



# STATE OF INDIANA

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April 29, 2016

Ms. Jeana Blake  
P.O. Box 3  
Kingsford Heights, Indiana 46346

*Re: Formal Complaint 16-FC-58; Alleged Violation of the Open Door Law and the Access to Public Records Act by the Town of Kingsford Heights Town Council*

Dear Ms. Blake,

This advisory opinion is in response to your formal complaint alleging the Town of Kingsford Heights ("Town") Town Council violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 et. seq. and the Access to Public Records Act ("APRA"). The Town has responded via Ms. Jennifer L. Koethe, Esq. 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 March 15, 2016.

## BACKGROUND

Your complaint dated March 15, 2016 alleges the Town of Kingsford Heights Town Council violated the Open Door Law by holding a meeting without public notice. Additionally, you were denied text messages and emails pursuant to a request.

On or about March 14, 2016 you submitted a series of public records requests for text messages and emails. You allege that you were told at a council meeting by one of its members you would not be receiving the emails. Furthermore, on the date of the filing of your complaint, you witnessed three (3) of the five (5) council members gathering at the local diner. You allege this is a violation of the Open Door Law.

## ANALYSIS

### *Open Door Law Violation*

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)*.

An exception to the Open Door Law is a chance or social gathering. *See Ind. Code § 5-14-1.5-2(c)(1)*. A gathering of a majority of a governing body at a local diner is not proof positive of a public meeting, however, the Town Council should be mindful of the *perception* it may create. Mere discussion or deliberation is enough to trigger the Open Door Law if public business was addressed. The Council members have provided affidavits this was not the case. *Emphasis added*.

### ***Access to Public Records Act Violation***

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 Town of Kingsford Heights Town Council 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 Town’s disclosable 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)*.

It is unclear why one Council member orally stated your request would be denied. It appears as if he was not speaking for the group as a collective. The Town attorney has provided correspondence which indicates your request is instead being processed. To my knowledge it has not been denied and the Town attorney has reached out to me for guidance on the matter. As of the writing of this Opinion, I have received confirmation as to whether a decision has been made to disclose the material. For more information on email correspondence, please see *Opinion of the Public Access Counselor 14-FC-199*.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor that the Town of Kingsford Heights has not violated the Open Door Law or the Access to Public Records Act.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Ms. Jennifer L. Koethe, Esq.