
OPINION OF THE PUBLIC ACCESS COUNSELOR

DEBRA L. FRYZEL,
Complainant,

v.

TOWN OF ST. JOHN,
Respondent.

Formal Complaint No.
17-FC-268

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Town of St. John (“Town”) violated the Access to Public Records Act¹ (“APRA”). The Town responded to the complaint through town attorney David M. Austgen. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on November 22, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Debra L. Fryzel (“Complainant”) filed a formal complaint alleging the Town of St. John violated the Open Door Law and Access to Public Records Act by failing to publish meeting minutes for the past several months from the Plan Commission, Board of Zoning Appeals, and Impact Advisory Fee Committee meetings.

On November 3, 2017, Fryzel emailed the members of the Plan Commission asking when the meeting minutes would be available. She asserts that she did not receive a response to that email. Fryzel noted that she had attended several Plan Commission meetings over the past several months, and that at these meetings the Commission would “continually defer the minutes.”

Fryzel further stated that meeting minutes are available on the Clerk-Treasurer’s Calendar webpage, but the Plan Commission and the Board of Zoning Appeals meeting minutes were seven months behind, and the Impact Advisory Fee Committee meeting minutes were nine months behind.

This Office received the Complaint on November 22, 2017, and sent notice of the Complaint on November 27, 2017. The Town filed its response to the complaint on December 14, 2017.

In its response, the Town explained that it had employed a private citizen as the Town’s recording secretary to attend meetings and prepare meeting minutes. The Town paid this citizen for each meeting attended and minutes prepared in accordance with the Town’s Salary Ordinance. Around January 2016, this citizen stopped preparing meeting minutes,

but continued to attend meetings. Eventually, in June 2016, the citizen resigned. As a result, the Town had a backlog of meetings for which minutes had not been prepared. The Town Manager assigned meeting minute preparation to his administrative assistant, who had to work overtime in order to clear out the backlog. She began attending the meetings and fulfilling all of the duties of the recording secretary in addition to her normal employment duties. This led to a dispute over overtime compensation, and as a result, the administrative assistant was told not to attend meetings or transcribe minutes until a new Town Salary Ordinance was approved. This has now been resolved, and the Town Manager's administrative assistant has now resumed working to eliminate the backlog of meeting minutes that had not been transcribed.

ANALYSIS

This complaint alleges violations of both the ODL and the APRA. I will address both in turn.

1. Open Door Law

Fryzel alleges that the Town violated the Open Door Law by not having meeting minutes available for several months and not approving prior meeting minutes at proceeding meetings.

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, so the people may be fully informed. The ODL's provisions are to be liberally construed with the view of carrying out its policy. *See* Ind. Code § 5-14-1.5-1.

1.1 Meeting Memoranda

The ODL requires that the following memoranda be kept as the meeting progresses: (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; and (4) record of all votes taken by individual members if there is a roll call. Ind. Code § 5-14-1.5-4(b). The ODL further requires that such memoranda are to be made available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. Ind. Code § 5-14-1.5-4(c).

The Town asserts that meeting minutes are the functional equivalent of memoranda as contemplated by the ODL. While it is true that meeting minutes will contain the information required by the ODL, transcribed meeting minutes often contain information above and beyond what is required by the ODL. Indiana Code section 5-14-1.5-4(c) provides that "minutes, if any, are to be open for public inspection and copying."

The Town acknowledged that approximately seven months is an unreasonable amount of time to not have copies of the meeting minutes prepared. The ODL, however, does not require transcribed meeting minutes to be made available within a reasonable amount of time – just the meeting memoranda. This Office commends the Town's efforts to provide transcribed meeting minutes on its website that can be viewed and downloaded by the general public. I do not want to discourage the Town from doing this. However, the Town has admitted that it has been an unreasonable amount of time to provide the memoranda information required by

the ODL, and I agree. It is my recommendation that the Town focus first on creating memoranda that fulfill the requirement of Indiana Code section 5-14-1.5-4(c) before moving its attention to more detailed transcribed minutes.

2. Access to Public Records Act

Fryzel also alleges that the Town violated the Access to Public Records Act by not responding to her email asking when meeting minutes would be made available.

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.” Ind. Code § 5-14-3-1. The Town of St. John is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, unless an exception applies, any person has the right to inspect and copy the Town’s public records during regular business hours. Ind. Code § 5-14-3-3(a). A request for inspection or copying must identify with reasonable particularity the record being requested. Ind. Code § 5-14-3-3(a)(1).

2.1 Requests for Information, Not Records

I have opined in the past that asking questions to obtain information, rather than a public record, is not contemplated by the APRA. Had the Complainant requested copies of the meeting minutes, she would have been entitled to a response pursuant to the APRA. *See* Ind. Code § 5-14-3-9(c). Even so, the APRA does not mandate public agencies to answer questions that are not requests for records. The Town noted that it has audio recordings available for public inspection and

copying for every meeting. It is my recommendation that the Complainant revise her request so that she is requesting a tangible public record such as the audio recording of the meeting, rather than merely asking for information.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Town of St. John violated the Open Door Law for not making meeting memoranda available within a reasonable time. However, the Town of St. John did not violate the Access to Public Records Act. I commend the Town's effort to provide detailed, transcribed meeting minutes, but I recommend the Town focus on providing the minimum information required for meeting memoranda before preparing more detailed meeting minutes.



Luke H. Britt
Public Access Counselor