

November 20, 2006

Adam D. Meyer
4410 State Road 39 N
Martinsville, IN 46151

Re: Formal Complaint 06-FC-183; Alleged Violation of the Open Door Law and the Access to Public Records Act by the Gregg Township (Morgan County) Board

Dear Mr. Meyer:

This is in response to your formal complaint alleging that the Gregg Township Board ("Board") violated the Open Door Law and the Access to Public Records Act.

BACKGROUND

You allege that the Board violated the Open Door Law when Lela Quillen and Joe Hayden, Board members, met at some time after September 19 on Board business. The Board business concerned a letter that was sent to the Department of Local Government Finance ("DLGF"). You also state that the communication between Ms. Quillen and the DLGF prior to sending the letter was a matter of public record and was taken in violation of the Open Door Law, because the correspondence concerned Township business but was conducted without notice or a public meeting.

You had asked Ms. Quillen for a copy of the correspondence with the DLGF, as well as Board minutes and notices. You complain that Ms. Quillen's response violates the Access to Public Records Act. You enclosed her response, which states that she has no public records or responsibility for maintaining same other than the minutes of the Board meetings. She agreed to make the minutes available at the fire station for you to copy because she has no copier. Your complaint states that if Ms. Quillen wishes to make arrangements with the fire department for use of their copy equipment, she should contact the fire chief. This complaint was filed with my office on October 20, 2006.

You filed an additional complaint on November 6, 2006. On October 26 you had sent to Ms. Quillen a request for a copy of the audiotape of the September 19 Board meeting. In this

complaint, you allege that Ms. Quillen has never responded to this request. You allege this non-response is a denial of access.

I sent both complaints to Ms. Quillen. Her response is enclosed for your reference. Ms. Quillen denies that the communication with the DLGF was a violation of the Open Door Law, and she similarly denies that she met with Mr. Hayden without notice or behind closed doors. With respect to your records complaints, Ms. Quillen says that she has no copy “of whatever he is referring” to. Ms. Quillen does have minutes but argues that because she has no access to a copier, she was willing to make an extra effort to take the minutes to a place where they can be copied. Ms. Quillen has not responded to your allegation that she failed to respond to your request for the audiotape of the meeting.

I am consolidating your two complaints in this advisory opinion.

ANALYSIS

Open Door Law

It is the intent of the Open Door Law 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. Ind. Code 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. IC 5-14-1.5-3(a).

“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. IC 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. IC 5-14-1.5-2(d). “Public business” means any function upon which the public agency is empowered or authorized to take official action. IC 5-14.1.5-2(e). The question of whether the Board met sometime after the public meeting of September 19 is dependent on three factors. First, there must have been a gathering of a majority of the three-member board. Second, the Board must have taken official action. Third, the official action must have concerned the public business of the Board.

The facts of this complaint are virtually the same as those in Formal Complaint 06-FC-181, for which I issued an advisory opinion on November 16, 2006. Just as Carole Snyder alleged in her complaint that Ms. Quillen and Joe Hayden met to carry out public business of the Board relating to a letter to the DLGF, you contend that a majority of the Board must have met regarding that business. Ms. Quillen has denied that a meeting took place. By Ms. Quillen’s own account with respect to 06-FC-181, the two members who had voted to withdraw the petition for emergency funding at the September 19 meeting met at Mr. Hayden’s home to sign the letter to the DLGF. In *Opinion of the Public Access Counselor 06-FC-181*, I stated:

“It appears that a majority was gathered. Official action is defined very broadly, and withdrawal of the petition for emergency funding is a

function upon which the Board is empowered or authorized to take official action. In previous opinions, this office has observed that it is not a violation of the ODL for a governing body to attend to some administrative tasks after the close of a public meeting, so long as the public is not excluded from observing the governing body during that time. *Opinion of the Public Access Counselor 03-FC-16.*

Accordingly, it is my opinion that a majority of the Board did meet at Mr. Hayden's home to take official action on public business, without notice to the public and not in a public forum. This meeting was in violation of the Open Door Law."

As to your complaint that there was a meeting between Ms. Quillen and the DLGF, I agree with Ms. Quillen that you have not alleged a violation of the Open Door Law. Ms. Quillen admits that she had a telephone conversation with Ron Stinson of the DLGF, but this communication, with less than a majority of the Board gathered, was not a meeting. Although the discussion did concern the Board's public business, that fact by itself is not sufficient to find that a meeting occurred for which notice and an opportunity for public attendance was required. What is lacking was a gathering of a majority of the Board. Hence, the Board did not violate the Open Door Law when Ms. Quillen talked with the DLGF on the telephone.

Access to Public Records Act

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A public agency that receives a request for records in person is required to issue a response within 24 hours, or the request is deemed denied. IC 5-14-3-9(a). If a public agency receives a request via U.S. Mail or facsimile, the public agency must respond within seven days, or the request is deemed denied. IC 5-14-3-9(b).

A public agency shall either provide the requested copies to the person making the request, or allow the person to make copies on the agency's equipment or on the person's own equipment. IC 5-14-3-3(b). If a person is entitled to a copy of a public record under the APRA, and the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record, the public agency must provide at least one copy of the public record to the person. However, if a public agency does not have reasonable access to a machine capable of reproducing the record, the person is only entitled to inspect and manually transcribe the record. IC 5-14-3-8(e).

A public agency shall protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a).

Relating to the correspondence with the DLGF during September 2006, Ms. Quillen stated in her complaint response that she has "no copy of whatever you are referring to." This response is not straightforward, given that Ms. Quillen was aware of the September letter she sent to the DLGF in September 2006. As I stated in *Opinion of the Public Access Counselor 06-*

FC-181, it is not clear whether Ms. Quillen personally does not maintain the letter, did not make a copy of the letter, or had a copy but no longer maintains it. Since it is clear that the letter was created, the Board's response should unambiguously state whether the Board had a copy but the copy was lost or destroyed, or whether no copy was made. In particular, I would note that Ms. Quillen's response to you that she has no responsibility for maintaining Board records other than minutes leaves the requester wondering why the Board would have no record of a letter signed by two Board members. I note also that your request included copies of Board meeting notices, but the Board has not responded to this request. I recommend that the Board, whether through Ms. Quillen or the Board President, issue a response that explains whether the Board maintains the records you seek and if so, whether the Board will make those records available for inspection and copying.

In a similar vein, I find that Ms. Quillen's failure to respond to your clearly stated request for an audiotape of the September 19 meeting was a denial of access, in violation of the Access to Public Records Act. I find the Board's continuing failure to respond to your request for an audiotape of the September 19 meeting is a continuing violation of the APRA, and is actionable under IC 5-14-3-9(e).

I do not find support in the APRA for your contention that Ms. Quillen is required to make arrangements with the fire department to provide you a copy of the minutes. Rather, if the Board does not have reasonable access to copying equipment, you are entitled to inspect the record and make memoranda abstracts from the record. This would include listening to the audiotape and making notes from it. In the alternative, as provided in section 3(b) of the APRA, you may make copies of the records using your own equipment.

CONCLUSION

For the foregoing reasons, I find that the Gregg Township Board violated the Open Door Law when a majority gathered at Mr. Hayden's home. I further find that the Board did not violate the Open Door Law with respect to the telephone call of one member to the DLGF. Finally, I find that the Board has not responded to your request for a copy of the audiotape of the September 19 Board meeting, in violation of the Access to Public Records Act. The Board's response to your request for the DLGF letter and meeting notices should clearly state whether the Board, not Ms. Quillen, maintains the records, and I recommend that the Board issue a response that addresses your requests. The Board is not required to provide a copy of its records if it does not have reasonable access to copying equipment, but must permit you to make your own copy on your equipment, or allow you to inspect the record.

Sincerely,

Karen Davis
Public Access Counselor

cc: Lela Quillen