



STATE OF INDIANA

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February 1, 2024

Michelle C. Goodman
Indiana Office of Court Services
251 N. Illinois St., Suite 800
Indianapolis, IN 46204

VIA EMAIL: michelle.goodman@courts.in.gov

Re: Informal opinion 24-INF-01; Local Justice Reinvestment Advisory Councils

Dear Ms. Goodman:

This informal opinion is in response to the inquiry you submitted January 25, 2024. Specifically, you requested an informal opinion regarding local Justice Reinvestment Advisory Councils and their relationship with the Indiana Open Door Law.

BACKGROUND

In 2015, the Indiana General Assembly established a statewide Justice Reinvestment Advisory Council (JRAC) to review and make recommendations regarding community correction programs and criminal justice systems.¹ Its purpose, in part, is also to review and make recommendations regarding grant programs in conjunction with the Indiana Department of Correction and Family and Social Services.²

Subsequently, in 2021, the legislature created local JRACs to explore similar issues on a more granular, local level.³

You question whether meetings of the local JRACs are subject to the Open Door Law (ODL) and whether records generated from their activities are subject to the Access to Public Records Act (APRA).

¹ Ind. Code § 33-38-9.5-2.

² Ind. Code § 33-38-9.5-3.

³ Ind. Code § 33-38-9.5-6.



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ANALYSIS

1. Open Door Law

The Open Door Law (ODL) requires the governing body of a public agency to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. *See* Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

1.1. Definition of public agency

While any person has the right to observe and record meetings of a public governing body, the Open Door Law has a notable exclusion for the judiciary. While the Access to Public Records Act (APRA) lists judicial powers as subject to its provisions⁴, the Open Door Law conspicuously omits judicial functions from the definition of “public agency”⁵. This office reads the access laws *in pari materia* consistent with the courts’ direction toward harmonious statutory interpretation.⁶

Nevertheless, the analysis does not end there. We need to explore whether these local JRACs could alternatively meet a definition of a governing body, which would qualify as being entities subject to the ODL.

First, we look at how their enabling statutes are organized under the Indiana Code. As a persuasive marker, the legislature placed JRACs under Title 33 of the Indiana Code, which governs “Courts and Court Offices.” What is more, JRACs are included under Article 38 – “Judges.” These are the first signposts that JRACs were intended to exercise judicial functions.

⁴ Ind. Code § 5-14-3-2(q)(1).

⁵ Ind. Code §§ 5-14-1.5-2(a)(1), -(2).

⁶ *Klotz v. Hoyt*, 900 N.E. 2d 1, 5 (Ind.Ct.App.2009).



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Next, we turn to the definitions of public agency in the Open Door Law. As noted above, judicial functions are absent from the definition of public agency. Even still, the following definition has potential to apply to JRACs:

Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency...

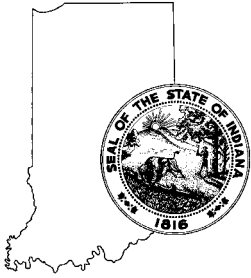
Ind. Code § 5-14-1.5-2(a)(5). Undoubtedly, local JRACs are created by statute. The question becomes whether they are created to advise the governing body of a public agency. The statutory duties assigned to local JRACs do not include advising any other entity that would qualify as a governing body of a public agency. *See* Ind. Code § 33-38-9.5-6. Instead, local JRACs: “review;” “evaluate;” “make recommendations;” “promote;” “compile;” “prepare and submit reports;” “establish committees;” and “communicate with the [statewide JRAC].” In other words, “advise” is not on the list of action verbs.

Nonetheless, JRACs are mutually exclusive from judicial circuits or conferences in that they include more than judges. For example, membership extends to county sheriffs, commissioners, and council members, among others. What is more, the statute was amended in 2022 (effective July 1, 2023) to include management of grants in a local JRAC’s statutory duties.⁷ Administration of public monies is typically an indicator that an entity could be subject to the Open Door Law.

Therefore, the activities of local JRACs are not *purely* judicial in nature, but taken altogether, the statutory construction and placement of JRACs in Indiana Code suggests that more likely than not, they are exempt from the Open Door Law.

That stated, it is up to the individual JRAC whether they choose to open its doors for public observation. Given that little of its subject matter would be confidential or even potentially sensitive, openness is always the best policy even if strict statutory requirements do not require it. This is especially true when public money is involved.

⁷ P.L.101-2022, SEC.36 adding Ind. Code § 33-38-9.5-6.



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2. The Access to Public Records Act

The Access to Public Records Act (APRA) states that “(p)roviding persons with 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.” Ind. Code § 5-14-3-1. Public agencies meeting the statutory definition of such are subject to the law’s requirements. See Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy that agency’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Notably, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a), to -(b). This inquiry also involves the intersection of APRA, Title 33, and rules promulgated by the Indiana Supreme Court.

In contrast with the Open Door Law, judicial activities are subject to the Access to Public Records Act, even when exclusions apply:

“Public agency”...means the following:

Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

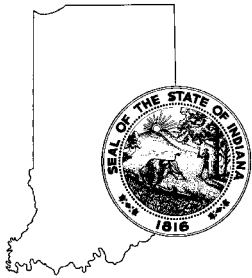
Ind. Code § 5-14-2-2(q)(1). Both the APRA and the administrative Rules on Access to Court Records⁸ promulgated by the Indiana Supreme Court govern the judiciary.

While JRACs may be part of the judiciary, any documentation arising from JRAC activities are not necessarily “court records” covered by the administrative Rules. Therefore, APRA is the default statute for any JRAC documentation.

Like any other agency or governing body, should JRACs prepare notices and meetings, board packets, agendas, and the like, they would be subject to disclosure unless an exception applies.⁹ This would presumably also extend to any reports prepared to submit to the State Court Administration.

⁸ <https://www.in.gov/courts/rules/records/index.htm>

⁹ APRA’s fee schedule would also apply to these materials.



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Please do not hesitate to contact me with any other questions.

Sincerely,

A handwritten signature in black ink, appearing to read "LH Britt".

Luke H. Britt
Public Access Counselor
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