

# INDIANA PUBLIC ACCESS LAWS

Presented by  
 Luke Britt, Indiana Public Access Counselor

## ACCESS TO PUBLIC RECORDS ACT

- Indiana Code § 5-14-3-1 through 5-14-3-10
- Enacted in 1983 ("APRA")

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.



## PUBLIC ACCESS COUNSELOR

The Public Access Counselor provides advice and assistance concerning Indiana's public access laws (the Access to Public Records Act and the Open Door Law) to members of the public and government officials and employees.

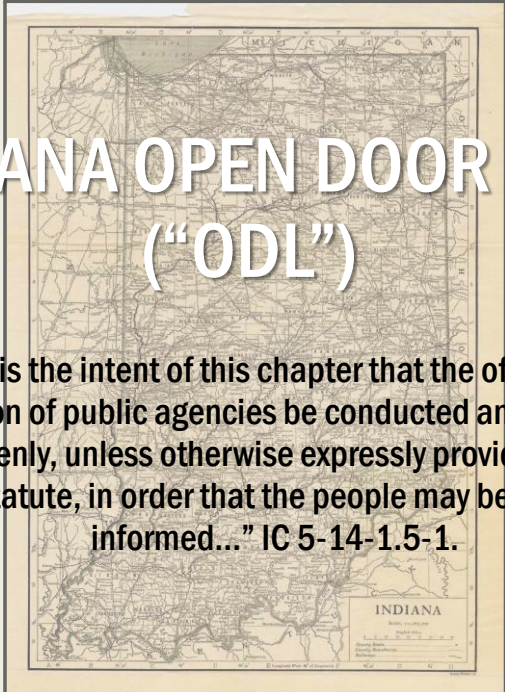
- Conducts research.
- Prepares interpretive and educational materials and programs in cooperation with the office of the attorney general.
- Distributes to newly elected or appointed public officials the public access laws and educational materials concerning the public access laws.
- Responds to informal inquiries made by the public and public agencies by telephone, in writing, in person, by facsimile, or by electronic mail concerning the public access laws.
- Issues advisory opinions to interpret the public access laws upon the request of a person or a public agency.
- Makes recommendations to the general assembly concerning ways to improve public access.

## 2016-2017 FISCAL YEAR

- Received approximately 5000 Inquiries
- 400 Formal Complaints Filed
- 40-50 Informal Inquiries Filed
- Conducted 50 Trainings and Presentations



Opinions and Annual Report found at [www.in.gov/pac](http://www.in.gov/pac)



# INDIANA OPEN DOOR LAW ("ODL")

**"...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..." IC 5-14-1.5-1.**



## BASIC RULE

- Majority
- Governing Body
- Official Action
- Public Business
- 48 Hours Notice
- Must be open to the public

## REQUIRED NOTICE

- 48 business hours in advance
- Date, time and place where Governing Body will meet
- Generally no requirements to publish in newspaper (public hearings are different than public meetings)
- Annual notices are permitted
- Emergency meetings are exception to notice requirement
- **Must** post at principal place of business or meeting location – mere website or newspaper notice is insufficient
- Special meetings of County Executives IC 36-2-2-8 (must state specific subject matter)
- Prohibition on serial meetings



## EXAMPLE OF PUBLIC NOTICE

**Notice of Public Meeting:**  
**Xavier Town Council**  
**Wednesday, July 16, 2016**  
**5:30 p.m.**  
**City Hall, Room 104**  
**123 Main Street, Xavier, Indiana**



## EXECUTIVE SESSIONS

- The “exception” to meetings that are open to the public
- Notice must include statutory purpose(s) for the meeting excluding the public.
- Meeting minutes or memoranda must include **certification** that only the topics permitted under the ODL for executive session were discussed.
- Should be irregular
- NO FINAL ACTION



## PROPER EXECUTIVE SESSION NOTICE

Notice of Executive Session  
 Xavier Town Council Executive Session  
 Wednesday, November 16, 2011  
 5:00 p.m.  
 City Hall, Room 104  
 123 Main Street  
 Xavier, Indiana

**The Council will meet to discuss a job performance of an individual employee as authorized under I.C. 5-14-1.5-6.1(b)(9)**



## COMMON EXECUTIVE SESSIONS

- To discuss:
  - records classified as confidential by state or federal statute
  - the alleged misconduct of an employee
  - strategy with respect to pending litigation or litigation threatened in writing
- To receive information and interview prospective employees



## MISCELLANEOUS ODL CONSIDERATIONS

- No right to speak under ODL unless some other statute requires it (i.e. public hearings)
- No right to participate by public
- Minutes/Memoranda (Draft copies)
- Electronic Meetings of State Agencies
- No secret ballots when voting



## ACCESS TO PUBLIC RECORDS

“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.

