



# STATE OF INDIANA

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March 5, 2009

Michael Griffin  
Clerk-Treasurer  
Town of Highland  
3333 Ridge Road  
Highland, Indiana 46322-3351

*Re: Informal inquiry 09-INF-4*

Dear Mr. Griffin:

This is in response to your informal inquiry dated January 27, 2009. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write on behalf of the Town of Highland. Pursuant to the Access to Public Records Act ("APRA") (Ind. Code 5-14-3), the Town is a public agency. I.C. § 5-14-3-2(m)(2). Your inquiry is whether notes utilized by a Town Council member at a Council meeting but not submitted to you as Clerk-Treasurer are public record for the purposes of the APRA.

Ind. 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 is the following:

[A]ny 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 and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

I.C. § 5-14-3-2(n).

The question here is whether the document at issue is a public record. You explain that at a recent Council meeting, the Council President read aloud prepared written remarks during the "comments from Councilors (Good of the Order)" portion of the meeting. The comments were paraphrased and generalized in the meeting minutes.

After reading the message, the President put his notes away and did not seek to include the notes in the written record of the meeting. The President did not issue copies of the notes to other Council members or to you. No audio or visual recording was made of the meeting. You have now received a request for a copy of the notes the President utilized when making his comments. You inquire whether the notes are public record required to be disclosed pursuant to the APRA.

In *Opinion of the Public Access Counselor 07-FC-317* I addressed a similar issue related to notes kept by a member of a governing body during a public meeting.

Regarding your request for notes taken by two different individuals during two different proceedings, this issue was addressed by Counselor Karen Davis in *Opinion of the Public Access Counselor 06-FC-72*. A “public record” is any material that is created, received, retained, maintained, or filed by or with a public agency. See I.C. §5-14-3-2(m). Mere creation of handwritten notes during a public meeting by a public official, without more, does not demonstrate that a record is a “public record.” Only “public records” are required to be available for inspection and copying. *Id.* If the handwritten notes created by Mr. White and Mr. Coutts were not filed with or are not maintained by the FWCS office, they are not public records. If the notes were filed with or are maintained by FWCS, the FWCS argues they constitute personal notes serving as the equivalent of a diary or journal, which are excepted from disclosure at the discretion of the public agency under I.C. §5-14-3-4(b)(7). If those handwritten notes were used as reference by each individual for his own purposes, I would agree with that characterization. As such, it is my opinion FWCS did not violate the APRA by denying access to the notes.

*Opinion of the Public Access Counselor 07-FC-317*

Here, the notes were, I presume, created in advance of the meeting. The notes were created by the Council President for his use during the meeting. The President did not demonstrate any intent to make those notes part of the written materials utilized at the meeting, as he did not distribute copies to the other members, the public members in attendance, or you, the record-keeper for the Council. Because the notes were utilized by the President to make his remarks and were not created, received, retained, maintained, or filed by or with a public agency (namely the Clerk-Treasurer’s office as the record-keeper for the Town), it is my opinion the notes do not fall under the definition of public record. Even if the notes were public record, it would be my opinion the notes would fall under the exception to disclosure in I.C. § 5-14-3-4(b)(7).

Please do not hesitate to contact me if I can provide any further assistance.

Best regards,



Heather Willis Neal  
Public Access Counselor