

November 16, 2005

*Sent Via Facsimile*

Greg L. Hamilton  
789 East Walnut Street  
Martinsville, IN 46151

*Re: Formal Complaint 05-FC-217; Alleged Violation of the Open Door Law and  
Access to Public Records Act by the Morgan County Health Department*

Dear Mr. Hamilton:

This is in response to your formal complaint alleging that the Morgan County Health Department (“Department”) violated the Open Door Law and Access to Public Records Act by failing to allow you to inspect and copy a tape recording of the June 30, 2005 meeting of the Department’s Board of Health. I find that the Morgan County Health Department did not preserve its record of the meeting in violation of the Access to Public Records Act.

#### BACKGROUND

You have been attempting to inspect and copy a “verbatim dialogue” of a meeting that occurred June 30, 2005. The Department had given you what you characterize as a “bland, paraphrased” version of the meeting. The Department told you that it tape-recorded the meeting; you then asked for a copy of this tape recording. Your most recent attempt to get the verbatim record of the meeting resulted in a response dated September 22, 2005 from Dr. John Reynolds, Health Officer for the Department. Dr. Reynolds stated that the Department had given you the only record of the meeting that the Department maintained.

You filed your formal complaint with the Office of the Public Access Counselor on October 18, 2005. You allege that, while you have received the summarized version of the meeting, you have never received a tape recording of the meeting. I sent the Department a copy of your complaint. I enclose Dr. Reynold’s response for your reference. He explained that the routine practice of the Department is to tape the meetings, and to use the tape to compose the

minutes of the Department's Board of Health. After the minutes are composed, the tape is reused or taped over for other purposes. He believed that the tape of the June 30 meeting may have been magnetically erased more than once since the meeting. He stated that the tape was used as a tool to prepare the meeting minutes, as would handwritten shorthand notes or other memory aids. It was never meant to be transcribed word for word.

## ANALYSIS

The Open Door Law requires that memoranda of meetings be maintained:

“As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under Indiana Code 5-1.5-2-2.5 or Indiana Code 20-12-63-7.”

Ind. Code 5-14-1.5-4(b). 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. The minutes, if any, are to be open for public inspection and copying. IC 5-14-1.5-4(c). Draft copies of minutes taken during a public meeting are disclosable public records despite not being in final form. *Opinion of the Public Access Counselor 98-08*.

A public agency shall protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a). A “public record” is any material created, received, retained, maintained, or filed by or with a public agency. IC 5-14-3-2(m). Public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under Indiana Code 5-15. IC 5-14-3-4(e). The records management unit of the Indiana Commission on Public Records has established a record retention schedule for Board or Commission Meeting Tapes. It states that the magnetic tapes used for board or commission meetings used to complete the minutes of the meetings may be erased or destroyed after official minutes taken from them are approved. See GRADM-2, [www.in.gov/icpr/records\\_management/grsadmin.html](http://www.in.gov/icpr/records_management/grsadmin.html).

If the tape recording of the June 30 meeting was not erased or reused at the time of your request for the verbatim dialogue of the meeting, it was a violation of the Access to Public Records Act to not disclose it to you. In addition, if the tape recording was erased or reused prior to the official approval of the minutes at the next meeting of the Department's Board of Health, the Department violated IC 5-14-3-4(e). The Department cannot avoid disclosure of the tape recording of a meeting merely because the Department designates the tape recording as an aid to composing the minutes or memoranda of a meeting. The tape is a public record, even if an official substitute will be created some time in the future. In fact, the Open Door Law requires that memoranda be kept *as the meeting progresses*. Hence, if the tape recording is the functional equivalent of shorthand notes or other notes kept during the meeting, then the tape recording fulfills the governing body's obligation under IC 5-14-1.5-4(b) to keep memoranda as the meeting progresses. Since those memoranda are to be available within a reasonable time after

the meeting, and because in any event, a tape recording constitutes a public record, the Department must maintain the tape recording and allow the tape recording to be inspected and copied upon request.

That said, the Department is not obliged to transcribe verbatim the tape recording, upon the request of a person. The Open Door Law's memoranda requirements do not require a verbatim transcript of a meeting, and the Access to Public Records Act does not require a public agency to create a record that it is not legally required to create.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Morgan County Health Department violated the Access to Public Records Act by failing to allow you to inspect and copy the tape recording of the June 30 meeting, and by destroying the tape recording prior to final approval of the minutes taken from the tape recording.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Dr. John Reynolds