



STATE OF INDIANA

MICHAEL PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 20, 2016

Mr. Gary G. Needham
Via email

Re: Informal Inquiry 16-INF-23; Complaint against the New Ross Town Board

Dear Mr. Needham:

This is in response to your informal inquiry regarding whether the New Ross Town Board (“Board”) violated the Open Door Law (“ODL”) and the Access to Public Records Act (“APRA”). The Town has provided a response via Ms. Susan Dismore, Esq. Her response is attached for your review.

BACKGROUND

You seek a determination as to whether the New Ross Town Board (“Town”) violated the APRA. You take exception to the way it posts its notice and you note members of the Board have told you during multiple Board meetings various discussions were held by the Board in executive session. The Board then told you at the July 12, 2016 meeting it had never held an executive session. Following this series of events, you made an oral request to the town clerk for copies of meeting minutes. You were told you would have to put your request in writing and the clerk has up to two (2) weeks to fulfill your request.

Next, you had requested details of the new Town budget estimates and were told you had to get them from the in.gov transparency gateway. A Notice to Taxpayers indicated the budget would be available at the Town Office.

ANALYSIS

It is the intent of the Open Door Law (ODL) that 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).

1. Notice

The first issue you raise in your complaint is whether it was a violation to fail to notice each individual meeting. A yearly notice is posted at the New Ross Town Hall and only gives notice of the regular meeting times and not a separate notice for each date.

Generally, public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. See Indiana Code § 5-14-1.5-5(a). Section (c) goes on to state that notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed.

Therefore, it appears as if notice is being properly posted by the Town.

2. Executive Sessions

Your first allegation is the Board may have received information or made decisions in an executive session in violation of the Open Door Law. Meetings held by the Board must be open to the public, although there are exceptions which allow the Board to deliberate in an executive session. 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 Indiana Code § 5-14-1.5-6.1(b). The only official action that cannot take place in executive session is a final action, which must take place at a meeting open to the public. See Indiana Code § 5-14-1.5-6.1(c). "Final action" is defined as a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. See Indiana Code § 5-14-1.5-2(g).

Notice of an executive session must be given 48 hours in advance of every session and must 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 Indiana Code § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, "To discuss a job performance evaluation of an individual employee, pursuant to Indiana Code § 5-14-1.5-6.1(b)(9)" would satisfy the requirements of an executive session notice. See *Opinions of the Public Access Counselor 05-FC-233, 07-FC-64; 08-FC-196; and 11-FC-39.*

Furthermore, Indiana *town* boards and councils may hold administrative meetings to discuss innocuous matters such as meeting times and how they will be posting meetings. These are not substantive business matters, but rather administrative tasks. These administrative meetings are authorized under Indiana Code § 5-14-1.5-5(f)(5)(2) and do not require notice. This provision only applies to County Boards of Commissioners and Town Boards and Councils; therefore, the Town of New Ross Board would qualify. It is important, however, to note the purpose of these meetings is very limited in scope and may only regard administrative tasks.

3. Meeting Minutes

Pursuant to the ODL, anytime a governing body meets, whether it be by regular meeting, executive session, or administrative task meeting, memoranda must be kept. The requirements of these memoranda differ from situation to situation, but they must be made available to the public as soon as they are created – even if they are in draft form. The Town indicates in its response that you received the meeting

minutes for the entirety of 2016.

4. Town Budget Estimates

You sought copies of the town budget estimates at a town council meeting. You were told you could view these documents on the Internet through the Gateway site. This transparency portal was developed and established to provide easier access to the public for government documents and information. The Town did not err by referring you to the site. If you insist, you are indeed entitled to one (1) copy of the documentation kept on-site. It does not appear, however, you were denied this. If requested, the Town should provide you a copy.

5. Oaths of Office

Please be advised this Office does not regulate the extent to which Oaths of Office must be submitted to the Town Clerk-Treasurer for retention. Only if it has a copy, the Town must provide you with a copy of the oaths which exist. Similarly, this Office does not prescribe the manner in which a public official is registered to vote, if at all.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Susan Dismore, Esq.