



STATE OF INDIANA

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October 29, 2014

Mr. Richard R. McQuaid
6910 Network Place
Indianapolis, IN 46278

Re: Formal Complaint 14-FC-224; Alleged Violation of the Open Door Law by the City of Indianapolis Mayor's Office

Dear Mr. McQuaid,

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis Mayor's Office ("Mayor") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Mayor has responded to your complaint via Ms. Samantha DeWester, Esq., Corporation Counsel. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 30, 2014.

BACKGROUND

Your complaint dated September 24, 2014, alleges the City of Indianapolis Mayor's Office "Your Life Matters Task Force" ("Task Force") held a meeting in violation of Ind. Code § 5-14-1.5 *et. al.*

On September 17, 2014, the Mayor held a meeting with the Task Force. During the course of the meeting, during a public comment forum, members of the media were asked to leave. Before and after, it appears you were allowed to attend. You take exception to this action and allege a violation of the Open Door Law. The Mayor has responded to your complaint and argues the Open Door Law is not applicable because the Task Force is not a governing body of a public agency.

ANALYSIS

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

The ODL defines a public agency in Ind. Code § 5-14-1.5- (a) as:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, School Corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

The ODL defines a governing body as two (2) or more individuals who are:

- (1) A public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business
- (2) The board, commission, council, or other body of a public agency which takes official action upon public business.
- (3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

See Ind. Code § 5-14-1.5-2 (b).

It does not appear the “Your Life Matters Task Force” was established by the Mayor to exercise any executive, administrative or legislative power of the City government. The Task Force is advisory in nature and was created by the Mayor.

Consider former Public Access Counselor Hoage’s *Advisory Opinion 12-FC-248*:

A committee that is not appointed directly by a governing body or its presiding officer does not constitute a governing body, under the plain language of the ODL. See *Opinions of the Public Access Counselor 05-FC-219 & 09-INF-29*. The Indiana Court of Appeals addressed this issue in *Robinson v. Indiana University*, 638 N.E.2d. 435 (Ind. Ct. App. 1994). *Robinson* was decided after the General Assembly amended the definition of “governing body” to add the word “directly” after “any committee appointed.” In *Robinson*, the Indiana University’s Board of Trustees (a governing body for ODL purposes) delegated the authority to appoint a committee and subcommittee to the university president who, in turn, passed the duty on to an associate vice president for research. *Id.* at 437. The Court held that “the Committee and Subcommittee did not derive their authority directly from the governing body” because the board delegated its appointment authority to the university administration. *Id.* at 438. Consequently, the committee and subcommittee were not governing

bodies under the ODL. Id. at 437-38; See also Frye v. Vigo County, 769 N.E. 2d 188, 196-196 (Ind. Ct. App. 2002).

Nothing in the documentation provided suggests the Task Force was created by ordinance or executive order. A Mayor has the discretion to establish these exploratory committees to advise him on matters relevant to his official duties. It does not appear to be a delegation or sub-committee of an established governing body. The Mayor has not delegated any authority – he has merely created an advisory task force. It also does not appear the Task Force has any inherent authority to be anything but advisory in nature. Any action taken by the Task Force is official action on public business because they have not been charged with any official capacity.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that the City of Indianapolis Mayor's Office has not violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Samantha DeWester, Esq.