

# **ANNUAL REPORT OF THE PUBLIC ACCESS COUNSELOR To the Indiana General Assembly**

July 1, 2003 through June 30, 2004

Pursuant to Indiana Code 5-14-4-12, this is the annual report of the activities of the Office of the Public Access Counselor for the time period covering July 1, 2003 through June 30, 2004. This report is presented in three parts: the information required under Indiana Code section 5-14-4-12; a narrative summary of the activities of the Office; and appendices with more detailed information on the presentations given and the advisory opinions issued over the past year.

## **PART I Annual Report**

- (1) Total number of inquiries and complaints received: 2,704
- (2) Number of inquiries and complaints received each from the public, media and government agencies:

Public	1,337
Media	363
Government	1,004

- (3) Number of inquiries and complaints that were resolved: 2,686
- (4) Number of complaints received about each of the following:

(A) State agencies -	65
(B) County agencies -	58
(C) City agencies -	19
(D) Town agencies -	29
(E) Township agencies -	9
(F) School corporations -	8
(G) Other agencies -	13

(5) Number of complaints<sup>1</sup> received concerning each of the following:

- (A) Public records - 164
- (B) Public meetings - 37

(6) The total number of written advisory opinions issued and pending:

Opinions Issued: 189  
Opinions Pending: 6

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<sup>1</sup> The number of complaints in this section does not match the total of all numbers reported in section 4. This is due to the fact that in some cases, the complainant alleged more than one type of violation.

## **PART II**

### **Executive Summary**

#### **Public Access Counselor and Staff Counsel**

The Office of the Public Access Counselor is staffed by two attorneys, the Public Access Counselor and a staff attorney. Early in this reporting period, Anne Mullin O'Connor resigned as Public Access Counselor to take another position in state government. Sandra Barger, the staff attorney, became acting Public Access Counselor pending a new appointment by Governor Frank O'Bannon. During the interim, the Office used the services of a temporary employee who was also an attorney. In November 2003, following Governor O'Bannon's untimely passing, Governor Joseph Kernan appointed Michael A. Hurst as the new Public Access Counselor. Prior to his appointment, Hurst was serving as a deputy legal counsel in the Governor's Office, and previously served as the Deputy Commissioner and as legal counsel for the Indiana State Department of Health. In January 2004, Ms. Barger left state government to enter private practice and since then, the office had been staffed only by the Public Access Counselor. On June 16, 2004, Hurst resigned as Public Access Counselor to return to the Indiana Department of Health. On that same date, Governor Kernan appointed Karen Davis, formerly General Counsel with the Family and Social Services Administration, to succeed Hurst. Prior to leaving the Public Access Counselor, Hurst hired a staff attorney, Lea Ellingwood. Ms. Davis and Ms. Ellingwood began their new duties on July 6, 2004.

#### **Advisory Opinions**

Since July 1, 2003, the Office has issued 189 written advisory opinions on formal complaints. Six opinions on formal complaints are pending as of this report. Under Indiana Code 5-14-5-9 and 10, advisory opinions must be issued within either seven (7) or thirty (30) days of receipt of a formal complaint. A more detailed listing of these opinions and a brief description of the opinions follow in Appendix B, below.

#### **Education and Presentations**

Twenty-four educational presentations were held for various groups over the past year. A full listing of these presentations follows in Appendix A, below.

#### **Access Handbook and other Educational Materials**

The Public Access Handbook was most recently revised effective December 2003, and it is posted on the Office's website, [www.IN.gov/pac](http://www.IN.gov/pac). The Office has historically distributed printed copies of the Handbooks during educational presentations of the sort described in the previous section of this report and also directly to citizens and public offices. This year, because of budget constraints affecting all of state government, we did not place a print order for Handbooks. The Office has instead responded to requests for copies of the Handbook by referring constituents to our web site and inviting them to download and print as many copies as needed. If a constituent did not have

access to the internet, the Office has printed a copy and distributed that printed copy to the constituent. In addition, the Office has given conditional permission to the Hoosier State Press Association and the Indiana Coalition for Open Government to place a print order for Handbooks at the expense of those organizations. Those organizations will make the Handbooks available to members and requesting parties without charge or at a nominal charge.