Indiana Code § 5-14-3-2(n)



## RESPONDING TO APRA REQUESTS

Time frames for responding to APRA Requests depend on the manner in which the public agency receives the request.

- If requestor is **physically present** in the office, the agency has 24 hours to respond.
- If the request is made by **mail or by facsimile**, the public agency has 7 days from the date it was received.
- Important: Production of documents is not required in these time frames, but within a reasonable time.
- Copy fees



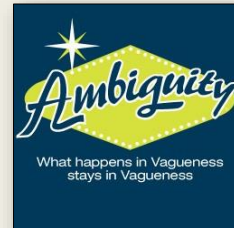
## REASONABLE PERIOD OF TIME

All records must be provided within a "reasonable period of time" after the request is received.

- Factors considered:
  - How broad is the request
  - Where are the records located
  - How much redaction is necessary
  - Busy time at the agency
  - Common sense factors
- What I like to see:
  - Communication - Status Updates
  - Piecemeal disclosures

## REASONABLE PARTICULARITY

- A request from the public must be reasonably particular - a subjective standard
- Two conflicting cases
  - Can you find it?
  - Are there objective elements in the query?
- What I like to see:
  - No blanket denial
  - Cooperate to narrow request





## THREE CATEGORIES OF PUBLIC RECORDS



## THE GOOD: DISCLOSABLE RECORDS

- Meeting Minutes
- Budgets
- Invoices
- Receipts
- RFPs
- Contracts



© Andrew McAllister - Looking at The West.com

## THE BAD: CONFIDENTIAL PUBLIC RECORDS

**Some Personal Health Information**

**Trade secrets**

**Student records**

**Social Security Numbers**

**Those declared  
confidential by state  
statute or federal law**



## THE UGLY: DISCRETIONARY PUBLIC RECORDS

**Investigatory records of law enforcement agencies**

**Attorney work product/client communication**

**Deliberative material**

**Personnel files of public employees**



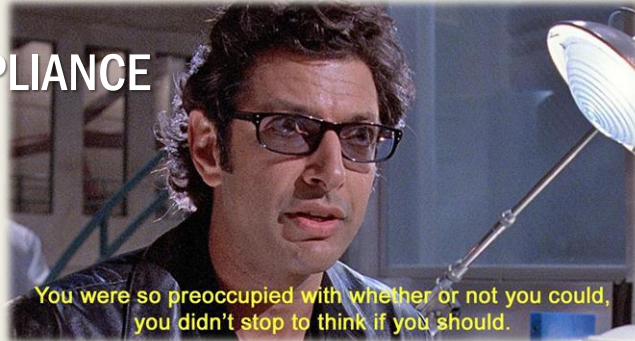
## EMAILS

- **A public record includes electronic media that is created, received, retained, maintained, or filed by or with a public agency.**
- **Electronic mail must be available for inspection and copying by the governing body unless an exception to disclosure, based on the content of the email, applies.**
- **Electronic mail must be maintained in accordance with records retention schedules, pursuant to I.C. 5-15.**
  - **Most agencies have their own retention schedules.**

## DENIALS

- **If a request is made orally, the agency may deny the request orally.**
- **If request is made in writing, the agency must deny the request in writing.**
- **Before the trial court, the burden is on the agency to demonstrate that the denial complied with the APRA.**
- **Court may review the records in-camera; the court may review the records if redaction of the record has occurred.**

## NONCOMPLIANCE



### Consequences

- Complaint to Public Access Counselor
- Lawsuit

### Penalties

- Court action seeking order to produce records and potentially order to pay attorney's fees
- Fines for knowing and intentional withholding of public records or violation of the ODL
- Bad press and damage to public perception

## COMMON MISCONCEPTIONS OF AGENCIES

- Offering to allow inspection is sufficient.
- Everything can be redacted
- Denials do not have to be explained
- Any document containing confidential information may be omitted from public records response





## COMMON MISCONCEPTIONS OF CITIZENS

- A public agency should:
  - Answer questions under APRA
  - Give me immediate access
  - Keep public records forever
  - Handle public records requests before handling other matters of the public agency
  - Keep public records in a format that is most convenient for me.



**Public Access Handbook:**  
[http://www.in.gov/pac/files/pac\\_handbook.pdf](http://www.in.gov/pac/files/pac_handbook.pdf)

**Public Access Counselor Website:**  
<http://www.in.gov/pac/>

**Contact Information:**

Indiana Public Access Counselor  
 402 W. Washington St, W470  
 Indianapolis, IN 46204  
 317.234.0906  
[pac@opac.in.gov](mailto:pac@opac.in.gov)

The End