



STATE OF INDIANA

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October 20, 2026

Re: Complaint 26-FC-206
Robert Meadows (Complainant) v.
Topeka Town Council (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed on April 17, 2026 and subsequently amended on April 20 and 21, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on April 21, 2026, requesting a formal response by May 20, 2026. A formal response, submitted by Bill Eberhard, Jr., attorney for the Town of Topeka, on behalf of Respondent, was received in this office on May 12, 2026.

The complaint alleges that Respondent violated the Open Door Law (ODL) when it conducted a written ballot during a public meeting. The amendment to the complaint alleges that Respondent violated the Access to Public Records Act (APRA) when it withheld a requested document.

ANALYSIS

Open Door Law (ODL) Analysis

ODL requires public agencies to conduct and take official actions openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. As a result, ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. IC 5-14-1.5-3(a).

Respondent is a public agency for purposes of ODL, and therefore, subject to the requirements. IC 5-14-1.5-2(a)(1). As a result, unless an exception applies, all meetings of Respondent should be posted by notice and open to the public.

On March 23, 2026, Respondent conducted a regularly scheduled board meeting, at which it discussed business including the possible implementation of an Improvement Plan for a town employee. At this time, a board member requested ballot voting. This process involved each board member writing their

name and vote on a piece of paper, and handing that completed ballot to the clerk, who then tallied the votes and declared the outcome as 4-1 in favor of the Improvement Plan. The ballots were then gathered and made a permanent part of the meeting minutes, but the individual ballots and their contents were not declared prior to concluding the meeting.

Complainant alleges this act constitutes a prohibited secret ballot under IC 5-14-1.5-3(b). ODL does not define a secret ballot, though this office opined on similar circumstances in *Opinion of the Public Access Counselor 20-FC-156*. In that matter, the public agency was alleged to have violated ODL when it took a ballot vote on final action and concluded the meeting without announcing how the individual members had voted. As here, the ballots with the individual votes were made available for inspection following the meeting. In response to a formal complaint, this office opined that:

“A final action omitting the identification of individual board member voters on a particular item is a secret ballot vote unless the consensus is by unanimous consent.”

Opinion of the Public Access Counselor 20-FC-156.

This office finds now, as it did then, that while the process of voting with paper ballots is not inherently in violation of ODL, the individual votes should be publicly declared prior to concluding the meeting, unless the vote is unanimous.

As further opined in *Opinion of the Public Access Counselor 20-FC-156*:

“It is unlikely the deviation from the Open Door Law would be enough to overturn a vote or mandate a do-over, but it does rise above a mere technicality. The public’s right to know was prejudiced in the moment, even if that moment was temporary.”

Accordingly, this office opines that Respondent violated ODL in failing to declare the individual votes of the board members, prior to concluding the meeting.

Access to Public Records Act (APRA) Analysis

The public policy of 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.” IC 5-14-3-1.

Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(s). As a result, unless an exception applies, any person has the right to inspect and copy Respondent's public records during regular business hours. IC 5-14- 3-3(a).

On April 17, 2026, Complainant submitted an APRA request asking for:

- 1) Ballots with names from the March 23, 2026 voting.
- 2) Any documentation identifying how each individual council member voted on the Improvement Plan.
- 3) The minutes from April 13, 2026 General Council Meeting.
- 4) The Improvement Plan referenced in the March 23, 2026 meeting, including any drafts, revisions, or related correspondence.
- 5) Any written communications between council members, the Town Manager, or Town Attorney regarding the Improvement Plan.
- 6) All executive session notices, memoranda, and certifications from the executive sessions held on March 12, 2026 and March 19, 2026.

Respondent provided a response and produced records on April 20, 2026. The Respondent withheld the Improvement Plan pursuant to IC 5-14-3-4(b)(2) and (8) and the communications between council member, the Town Manager, or Town Attorney regarding the Improvement Plan pursuant to IC 5-14-3-4(b)(8).

Indiana Code 5-14-3-4(b)(8) states that personnel files of public employees and files of applicants for public employment shall be exempted from disclosure, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

Indiana Code 5-14-3-4(b)(6) provides an exemption for records that,

“are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.”

It is unclear what information the Improvement Plan consisted of. Respondent states it concerned “internal personnel and performance related matters involving a Town employee” and “consist solely of internal employment related materials concerning employee performance and corrective action.”

If the Improvement Plan contained information regarding a facts for a disciplinary action against the Town employee and that final action resulted in the employee being suspended, demoted, or discharged then Respondent should have produced the final version of the Improvement Plan that was voted on at the March 23, 2026, meeting. However, any “drafts, revisions, or related correspondence” would fall within the deliberative material exception provided under IC 5-14-3-4(b)(6).

With regards to the request for any written communication between council members, the Town Manager, or Town Attorney regarding the Improvement Plan, this office opines that any communication between council members and the Town Attorney or the Town Manager and the Town Attorney would fall under attorney-client privilege.

Communication regarding the Improvement Plan between council members and the Town Manager would likely fall within the deliberative material exception so long as it is expressions of opinion, speculative in nature, and used for the purpose of decision making.

CONCLUSION

This office finds that Respondent violated ODL as asserted in the complaint. Though this violation was partially cured by making the ballots available for inspection following the meeting, this office encourages Respondent to declare all individual ballots following any further ballot votes.

This office finds that Respondent may have violated APRA when it withheld the Improvement Plan if the plan contained a factual basis for disciplinary action in which final action was taken that resulted in the employee being suspended, demoted, or discharged. If the Improvement Plan did not, then Respondent did not violate APRA

This office finds that Respondent did not violate APRA when it withheld attorney-client privileged communications.

This office finds that Respondent may have violated APRA when it withheld written communication between council members and the Town Manager, if those written communication were not expressions of opinions, speculative in nature, and used for the purpose of decision making regarding the Improvement Plan. If the communications were used for decision making regarding the Improvement Plan, then Respondent did not violate APRA.

A handwritten signature in black ink, appearing to read "Brittney A. Long". The signature is stylized with a large, looped "B" and a long, sweeping underline.

Brittney A. Long
Public Access Counselor