

Indiana's Public Access Laws

Presented by
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Access to Public Records Act (APRA)

- 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.

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."

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.
- Governor Frank O'Bannon created the office by executive order in 1998 after a statewide collaboration of seven newspapers found great obstacles in obtaining government information in Indiana.
- In 1999, the General Assembly created the office statutorily.



2015-2016 Fiscal Year

- Received 4,956 Inquiries
- 286 Formal Opinions Issued
- 38 Informal Inquiry Responses Published



Opinions found at www.in.gov/pac

Indiana's 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.



Basics

- A Majority
- Governing Body
- Official Action
- Public Business
 - Notice
 - Open to the Public



Official Action vs. Final Action

- | | |
|--|---|
| <p>□ Official Action:</p> <ul style="list-style-type: none"> • Discussions • Deliberations • Receiving Information • Giving Information | <p>□ Final Action:</p> <ul style="list-style-type: none"> • Voting • Decisions |
|--|---|



What Kind of Notice is Required

- 48 business hours in advance
- Date, time and place where Governing Body will meet
- Generally no requirements to publish in newspaper
- Annual notices are permitted
- Emergency meetings are exception to notice requirement
- Must post at principal place of business or meeting location
- 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.
- **NO FINAL ACTION**



Improper Executive Session Notice

Notice of Executive Session

Xavier Town Council Executive Session
 Wednesday, July 16, 2016
 5:00 p.m.
 City Hall, Room 104
 123 Main Street
 Xavier, Indiana

Personnel and Litigation to be discussed

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)



Executive Session Common Exceptions under the ODL



- 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
 - information and intelligence intended to prevent, mitigate or respond to threat of terrorism
- To receive information and interview prospective employees

Administrative Function Meetings

- Only available to Town Councils and County Boards of Commissioners
- Solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit.
- "Administrative functions" do not include the awarding of contracts, the entering into contracts or any other action creating an obligation or otherwise binding a county or town.
- Penultimate opinion: 12-INF-36 and 15-FC-15.
- County Boards are no longer in continuous session.

Meetings under the ODL

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



What is a Public Record?

“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



Examples of Confidential Public Records

-  Those confidential by state statute or federal law (i.e. IC 4-6-9-4)
-  Social Security Numbers contained in public records
-  Patient medical records unless the patient gives written consent
-  Trade secret information
-  Certain foreclosure information
-  Grade transcripts/license exam scores in licensure process

Discretionary Categories - Selected Examples

- Investigatory records of law enforcement agencies
- Attorney work product/client communication
- Deliberative material
- Personnel files of public employees



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.



Access to Public Records Act

Electronic Mail

- 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.

Noncompliance

- Remedies
 - Fix it
 - Complaint to Public Access Counselor
- 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.
- Public Access = Immediate Access
- 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
 - ▣ 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.



Thank You

Contact Information:

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Public Access Handbook:
http://www.in.gov/pac/files/pac_handbook.pdf
Public Access Counselor Website:
<http://www.in.gov/pac/>