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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JEFFERY A. SLAVEN  
*Complainant,*

v.

TOWN OF ST. JOHN,  
*Respondent.*

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Formal Complaint No.  
21-FC-179

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Town of St. John (Town) violated the Access to Public Records Act.<sup>1</sup> Attorney David Westland 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 November 1, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute about whether the Town of St. John violated the Access to Public Records Act (APRA) by failing to provide copies of meeting minutes because the records were never created after public meetings.

On October 28, 2021, Jeffery Slaven (Complainant) filed a public records request with the Town of St. John (Town) seeking the following:

1. SJ Town Ordinance that specifies who's responsible for recording BZA. Town Council Minutes
2. Request Plan Commission Minutes from start of 2021 to present
3. Request Board of Zoning Appeals Minutes from April 2021 to present

On October 29, 2021, Clerk-Treasurer Beth Hernandez responded to Slaven's request. Hernandez emailed Slaven a copy of Ordinance 1720 and informed him that the Town did not have any other records responsive to his request.

On November 1, 2021, Slaven filed a formal complaint with this office arguing that the Town violated the law by not having available the requested meeting minutes.

On November 5, 2021, the Town filed a response to Slaven's complaint. The Town asserts that during the past year it lost the employee responsible for transcribing the Board of Zoning Appeals and Town Council minutes. However, while the minutes are not yet available the Town has since hired a replacement and "the minutes are currently being

transcribed. Moreover, the Town maintains that all meetings are recorded, and those recordings are posted on YouTube for public consumption.

In a follow-up to the Town's response, Slaven noted that he only requested minutes for BZA and Planning Commission meetings, not Town Council meeting minutes. Furthermore, Slaven claims that due to a disability he is unable to utilize YouTube, therefore those recordings are not helpful for him.

## ANALYSIS

### 1. The Access to Public Records Act & Open Door Law

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 Town of Saint John (Town) 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 Town's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

Furthermore, although not cited in his complaint, this situation also involves the Open Door Law(ODL).<sup>2</sup>

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<sup>2</sup> Ind. Code § 5-14-1.5-1 to -8.

## **2. Meeting minutes**

This office has consistently held that a public agency does not need to create or provide records that do not exist. There are certain records, however, that must exist in accordance with the law. Therefore, it is not an affirmative defense to a public records complaint that these type of records have not been made available because they do not exist.

Here, the Open Door Law states that:

(b) As the 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.

(c) 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.

Ind. Code § 5-14-1.5-4. In practicality, it is understood that these memoranda cannot always be kept in real

time by a stenographer necessarily, so recordings are used for posterity. The expectation, of course, is that they be transcribed for public consumption in a reasonable time.

Reasonable time will indeed vary on a case-by-case and board-by-board basis, but a good rule of thumb is that most meeting minutes should be drafted within two weeks from the date of the gathering.

While some boards have designated officials as record keepers and minute takers – county auditors for commissioners or clerks for town and city councils – other boards do not have such official designees. Therefore, it is the responsibility of the board itself to ensure compliance with the Open Door Law.

In this instance, this office has received several complaints and phone calls about Saint John specifically. This is the only one that has manifested into an official opinion, but nevertheless, it has been on our radar.

In order to comply with the Open Door Law minutes requirement and, in turn, a request for those records under the Access to Public Records Act, minutes must be made available during the reasonable time period. The governing bodies in question have had ample time to do so. Mere recordings are not an acceptable substitute. A requester should be able to come away with an actual document summarizing the information set forth under Indiana Code section 5-14-1.5-4.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Town of Saint John violated the Open Door Law by not making minutes available within a reasonable time. As such, it violated the Access to Public Records Act by not supplying the requester with documents that should exist.



Luke H. Britt  
Public Access Counselor