



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

July 6, 2009

Mark Myers  
1227 Apryl Drive  
Greenwood, Indiana 46143

*Re: Formal Complaint 09-FC-144; Alleged Violation of the Open Door Law  
by the City of Southport*

Dear Mr. Myers:

This advisory opinion is in response to your formal complaint alleging the City of Southport ("City") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting a pre-termination hearing in executive session. A copy of the City's response to the complaint is enclosed for your reference. It is my opinion the City did not violate the ODL.

## BACKGROUND

You allege the City, through the Public Safety Board, conducting a police officer's pre-termination hearing in executive session on June 11, 2009. You allege the City violated the ODL by conducting the hearing in executive session rather than in a public meeting. You filed the present complaint on June 16.

The City responded to the complaint by letter dated June 30 from attorney John T.L. Koenig. The City contends the pre-termination hearing was appropriate for executive session based on the ODL and the Indiana Supreme Court's decision in *Town of Merrillville v. Peters*, 655 N.E.2d 341 (Ind. 1995).

## ANALYSIS

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, in order that the people may be fully informed. I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, 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. I.C. § 5-14-1.5-3(a).

An “executive session” is a meeting from which members of the public are excluded, but a governing body may invite anyone necessary to carry out the board’s business. *See* I.C. § 5-14-1.5-2(f).

An executive session may be held for the following purpose, among others:

With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:

(i) a physician; or

(ii) a school bus driver.

I.C. § 5-14-1.5-6.1(b)(6).

Here, the Safety Board of the City met on June 11 to receive information concerning alleged misconduct with respect to you, a part-time police officer and as such an individual over whom the Safety Board has jurisdiction. You were present and represented by counsel at the executive session. As the City contends, the Indiana Supreme Court has addressed a situation similar to this in *Town of Merrillville v. Peters*, 655 N.E.2d 341 (Ind. 1995). There, the court held that it was permissible for the board to conduct the pre-termination hearing in executive session. *Id. at 343*. The court said that absent a statute requiring the hearing to be conducted in a public meeting, the hearing could be conducted in executive session because the subject matter was appropriate for executive session. *Id.* The court said that “an administrative hearing need not be public to be full and fair.” *Id.*

The matter here is similar to that addressed in *Town of Merrillville*. I find no statute requiring the pre-termination hearing concerning your employment to have been conducted in a public meeting. You were present and represented by counsel at the hearing. The subject matter of the hearing was appropriate for executive session, based on I.C. § 5-14-1.5-6.1(b)(6). As such, it is my opinion the City did not violate the ODL.

#### CONCLUSION

For the foregoing reasons, it is my opinion the City did not violate the ODL.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Mayor Robin Thoman  
John T.L. Koenig, Barnes & Thornburg LLP