### **Oversight Committee on Public Records**

Effective July 1, 2001, the Public Access Counselor serves as a member of the Oversight Committee on Public Records, the governing body for the Indiana Commission on Public Records. The Committee generally meets one time each month. During the past year, the Public Access Counselor has served as Chair of the Committee.

Respectfully submitted,

Karen Davis  
Public Access Counselor<sup>2</sup>

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<sup>2</sup> The author gratefully acknowledges the assistance of the former Public Access Counselor Michael Hurst for his assistance in preparing this report. Any omissions or errors are the responsibility of the author alone.

**PART III**  
**Appendices**

**APPENDIX A**

**PRESENTATIONS/TRAINING/EDUCATION**

July 1, 2003 through June 30, 2004

**2003**

November 19, 2003	Hendricks County Sheriff's Department (Danville)
December 3, 2003	Indiana Association of County Commissioners (Indianapolis)
December 15, 2003	Indiana Attorney General's Office, "Representing State Government Seminar for Government Attorneys (Indianapolis)

**2004**

January 15, 2004	Indiana Association of Cities and Towns, Newly Elected Officials Training (Indianapolis)
February 12, 2004	Carmel-Clay Parks Department (Carmel)
February 13, 2004	Indiana Commission on Abused and Neglected Children (Indianapolis)
February 18, 2004	Association of Licensed Nurse Consultants, Indianapolis Chapter (Indianapolis)
February 25, 2004	Innovative Mapping Solutions, GIS Conference (Indianapolis)
March 3, 2004	Westfield Police and Fire Departments (Westfield)
March 9, 2004	Indiana Attorney Generals' Office, Division of Consumer Protection (Indianapolis)
March 11, 2004	Society of Professional Journalists (Indianapolis)
March 15, 2004	Indiana League of Municipal Clerk-Treasurers (Muncie)
March 17, 2004	Indiana Public Health Foundation, County Health Officers Conference (Indianapolis)

April 15, 2004 Sherman Minton American Inn of Court (New Albany)

April 19, 2004 Indiana State Department of Health (Indianapolis)

April 19, 2004 Town Boards, Warren, Huntington, Andrews, Roanoke,  
Joint Board Meeting (Roanoke)

April 20, 2004 Indiana Department of Family & Children,  
Directors and Regional Managers (Indianapolis)

April 28, 2004 Vincennes County Council and Other Interested Governing  
Bodies and Public Agencies, Indiana Association of Cities  
and Towns Public Access Training (Vincennes)

April 29, 2004 Indiana Department of Correction,  
Public Information Officers' Training (Indianapolis)

April 29, 2004 Northwest Indiana, Local Government Academy,  
Training for Governing Bodies, Public Agencies  
and Interested Constituents (Gary)

May 6, 2004 Indiana Municipal Personnel Administrators for  
Cities and Towns (Indianapolis)

June 8, 2004 Logansport Kiwanis Club (Logansport)

June 17, 2004 City and Town Clerk-Treasurers' City Controllers' School  
(Sponsored by Indiana State Board of Accounts)  
(Indianapolis)

June 24, 2004 Indiana Municipal Lawyers Association (Indianapolis)

## APPENDIX B

## ADVISORY OPINIONS ISSUED<sup>3</sup> JULY 1, 2003 THROUGH JUNE 30, 2004

### 2003

<u>Opinion No.</u>	<u>Issue(s)</u>
03-FC-44	Alleged Denial of Access to Public Records by the Washington Redevelopment Corporation
03-FC-45	Alleged Denial of Access to Public Records by the Indiana State Police Department
03-FC-46	Alleged Denial of Access to Public Records by the Starke County Sheriff's Department
03-FC-47	Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department
03-FC-48	Alleged Denial of Access to Public Records by the Indiana State Police Department
03-FC-49	Alleged Denial of Access to Public Records by the Clerk of the Circuit Court of Delaware County
03-FC-51	Alleged Denial of the Access to Public Records Act by the Indiana Department of Correction, Wabash Valley Correctional Facility
03-FC-52	Alleged Denial of Access to Public Records by the Indiana Department of Correction, Wabash Valley Correctional Facility
03-FC-53	Alleged Denial of Access to Public Records by the Lake County Prosecutor's Office
03-FC-54	Alleged Denial of Access to Public Records by the Indiana Department of Administration
03-FC-55	Alleged Denial of Access to Public Records by the Indiana Department of Correction, Wabash Valley Correctional Facility

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<sup>3</sup> The full text of these opinions is posted on the Office website, [www.IN.gov/pac](http://www.IN.gov/pac). Cause numbers missing in sequence represent complaints that were withdrawn, dismissed or handled as informal inquiries.

- 03-FC-56 Alleged Denial of Access to Public Records by Purdue University
- 03-FC-57 Alleged Denial of Access to Public Records by the Indianapolis Fire Department
- 03-FC-58 Alleged Denial of Access to Public Records by the State Lottery Commission of Indiana
- 03-FC-59 Alleged Denial of Access to Public Records by the Indiana Department of Administration
- 03-FC-60 Alleged Violation of the Open Door Law by the Roseland Housing and Neighborhood Development Committee
- 03-FC-61 Alleged Denial of Access to Public Records by the Rush County Board of Zoning Appeal
- 03-FC-62 Alleged Denial of Access to Public Records by the Indiana House of Representatives
- 03-FC-63 Alleged Denial of Access to Public Records by the City of Fort Wayne
- 03-FC-64 Alleged Violation of the Indiana Open Door Law and the Indiana Access to Public Records Act by the North Gibson School Corporation
- 03-FC-65 Alleged Denial of Access to Public Records by the Indiana Parole Board
- 03-FC-66 Alleged Denial of Access to Public Records by the Lake County Court
- 03-FC-67 Alleged Denial of Access to Public Records by the Calumet Township Trustee's Office
- 03-FC-68 Alleged Violation of the Indiana Open Door Law by the Lawrenceburg Conservancy District Board
- 03-FC-69 Alleged Denial of Access to Public Records by the Rush County Area Plan Commission/Board of Zoning Appeals
- 03-FC-70 Alleged Denial of Access to Public Records by the Rush County Area Plan Commission/Board of Zoning Appeals



03-FC-71	Alleged Denial of Access to Public Records by the Indiana Department of Correction, Wabash Valley Correctional Facility
03-FC-72	Alleged Denial of Access to Public Records by the Nappanee Police Department
03-FC-73	Alleged Violation of the Indiana Open Door Law by the Tax Abatement Compliance Committee, City of Rensselaer
03-FC-74	Allegation of Excessive Copy Fees by Knox County Commissioners
03-FC-75	Alleged Denial of Access to Public Records by the Ferdinand Police Department
03-FC-76	Alleged Denial of Access to Public Records by the Luce Township Regional Sewer District
03-FC-77	Alleged Denial of Access to Public Records by the Indiana State Ombudsman Bureau
03-FC-78	Alleged Denial of Access to Public Records by the Indiana Judicial Nominating Commission
03-FC-79	Alleged Denial of Access to Public Records by the Indiana Supreme Court Disciplinary Commission
03-FC-80	Alleged Denial of Access to Public Records by the City of Charleston
03-FC-81	Alleged Denial of Access to Public Records by the Gary Police Civil Service Commission
03-FC-82	Alleged Violation of the Indiana Open Door Law by the City of Charleston
03-FC-82(a)	Alleged Denial of Access by Indiana University Purdue University Indianapolis
03-FC-83, 03-FC-84 (cons.)	Alleged Violation of the Open Door Law by the Family & Social Services Administration
03-FC-85	Alleged Violation of the Open Door Law by the Bremen School Board

03-FC-86	Alleged Denial of Access by Indiana Department of Correction
03-FC-87	Alleged Violation of Open Door Law by Family & Social Services Administration
03-FC-88	Alleged Denial of Access to Public Records by the LaPorte County Public Library
03-FC-89	Alleged Denial of Access to Public Records by the Indiana Secretary of State of Indiana
03-FC-90	Concerning the Alleged Denial of Access by the Indiana Department of Correction
03-FC-92	Alleged Denial of Access to Public Records by the Legislative Services Agency
03-FC-93	Alleged Denial of Access by Family & Social Services Administration
03-FC-94	Alleged Violation of APRA by Madison Township Trustee
03-FC-95	Alleged Violation of the Open Door Law by Madison Township
03-FC-96	Concerning the Alleged Violation of the APRA by the Indiana Clerk of Courts
03-FC-97, 03-FC-98 & 03-FC-99	Alleged Violation of Access to Public Records Act by the Hamilton County Prosecutor, Hamilton Superior Court 4, Hamilton County Human Resource Director, and Hamilton County Auditor
03-FC-101	Concerning the Alleged Denial of Access to Public Records by the Madison Township Trustee
03-FC-103	Alleged Violation of the Access to Public Records Act by the Madison Township Trustee
03-FC-104	Alleged Violation of the Open Door Law by the Gary Board of School Trustees

03-FC-105	Alleged Violation of the Access to Public Records Act by the Madison Township Board
03-FC-106	Alleged Denial of Access to Public Records by the Lake County Grievance Review Board
03-FC-107	Alleged Violation of the Access to Public Records Act by the Public Defender Council
03-FC-108	Alleged Denial of Access to Public Records by the Taylor University Office of Campus Security
03-FC-109	Alleged Violation of the Access to Public Records Act by the City of Goshen
03-FC-111	Alleged Violation of the Open Door Law by the Gary Board of School Trustees
03-FC-112	Alleged Violation of the Access to Public Records Act by the Indiana Supreme Court
03-FC-113	Alleged Denial of Access to Public Records by the Indiana Attorney General
03-FC-118	Alleged Violation of the Access to Public Records Act by the Indiana State Board of Accounts
03-FC-119, 03-FC-123 & 03-FC-125	Alleged Denial of Access to Public Records by the Lake Superior Court, Lake County Council and Lake Superior Court Clerk
03-FC-120	Alleged Denial of Access to Public Records by the Gary Police Department, Internal Affairs Division
03-FC-121	Alleged Violation of the Open Door Law by the Town of Clear Lake
03-FC-122	Alleged Violation of the Access to Public Records Act by the Town of Clear Lake
03-FC-124	Alleged Denial of Access to Public Records by the Indiana Department of Transportation
03-FC-126	Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

03-FC-128	Alleged Denial of Access to Public Records by the Jefferson County Health Department
03-FC-129, 03-FC-131 & 03-FC-132 (cons.)	Alleged Violation of the Open Door Law by the Town of Dayton
03-FC-130	Alleged Denial of Access to Public Records by Town of Knightstown, Clerk-Treasurer for Town of Knightstown, Greg Crider and Hayes Copenhaver & Crider, and Governmental Insurance Exchange
03-FC-133	Alleged Denial of Access to Public Records by the Lake County Superior Court
03-FC-134, 03-FC-135, & 03-FC-136 (cons.)	Alleged Denial of Access to Public Records by the Disciplinary Commission of the Supreme Court, Lake County Judicial Nominating Commission, and the Lake County Superior Court
03-FC-137	Alleged Denial of Access to Public Records by the Fulton County Sheriff's Department
03-FC-138	Alleged Violation of the Open Door Law by the Evansville-Vanderburgh School Corporation
03-FC-139	Alleged Denial of Access to Public Records by the Disciplinary Commission of the Supreme Court
03-FC-140	Alleged Violation of the Open Door Law by the Town of St. John Plan Commission
03-FC-141	Alleged Denial of Access to Public Records by the Office of the Governor
03-FC-142	Alleged Denial of Access to Public Records by the State Ethics Commission
03-FC-143	Alleged Denial of Access to Public Records by the Edgewood Town Court
03-FC-144	Alleged Denial of Access to Public Records by the Clerk of the Supreme Court, Court of Appeals, and Tax Court

- 03-FC-145 Alleged Denial of Access to Public Records by the Lake County Auditor
- 03-FC-146 Alleged Denial of Access to Public Records by the LaPorte County Public Library
- 03-FC-147 Alleged Denial of Access to Public Records by the LaPorte County Auditor

