
OPINION OF THE PUBLIC ACCESS COUNSELOR

LAURA REDWEIK,
Complainant,

v.

CASS COUNTY REDEVELOPMENT COMMISSION,
Respondent.

Formal Complaint No.
20-FC-65

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Cass County Redevelopment Commission violated the Access to Public Records Act.¹ Attorney John Hillis filed a response on behalf of the Commission. 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 11, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over the access to recordings of public meetings.

On April 9, 2020, Laura Redweik (Complainant) submitted a public records request to the secretary of the Cass County Redevelopment Commission (Commission) for tape recordings and member “notes” of three meetings: February 19; February 25; and March 19, 2020.

It is unclear exactly what happened next, but Redweik interpreted the Commission’s actions as a denial and therefore she filed her complaint on May 11, 2020.

In response, the Commission clarified the sequence of events by contending that any effective denial of Redweik’s request was inadvertent. The Commission contends that it does not record the meetings, but did provide the draft minutes as a supplement to its response. The Commission has since posted meeting minutes online.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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.” Ind. Code § 5-14-3-1. The Cass County Redevelopment Commission is a public agencies for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy the Commission's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Furthermore, the Open Door Law (ODL) plays a part in this matter because it governs the procedure for keeping minutes and memoranda of public meetings. It will be described in detail below. *See* Ind. Code § 5-14-1.5-4

2. Redweik's requests

Redweik argues that the Commission denied her request for recordings and notes of board members they used to develop the minutes for three public meetings.

2.1 Minutes and memoranda

With a few notable exceptions, the Indiana access laws do not require the creation of a public record. Meeting memoranda are an exception. For instance, Indiana Code § 5-14-1.5-4 states:

As [a] meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken by individual members if there is a roll call.
- (5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct

a meeting using an electronic means of communication.

This memoranda is often colloquially termed as meeting minutes. In turn, subsection (c) of this statute mandates:

The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying.

“Reasonable time” is defined by neither the ODL nor the APRA, but as a rule of thumb, typically draft minutes of public meetings are drafted two weeks or so after the meeting itself and then ratified at the subsequent meeting.

Here, Redweik requested recordings of the meetings. While many governing bodies record their meetings for either posterity or to assist in the preparation of minutes, it is not strictly required by the ODL. Notably, recordings can be destroyed after meeting minutes or memoranda are ratified.²

In this case, the Commission argues that it does not electronically record its meetings. If this is the case, the request for recordings is dead on arrival. Minutes and memoranda, however, do have to be created and retained in perpetuity³ regardless if recordings are used in their creation.

² https://www.in.gov/iara/files/county_general.pdf, GEN 10-1

³ https://www.in.gov/iara/files/county_general.pdf, GEN 10-2

2.2 Ancillary notes or materials used for preparation

In lieu of recordings, secretaries of governing bodies will sometimes rely upon personal notes to assist them in creating minutes. Redweik requested those too.

Although not explicitly addressed in the Commission's response, it did provide draft minutes of one of the meetings. The others had already been posted online.

Draft minutes have been historically deemed by this office to be disclosable upon request.⁴

Personal notes, however, fall into a different category of record altogether. Indiana Code Section 5-14-3-4(b)(7) considers these types of materials to be discretionary. While still a public record, the law does not mandate disclosure. Public officials are given some measure of latitude to keep their note-taking to themselves. This includes notes taken during a public meeting by the secretary of a board.

Minutes and memoranda are the official memorialization of a public meeting. Recordings are helpful to verify accuracy but are not considered to be critical records and boards are not forced to make them. Given that meetings are open to begin with and attendees have the right to record for themselves, this office does not find the lack of electronic self-recording to be non-compliant with the APRA or ODL.

⁴ See *Opinion of the Public Access Counselor 20-FC-07*, "It is worth mentioning, that draft minutes are disclosable under APRA if they exist at the time of the request. Meeting minutes need not receive official approval before disclosure, an agency should simply mark them as draft."

CONCLUSION

Based on the foregoing, it is the opinion of the public access counselor that the Cass County Redevelopment Commission did not violate the Access to Public Records Act if it does not create or maintain the documents requested.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor