

FORMAL COMPLAINT GUIDE

Office of the Indiana Public Access Counselor

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Purpose of the complaint process

The formal complaint process exists to afford any person to seek and receive an interpretation of substantive issues relating to the access laws found throughout Indiana Code. The process provides an alternative to litigation so that results can be obtained quicker and expense-free. The complaint process is not, however, means for spiteful retribution, settling political scores, litigation pre-discovery, or harassment. They are valuable for educational and advisory purposes. The PAC is always mindful of preserving the fidelity and integrity of the access laws and how they are applied.

Since the creation of this office in 1998, we have received several thousand complaints and have issued approximately 4500 non-binding, yet influential, opinions. As the public becomes more aware of their right to know what government is doing, the need for the services of the Office of the Public Access Counselor (PAC) will continue to grow.

Common grounds for a complaint

The formal complaint process first begins with an alleged violation of access laws concerning public records and meetings of governing bodies. A review of the Handbook on Indiana's Public Access Laws is recommended prior to filing. Common types of complaints include, but are not limited to:

PUBLIC RECORDS

Improperly denied records

If an agency denies a record request submitted in writing, it must provide the statutory authority allowing it to deny the record. If the agency fails to provide this or you believe an incorrect statute was used to deny your request, you may file a formal complaint.

Inappropriate redactions

Another common complaint entails information incorrectly redacted from the records produced by an agency. Similar to denials, the agency must also provide the applicable state or federal law allowing it to redact certain information.

Unresponsive agencies

An agency has seven (7) days to acknowledge a remote request submitted by fax, email, or US post. An agency must respond within twenty-four (24) business hours to an in-person, hand-delivered request. This response does not have to be the final production of records but an affirmative acknowledgment or receipt of the request.

Delayed production of records

After the acknowledgement deadline, records must be produced within a "reasonable amount of time." The public access counselor employs a fact-and-context specific approach to this determination.

Excessive copy fees

Statutory fee schedules for public agencies are found throughout Indiana Code. Notably, local policy or ordinances cannot exceed these fees. Depending on the type of record, agencies may have some discretion in the types of costs recouped.

PUBLIC MEETINGS

Deficient meeting notice

The public is entitled to know when and where a public meeting of a governing body will be held. Notice must be posted 48 hours in advance of the gathering. Substantially defective notice is ripe for a complaint.

Unauthorized executive session

Only a very few specific instances exist in which an executive session can be legally held. An executive session also must be properly noticed with the subject matter included.

Final action taken outside of public meeting

A governing body must take final action during a properly noticed public meeting. Final action is defined as a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. Depending on context and the type of governing body, some limited preliminary or administrative decisions may be made.

Missing or deficient minutes and memoranda of public meetings

Subsequent to a public meeting, a documented memorialization of the gathering must be recorded and provided to the public within a reasonable time. The type of meeting will dictate the level of detail that minutes or memoranda must contain.

Complaint checklist

Please ensure these questions have been considered before filing a complaint.

Is my complaint an issue over which the PAC has jurisdiction?

The PAC has jurisdiction to address a multitude of access considerations found throughout Indiana code with some notable exceptions. For example, the PAC does not comprehensively address issues with public hearings, especially when another regulatory agency has such authority. Similarly, the PAC does not have jurisdiction over local ordinances or governance procedures unless they are in direct conflict with Indiana code.

Do I have a working familiarity with Indiana access laws in order to identify an alleged deficiency?

The most essential portion of the complaint is the narrative. A complaint should include citations to statutory authority or case law to a reasonable extent and the reasons why advisory relief may be warranted. Toward that end, the PAC publishes the Handbook on Indiana's Public Access Laws found at www.in.gov/pac. Hardcopies are also available upon request.

Do I have the correct complaint form and is it thoroughly completed, legible, concise, signed, and dated?

The PAC prescribes a form on which formal complaints must be submitted. You must file a formal complaint using the formal complaint form available via our website, www.in.gov/pac. This form provides space for all the information necessary for the processing of the complaint.

All spaces must be completed, including the signature and date field. You must describe the denial of access in the space on the form. You can use additional sheets if necessary, and you can send copies of documentation such as meeting notices or the agency's written denial of the record. Do not use multiple complaint forms for a single submission. It is usually not helpful to explain why the record is needed or to complain about the agency's conduct, because the opinion seldom concerns those matters. You need only submit one (1) copy of the complaint form and one (1) copy of substantiating evidence to the counselor. Any information provided to the Office of the Public Access Counselor is considered public record unless a specific statutory exemption applies.

While the complaint process is not subject to the Indiana Trial Rules or any other procedural authority, complaints should be crafted in a clear and coherent manner consistent with court pleadings. Documents should be scanned and not photographed. Audio or visual evidence will be addressed on a case-by-case basis.

Inflammatory language or rhetoric should be avoided.

Be sure to use readable professional fonts and black or blue ink font. No photostopping or writing in the margins will be accepted. If you are unable to write legibly, please type your narrative. Unless permitted in writing from the office, evidence or narrative submitted outside the original complaint submission may not be considered as part of the complaint.

The office cannot accept documentation in shared drive links such as Google Docs or social media.

Is the complaint within the statutory time limits?

See Indiana code section 5-14-5-7 or the Handbook for the statute of limitations for filing a complaint. These will be strictly enforced.

Rejected or returned complaints

When a complainant fails to provide all the necessary information or follow the previously addressed guidelines, the complaint may be returned for more information or returned because the complaint does not state a matter subject over which the Public Access Counselor has authority. Some other reasons may include:

Responding entity is not a public agency

Because only public agencies are subject to Indiana access laws, the PAC does not have jurisdiction over complaints against private corporations, private individuals (including candidates for public office), or non-profit organizations unless extraordinary circumstances apply.

Lawsuit has been filed

The PAC is statutorily precluded from accepting complaints and issuing opinions in cases where a lawsuit has been filed. If a lawsuit has been filed against the public agency and pertains to the issue for which the formal complaint has been filed, the PAC will not issue an opinion.

Duplicative complaints

Once the Public Access Counselor has issued an opinion on a matter, the issue is closed. If a complainant does not receive a favorable result, judicial review remedies are available. Duplicate complaints regarding the same issue from different complainants will be consolidated into one (1) complaint and addressed collectively. Repetitive complaints about the same issue from the same complainant will not be accepted.

Insufficient information

It is important for the complainant to provide all the information requested on the form. The complaint will be returned if the form is not completed in its entirety. The Office of the Public Access Counselor does not have the resources to research the contact information for every complaint it receives. Therefore, it is imperative this information is identified at the initial time of filing. Narratives which merely reference attached email chains or decontextualized material will be summarily dismissed.

**Anonymous complaints will not be accepted.*

Request originally sent to wrong agency or address

Once a complaint is received, if the PAC believes the original request was sent to the wrong address or agency, the complaint will be returned. The complainant will be asked to resubmit the request to the proper agency or address. If there is still no response to the request or a denial still occurs, the complainant may resubmit the complaint to the Office.

No actual denial has occurred

An agency has a reasonable time to respond to a request for copies. Except in very specific circumstances, copies of documents do not have to be provided on-the-spot. Even inspection during business hours may require a later appointment depending on the records requested.

Once the Complaint is filed

Once a complaint is filed and accepted, the Office of the Public Access Counselor notifies the alleged offending agency. A notice of formal complaint letter and a copy of the complaint are sent to the agency. The agency is given approximately twenty (20) business days to respond to the complaint. An agency may request more time to complete the response if necessary. The PAC requires the response to be submitted in writing although some investigation is often handled telephonically.

Occasionally, complainants request a copy of the public agency's response prior to the opinion being issued in order to provide a rebuttal. It is not the practice of the PAC to send a copy of the agency response prior to the issuance of the opinion, however, agency the response will accompany the PAC opinion. Rebuttals are permitted on a case-by-case basis at the PAC's discretion.

An opinion will typically be issued within 40-45 days after a complaint is submitted. Certain factors, including the complexity of the issue or the cooperation of the parties, may delay issuance.

After the response is issued

Approximately half of all opinions will be published on the PAC website. Some may be issued in letter form depending on the circumstances, however, they carry the same legal weight as the published rulings. The PAC tries to identify novel or interesting issues for the website opinions, however, all are treated with the same level of attention and diligence.

The opinions issued by the PAC are advisory only. The PAC has no statutory authority to compel a public agency to either produce records or reverse an action made in a public meeting. Only a court may provide remedial or monetary relief. Under certain circumstances, a court could reverse a decision made in violation of the Open Door Law or the Access to Public Records Act. The only method for compelling action by a governmental agency is to file a lawsuit. If a complainant first asks for and receives an advisory opinion or an informal inquiry response before the lawsuit is filed and the substantially complainant prevails in the lawsuit, the court may award attorney fees, court costs, and reasonable expenses of litigation. Civil penalties, while rare, may also be imposed on the agency.

If there is evidence which may change the PAC's opinion after it has been issued, the PAC will review the information and may make necessary amendments to the opinion. This is an exceedingly rare occurrence. Because PAC opinions are advisory, there is no appeal process. Any information filed after the opinion is issued will be added to the complaint file for future reference or public inspection.

Frequently Asked Questions

Do I have to file a formal complaint to get assistance from the PAC?

No. The PAC is pleased to offer a public service whereby the PAC and his staff can offer guidance via email or over the phone. The PAC frequently travels to conduct agency trainings, town halls, seminars, and occasionally attends municipal or county public meetings. The Office can schedule an appearance upon request based on availability. While we do host in-office meetings, appointments are required.

Can the Public Access Counselor provide legal representation?

No. The Public Access Counselor cannot provide legal representation to private citizens or public officials.

Can I use informal statements provided by the PAC or office staff as a definitive conclusion on a matter?

No. The PAC and legal staff are available for direction and conversation outside of the formal complaint process. Any informal guidance provided to a public official or constituent is not dispositive. It is meant to be interpretive assistance to foster compliance.

Should I withdraw a complaint if a matter is resolved before the issuance of an opinion?

Yes! Ultimately, the goal of the PAC is compliance. The more a conflict can successfully be accomplished outside the formal complaint process, the better.

Can the PAC provide public records of other agencies such as autopsy or police reports?

No. While the Office of the Public Access Counselor is subject to the Access to Public Records Act, it does not have access to or custody over other agency's records.

Can I receive priority complaint status for an expedited timeline?

Doubtful. Due to the volume of complaints received, the granting of priority status is exceedingly rare.