**2004**

<u>Opinion No.</u>	<u>Issue(s)</u>
04-FC-1	Alleged Denial of Access to Public Records by the Division of State Court Administration
04-FC-02	Alleged Violation of the Open Door Law by the Johnson County Plan Commission
04-FC-03, 04-FC-04 (cons.)	Alleged Denial of Access to Public Records / Open Door Law Violations by the Madison Industrial Development Corporation
04-FC-05	Alleged Violation of the Open Door Law by the Town of Clermont
04-FC-06	Alleged Denial of Access to Public Records by the Lafayette Police Department
04-FC-07	Alleged Violation of the Access to Public Records Act by the Indiana State Police
04-FC-08	Alleged Denial of Access to Public Records by the Madison Township Board
04-FC-09	Alleged Denial of Access to Public Records by the Mayor's Office, City of Hobart
04-FC-10	Alleged Denial of Access to Public Records by the Bartholomew Superior Court, No. 2
04-FC-11	Alleged Denial of Access to Public Records by the Cicero Police Department
04-FC-12	Alleged Violation of the Access to Public Records Act by the Indiana State Board of Law Examiners

- 04-FC-13, 04-FC-17 (cons.) Alleged Violation of the Access to Public Records Act by the Kosciusko County Prosecutor's Office and the Kosciusko County Sheriff's Department
- 04-FC-14 Alleged Denial of Access to Public Records by the Indiana Department of Insurance
- 04-FC-15, 04-FC-16 (cons.) Alleged Violations of the Open Door Law by the Town of French Lick
- 04-FC-18, 04-FC-19 (cons.) Alleged Violation of the Access to Public Records Act by the City of Whiting
- 04-FC-21 Alleged Violation of Access to Public Records Act by the Indiana State Board of Accounts
- 04-FC-23 Alleged Denial of Access to Public Records by the Indiana Department of Correction
- 04-FC-24 Alleged Violation of the Access to Public Records Act by the City of Carmel
- 04-FC-25 Alleged Violation of the Access to Public Records Act by the Town of St. John
- 04-FC-26 Alleged Denial of Access to Public Records by the Indiana Department of Correction
- 04-FC-27 Alleged Violation of the Access to Public Records Act by the Clerk of the Allen Circuit and Superior Courts
- 04-FC-28 Alleged Violation of the Access to Public Records Act by the Indiana State Police
- 04-FC-29 Alleged Violation of the Access to Public Records Act by Ball State University
- 04-FC-30 Alleged Denial of Access to Public Records by the Indiana Department of Correction
- 04-FC-31 Alleged Denial of Access to Public Records by the Center Township Trustee
- 04-FC-32 Alleged Violation of the Access to Public Records Act by the North Gibson School Corporation

- 04-FC-33 Alleged Violation of the Access to Public Records Act by the Indiana Attorney General
- 04-FC-34 Alleged Violation of the Access to Public Records Act by the Marion County Circuit Court
- 04-FC-35 Alleged Violations of the Open Door Law by the Town of Westfield and the Westfield-Washington Plan Commission
- 04-FC-36 Alleged Denial of Access to Public Records by the Indianapolis Police Department
- 04-FC-37 Alleged Denial of Access to Public Records by the Indiana State Prison
- 04-FC-38 Alleged Denial of Access to Public Records by the Sullivan County Prosecuting Attorney
- 04-FC-39 Alleged violation of the Access to Public Records Act by the Indiana State Police
- 04-FC-40 Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction
- 04-FC-41 Alleged Violation of the Access to Public Records Act by the Whitley County Coroner
- 04-FC-42 Alleged Violation of the Access to Public Records Act by the Allen Superior Court
- 04-FC-43 Alleged Violation of the Access to Public Records Act by the Maximum Control Complex
- 04-FC-44 Alleged Violation of the Access to Public Records Act by the Cloverdale Police Department
- 04-FC-45 Alleged Denial of Access to Public Records by the Calumet Township Trustee
- 04-FC-46 Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility
- 04-FC-47, 04-FC-48 (cons.) Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

