



STATE OF INDIANA

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Eric M. Cox and Jeff Eakins
The Banner
24 N. Washington Street
P.O. Box 116
Knightstown, Indiana 46148

David Day
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Noblesville, Indiana 46061

Re: Informal Inquiry 12-INF-34; Executive Session Notice

Dear Sirs:

This is in response to your informal inquiry regarding proper notice for an executive session held pursuant to Indiana Code § 5-14-1.5-6.1(b)(1). Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on the applicable provisions of the Open Door Law ("ODL") I.C. § 5-14-1.5 *et seq.*

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Exceptions include receiving information about and interviewing prospective employees to discussing the job performance evaluation of an individual employee. *See* I.C. § 5-14-1.5-6.1(b)(5); § 5-14-1.5-6.1(b)(9). Notice of an executive session must be given 48 hours in advance, excluding nights and weekends, and contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and list the specific statutory citation. *See Opinions of the Public Access Counselor 05-FC-233, 07-FC-64; 08-FC-196; and 11-FC-39.* Thus in order to satisfy the requirements of 6.1(d), a proper notice for an executive session held pursuant to I.C. § 5-14-1.5-6.1(b)(9) would include, in addition to the time, date, and location of the executive session, the following statement: "To discuss a job performance evaluation of an individual employee pursuant to I.C. § 5-14-1.5-6.1(b)(9)."

I.C. § 5-14-1.5-6.1(b)(1) provides that an executive session may be held where authorized by state or federal statute. You inquire whether the governing body in its notice for executive session held pursuant to (b)(1) is also required to provide the specific state or federal statute that would allow the executive session. It is my opinion that the governing body would be required to provide in the executive session notice the respective federal or state statute that authorized the executive session and the language of the statute. Very rarely have I received an inquiry regarding this particular subsection of the executive session statute. I was unable to find an advisory or informal opinion issued by a previous public access counselor that specifically addressed this issue. However, I would note that Counselor O'Connor opined that "It is the burden of the public agency to show that there is a state or federal statute that either permits the executive session or permits discussion of a record in executive session because it has been classified as confidential." See *Opinion of the Public Access Counselor 01-FC-51*. Further, Counselor Davis opined regarding I.C. § 5-14-1.5-6.1(b)(7), which would allow a governing body to meet in executive session for discussion of records classified as confidential by state or federal statute, that the body had failed to meet its burden that it complied with the ODL by not indicating the corresponding state or federal statute(s) that would make the records discussed confidential. See *Opinion of the Public Access Counselor 07-FC-347*.

It is the intent and purpose of the Indiana Open Door Law is 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. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." For all other properly held executive sessions, the public is given a general idea from the notice that is provided what the governing body will be discussing (e.g. alleged misconduct of an employee, to receive information about and interview prospective employees). To provide that the governing body would not be required to post the corresponding state or federal statute allowing for the executive session to be held would eliminate the ability of the public to discern the reason for and topic of the executive session, which is provided in all other instances. Even if it was my opinion that the governing body was not required to post the corresponding state or federal statute, a citizen could file a formal complaint alleging that the executive session conducted pursuant to I.C. § 5-14-1.5-6.1(b)(1) was held for an improper purpose. In response to such a complaint, the governing body would generally satisfy its burden by simply providing the state or federal statute that allowed it to meet in executive session. I do not believe that a member of the public should have to take the step of filing a formal complaint to discover the applicable state or federal statute that allowed for the executive session, when the body can simply provide the statute and language of the statute in its notice for the executive session. As such, it is my opinion that in a notice for executive session held pursuant to I.C. § 5-14-1.5-6.1(b)(1), the corresponding state or federal statute and the language of the statute must be provided in the notice in order to comply with I.C. § 5-14-1.5-6.1(d). I would also opine that the same analysis would be applicable to an executive session held pursuant to I.C. § 5-14-1.5-6.1(b)(7).

As stated *supra*, I failed to find an opinion by a previous public access counselor that specifically addressed this issue. As such, it is my opinion that the School acted in complete compliance with all previous guidance offered by the public access counselor regarding this area of the law. Although I would encourage to a certain extent (i.e. the July 18, 2012 executive session), I do not believe the ODL or the APRA would require the School to return to all previous executive session notices and provide the respective state or federal law. However, in all future notices, it is my opinion that the School in order to comply with the requirements of I.C. § 5-14-1.5-6.1(d), would need to provide the appropriate state or federal statute and language of the statute, in any executive session notice held pursuant to I.C. §§ 5-14-1.5-6.1(b)(1) and (7).

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor