



# STATE OF INDIANA

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June 16, 2008

Jo Ellen Dotlich  
4400 West 10<sup>th</sup> Street  
Indianapolis, Indiana 46222

*Re: Formal Complaint 08-FC-133; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Speedway Redevelopment Authority*

Dear Ms. Dotlich:

This advisory opinion is in response to your formal complaint alleging the Speedway Redevelopment Authority (“Authority”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by failing to provide to news media organizations proper notice for a meeting and violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by failing to provide you a copy of the notice sent to news media when you requested such. It is my opinion you lack standing to file a complaint on the basis that news media organizations did not receive notice of a meeting. Further, it is my opinion that the Authority is required to retain and provide access to inspect and copy notices of its meetings.

## BACKGROUND

In your complaint you allege that the Authority held a regular meeting on Monday, May 19, 2008 at 4:30pm, for which neither the *Indianapolis Star* nor the *Speedway Navigator* received notice until Friday, May 16. You further complain that when you requested from the Town Clerk-Treasurer a copy of the notice sent to the newspapers, she indicated she did not retain a copy of the notice. You filed this complaint on May 20. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Authority responded to the complaint by letter dated June 5 from attorney James Gutting. The Authority contends that proper notice of the May 19 meeting was made. The Authority contends that because the *Indianapolis Star* did not by January 1 of this year request notices of all meetings for the year, the Authority was not required to send notice to the *Indianapolis Star*. The Authority further contends that it did and routinely does provide notice of its meetings to the news media, regardless of whether the

organizations have requested notice. That a transmission error may have occurred in this instance does not constitute a violation of the ODL since the Authority was not required to send notice. The Authority further contends you do not have standing to file a complaint on the basis provided because you are not a member of the news media.

Regarding your complaint based on denial of access to records, the Authority contends it is not required to retain a copy of the electronic notification of the meeting and as such did not violate the APRA by failing to provide you a copy. The Authority contends that it retains and makes available the meeting memoranda as required by I.C. § 5-14-1.5-4 but is not required to maintain a copy of the electronic meeting notice communication.

### 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).

(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 forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting . . .

(b) Public notice shall be given by the governing body of a public agency by:

(1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail.

(C) Transmitting the notice by facsimile (fax).

I.C. § 5-14-1.5-5

You have alleged that the Authority did not provide notice to the *Indianapolis Star* or *Speedway Navigator* at least forty-eight hours in advance of the May 19 meeting. The Authority contends that you do not have standing to file a complaint on this basis because you are not a member of the news media. Furthermore, you were in attendance at the May 19 meeting.

Indiana law provides that any person denied the right to attend any public meeting of an agency in violation of I.C. 5-14-1.5 or denied any other right conferred by the APRA or ODL or any other state statute or rule governing access to public meetings or records may file a formal complaint with the counselor. I.C. § 5-14-5-6(2) and (3). You have not asserted you have filed the complaint on behalf of a news media organization, but your complaint centers around notice provided or not provided to news media organizations. It is my opinion that because you have failed to allege that you have been denied the right to attend the May 19 meeting or denied any other right conferred by public access laws related to this issue, you do not have standing to file the complaint alleging a violation of the ODL.

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).

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.  
I.C. § 5-14-3-2(m).

Certainly electronic mail messages generated by a public agency are public records under the definition found in I.C. § 5-14-3-2(m). The Authority contends that the ODL requires only the memoranda to be kept of a meeting, in accordance with I.C. § 5-14-1.5-4. Section 4 of the ODL requires an affirmative action on the part of the agency – to create a specific record. The question here, though, is whether a record which has been created must be retained. The APRA definition for public record applies to any record which has already been created, received, retained, maintained, or filed by or with a public agency. *See* I.C. § 5-14-3-2(m). It is my opinion that an electronic mail message containing notice of a public meeting created and sent by the Authority or the Clerk-Treasurer acting on behalf of the Authority is a public record under the APRA definition.

Because the meeting notice, whether created in electronic or some other format, is a public record, the Authority shall protect the record from loss, alteration, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). Further, the agency is required by I.C. 5-15-6 to retain the record for a certain period of time. Many records of local agencies must be retained for three years. *See* I.C. § 5-15-6-3. As such, it is my opinion the Authority is required to retain copies of meeting notices and to provide inspection and copying of meeting notices upon request after the notices have been created. This is not to say the Authority must honor requests received before a notice is created. Further, the Authority is not required by the APRA to produce a copy of the record at a specific time identified

by the requester (*See Opinion of the Public Access Counselor 07-FC-330*, finding an agency is not required to honor a request received in advance of the creation of the record, nor is the agency required to provide a copy of meeting materials upon request before the meeting is held).

#### CONCLUSION

For the foregoing reasons, it is my opinion you lack standing to file a complaint on the basis that news media organizations did not receive notice of a meeting. Further, it is my opinion that the Authority is required to retain and provide access to inspect and copy notices of its meetings.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: James Gutting, Barnes & Thornburg LLP  
Edward Frazier, Speedway Redevelopment Authority  
Sharon Zishka, Town of Speedway Clerk-Treasurer