
OPINION OF THE PUBLIC ACCESS COUNSELOR

MATTHEW E. SMITH,
Complainant,

v.

PINE TOWNSHIP TRUSTEE'S OFFICE,
Respondent.

Formal Complaint No.
19-FC-37

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Pine Township Trustee violated the Access to Public Records Act¹ and the Open Door Law.² Pine Township Trustee Tammy M. Watkins filed an answer on behalf of office. 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 May 6, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10.

² Ind. Code §§ 5-14-1.5-1 to -8.

BACKGROUND

Matthew E. Smith (“Complainant”), chair of the Pine Township Board, alleges Pine Township Trustee Tammy M. Watkins (“Trustee”) violated the Access to Public Records Act and the Open Door Law.

Smith raises three issues in support of his complaint against the Trustee.

First, Smith contends that Watkins denied him access to the Board’s meeting minutes in violation of the Access to Public Records Act (“APRA”). He contends that he requested access to the Board’s “minute book” after a meeting in January, and the Trustee said that he could not have the minute book and if anyone wanted to view the minutes they would need to fill out a request form. Smith also references Indiana Code section 36-6-6-8³ as support in his complaint.

Trustee Watkins disputes Smith’s claim. Watkins says that Smith asked if he should keep the minute book, and she indicated that the book has always been kept in the trustee’s office. The Trustee contends that Smith then asked what if he wanted to see the minute book and she stated that he could contact her and she would provide the minute book. Watkins concedes that she told Smith he would need to fill out a request for public records.

Second, Smith asserts that Watkins changed the meeting minutes from two of the Board’s meetings, presumptively in violation of the Open Door Law. Watkins disagrees. The Trustee contends that she requested the minutes for the two

³ The statute says, in relevant part, that “[t]he chair of the legislative body shall retain the record in the chair's custody.”

meetings in question and after receiving them she responded by informing the Board of information missing from the minutes and stating she would add the missing information to the minutes. Watkins notes that the Board read and approved the minutes at the next meeting without objection.

Third, Smith claims that Watkins violated the Open Door Law by failing to provide public notice of a meeting 48 hours in advance. Specifically, Smith contends that Watkins wanted to call a meeting on April 4, 2019, and “advertise it in the local paper” the day before the meeting. Smith says because this notice was not 48 hours in advance and the board did not show up as a result.

Trustee Watkins does not dispute that April 4, 2019, meeting was not advertised 48 hours in advance. She does, however, note that the meeting was originally scheduled for March 28, but two board members—including Smith—could not attend so she attempted to reschedule it for April 4. She says she asked a local paper to publish notice for the meeting and emailed the residents of the township to notify them of the upcoming meetings. Watkins says the paper published the notice on the same day of the meeting. Watkins says shortly before the meeting she again received word that there would not be a quorum present, so she cancelled the meeting.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the

affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.* There is no dispute that the Pine Township Trustee’s Office is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Thus, unless otherwise provided by statute, any person may inspect and copy the Board’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Still, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. *See generally* Ind. Code § 5-14-3-4.

1.1 Access to the Township “Minutes Book”

Smith argues Watkins violated APRA by denying him access to the Board’s meeting minutes or “minute book” after a meeting in January. Watkins offers a divergent version of events where Smith asked her if he should keep, that is, be the custodian of the minute book rather than the Trustee. Historically, the township trustee kept the permanent record in the trustee’s office.

Smith cites to Indiana Code section 36-6-6-8, which says “[t]he chair of the legislative body shall retain the record in the chair’s custody,” as support for his claim of the Trustee’s APRA violation. As a result, this office is persuaded that the Trustee did not deny Smith the opportunity to inspect and copy public records under APRA.

Based on the information provided here, it seems more likely that Smith and Watkins' disagreement here is not over Smith's access to public records, but rather which one of them should have custody of the township's permanent record or the "minutes book."

It is worth mentioning that township trustees, as the township executive, have a statutory duty to both "[k]eep a written record of official proceedings" and "[k]eep township records open for public inspection." Ind. Code §§ 36-6-4-3(1), and (3).

This office will not interject in a dispute over who should statutorily be the custodian of the Pine Township permanent record book because it is not an APRA issue. Regardless, the Trustee did not violate APRA here.

We now turn to Smith's Open Door Law claims.

2. The Open Door Law ("ODL")

The Open Door Law ("ODL") requires 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.

Except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. Ind. Code § 5-14-1.5-3(a).

There is no dispute that Pine Township is a public agency for purposes of the ODL; and thus, subject to the law's requirements. *See* Ind. Code § 5-14-1.5-2. Additionally, the parties do not dispute that the Pine Township Board

(“Board”) is the governing body of the township for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

2.1 Amended Meeting Minutes

Smith claims Watkins violated the Open Door Law because she changed the board’s minutes from two different meetings. Watkins claims she merely noticed information missing from the minutes, made additions, and the board read and approved the minutes at its next meeting.

The secretary of the township board, by statute, is responsible for recording the minutes of each meeting and providing the minutes to each member of the board prior the next meeting. Ind. Code § 36-6-6-8. After the minutes are approved by the board, the secretary must put the minutes in the permanent record book. *Id.*

A township trustee has no authority to amend the board’s meeting minutes without board approval.

2.2 Public Notice

Generally, under the ODL, public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, must be given at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* Ind. Code § 5-14-1.5-5(a).

What is more, public notice must be given by the *governing body* of a public agency as follows:

The *governing body* of a public agency shall give public notice by posting a copy of the notice at the

principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

Ind. Code § 5-14-3-5(b) (emphasis supplied). The ODL does not require the publication of the notice in a newspaper for regular township meetings. Furthermore, the governing body is responsible for giving public notice of its meetings, so any violation of the ODL's notice provisions is on the township board, not the trustee.

Even if the public notice for the April 4, 2019, meeting was defective under the ODL, the meeting didn't happen so it the issue is moot.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Pine Township Trustee's Office has not violated the Access to Public Records Act or the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor