

November 1, 2007

Ryan Harrell  
11632 South 700 West 35  
Marion, Indiana 46952

Dear Mr. Harrell:

This is in response to your informal inquiry dated December 11, 2006. I apologize for the delay in the response. Upon my appointment by Governor Daniels effective July 1 of this year, I found a backlog of informal inquiries. I am currently endeavoring to address those inquiries and issue an opinion in each matter pursuant to Indiana Code §5-14-4-10(5).

#### BACKGROUND

You filed a formal complaint with this office on December 11, 2006. Because your complaint was untimely filed under Indiana Code §5-14-5-7(a), the previous counselor converted it to an informal inquiry to be answered pursuant to I.C. §5-14-4-10(5). In your complaint, you alleged violations of both the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) and the Open Door Law ("ODL") (Ind. Code 5-14-1.5). You allege that the Surveyor called an emergency meeting of the Board on August 4, 2006 and did not provide notice to the public. Further, you allege that you later requested copies of the September 25, 2006 meeting of the Board and were never provided with copies.

The Surveyor responded to your complaint by letter dated January 11, 2007. The Surveyor contends that he called the August 4 meeting pursuant to I.C. §36-9-27-7(d) and notified the members of the Board and the media by telephone "a couple days" before the meeting. Regarding the minutes you requested, the Surveyor contends that the minutes were not ready as quickly as he would have hoped because of a death of the employee responsible for the minutes. The Surveyor further contends he both mailed and hand delivered to your attorney a copy of the minutes.

#### ANALYSIS

The public policy of the APRA states, "(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." I.C. §5-14-3-1.

Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2(m). The Surveyor is clearly a public agency under I.C. §5-14-3-2(l).

Regarding the minutes of the Board’s September 25, 2006 meeting, the Surveyor is required by the APRA to allow you to inspect and copy those minutes unless an exception to disclosure exists. I.C. §5-14-3-3. It is my understanding the Surveyor provided a copy of the minutes to your family and your attorney once the minutes were completed. As such, I do not believe the Surveyor violated the Access to Public Records Act.

Regarding your claim the Surveyor violated the ODL by not providing notice of the August 4, 2006 meeting, the Surveyor contends he called the meeting pursuant to I.C. §36-9-27-7(d), which provides that special meetings of the board may be called by the chairman, any two members, or the county surveyor, by mailing a written notice setting forth the time, date, and place of the meeting to each member not less than five days before the date of the meeting. A member may waive the mailing of notice of a special meeting by filing a written waiver with the secretary or by his presence at the meeting.

I understand the Surveyor’s contention that he called the meeting pursuant to I.C. §36-9-27-7(d), and I believe he was appropriately relying on the statute to call the meeting. However, the notice requirement in that subsection applies only to the members of the Board. All meetings of the board must be open to the public, pursuant to I.C. §36-9-27-7(f). Without another specific statute regarding public notice, the notice provisions of the Open Door Law would apply to this meeting. This means that notice of the date, time and location of the meeting must be posted at the office of the public agency, or at the meeting place if there is no office, at least 48 hours in advance of the meeting. I.C. §5-14-1.5-5. This is in addition to delivering notice to the news media pursuant to I.C. §5-14-1.5-5(b)(2). While the Surveyor may have appropriately notified the Board members of the meeting, I do not believe the Surveyor provided adequate notice to the public of the August 4, 2006 meeting.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Surveyor did not violate the Access to Public Records Act because he did provide you with the requested records. Further, it is my opinion the Surveyor was required to provide notice to the public of the August 4, 2006 meeting.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Jay Poe, Huntington County Surveyor