



# STATE OF INDIANA

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December 31, 2014

Ms. Trudy Ellis  
11769 N. Forest Manor Dr.  
Mooresville, IN 46158

*Re: Formal Complaint 14-FC-297; Alleged Violation of the Indiana Access to Public Records Act by the Madison Township Board of Morgan County*

Dear Ms. Ellis,

This advisory opinion is in response to your formal complaint alleging the Madison Township Board of Morgan County ("Board"), violated the Indiana Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Board has responded via Counsel, Stephen R. Buschmann. His 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 December 2, 2014.

## BACKGROUND

Your formal complaint dated November 26, 2014, alleges the Madison Township Board of Morgan County violated the public records act by not releasing records to you in a timely manner.

On or about October 30, 2014, you requested a draft copy of meeting minutes of a public meeting held on October 23, 2014. You did not receive a copy until November 19, 2014. You take exception with the timeliness of the Board's response.

The Board responded by arguing the draft copy of the minutes were not yet ready until their disclosure on November 19, 2014. Before that specific date, the public record had not yet been created.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind.

Code § 5-14-3-1. The Madison Township Board of Morgan County is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Board's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

This Office has held on several occasions draft copies of minutes are generally disclosable public records. Similarly, this Office has also held an agency is not required to create a public record to satisfy a public records request. Implicit in that determination is that a request for a record which may or may not be created in the future is invalid. However, there may be an Open Door Law implication to your complaint.

Ind. Code § 5-14-1.5-4(b) states the following:

As the meeting progresses, the following memoranda 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 section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

Subsection (c) holds 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. The minutes, if any, are to be open for public inspection and copying.

You specifically asked for the board minutes. Often, minutes will substitute for the memoranda and contain all of the information required in subsection (b). If a governing body utilizes minutes as an alternative to memoranda, the minutes should be available within a reasonable time.

What constitutes a reasonable time is a subjective determination. Nearly a month had elapsed between the meeting and the disclosure of the minutes. Unless a separate memorandum was prepared with all of the information in subsection (b), the amount of time it took for the minutes to be available for public inspection stretches the definition of a reasonable time. The memoranda would not need to be available for instant or immediate public inspection; however, a month is too long to satisfy the requirements of the Open Door Law.

### CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Madison Township Board of Morgan County did not violate the Access to Public Records Act; however, it may have violated the Open Door Law by failing to make the information in Ind. Code § 5-14-1.5-4(b) available within a reasonable time. Your complaint did not allege an Open Door Law violation. Because this Office does not issue *sua sponte* determinations, this Formal Opinion is purely advisory in nature and should not be considered an administrative remedy for any further action.

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 R. Buschmann