



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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September 17, 2015

Marshal James L. Eads
201 W. Main Street
Mentone, Indiana 46539

Terry S. Engstrand
7771 E. 500 N.
Rochester, IN 46975

Re: Formal Complaint 15-FC-225; Alleged Violation of the Open Door Law by the Town of Mentone

Dear Marshal Eads and Mr. Engstrand,

This advisory opinion is in response to your formal complaint alleging the Town of Mentone ("Town") violated the Open Door Law (ODL), Ind. Code § 5-14-1.5-1 *et. seq.* On August 19, the Town responded via Jill Gross, Council Member. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 6, 2015. This complaint has been consolidated for convenience.

BACKGROUND

Your complaint dated August 4, 2015, alleges the Town of Mentone, specifically, town council member Jill Gross violated the Open Door Law by improperly releasing information that was discussed at an executive session.

The Town scheduled an executive session, which was held on July 15, 2015. On August 3, a Board Member, Jill Gross, disclosed that the executive session was held in response to a complaint filed against an officer of the Town's Police Department. This information was provided to the media. You contend that informing the press was a violation of the ODL.

The Town responded to your complaint, stating that under its interpretation of the ODL, nothing prevents the disclosure of information from an executive session once the session



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is concluded.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. See Ind. Code § 5-14-1.5-3(a).

An executive session is a non-public meeting and the only type of majority gathering which may be held behind closed doors. Ind. Code § 5-14-1.5-6.1 provides for certain exceptions to the general rule of public meetings. Job performance of employees is one of those exceptions and it appears as if the executive session was proper.

The issue in the current case is whether a member of a governing body can 'breach confidentiality' of an executive session by discussing the particulars of a closed-door meeting in public. There is nothing in the Open Door Law that prohibits this. There may be an understanding between council members that executive session issues be kept behind closed doors, however, there is not a mandatory gag order to keep details secret. Governing bodies (and ostensibly their individual members) have the discretion and the autonomy to disclose details of executive sessions. Unless it has been declared confidential by statute, information about public business is subject to disclosure. Personnel files and contents of complaints are subject to discretionary release and are not confidential pursuant to Ind. Code § 5-14-3-4(b)(8).

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Town of Mentone has not violated the Open Door Law.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Cc: Ms. Jill Gross