



# STATE OF INDIANA

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February 10, 2014

Ms. Margaret Fosmoe  
C/o South Bend Tribune  
225 W. Colfax Avenue  
South Bend, IN 46626

*Re: Formal Complaint 14-FC-03; Alleged Violation of the Open Door Law by Ivy Tech Community College*

Dear Ms. Fosmoe,

This advisory opinion is in response to your formal complaint alleging the Ivy Tech Community College ("College") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The College has responded via Christopher A. Ruhl, Esq., General Counsel. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 10, 2014.

## BACKGROUND

Your complaint dated January 9, 2014, alleges the Ivy Tech Community College violated the Open Door Law by providing proper notice of their executive meetings.

On December 23, 2013, I issued an Informal Opinion on this topic wherein the College was alleged to have published notice of an executive session using a template that, in my opinion, followed the letter, but not the spirit of the Open Door Law. In the *Opinion of the Public Access Counselor 13-INF-65*, I concluded there was not enough information to make a determination of an Open Door Law violation. The notice, pursuant to I.C. § 5-14-1.5-6.1(b), listed the following topics for discussion:

- Initiation of litigation or litigation which is either pending or has been threatened specifically in writing. As used in this clause, "litigation" includes any judicial action or administrative law proceeding under federal or state law.  
The implementation of security systems.  
The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

- For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.
- To receive information about and interview prospective employees. With respect to any individual over whom the governing body has jurisdiction:  
to receive information concerning the individual's alleged misconduct;
- For discussion of records classified as confidential by state or federal statute.
- To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.
- To train school board members with an outside consultant about the performance of the role of the members as public officials.

All of these are permissible under the ODL, however, I opined if the College only intended to discuss some of these topics, yet published the same notice every time they conducted an executive session; it would be misleading the public and could be considered a violation.

After 13-INF-65 was published, I was informed the College did in fact use the same executive session notice every time, regardless of their intention to discuss some or all of the topics. Therefore, you filed a formal complaint arguing “the public is best served by knowledge of the reasons for closed door-meetings.”

I wholeheartedly agree. To their due credit, Ivy Tech (via Mr. Ruhl’s response), has agreed to alter their practice of using the same executive session notice and to be more precise in their language when preparing to meet behind closed doors.

### **ANALYSIS**

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. See Ind. Code § 5-14-1.5-1. 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).

Ind. Code § 5-14-1.5-6.1(d) states public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. All of the subject matters intended to be discussed fall under the permissible discussion topics for a closed door executive session under the ODL.

Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, and must contain, in addition to the date, time and

location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. See Ind. Code § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to Ind. Code § 5-14-1.5-6.1(b)(9)” would satisfy the requirements of an executive session notice.

As I stated in the prior opinion, I take no exception to an executive session being called to discuss multiple subject matters. It is only when a generic notice is used as a catch-all by listing every possible discussion topic, do I believe it is a violation of the public’s right to be advised of the goings-on of their public agencies behind closed doors. Although the public is advised after the executive session of the subject matter discussed by way of memoranda, it is also their right to know before the session takes place, what matters will be discussed.

I find it estimable the College would recognize best practices and change their notice to better reflect the actual happenings of their planned executive sessions. As such, I decline to declare a violation as the College has indicated an intention to remedy the situation. The College should also be advised of their continued obligation under Ind. Code § 5-14-1.5-6.1(d) to prepare memoranda after the executive session memorializing the specific subject matter discussed during their meetings.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Christopher A. Ruhl, Esq.