-1.5-1 to -8.

## **BACKGROUND**

Nathon J. Owens (“Complainant”) claims the Town of Lapel violated the Open Door Law by taking action regarding his employment status with the Town in executive session without public discussion.

Owens notes three separate executive sessions held by the Town on May 18, July 17, and July 20, 2017, all for the purpose of discussing personnel issues. Owens received a disciplinary action on May 22, and his employment was terminated on July 24. The Complainant takes issue that neither his disciplinary action nor his termination were discussed in an open, public meeting.

The Town was notified of the Complaint on August 4, 2017, and filed a response with this Office on August 21, 2017. In the response, the Town contends that the personnel matters discussed at the May 18 executive session involved two other town employees, not the Complainant, and no vote was taken on any issue at this executive session.<sup>2</sup> The Town enclosed the meeting minutes for this executive session.

The Town also asserts that at the second executive session on July 17, the Complainant was mentioned in discussion insofar as there was a delay in reading a meter and that a board member said he would be speaking to the Complainant about the delay. Again, the Town argues that no vote was taken at this executive session. Finally, regarding the

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<sup>2</sup> Complainant alleges he has audio proof of a Town Board member saying a vote was taken in executive session, however, it was not provided to this office.

July 20 executive session, the Town responds that the personnel matters discussed involved Town employees other than the Complainant, the Complainant was not discussed, and no votes were taken in the executive session. The Town did not enclose minutes for these two executive sessions, but instead provided a sworn affidavit by the Town's Deputy Clerk-Treasurer.

In addition, the Town provided a copy of the employee disciplinary policy along with the response. It notes that the progressive disciplinary procedure of a written warning, followed by suspension, followed by dismissal, was appropriately followed. The Town asserts that the discussion leading to the termination of Owens occurred the same day that the termination occurred, and that no vote was necessary for the dismissal because the personnel policy of the Town was followed.

Finally, the Town notes that dismissed employees have the right to request a hearing with the Town Council within 48 hours of being dismissed. The Town says it has no record of any request by the Complainant for a public hearing.

### **ANALYSIS**

It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, so the people may be fully informed. The ODL's provisions are to be liberally construed with the view of carrying out its policy. *See* Ind. Code § 5-14-1.5-1. Therefore—unless an exception applies—all meetings of the governing bodies of public agen-

cies 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). One such exception is for discussing a job performance evaluation of an individual employee. *See* Ind. Code § 5-14-1.5-6.1(b)(9). However, any final action taken must be done at a meeting open to the public. *See* Ind. Code § 5-14-1.5-6.1(c).

It appears from the personnel policy provided to my Office that dismissal decisions do not require a vote by the Town Council. The response from the Town states that the termination was “initiated by [a] Town Board member” and that no vote was taken. If a personnel matter required a vote by the Town Council, then the vote (and associated discussion) would need to be taken in an open, public meeting. However, this does not appear to be the case in this situation.

The extent to which the Complainant was discussed in the July 17 executive session was an appropriate topic for an executive session. *See* Ind. Code § 5-15-1.5-6.1(b)(6)(A). It is not unusual for governing bodies to discuss personnel matters in an executive session.

Although not subject of the complaint, the Complainant does include the actual notices of the executive sessions and they appear to be deficient. Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* Ind. Code § 5-14-1.5-6.1(d). Simply citing “personnel matters” – which could encompass any number of items – is not sufficiently descriptive. The notices

should have included language specifically listed in the Open Door Law. For example:

Pursuant to Ind. Code § 5-14-1.5-6.1(b)(6): With respect to any individual over whom the governing body has jurisdiction:  
(A) to receive information concerning the individual's alleged misconduct; and  
(B) to discuss, before a determination, the individual's status as an employee

The Town should be mindful of including specific language in its notices in the future.

## **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Town of Lapel has not violated the Open Door Law provided it truly did not vote to fire any personnel in executive session. It did violate the Open Door Law in regard to improper notice.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt  
Public Access Counselor