

August 11, 2005

Samuel L. Shaw
629 I Street
Bedford, IN 47421

Re: Formal Complaint 05-FC-142; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Lawrence County Auditor

Dear Mr. Shaw:

This is in response to your formal complaint alleging that the Lawrence County Auditor (“Auditor”) violated the Access to Public Records Act and the Open Door Law. I find that the Auditor violated the Access to Public Records Act.

BACKGROUND

You complain that you were denied the minutes of the June 21st meeting because the minutes were not approved. You also allege that no agenda was posted for the June 21st meeting, and that you were also denied access to the June 28th meeting minutes.

I sent a copy of your complaint to the Auditor. Lawrence County Auditor Billie Tumey responded by letter, a copy of which is enclosed for your reference. She stated that the June 21st council special meeting was tape recorded for accuracy and the minutes were not complete or reviewed for approval at the time of the request. The same condition applied to your request for June 28th council minutes. Finally, she stated that all Lawrence County meeting agendas are posted 48 hours in advance.

ANALYSIS

Access to Public Records Act

Any person may inspect and copy the public records of any public agency unless excepted under section 4 of the APRA. IC 5-14-3-3(a). A public record includes any aural record or printed material that has been created by the public agency. IC 5-14-3-2(l). This office

has often stated that draft minutes or draft memoranda are disclosable public records. If minutes have been transcribed from a tape recording but require editing, the rough draft version should be disclosed upon request, but the agency may attach a disclaimer that the minutes represent an unedited draft. Also, a person requesting the minutes may be provided with the opportunity to inspect or copy the tape recording from a meeting if the tape recording has not been transcribed. Under the facts as you allege them, and given the Auditor's response, the Auditor improperly denied you a record in violation of the Access to Public Records Act.

Open Door Law

You did not file your complaint against a governing body of a public agency; you named only the Auditor in your complaint. The Auditor is not a governing body subject to the Open Door Law. IC 5-14-1.5-2(b)(defining governing body as "two or more individuals"). The Auditor has responsibility to record the proceedings of the meetings of the county executive, the commissioners. IC 36-2-9-7(b); IC 36-2-2-11. To further confuse the matter, the Auditor's response referred to the council, not the commissioners. Because you have not clearly stated what governing body you are complaining about, I deem this section of the advisory to be an informal inquiry response pursuant to IC 5-14-4(10)(5). To the extent that you are alleging that the commissioners or the council did not post an *agenda* on June 21st, I note that a governing body is required to post an agenda prior to the meeting, if it utilizes one. IC 5-14-1.5-4(a). If the commissioners or council met June 21 and utilized an agenda, they were required to post an agenda outside the meeting room prior to the start of the meeting.

Under IC 5-14-1.5-5(a), notice of a meeting must be posted at least 48 hours in advance, excluding Saturdays, Sundays, and legal holidays. According to the Auditor, notice of all meetings of Lawrence County government are posted 48 hours in advance of the meeting; she does not specifically address the June 21st meeting. I note that June 21st was a Tuesday, and the weekend may have intervened during the time that the notice was posted. So long as the governing body against which you complain posted notice of its June 21st meeting 48 hours in advance, not counting Saturday or Sunday, the notice was posted timely and no violation of the Open Door Law occurred.

CONCLUSION

For the foregoing reasons, I find that the Auditor violated the Access to Public Records Act by not providing either rough draft minutes of meetings or the tape recording of the proceedings.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Billie Tumey