
OPINION OF THE PUBLIC ACCESS COUNSELOR

LORA REDWEIK,
Complainant,

v.

CASS COUNTY REDEVELOPMENT COMMISSION,
Respondent.

Formal Complaint No.
20-FC-94

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

¹ Ind. Code § 5-14-3-1-10.

opinion to the formal complaint received by the Office of the Public Access Counselor on July 14, 2020.

BACKGROUND

This case involves a dispute over the access to meeting minutes.

On May 20 and June 9, 2020, Lora Redweik (Complainant) submitted a public records request with the Economic Development Director, Christy Householder, seeking the following:

1. Tape and audio recordings of the March 18, 2020 meeting with Cass County officials and the Indiana Department of Environmental Management
2. Notes of Christy Householder and Redevelopment Commission members from the March 18, 2020 meeting with Cass County officials and the Indiana Department of Environmental Management
3. Minutes of the March 18, 2020 meeting with Cass County officials and the Indiana Department of Environmental Management

On June 30, 2020, Redweik received a response from the Commission, which stated that no such records existed. Redweik then filed her formal complaint with this office dated July 10, arguing that she had previously confirmed with the Public Access Counselor that minutes from the meeting should be available for public inspection, therefore the Commission had violated APRA.

On August 3, 2020, the Commission, through John Hillis, responded to Redweik's complaint. The Commission reiterated that there were no records responsive to Redweik's request, due to the fact that minutes from the phone meeting

were never created. Therefore, he argues the allegation that the Commission violated the Access to Public Records Act is false, since the Commission never actually denied the complainant access.

The Commission concludes by arguing that it “omits a discussion regarding the Open Door Law because the Complaint only alleges a public records access violation not an Open Door Law violation. By that token, the actions of the Commission were not in violation of the APRA, and the question of whether or not they violated the Open Door Law should be addressed separately.

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 agency 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, notes, and minutes for a Redevelopment Commission meeting.

2.1 Minutes and memoranda

With a few notable exceptions, the Indiana public access laws do not require the creation of public records. Meeting memoranda are an exception. For instance, the Open Door Law provides:

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.

Ind. Code § 5-14-1.5-4. This memoranda is often colloquially referred to 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.

Here, Redweik requested records generated from a March 18 meeting. The Commission argues that it does not have the records Redweik requested because they were not created. It argues that it cannot violate the APRA if the documents do not exist.

In a sense, this is correct. However, by virtue of another statute, they must exist if a majority of a governing body was present. The response from the RDC reserves the right to argue its point as to any Open Door Law considerations as the ODL was not directly implicated by the complaint. Tacitly, however, the ODL is very much in play.

To that end, I offer the following.

Under the ODL, a meeting is “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c). “Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d).⁴ Moreover, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

There are exceptions to the definition of meetings. In context, Indiana Code section 5-14-1.5-2(c)(5) comes to mind.² But even that exception would improbably apply at least in terms of conclusory recommendations, policy, or decisions from IDEM. Nevertheless, the complaint was specific enough to communicate an alleged deficiency and put the RDC on notice of the issue even if the ODL wasn't explicitly namechecked.

Therefore if no exception exists, minutes would be required from either the RDC, the county commissioners, or the county council.³

² [A meeting] does not include...[a] gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.

³ The county attorney was not provided a copy of the complaint, however, was otherwise notified of this opinion and will be copied.

CONCLUSION

Based on the foregoing, it is the opinion of this office that minutes should exist from the March 18, 2020, meeting of the Cass County Redevelopment Commission, the Cass County Council, and the Cass County Board of Commissioners.

Accordingly, they should be created, albeit retroactively, as soon as possible. If the meeting fell into an exception to the statutory definition of “meeting,” it should be communicated to Ms. Redweik.



Luke H. Britt
Public Access Counselor