



# STATE OF INDIANA

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February 28, 2013

Mr. James B. Gould  
3432 E 800 S.  
Star City, Indiana 46985

*Re: Formal Complaint 13-FC-66; Alleged Violation of the Access to Public Records Act by the Pulaski County Auditor*

Dear Mr. Gould:

This advisory opinion is in response to your formal complaint alleging the Pulaski County Auditor ("Auditor") violated the Open Door Law ("ODL"). Kevin C. Tankersley, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint you allege that the Pulaski County Board of Commissioners held an executive session on Monday, February 25, 2013. On Tuesday, February 26, 2013, you requested a copy of the memoranda/minutes from the executive session. The Auditor informed you that the memoranda had not been completed and that the agency would need to contact its attorney prior to disclosure. On Wednesday, February 27, 2013, you submitted a written request to the Auditor for a copy of the memoranda/minutes from the executive session. You were informed that the memoranda would be provided on Friday, February 29, 2013.

In response to your formal complaint, Mr. Tankersley provided a draft copy of the memoranda that you had requested. The copy of the memoranda that is enclosed is only a draft, as the Commissioners are not scheduled to meet until March 4, 2013 and will sign the memoranda at that time.

## ANALYSIS

It is the intent of the ODL 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. *See* I.C. § 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* I.C. § 5-14-1.5-3(a).

Under the ODL, governing bodies that conduct meetings are required to keep memoranda. The ODL does not require that a governing body keep minutes; however if kept, minutes of a meeting must be open for inspection and copying under the APRA. *See* I.C. § 5-14-1.5-4(c). As for memoranda, the ODL specifically provides that the following shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under I.C. § 5-1.5-2-2.4. I.C. § 5-14-1.5-4(b).

The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. *See* I.C. § 5-14-1.5-4(c). For executive sessions, the memoranda requirements are modified in that the memoranda "must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given." *See* I.C. § 5-14-1.5-6.1(d). The public agency must also certify in a statement in the memoranda that no subject was discussed other than the subject specified in the public notice. *Id.*

As to "draft" minutes or memoranda, meeting minutes in draft or unapproved form are subject to inspection and copying in response to a request under the APRA. *See Opinion of the Public Access Counselor 98-FC-8* at 1 ("Once created, draft or proposed minutes are public records and nondisclosure must be based upon one of the exceptions outlined in the APRA."); *See also Opinions of the Public Access Counselor 01-FC-65; 05-FC-23; 10-FC-264*. If the governing body is concerned about releasing the minutes in draft form, it could include a disclaimer on any copies noting that the minutes are not yet approved and subject to revision. *See Opinions of the Public Access Counselor 01-FC-65 and 10-FC-264*.

As applicable here, the Commissioners' executive session took place on Monday, February 25, 2013. Your initial request was submitted on Tuesday, February 26, 2013 at which point you were informed the memoranda had yet to have been completed. You resubmitted a written request on Wednesday, February 27, 2013. A copy of the draft memoranda from the meeting was provided to you on Thursday, February 28, 2013. As the memoranda was provided to you within three business days of the date of the executive session, it is my opinion that the Auditor complied with the requirements of section 4(c) of the ODL by providing a copy of the memoranda within a reasonable period of time.

## CONCLUSION

Based on the foregoing reasons, it is my opinion that the Auditor did not violate the ODL.

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

cc: Kevin C. Tankersley