



STATE OF INDIANA

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Via email transmission

October 25, 2016

Mr. Sabrina Graham
7210 East County Road 700 North
Brownsburg, Indiana 46112

Re: Informal Inquiry 16-INF-29; Open Door Violation

Dear Ms. Graham:

This is in response to your informal inquiry regarding whether Brown Township, Hendricks County ("Township") has violated various Indiana access laws. A response to your informal inquiry has been provided by Mr. Stephen R. Buschmann, Esq., Township Attorney. The response has been provided for your review.

You allege several violations in your inquiry based on Title 36 Code provisions. While this Office primarily interprets the Indiana Access to Public Records Act and the Indiana Open Door Law, I may opine on any other state statute or rule governing access to public meetings or public records pursuant to Indiana Code §§ 5-14-5-3(3) & 10(1).

Access to Township Records

On September 14, 2016, you attended a Brown Township meeting. During or after the meeting, you requested immediate inspection of meeting minutes which had just been approved, as well as a number of past annual reports. You take exception to the fact you were asked to document your public records request on a form to be submitted and inspection would be granted at a later date.

You point to Indiana Code § 36-6-4-3 which states township records must be kept open for public inspection, and Indiana Code § 36-6-6-9(e) which states annual reports must be kept open for public inspection.

Generally, a public agency has a 'reasonable time' to produce public records for inspection and/or copying. *See Indiana Code § 5-14-3-3.* The right to public access sometimes, but not always, means a right to immediate public access. There are surely situations when a public records request for inspection can be granted simultaneous with a request. Other times, an agency may need a period of time to gather, curate and provide the records for inspection. The

Access to Public Records Act (“APRA”) grants a twenty-four (24) hour grace period for a mere acknowledgement or receipt of a request for public records, let alone the actual production of documents. Keeping records open for inspection simply means the records are available to the public upon request. Availability could mean immediately or it could mean the next day or next available appointment time. As long as the availability is reasonable, it is legal and appropriate. It should also be noted a public agency only must grant access during regular business hours. *See Indiana Code § 5-14-3-3(a)*. Your request was during or after a meeting which took place at 7:00 p.m.

As for the requirement of a written form, Indiana Code § 5-14-3-3 is clear a request for inspection or copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

Again, because keeping records open simply means to have them available within a reasonable time pursuant to a request, the APRA written form standard is not in conflict with Indiana Code § 36-6-4-3.

Public Comment at a Meeting

Your complaint alleges you attempted to ask questions during the meeting, but were thwarted by members of the Board. I have not been made privy to a recording of the meeting; therefore, I cannot affirm or deny the allegations, but I offer the following guidance:

Generally, under the Open Door Law, Indiana Code § 5-14-1.5 et.al., the public does not have a right to speak or have an entitlement to a public comment forum. Township Board meetings; however, are one type of meeting where the public does have this right, albeit with some restrictions. Indiana Code § 36-6-6 states:

A taxpayer of the township may appear at any meeting of the legislative body and be heard as to:

- (1) an estimate of expenditures;
- (2) a proposed levy of taxes;
- (3) the approval of the executive's annual report; or
- (4) any other matter being considered by the legislative body.

To the extent you were speaking on one of these topics, you should have been given a right to comment. The Township has the obligation to ensure its meetings are orderly and organized consequently it may regulate this right within reason, but you must be given an opportunity to voice concerns or express support in some way, shape or form.

Prior Review of Documents

Your complaint finally alleges you were denied access to documents with a co-requester when he made a past appointment to review records some time ago. During the appointment, you

attempted to sit in, but were asked to leave (you were finally given access). Additionally, you were told you may not review pre-2011 documents but only those records asked for by the co-requester (2011-present).

As noted above, a records request must be made with reasonable particularity and the agency has a reasonable amount of time to allow inspection. The fact you arrived with a co-requester appears to have caught the Trustee off-guard -although you were eventually allowed access. He gave your co-requester unfettered access to the public records books. Indiana Code § 5-14-3-7 states a public official must take measures to prevent loss or destruction of public records. It could be presumed, by allowing one person at a time to view records, this may have been his way of upholding this statute. Either way, you were ultimately allowed to look at the records.

As for the pre-2011 records, the request for immediate inspection may have been met with resistance for some of all of the considerations listed above. My concern is that you are granted access within timely manner. If the Township requires a form or an appointment, it may do so, as long as you are allowed to inspect documents within a reasonable time.

Please do not hesitate to contact me with any questions.

Best regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Stephen Buschmann, Esq.