



STATE OF INDIANA

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January 3, 2017

Ms. Tameka Wilson
5633 Foxcross Court
Fort Wayne, Indiana 46835

Re: Formal Complaint 16-FC-294; Alleged Violation of the Open Door Law by Fort Wayne Center for Education - Fort Wayne Urban League

Dear Ms. Wilson:

This advisory opinion is in response to your formal complaint alleging the Fort Wayne Center for Education ("FWCE") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The FWCE has responded via Mr. Kirby Moss, Esq. 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 November 13, 2016.

BACKGROUND

Your complaint dated November 13, 2016, alleges the Fort Wayne Center for Education violated the Open Door Law by discussing personnel information during a public meeting.

On November 17, 2016, during a school board Thurgood Marshall Leadership Academy with two (2) visitors present. Mr. Jonathan Ray, CEO of the Urban League, asked you to leave the meeting in order to discuss your job performance and salary. You believe his discussion should have been discussed in an executive session.

The FWCE response states that matters involving your compensation and or disciplinary file are matters of public record. Thus your complaint lacks merit.

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 Indiana 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 Indiana Code § 5-14-1.5-3(a)*.

“Public business” means “any function upon which the public agency is empowered or authorized to take official action.” Indiana Code § 5-14-1.5-2(e). “Official action” is very broadly defined by our state legislature to include everything from merely “receiving information” and “deliberating” (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Indiana Code § 5-14-1.5-2(d). Pursuant to Indiana Code 5-14-1.5-6.1(b)(9) Executive sessions may be held to discuss job performance evaluation of individual employees. But does not apply to a discussion of the salary, or compensation of employees.

Pursuant to the Access to Public Records Act, personnel files of public employees and files of applicants for public employment are confidential, but the release of details are discretionary on the part of the employing agency. *See Indiana Code § 5-14-3-4(b)(8)*. Some details such as the name, compensation, work title, business address, business telephone number, job description, education and training background, previous work experience, etc., must be released; however, performance issues are largely kept private by most public agencies as long as they do not involve suspension, demotion, or termination. Generally, performance appraisals and issues are discussed in executive session out of courtesy, but this is not a requirement. Apart from social security numbers, personal health information and student records, there is little expectation of privacy on the part of a public employee.

The real violation, which you have not alleged, is your exclusion from the public meeting to discuss the matter outside your presence. While it would have been appropriate to exclude you from an executive session, you have the same standing as any other member of the public to attend and stay in attendance at a duly noticed public meeting regardless of the subject matter. In the future, I encourage the FWCE to be mindful of these considerations and also to hold executive sessions to discuss sensitive personnel performance matters out of courtesy to an employee.

Please do not hesitate to contact me with any other questions.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Kirby G. Moss, Esq.