

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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CARLA S. HACKER,  
*Complainant,*

v.

TOWN OF BROOKVILLE,  
*Respondent.*

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Formal Complaint No.  
21-FC-13

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the Town of Brookville violated the Open Door Law (ODL).<sup>1</sup> Attorney Tammy Davis filed an answer on behalf of the town. 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 25, 2021.<sup>2</sup>

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

<sup>2</sup> 21-INF-02 has been consolidated into this advisory opinion.

## **BACKGROUND**

This case involves allegations against the Town of Brookville and whether the town council's actions violated the Open Door Law.

Details submitted by both parties are too labyrinthian to restate here and largely unnecessary. In short, Carla Hacker (Complainant) alleges that the Brookville Town Council's meetings are rather perfunctory in nature and do not contain substantive discussion of certain matters, notably appointments to the area plan commission and a matter involving damage to a fire truck. In lieu of these discussions, Hacker has attempted to submit questions to the governing bodies with little-to-no satisfactory response. As a result, Hacker filed a formal complaint with this office.

The Town's response largely explains the concerns addressed in Hacker's complaint but also raises a new matter related to a committee, which will be analyzed below.

## ANALYSIS

### 1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, 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 Town of Brookville 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 Town's Council is a governing body of the Town 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.

#### 1.1 Meeting

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).

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).

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. Ind. Code § 5-14-1.5-3(a).

## **2. Hacker's complaints**

Hacker's complaints are well taken in that she raises concerns over the lack of discussion at Council meetings.

Meetings of governing bodies are not simply limited to taking action on pending matters. They are an opportunity for the governing body to discuss and explain its decisions. And those explanations are a condition precedent to a vote or other final action. Brevity of discussion before an action is generally a red flag as to noncompliance with the Open Door Law.

Governing bodies should be mindful that official action under the Open Door Law is broadly defined to include discussion, deliberation, making recommendations, and receiving information. All of these actions, whether active or passive, if done as a majority is required to take place in a public meeting, unless an exception applies.

This very much includes reasoning behind appointments, expenditures, contracts, etc. While it may seem inconvenient or inefficient for a governing body to show its work before arriving at a conclusion, it is also a golden opportunity for board members to demonstrate to their constituents (and voters) that they are the right people for their positions and they are being mindful and thoughtful as to all decisions affecting their respective communities. This does not necessarily mean a governing body needs to forensically respond to every single question from every single

constituent, but it should at least provide a meaningful basis for its actions.

The governing bodies of Brookville would be well served to take this into consideration.

### **3. Committees**

The Town's response introduces a matter worth mentioning in terms of general governance. It appears to imply that work was delegated to a committee of less than a quorum to address a matter outside of a public meeting. The Town seems to argue that this non-majority gathering would not be subject to the Open Door Law.

This is not the case. While informal non-majority gatherings are not usually subject to the Open Door Law, official committees are. Under the ODL, "governing body" means:

Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

Ind. Code § 5-14-1.5-2(b)(3). The formal delegation of duties is the trigger for a committee to constitute a new governing body, a majority of which would be subject to the Open Door Law.

Committees are a useful tool but not an opportunity to subvert the transparency requirements of the law or creatively abdicate open meeting duties.

## **CONCLUSION**

Based on the complaint and the response, there is not enough information to draw a conclusive determination, but this advisory opinion should be enough for the Town to amend its practices during future meetings.

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

Luke H. Britt  
Public Access Counselor