



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 20, 2016

Ms. Jennaca Combs
116 East Jackson
Galveston, Indiana 46932
Jcombs46932@gmail.com

Re: Formal Complaint 16-FC-229; Alleged Violation of the Access to Public Records Act and Open Door Law by the Town of Galveston

Dear Ms. Combs:

This advisory opinion is in response to your formal complaint alleging the Town of Galveston ("Town") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. and the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1. Mr. Jim Brugh, Esq., has responded in regards to his appointment as special counsel and fees accessed. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 8, 2016.

BACKGROUND

Your complaint filed September 8, 2016, alleges the Town violated the APRA by not giving you information about special counsel Mr. Jim Brugh being appointed and the identity of the concerned citizen responsible for the legal fees. On July 26, 2016 during a special meeting, the Town decided on Resolution NO. 2016-01, which has your signature on the Nay vote for affirmation of special counsel. You stated it was questioned who is responsible for the costs and you were given no name and only a concerned citizen. You placed a request with the Town on August 1, 2016; the clerk called to explain there were no records of who paid special counsel Brugh, as the transaction was not through the Town.

Your complaint also alleges three (3) council members had a conference call with Mr. Jim Brugh without notice to other board members, as well as not giving notice to the public. Mr. Brugh has responded with the attached letter dating September 13, 2016 of the clerical error in regards to the August 1, 2016 conferences on the invoice; the conference did not take place with all three (3) members simultaneously.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See Indiana Code § 5-14-3-1*. The Town of Galveston is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Town’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

The issue of whether an anonymous donor can pay for a public agency’s legal representation is a novel one to this Office. I reached out to the ever-helpful folks at the Department of Local Government Finance (“DLGF”) for some clarification. Their response is as follows:

Governmental units often receive donations which are restricted by the donor for specific purposes. The council should agree to the terms of the gift or reject the gift in writing. We have not taken audit exception to the use of restricted donations as long as the purposes are within the scope of the unit’s general statutory authority.

[T]he donor may remain anonymous if the donor requires nondisclosure as a condition of the gift - IC 5-14-3-4(b)(15).

The financial arrangement was made between two (2) private actors. Mr. Brugh provided the Town with an itemized invoice of services rendered, but the payment itself never became a public record. The invoice is public record and has properly been provided to you. The arrangement did not raise red flags with DLGF and anonymous financial donations are well outside the scope of this Office.

As for the alleged Open Door Law violation, 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 Indiana Code § 5-14-1.5-1*.

From the information provided, it does not appear the Town Board members held a secret meeting with Mr. Brugh without the public’s notice. A meeting as defined in the statute; “means a gathering of a *majority* of the governing body of a public agency for the purpose of taking official action upon public business”. *See Indiana Code § 5-14-1.5-2*. It appears as if only two (2) members (of five (5)) were a part of the conversation; therefore, the Open Door Law is not triggered.

CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor the Town of Galveston did not violate the Access to Public Records Act or the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Jim Brugh, Esq.