



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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April 6, 2015

Ms. Leslie M. Mathewson, Esq.
112 E. Gilbert St.
Muncie, IN 47305

Re: Formal Complaint 15-FC-78; Alleged Violation of the Access to Public Records Act and the Open Door Law by Muncie Fire Merit Commission, Joe Greer

Dear Ms. Mathewson,

This advisory opinion is in response to your formal complaint alleging Muncie Fire Merit Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Commission has not responded to your complaint despite an invitation to do so on March 7, 2015. 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 March 3, 2015.

BACKGROUND

Your complaint dated March 3, 2015 alleges the Muncie Fire Merit Commission violated the Access to Public Records Act by failing to acknowledge your request and has violated the Open Door Law by conducting improper executive sessions.

On January 22, 2015, the Commission held an executive meeting to discuss personnel matters and a new rule. You contend this is improper for an executive meeting. You also contend no minutes were provided for the meeting. Finally, you allege final action and determinations were made which should only have occurred in a properly noticed public meeting.

Additionally, on February 25, 2015 you delivered a public records request to the Secretary of the Commission. As of the filing of this complaint, I have not received a response contrary to the requirements set forth in Ind. Code § 5-14-5-5.



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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 Muncie Fire Merit Commission 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 Commission’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.

Because you made your request in writing, it must be denied in writing pursuant to Ind. Code § 5-14-3-9(d). Again, I have not received a response from the Commission with an explanation as to why this did not happen.

Furthermore, 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).

Ind. Code § 5-14-1.5-6.1(d) states public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. See I.C. § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to I.C. § 5-14-1.5-6.1(b)(9)”



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would satisfy the requirements of an executive session notice.

The notice in this case was not given with specificity. Additionally, pursuant to Ind. Code § 5-14-1.5-6.1(d) the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

Finally, final action is never to be taken at an executive session. See Ind. Code § 5-14-1.5-6.1(d). If this indeed took place, a violation has occurred.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Muncie Fire Merit Commission has violated the Access to Public Records Act and the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be "LHB", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Leslie M. Mathewson, Esq.