- 04-FC-49 Alleged Denial of Access to Public Records by the Marion County Clerk
- 04-FC-50 Alleged Denial of Access to Public Records by the Indiana Department of Natural Resources
- 04-FC-51 Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction
- 04-FC-52 Alleged Violation of the Access to Public Records Act by the St. Joseph County Jail, Medical Department
- 04-FC-53 Alleged Violation of the Access to Public Records Act by the South Harrison School Corporation
- 04-FC-54 Alleged Violation of the Access to Public Records Act by the Harrison County Superior Court
- 04-FC-55 Alleged Violations of Access to Public Records Act and Indiana Open Door Law by the Town of Dayton
- 04-FC-56 Alleged Denial of Access to Public Records by the Indiana Auditor of State
- 04-FC-57 Alleged Violation of the Access to Public Records Act by the Grant County Assessor
- 04-FC-58 Alleged Denial of Access to Public Records by the Gaston Police Department
- 04-FC-59 Alleged Denial of Access to Public Records by the Department of Natural Resources
- 04-FC-60 Alleged Denial of Access to Public Records by the Putnam County Assessor
- 04-FC-61 Alleged Violation of the Access to Public Records Act by the Lake County Health Department
- 04-FC-62 Alleged Violation of the Access to Public Records Act by the Indiana State Prison
- 04-FC-63 Alleged Violation of the Access to Public Records Act by the Lake County Recorder
- 04-FC-64 Alleged Violation of the Access to Public Records Act by



the Clay County Assessor

- 04-FC-66 Alleged Violation of the Access to Public Records Act by the East Chicago Human Rights Commission
- 04-FC-67 Alleged Denial of Access to Public Records by the Bartholomew County Superior Court No. 2
- 04-FC-68 Alleged Violation of the Open Door Law by the Maconaquah School Corporation
- 04-FC-69 Alleged Violation of the Access to Public Records Act by the Lake County Treasurer
- 04-FC-70 Alleged Violations of the Open Door Law by the Town of Boswell
- 04-FC-71 Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction, PEN Products
- 04-FC-72 Alleged Violation of the Open Door Law by the City of Anderson
- 04-FC-73, 04-FC-75 & 04-FC-80 (cons.) Alleged Violation of the Access to Public Records Act by the Bartholomew County Sheriff's Department
- 04-FC-74 Alleged Violation of the Access to Public Records Act by Purdue University
- 04-FC-76 Alleged Denial of Access to Public Records by the Noble Township Trustee
- 04-FC-77 Alleged Violation of the Open Door Law by the Boone County Board of Commissioners
- 04-FC-78 Alleged Violation of the Access to Public Records Act by the Clerk of the Madison Superior Court
- 04-FC-79 Alleged Violation of the Access to Public Records Act by the Hendricks County Sheriff's Merit Board
- 04-FC-81 Alleged Violation of the Access to Public Records Act by the Hendricks County Board of Commissioners and Hendricks County Council

- 04-FC-82 Alleged Violation of the Access to Public Records Act by the Indiana Department of Local Government Finance
- 04-FC-83 Alleged Violations of Access to Public Records Act and Indiana Open Door Law by the Floyd County Board of Commissioners
- 04-FC-84 Alleged Violation of the Open Door Law by the Bremen School Board of Trustees
- 04-FC-85 Alleged Denial of Access to Public Records by the Town of Oxford
- 04-FC-86 Alleged Violation of the Access to Public Records Act by the Clerk of the Madison County Circuit Court
- 04-FC-87 Alleged Denial of Access to Public Records by the Elkhart City Court
- 04-FC-88, 04-FC-89 Alleged Denial of Access to Public Records by the Town of Westfield
- 04-FC-90 Alleged Violation of the Open Door Law and Denial of Public Records by the MSD Pike Township Board of Education
- 04-FC-91 Alleged Violation of the Open Door Law by the Town of Roanoke
- 04-FC-92 Alleged Denial of Public Records by the Allen County Public Defender
- 04-FC-94 Alleged Violation of the Access to Public Records Act by the Town of Gosport
- 04-FC-95 Alleged Violation of the Access to Public Records Act by the Indianapolis Fire Department
- 04-FC-96 Alleged Violation of the Access to Public Records Act by the Town of Wanatah
- 04-FC-97 Alleged Denial of Public Records by the Elkhart County Sheriff's Department
- 04-FC-98 Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

04-FC-99

Alleged Denial of Access to Public Records by the  
Vigo County Sheriff's Department

04-FC-101

Alleged Denial of Access to Public Records Act by the  
Wabash Valley Correctional Facility