



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room
W470

Indianapolis, Indiana 46204-2745

Telephone: (317)234-0906

Fax: (317)233-3091

1-800-228-6013

www.IN.gov/pac

April 5, 2023

Mr. Jeff Ravenscroft

VIA EMAIL: jeffravenscroft@hotmail.com

RE: 23-INF-5; Non-Profit Entities & the Public Access Laws

Dear Mr. Ravenscroft,

This informal opinion explores the possibility of a non-profit entity becoming subject to the Indiana Public Access Laws.

BACKGROUND

This opinion will address your inquiry as it relates to your capacity as a board member of the Wabash County Animal Shelter. You contend that the Animal Shelter Board is subject to the Indiana Open Door Law, but you are getting resistance from your fellow board members. This opinion will analyze the ways in which a non-government entity could potentially be subject to the Open Door Law.

ANALYSIS

1. Open Door Law

The Open Door Law (“ODL”) requires the governing body of a public agency to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. *See* 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).

Unless an exception applies, all meetings must be open at all times to allow members of the public to observe and record.

2. Definitions of a public agency

While any person has the right to inspect and copy the public records of a public agency,¹ this right does not generally extend into the private sector. Therefore, our analysis begins with the definition of a public agency.

Historically, this office has applied this statute as a functional equivalency test (i.e., is the private actor performing the functional equivalent of a public agency and has it been delegated the authority to do so).

For the purposes of this discussion, the Open Door Law defines public agency as:

Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

Ind. Code § 5-14-1.5-2(a)(2). A traditional public agency cannot simply outsource a government function to a private third party without some strings attached.

Here, we look at a number of different factors as to why the Wabash County Animal Shelter could be consider a public entity for certain purposes. When a private entity is delegated a governmental power, its functions related to those powers become subject to oversight and accountability.

Notably, this issue was previously addressed by this office in *Opinion of the Public Access Counselor 22-FC-91* where we found that the St. Joseph County Animal Shelter was the functional equivalent of a government unit. That Opinion, published on the Public Access Counselor website, is incorporated by reference.

In this case, the Animal Shelter is addressed in the County's General Ordinance No. 2019-85-12. For example, Section 3 gives enforcement power explicitly to the Animal Shelter Manager; Section 4.15 gives the Manager the ability to demand the surrender of strays; Section 7 gives the Shelter impoundment authority; and the list of authority continues throughout the Ordinance.

Enforcement of ordinances is unquestionably a government function. This is especially so when there are fees and fines involved, numerous examples of which are scattered throughout Ordinance No. 2019-85-12. The Ordinance itself all but declares the Shelter an instrumentality of the County.

A private entity is deemed a state actor when the state delegates a traditionally public function to the entity itself. *Wade v. Byles*, 83 F.3d 902, 905 (7th Cir.1996). But for the delegation of authority from the County, the Animal Shelter could not enforce the ordinance. It meets, by any definition, the standard for an entity exercising a local government power.

¹ Ind. Code § 5-14-1.5-1

Toward that end, a governing body is defined as the Board of a public agency². If we continue with the presumption that the Shelter is akin to a public agency, it follows that its Board is a public governing body subject to the Open Door Law when it takes official action on public business.

3. Financial Considerations

In addition to the functional equivalency test, there is also a way by which we reach a similar conclusion based upon the receipt of public money. A public agency can also be defined as:

Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts that is required by statute, rule, or regulation.

Ind. Code section 5-14-1.5-2(a)(3). It is doubtful that the Shelter receives enough public money to qualify as a non-profit subject to audit under Indiana Code section 5-11-1-9. In fact, the standard was raised in 2019 to \$750,000. If the County appropriates money to the Shelter, and it constitutes more than fifty percent of its budget, an audit is triggered and, by extension, the public access laws³.

Here, it is unlikely the Shelter's budget reaches that amount. Nonetheless, the statutes also provide for budget review by the County commissioners. In that regard, County Ordinance No. 2019-85-12 states in Section 19:

It shall be the duty of the Animal Shelter to keep, or cause to be kept, accurate and detailed records of any monies paid to or held by said Animal Shelter, which records shall be open to inspection at reasonable times by such persons responsible for similar records of the County of Wabash and may be audited at the request and cost of the County Commissioners. A written copy of such audit shall be submitted to the County Commissioners.

There appears to be little question that the Shelter is subject to budget review by the county's governing body.

² Ind. Code § 5-14-1.5-2(b)(2)

³

CONCLUSION

Based on the information provided, it appears as if the Wabash County Animal Shelter is subject to the State's public access laws insofar as it possessing authority delegated to it by the County. When it is exercising the functions enumerated in General Ordinance 2019-85-12, it must do so in a manner consistent with the Open Door Law and Access to Public Records Act.



Luke H. Britt
Public Access Counselor

Issued: April 5, 2023