



STATE OF INDIANA

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December 18, 2014

Ms. Christine Mueller
Via email

Re: Informal Inquiry 14-INF-33

Dear Ms. Mueller,

This is in response to your informal inquiry regarding the Dearborn County Government. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 *et seq.* and the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.*

BACKGROUND

Your informal inquiry regarding Dearborn County Government was threefold. First, you inquired whether committees created by the Dearborn County Commissioners are subject to the Open Door Law (ODL) and if so, whether the committee must publish notice of meetings and keep official minutes. Second, you inquired if an email communication containing legal advice, sent by the Commissioner’s attorney to additional parties, is subject to attorney-client privilege. Finally, you inquired if it is illegal to publish information provided to the public, such as an email mentioned in your second inquiry.

DISCUSSION

It is the intent of the ODL that 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. The term “public agency” is defined very broadly by the ODL and encompasses many meanings, which are set forth at Ind. Code § 5-14-1.5-2(a).

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). The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight

hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. See Ind. Code § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no such office exists, at the place where the meeting is held. See Ind. Code § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. See Ind. Code § 5-14-1.5-5(b)(2).

The ODL requires the following memoranda to be kept: the date, time, and place of the meeting; the members of the governing body recorded as either present or absent; the general substance of all matters proposed, discussed, or decided; and a record of all votes taken, by individual members, if there is no roll call. The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. There is no requirement in the ODL for a public agency to keep minutes of its meeting. If minutes are kept, the minutes are to be open for public inspection and copying. See Ind. Code § 5-14-1.5-4.

The ODL defines a public agency in Ind. Code § 5-14-1.5- (a) as

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) 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.

The ODL defines a governing body as:

two (2) or more individuals who are:

(1) A public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and (B) takes official action on public business

(2) The board, commission, council, or other body of a public agency which takes official action upon public business. (3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

See Ind. Code § 5-14-1.5-2 (b).

Therefore, I would need more information as to how the committees you reference are established before making a conclusive determination.

As for the email from the attorney you reference, Ind. Code § 34-46-3-1 provides a statutory privilege regarding attorney and client communications. Indiana courts have also recognized the confidentiality of such communications:

The privilege provides that when an attorney is consulted on business within the scope of his profession, the communications on the subject between him and his client should be treated as confidential. The privilege applies to all communications to an attorney for the purpose of obtaining professional legal advice or aid regarding the client's rights and liabilities.

Hueck v. State, 590 N.E.2d 581, 584 (Ind. Ct. App. 1992) (citations omitted).

Information subject to the attorney client privilege retains its privileged character until the client has consented to its disclosure.” *Mayberry v. State*, 670 N.E.2d 1262, 1267 (Ind. 1996), citing *Key v. State*, 132 N.E.2d 143, 145 (Ind. 1956). Moreover, the Indiana Court of Appeals has held that government agencies may rely on the attorney-client privilege when they communicate with their attorneys on business within the scope of the attorney’s profession. *Board of Trustees of Public Employees Retirement Fund of Indiana v. Morley*, 580 N.E.2d 371 (Ind. Ct. App. 1991).).

The privilege is asserted by the client and not the attorney, therefore a client may consent to disclosure. If an email containing attorney-client communication was shared with you, then the client has consented to waiving the privilege.

Similarly, without a court order stating otherwise, there would be no prohibition on publication of any information received via a public records request.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor