
OPINION OF THE PUBLIC ACCESS COUNSELOR

WILLIAM T. CORD,
Complainant,

v.

SWITZERLAND COUNTY SCHOOL CORP.,
Respondent.

Formal Complaint No.
17-FC-205

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Switzerland County School Corp. (“School”) violated the Access to Public Records Act¹ (“APRA”). The School has responded via attorney Alexander P. Pinegar. 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 August 28, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

William T. Cord (“Complainant”) filed a formal complaint alleging that the School violated the Access to Public Records Act by creating a record that does not meet the statutory standard for executive session minutes.

On August 23, 2017, Cord requested a copy of the minutes from an executive session the school board held on June 5, 2017. After receiving the requested record, Cord believed the record lacked the certification required under Indiana Code section 5-14-1.5-6.1. Cord contends this is similar to the situation presented to this office in *Opinion of the Public Access Counselor*, 15-FC-143 (2015), which is incorporated by reference.

The School contends the certification of the executive session memoranda was delayed due to unusual circumstances and the minutes were in draft form when presented to Cord. The board eventually certified the minutes on August 28, 2017, the next earliest opportunity.

ANALYSIS

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 Switzerland County School Corporation is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the School’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under

the APRA. Ind. Code § 5-14-3-3(a). A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received. Ind. Code § 5-14-3-9(c).

Although this matter indeed involves a public record, it is more closely related to a requirement under the Open Door Law (“ODL”).

Indiana Code section 5-14-1.5-6.1(d) provides, in relevant part, the following:

The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

Different governing bodies have a multitude of various procedures to approve and ratify minutes. Indeed, the approval of official minutes of some meetings are delayed due to practical reasons. For board meeting only once a month, this delay could stretch over several meetings. This is why this Office has taken the position that draft minutes should be made available to the public as they are created. And so it appears to be in this case.

The School's response demonstrates an understanding of the Open Door Law as it relates to executive session memoranda. It just appears as if the certification had not been created at the time of the request. This does not render the executive session or the meeting minutes illegitimate. Still, the School should be mindful that executive sessions are the exception to the general rule that public business be conducted openly, and therefore, the rules governing executive sessions should be followed as strictly as possible.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Switzerland County School Corporation did not violate the Access to Public Records Act or the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor