

ANNUAL REPORT OF THE INDIANA PUBLIC ACCESS COUNSELOR

July 1, 2019 to June 30, 2020

In accordance with Indiana Code Section 5-14-4-12, the Public Access Counselor hereby submits this annual report of activities for the time period covering July 1, 2019 through June 30, 2020.¹ This report is presented in two parts: in Part 1 a narrative summary of the activities of the PAC; and in Part 2 the information required to be submitted in accordance with Indiana Code Section 5-14-4-12.

PART 1: Annual report narrative

1.1 Mission

The Public Access Counselor provides advice and assistance concerning Indiana's public access laws to members of the public and government officials and their employees.

Vision

The Office of the Public Access Counselor is dedicated to carrying out its mission by employing the following philosophy:

“A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the 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. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” Ind. Code § 5-14-3-1-10.

“...It is the intent of this chapter 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...” Ind. Code § 5-14-1.5-1.

¹ All data current as of 5:00 p.m. on Monday, June 29, 2020.

1.2 Public Access Counselor and Staff

Public Access Counselor Luke H. Britt was appointed by Governor Mike Pence to serve as Indiana's seventh PAC. Governor Eric J. Holcomb reappointed Britt for a second term in October 2017. Britt previously served as an attorney and operations manager for the Indiana State Department of Health and as an attorney for the Indiana Department of Child Services.

The office has two other full-time employees: Kristopher L. Cundiff, who serves as deputy PAC and chief of staff; and Kaitlyn Holmecki, a program coordinator. The office also utilizes the assistance of interns from time to time. The office underwent a structural reorganization in 2019 based upon increased funding levels. The addition of a program coordinator improved process flow and resulted in increased efficiency regarding constituent services.

1.3 Advisory opinions

The PAC received 403 formal complaints in fiscal year 2019, an increase from 364 in fiscal year 2018. From July 1, 2019, to June 30, 2020, the PAC anticipates issuing 170 written advisory opinions in response to formal complaints (42 are pending at the time of the submission of the report). The formal complaint process is governed by statute. *See* Ind. Code § 5-14-5. In accordance with Indiana Code Section 5-14-5-9, the PAC must issue an advisory opinion within 30 business days of receiving a formal complaint. Before the COVID-19 event, 92% met that benchmark.

Similar to fiscal years 2017 and 2018, the office took a more proactive position in resolving complaints during the adversarial complaint process. This reduced the total number of opinions issued. This allowed the PAC to focus both on crafting higher quality opinions and addressing novel or complex issues, which have not been addressed in the past. The size of the opinions has doubled, providing the reader with a better understanding of the issue at hand.

Additionally, the office has made efforts to screen out unmeritorious complaints that do not meet statutory grounds for a formal complaint. A majority of these complaints are DOC inmates who are seeking post-conviction-relief (with its own discovery mechanism) or have a misunderstanding of this office's jurisdiction and purpose. Exercising this discretion has helped the office reduce the number of opinions published; and thus, increase the quality of the published opinions. Reasons for declining a complaint are predicated upon issues relating to timeliness, unclear narrative, defective public records requests, and duplicative factual matters.

1.4 Informal opinions

In addition to published advisory opinions, the PAC issues written informal opinions in accordance with Indiana Code Section 5-14-4-10(5). The PAC issued 13 informal opinions for the period July 1, 2019 to June 30, 2020.

1.5 Telephone and email inquiries

Our most important metric is interaction with the public. The office has experienced steady activity in relation to fiscal year 2020. From July 1, 2019 to June 30, 2020, the three PAC staff members received and responded to 6,941 inquiries via telephone and electronic mail, as compared to 7,141 in fiscal year 2019. The office responded to all general inquiries within 72 business hours. All inquiries prior to June 26, 2020 are currently resolved. Of the inquiries and requests

for assistance received, 2,499 were from the public at large, 3,817 from government agencies and 625 from media.

1.6 Education and presentations

The PAC made 35 educational presentations in fiscal year 2020; the same number as 2019. The focus of this Public Access Counselor has been expanding educational awareness on the Access to Public Records Act and the Open Door Law to the public and government officials. These educational presentations have given the Public Access Counselor the opportunity to travel across the state, speaking to audiences ranging from small town halls to the Indiana General Assembly. The decrease in in-person presentations is largely due to the COVID-19 event. Toward that end, counselor Britt has also expanded the use of technology in the office by participating in webinars, media interviews, and through the use of the website.

1.7 Handbook and Other Educational Materials

The office revised the *Handbook on Indiana's Public Access Laws* in fiscal year 2017. Notably, as the access laws have not changed substantially since that time. The handbook is issued by the PAC and the Office of the Attorney General in accordance with Indiana Code Section 5-14-4-10(3). The Hoosier State Press Association assisted significantly with the production of the handbook. The handbook is a resource utilized by many government officials and the public, and the PAC receives many requests for the print version of the handbook. The agency posts the handbook on our website: www.IN.gov/pac. We encourage individuals and agencies to download it from the website at no charge.

Additionally, the PAC prepares slides and handouts for participants at the educational seminars where he presents. Because the agency budget will not allow the PAC to provide copies of slides and handouts to attendees at all events (some of which number in the hundreds), the PAC generally asks the sponsoring organization to provide copies for attendees. The PAC makes copies of all slide presentations available via the PAC website. The PAC does not anticipate revising the handbook until fiscal year 2021 due to only minor changes in the access laws.

1.8 Agency website

The Office of the Public Access Counselor maintains a website at: <http://www.in.gov/pac>. The website contains formal advisory and informal opinions that have been issued since 1998. In addition to the resources listed above, the website contains upcoming and past presentations of the PAC, sample letters and meeting notices, frequently asked questions, previous annual reports, and other resources, which includes guidance for the COVID-19 event and interpretive guidance of Governor Holcomb's Executive Orders as it relates to public access laws.

1.9 Oversight Committee on Public Records

In accordance with Indiana Code Section 5-15-5.1-18, the PAC serves as a member of the Oversight Committee on Public Records, the governing body for the Indiana Commission on Public Records. The OCPR is a committee appointed by the governor, which sets public records retention schedules for state and local government. Counselor Britt served four consecutive terms as elected chairman of the commission, but stepped down in 2019 to a regular member due to statutory term limitations.

PART 2: Annual report

(1) Total number of formal complaints received (includes pending complaints): 403

(2) Total number of formal complaints that have been withdrawn, rejected, or lawsuit/post-conviction filed:

Withdrawn: 33

Rejected:² 183

Lawsuits filed: 17

(3) Number of formal complaints received about each of the following (includes pending and withdrawn complaints but not rejections):

(A) State agencies:³ 183

(B) County agencies: 75

(C) City agencies: 76

(D) Town agencies: 30

(E) Township agencies: 12

(F) School corporations: 19

(G) Other local agencies:⁴ 8

(4) Number of formal complaints received concerning each of the following (includes pending and withdrawn complaints):

(A) Public records: 292

(B) Public meetings: 103

(C) Both: 8

(5) Number of formal complaints received each from the public, media, and government agencies (includes pending and withdrawn complaints):

(A) Public: 316

(B) Media: 79

(C) Government: 8

(6) Total number of written formal advisory opinions issued (does not include written informal opinions):

(A) Opinions Issued: 120

(B) Opinions Pending:⁵ 50

² Rejected complaints lack statutory grounds for a complaint.

³ The bulk of filings against state agencies are against the Indiana Department of Correction. A significant majority are dismissed for reasons stated in the narrative.

⁴ Conservation districts; regional boards, etc.

⁵ Much of this backlog is due to an influx of complaints in Q4 related to COVID-19.