
OPINION OF THE PUBLIC ACCESS COUNSELOR

MELISSA J. COPELAND,
Complainant,

v.

SHELBURN TOWN COUNCIL,
Respondent.

Formal Complaint No.
24-FC-05

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging the Shelburn Town Council, through its town council, violated the Open Door Law.¹ The Town did not respond despite invitations to do so. 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 January 2, 2024.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

The issue in this case is whether the Town of Shelburn Town Council (Council) took reasonable steps in accordance with the Open Door Law (ODL) to notice an executive session.

On December 26, 2023, the Town Council held an executive meeting where the topic the Council intended to discuss was an ordinance that was up for vote.

Melissa Copeland (Complainant) filed her formal complaint with this office because she felt the meeting was not properly noticed and the topic was not proper under the Open Door Law.

The complaint was filed on January 2, 2024.

This office advised the Town of the complaint on January 12. Despite several subsequent attempts to solicit a response, we were unsuccessful in obtaining an answer.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

The Town of Shelburn (Town) is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. The Town Council (Council) is a governing body of the Town; and thus, subject to the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

1.1 ODL definitions

Under the ODL, "meeting" means "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code § 5-14-1.5-2(c).

"Official action" means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;

- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

Ind. Code § 5-14-1.5-2(d). Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

1.1 Cooperation from public agencies

Indiana Code section 5-14-5-5 expressly states that a “public agency shall cooperate with the [Public Access] Counselor in any investigation or proceeding under this chapter.”

Indeed, the chapter referenced in that statute is the one that governs the formal complaint procedure administered by this Office. In other words, public agencies must work with this Office in any formal complaint investigation or proceeding.

Here, the Council did not file an answer to the formal complaint or resolve the dispute despite several invitations to do so.

The Council should be mindful going forward that cooperating with this Office necessarily requires—at minimum—a response to the allegations raised in a formal complaint.

Otherwise, this Office will presume that the agency does not dispute a complainant’s allegations. This Office will not form and present arguments on behalf of an agency that does not file an answer to a complaint.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Shelburn Town Council violated the Open Door Law by holding an improper executive session.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Issued: April 3, 2024