



# STATE OF INDIANA

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March 16, 2015

Ms. Suellen Jackson-Boner  
C/o Governor's Council for People with Disabilities  
Via email

*Re: Informal Inquiry 15-INF-08; Online work sessions*

Dear Ms. Jackson-Boner

This is in response to your informal inquiry regarding online work sessions of the Governor's Council for People with Disabilities ("Council"). Your inquiry seeks confirmation by this Office as to the propriety of holding brainstorming sessions through the use of an online portal.

The GCPD Board is in the process of making suggestions for workshops and presenter's for the Council's statewide conference. As an alternative to an in-person gathering, the Board would prefer to meet through the use of an online portal known as COVOH Decision Lab. The portal would allow Board members to offer suggestions and feedback on line as opposed to face-to-face conversation. You suggest the Lab would be used for a week or so in order for the Board members to interact and see each other's comments. You inquire as to the propriety under the Open Door Law for such an initiative.

To my knowledge, the issue of an online system such as this has not been addressed by any prior Public Access Counselor or the courts. As such, I am left to opine on my interpretation of the Open Door Law in regard to a situation such as this.

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. Official action is very broadly defined and includes discussion and brain storming.

The ODL is only triggered when a majority of a governing body gathers to take official action on public business. The Board and the Council are governing bodies subject to the Open Door Law. If I understand the Decision Lab logistics correctly, each user would independently place a comment or suggestion online for the rest of the group.

When deciding issues like this in the past (instant messaging, email groups, etc.), I have based my analysis on whether the communication was simultaneous. I have also suggested that a “gathering” could include a meeting of the minds online – even if it isn’t simultaneous – if the intent is to have a call-and-response discussion of public business.

I do not believe the use of a messaging forum is a *de facto* violation of the ODL. The conversation is not simultaneous and does not call for instant feedback. I would, however, caution the Board as to the perception it may create in the minds of the public. Anytime a discussion takes place *involving* the majority of a governing body, it should theoretically be conducted in the open. The general assembly has expressed in the Open Door Law public agencies exist only to aid in the conduct of the business of the people of this state.

While the subject matter of the forum is fairly innocuous (and may even be considered an administrative function), it is still public business germane to the Board’s official capacity as a civil servant.

It is not the purpose of the Office of the Public Access Counselor to frustrate the operations of public agencies; therefore, I offer a solution which may serve the dual purpose of efficiency and transparency. If the Decision Lab portal was open to the public in a read-only fashion, the perception that a discussion was taking place behind closed doors would be mitigated. Normally, such discussions would be considered deliberative as they are thoughts, ideas, opinions, speculations, etc. Deliberative materials are generally shielded from disclosure under the Access to Public Records Act. However, if, in an act of good faith, the public was allowed to view the comments as they are presented, it may ease the concern the discussion was conducted in a manner inconsistent with transparency.

I do believe the idea of an online discussion forum walks up to the line of being considered an Open Door gathering, there is no authority on-point validating my perspective. Therefore, in this instance, I caution the Board to exercise discretion in a light most favorable to transparency and access.

Best regards,

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

Luke H. Britt  
Public Access Counselor