OPINION OF THE PUBLIC ACCESS COUNSELOR

DAVID M. ASKINS,
Complainant,

v.

BLOOMINGTON COMMON COUNCIL,
Respondent.

Formal Complaint No.
20-FC-17

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Common Council for the City of Bloomington violated the Open Door Law.[1] Deputy Attorney for the council Stephen Lucas filed an answer on behalf of the city. 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 February 6, 2020.

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[1] Ind. Code §§ 5-14-1.5-1–8

BACKGROUND

On January 24, 2020, the Bloomington Common Council (Council) convened a work session to discuss local ordinance 20-04. Around two weeks later, David M. Askins filed a formal complaint with this office alleging the Council violated the Open Door Law.

First, Askins contends that the Council failed to post an agenda for the meeting in accordance with the ODL. He says the Council uses an agenda but did not post one on January 24, 2020.

Second, Askins asserts that the Council failed to post public notice of the work session 48 hours in advance as required by the ODL.

Third, Askins alleges Council held the meeting in the council library, which he maintains is not ADA accessible. Specifically, Askins says the outside door to the office suite has no automatic opener, the door was not propped open on the day in question, and the furniture in the meeting space would not accommodate wheelchairs without substantially rearranging the furniture.

On February 20, 2020, the Council filed a response to Askins' complaint. The Council concedes that it did not use an agenda at the work session, but argues it rarely, if ever, uses an agenda for work sessions.

Additionally, the Council argues that it posted public notice of its 2020 meeting schedule—including work sessions—in November 2019 to ensure compliance with the ODL. The Council acknowledges that the posted notices were removed from city hall but is unsure of when the postings were taken

down. Although the Council agrees that there was not a copy of the public notice posted on January 24, 2020, the Council asserts it reposted the annual meeting notice at city hall that was originally posted in November.

Finally, the Council disputes Askins' argument that the council library is not ADA accessible to the public. Specifically, the Council contends that the two doors leading to the meeting location were propped open on the day of the meeting. The Council contends that Askins routinely arrives early to public meetings and simply showed up before it propped the doors open.

What is more, the Council argues that Askins' assertion that the meeting space could not accommodate a person using a wheelchair is false. The Council maintains individuals using wheelchairs have attended meetings in the room before with no issues. Moreover, the Council noted that simply moving a chair at the table or from the perimeter of the room would hardly constitute a substantial rearrangement of the furniture.

The Council says the city measured all doorways and clearances, and inspected the room setup, which confirmed compliance with the ADA.

ANALYSIS

1. The Open Door Law

It is the intent of the Open Door Law (ODL) that 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, 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. *See* Ind. Code § 5-14-1.5-3(a). The City of Bloomington is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Ind. Code § 5-14-1.5-2. The Bloomington Common Council (Council) is a governing body of the agency for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the Council must be open at all times to allow members of the public to observe and record.

2. Agendas

Askins takes exception to the lack of an agenda at the Council's work session and alleges this is a violation of the Open Door Law.

Agendas are to be made available to the public to the extent a governing body uses one for the meeting. *See* Ind. Code § 5-14-1.5-4. Critically, this does not imply the Council must use agendas at every meeting.

Indeed, work sessions, while a term of art used by local government and not name checked in the ODL, are more informal in nature and have free-flowing extemporaneous discussion.

So long as the Council did not use an agenda during the work session, one did not need to be created and distributed to the public.

3. Public notice

Askins argues that the Council violated the Open Door Law by failing to post public notice 48 hours before its meeting on January 24, 2020. In response, the Council argues that the meeting did not require 48 hours' notice because it was a regularly scheduled meeting, which the Council published in November 2019.

Under the ODL, the governing body of a public agency must give public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting 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 § 5-14-1.5-5(b)(1). Here, there is no dispute that the Council did not post public notice 48 hours in advance in accordance with this statute. In essence, the Council contends that the law did not require it because the meeting was a regularly scheduled work session and the Council posted the notice the prior year.

Notably, the ODL authorizes a governing body to post annual public notice of regular meetings as follows:

> Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

Ind. Code § 5-14-1.5-5(c). If the Council posted the annual notice of its regular meetings at city hall, then no additional notice is required under the ODL for the regular meetings unless the date, time, or place changes for any of them.

The annual notice should remain posted for the duration of the calendar year. To the extent the notice was taken down at some point, it appears as if the Council has taken measures to repost the notice in accordance with the law.

3. Disability access

Askins argues the Council held the work session in a location that was not ADA accessible to the public in violation of the section 8 of the ODL.

Notably, the Open Door Law only mandates disability access for state government agencies and its governing bodies. Counties, towns, cities, and townships are grandfathered in when it comes to the provision. *See* Ind. Code § 5-14-1.5-8(a).

There may well be other provisions of federal and state law interpreting the ADA to provide access to those with disabilities, however, it is not grounds for a complaint to this office because the ODL provision does not apply to units of local government.

Still, part of the of the ODL's purpose is to permit the people to be fully informed on the business of the government. Toward that end, the spirt of the ODL implicitly requires reasonable effort on the part of the agency to make sure the audience can see and hear what is going on at a public meeting regardless of disability. From its response, it appears the Council recognizes these considerations.

CONCLUSION

Based on the foregoing, it is the opinion of this office that, without more, the Bloomington Common Council did not violate the Open Door Law. Any noncompliance as to its annual public notice has been remedied.

Luke H. Britt
Public Access Counselor