

May 20, 2008

Greggery Ellenberger
Box 35
Bryant, Indiana 47326

Re: Formal Complaint 08-FC-112; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Town of Bryant

Dear Mr. Ellenberger:

This advisory opinion is in response to your formal complaint alleging the Town of Bryant ("Town") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by failing to provide proper notice for an executive session meeting and violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. It is my opinion the Town violated the ODL by conducting an executive session without proper notice. Further, it is my opinion the Town should provide you with a timeline for production of the records you requested.

BACKGROUND

In your complaint you allege that the Town Council held an executive session on April 17, 2008 without proper notice. You provide a copy of the notice, which provides the following: "Bryant Town Council will have a [sic] executive meeting on Thurs April 17, 2008 [sic] at 4pm with a regular council meeting following at 6pm."

Further, you hand-delivered a request for access to records to the Council president and vice president on March 22. You received a copy of one ordinance you request but no other response regarding the other three items listed in your request. You allege you inquired about the request at a board meeting and received no response. You mailed this complaint on April 28, and I received it on May 2.

The Council responded to the complaint by letter dated May 13. The Council contends the executive session held on April 17 was held for the purpose of discussing behavior at meetings and parliamentary procedure. The Council indicates it did not realize it was required to provide the subject matter for the meeting on the meeting notice. The Council contends that any decisions were made during the public meeting.

Regarding your request for access to records, the Council indicates Jason Meinerding of the Council responded to your request by email, indicating the Clerk-Treasurer would provide you with the remainder of the records. The Council provides a copy of this email, dated March 23.

ANALYSIS

It is the intent of the ODL that 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. I.C. § 5-14-1.5-1. 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. I.C. § 5-14-1.5-3(a).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a). In addition to providing notice to any news media who by January 1 of the year have requested notice, the agency must post notice at the principal office of the agency or, if there is no office, at the building where the meeting will be held. I.C. § 5-14-1.5-5(b).

In addition to date, time and location of the meeting, a notice of an executive session must state the subject matter by specific reference to the enumerated instance(s) for which the executive session may be held. I.C. § 5-14-1.5-6.1(d). Executive sessions may be held only in the instances listed in I.C. § 5-14-1.5-6.1(b).

Here you allege the Council conducted an executive session without proper notice. I agree. The notice did not provide the location of the meeting, which is required by I.C. § 5-14-1.5-5. Further, the notice did not provide the enumerated instance for which the executive session may be held, which is required by I.C. § 5-14-1.5-6.1(d). Additionally, I find no instance in the ODL to allow an executive session for the purposes identified by the Council.

Regarding the request for access to records, the APRA provides that any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered in person and the agency does not respond to the request within twenty-four (business) hours, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to

deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Council received the request on March 22 and responded to the request on March 23, which was a Sunday. This is within the time period prescribed by I.C. § 5-14-3-9(a). While the APRA does not provide a time period for the production of records, it is now close to two months since you submitted the request. I would urge the Town to provide you a timeline by when it will provide the requested records. While I understand the Clerk-Treasurer is learning a new job and addressing the regular duties of the office, it is my opinion that two months without any further correspondence from the Town is an unreasonable amount of time.

I would also urge the Town Council to visit my office's website at www.IN.gov/pac and download the 55-page Public Access Handbook. This should provide a good starting point for the Council as they learn their roles and responsibilities under the ODL and the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Town violated the ODL by conducting an executive session without proper notice. Further, it is my opinion the Town should provide you with a timeline for production of the records you requested.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Town of Bryant Town Council