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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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ELIZABETH A. THOMAS,  
*Complainant,*

v.

CASS COUNTY COMMISSIONERS,  
*Respondent.*

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Formal Complaint No.  
18-FC-4

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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 the formal complaint alleging the Cass County Commissioners (“County”) violated the Open Door Law<sup>1</sup> (“ODL”). The County responded on January 30, 2018, through counsel Jeffrey D. Stanton. 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 January 8, 2018.

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

## **BACKGROUND**

Elizabeth Thomas (“Complainant”) filed a formal complaint against the Cass County Commissioners (“County”) alleging the County violated the state’s Open Door Law (“ODL”) by prohibiting cell phones within the County’s government building.

The Complainant states that by not allowing cell phones or cameras inside the government building, the County is also denying the public the ability to record public meetings such as Commissioner’s meetings and Planning Commission Meetings. The Complainant explains that the notice posted at the entrance of the government building states the following:

“Effective April 3, 2017, cellular telephones/tablets will no longer be allowed in the Cass County Government Building in accordance with a county council ordinance. All cell phones and tablets brought in to the building will be surrendered to security officers and be returned to their owners as they leave the building. Anyone seeking to use the phone/tablet in court or for another purpose must obtain written permission from that court. Court officers (including attorneys and law enforcement personnel) and county employees are exempt so long as they are in compliance with their individual department regulations.”

The Complainant also states that notifying the security officer that the device is to be used to record a public meeting, security will not allow the citizen to bring the device to the meeting. The Complainant argues that the court is on the

top floor and that the County could move the phone check-in to outside the court entrance.

My Office notified the County of the Complaint on January 9, 2018, and received the response of the County on January 30, 2018. The County responds that the ordinance does not prohibit the use of audio and visual recordings devices to record public meetings. The County notes that on the dates mentioned in the Complaint (December 4, 2017, and December 18, 2017), public meetings took place and at least one citizen recorded each meeting. In some cases, attendees have placed tape recording devices near the front of the room for clearer recordings. The County also notes that several other counties, including St. Joseph, Steuben, LaGrange, and LaPorte, have similar policies prohibiting cell phones in courthouses or government buildings.

The County further responds that the purpose of the ordinance is not just to prohibit cell phones in the courtrooms. The County states that prior to the ordinance, “it was a common occurrence for Court staff, Judges, County employees and security to intervene when a person’s cell phone conversation was interrupting employees work, intimidating county employees or preventing the efficient assistance of citizens because citizens were using cell phones rather than conducting county business.” Written permission from a court or county office is required because apparently visitors to the government building have lied to security about needing to use their cell phone for county business when that is not the case. The County notes that no one requested to use a cell phone to record Commissioner meetings on December 4, 2017, or December 18, 2017. Citizens wishing to record a public meeting may do so by tape recorder, video recorder,

or other recording device that is not a cell phone or tablet. If a citizen wishes to use their cell phone as a recording device, they may do so by obtaining written permission from any County Officer prior to the meeting.

### ANALYSIS

The public policy of the Open Door Law (“ODL”) is 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. Simply put, unless an exception applies, 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).

While I am sympathetic to the challenges that cell phones may pose in conducting official business, the fact remains that most individuals use their cell phones as their primary device for recording video or audio. Tape recorders and video tape recorders are infrequently used by average citizens. The Complainant may be overstating the issue by claiming that the County is refusing to allow citizens to record public meetings, but the County is adding an additional requirement of either purchasing a separate tape or video recorder or obtaining written permission to use a cell phone. Requiring citizens to obtain written permission before being allowed to record a public meeting using their cell phone is effectively a barrier to access and is not contemplated by the ODL.

The County provided copies of the policies of other counties restricting cell phone usage. It is worth noting that the St. Joseph County ordinance allows the general public to bring cell phones and similar devices into the “portion of the St. Joseph County Courthouse complex that contains county and city governmental offices.” This is essentially what the Complainant argues citizens should be allowed to do.

Local ordinances should not usurp Indiana statutes. While the ODL does not specifically state that an individual may use a cell phone to record a meeting, denying a citizen the ability to record a public meeting using their cell phone violates the public policy intentions of the Open Door Law.

### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Cass County Commissioners have violated the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor