

January 5, 2007

Mr. Marshall R. Patton
4405 E. Springersville Road
Connersville, IN 47331

*Re: Formal Complaint 06-FC-211; Alleged Violation of the Open Door Law and the
Access to Public Records Act by the Fayette County Public Library*

Dear Mr. Patton:

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

BACKGROUND

You filed your formal complaint on December 6, 2006. You allege that after meetings of the Library Board in August and September, you were told that you could not see copies of papers that the Board was discussing. On November 22, you requested in writing papers from the November 21 Board meeting. You waited at the library for some time after hand-delivering your request to learn whether the Library intended to make the records available. After being told by Library Director Helen Holmstrom that she had other important things to do and would answer in a timely fashion, you left.

You received a letter from Ms. Holmstrom dated November 22. The letter stated that you would get the records the week of November 27. On December 2 at 9:12 a.m., you visited the library specifically to retrieve the records. You were told that it would be at least 10:30 a.m. before the copies could be made available. You believe that the records should have been available by the time you filed your complaint.

For your Open Door Law complaint, you say that the papers being discussed at the meetings have been "color coded" and the Board refers to them by color and line number. "Nothing was said out loud about what was read."

I sent a copy of your complaint to the Library. Board President Margie A. Yeager responded, a copy of which is attached for your reference. Ms. Yeager explained that the color coding of Board packet materials was instituted a little over a year ago to facilitate access to items of discussion. The Board follows all the requirements of the Open Door Law and keeps minutes. Those minutes and the various papers that the Board considers at each meeting are made available to the public after the Board acts on those items at the meeting. Providing everyone who attends a meeting of the Board with all the material in the Board packet would be prohibitive.

Speaking to your specific allegations, you have never asked for any material in advance of the meeting, only after the conclusion of the meeting. Ms. Yeager has told you the packet materials are for the Board's use during the meeting, and hence are provided to the public only after the meeting. When you asked for the budget papers, Ms. Yeager stated that the budget is published in the newspaper for your information; she did not intend to imply that you were not entitled to a copy of the budget. Also, the time within which the Library could produce the copies of expenditures, a lease agreement, and three estimates for roof repairs was not unreasonable, given the Thanksgiving holiday. Also, although you were told that the copies were ready to be picked up, as of December 20 you had not retrieved the copies. Concerning the operating, capital projects, and Rainy Day Fund budgets, the public budget hearings would be the time to see copies of proposals and you would have the opportunity to ask questions at those hearings.

ANALYSIS

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). If a public agency receives a request for a record at the offices of the agency, the public agency is required to respond within 24 hours or the request is deemed denied. IC 5-14-3-9(a). The time to produce the records is not specifically provided for in the APRA, because the public agency must identify what records are responsive and determine whether the records are disclosable in whole or in part. A response should acknowledge receipt of the request and state how or when the agency intends to comply.

A board or commission of a public agency may receive a packet of materials that constitute the "board packet" for discussion during an upcoming meeting. These materials are "public records" as that term is broadly defined in the APRA: any material that is "created, received, retained, maintained, or filed by or with a public agency." IC 5-14-3-2(m). Hence, whether a request is made before the meeting or after, the materials included in the board packet are public records of the board, and must be made available for inspection and copying within a reasonable period of time. If some of the materials in the board packet are exempt from disclosure under IC 5-14-3-4, then the public agency is required to state the exemption or exemptions that apply to each record. *See* IC 5-14-3-9(c).

Hence, the Library may not refuse to disclose records merely because they have not yet been considered by the Board, if that is what has transpired in your case. If some of the records

in the Board's packet meet the exemption for deliberative materials, for example, then the Board must identify the record and state the exemption for deliberative materials. *See, e.g.,* IC 5-14-3-4(b)(6). Otherwise, the records must be disclosed within a reasonable time. In addition, the budget must be provided, even if it is published in the newspaper. It appears that the records have now been made available to you. If you have not retrieved them, you should contact the Library. The delay of several days due to the long holiday weekend is certainly a reason why the records may not have been available as quickly as you would have preferred. However, this does not mean that the Library unreasonably delayed production of the records.

Finally, you express dissatisfaction with the means by which the Board refers to the items under consideration during the public meeting. You state that the Board refers to items by color and line number, with nothing said about what was read. Although the Open Door Law does not primarily concern the procedures for conducting a meeting, one provision of the Open Door Law prohibits a governing body from adopting a rule, regulation, ordinance, or other final action by reference to agenda number or item alone. IC 5-14-1.5-4(a). Hence, if the Board has taken final action by reference to the agenda item or number alone, without stating the proposal under consideration, the Board violated the Open Door Law.

Having said that, nothing in the Open Door Law prohibits the use of color coding of materials to ease the Board members' ability to locate and refer to materials in the Board packets. The Board should take care to propose any final action by referring to the substance of the proposal rather than just by agenda item or number (or color) alone, but the Board can utilize the color coding for other purposes.

CONCLUSION

For the foregoing reasons, I find that the Fayette County Public Library may not deny a record without citing the exemption that applies to the record. Unless exempt, the records should be produced within a reasonable time after the request is received. In addition, the Fayette County Public Library Board may not adopt a final action by reference to agenda item or number alone.

Sincerely,

Karen Davis
Public Access Counselor

cc: President Margie Yeager