**Office of the**
**Public Access Counselor**

# Handbook on Indiana's Public Access Laws

# TABLE OF CONTENTS

The Office of Public Access Counselor is pleased to provide you with a copy of this "Handbook on Indiana's Public Access Laws." The Indiana General Assembly created this Office in July 1999 and the role of the office, among other things, is to prepare and distribute interpretive and educational materials such as this handbook. This handbook is available in PDF format on our website, www.IN.gov/pac.

In this handbook, you will find the text of the two major public access statutes that apply to state and local public agencies: the Indiana Open Door Law, which governs meetings of governing bodies of public agencies and the Access to Public Records Act, which governs access to public records. In addition to the text of these statutes, we have included references to court cases interpreting these statutes. The statute and rules governing the operation of the Office of Public Access Counselor are also included. There are also appendices at the back of the handbook with a checklist for public agencies responding to requests for public records, a sample request letter, sample meeting notices and our formal complaint form.

This handbook addresses many issues, but is not intended to be a substitute for seeking advice from legal counsel. Please feel free to contact this Office using the contact information provided on the back cover of this handbook if you have any questions or problems related to the public access statutes.

Sincerely,

Karen T. Davis
Public Access Counselor

*"Information is the currency of democracy."*
*—Thomas Jefferson*

## Section One:
# Overview of the Indiana Open Door Law
# INTRODUCTION

The Open Door Law, originally passed by the Indiana General Assembly in 1977, was enacted to permit the citizens of Indiana access to meetings held by public agencies. By providing the public with an opportunity to attend and observe meetings, the public may witness government in action and more fully participate in the governmental process. The Open Door Law will serve these purposes if the public understands the provisions of this statute. This guide sets forth the basic elements of the Open Door Law and provides answers to commonly asked questions. In order to find answers to more specific questions, please consult the provisions of the Indiana Code set forth in Section Two of this guide.

## Commonly Asked Questions About the Open Door Law

The following are commonly asked questions about the Open Door Law. It is important to note that the answers are not the final authority on a particular issue as the facts will vary from situation to situation. Indeed, laws and court interpretations of the law are ever changing. Therefore, it is important to remember that the answers to these questions are only guides for the public, may only apply to specific situations, and are subject to change.

### Who may have access to government meetings?

The statutory language of the Open Door Law allows all members of the public access to certain meetings.

### What government meetings are open to the public?

Generally, all meetings of the governing bodies of public agencies must be open at all times so that members of the public may be permitted to observe and record them. Although this general rule may appear to be straightforward and easy to apply, it contains several words and phrases which are given a specific meaning by the Open Door Law. In order to fully understand the range of meetings which must be accessible to the public, certain phrases must be defined.

### What is a "public agency"?

The term "public agency" is defined very broadly by the Open Door Law and encompasses many meanings, which are set forth at Indiana Code 5-14-1.5-2(a). According to this provision, a public agency means, among other things:

*Any board, commission, department, agency, authority, or other entity which exercises a portion of the executive, administrative, or legislative power of the state.*

*Any entity which is subject to a budget review by the department of local government finance or the governing body of a county, city, town, township, or school corporation.*

*Any entity which is subject to an audit by the state board of accounts.*

*Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.*

*Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except for medical staffs or the committees of any such staff.*

The following are examples of public agencies:

***Example 1:*** A school building corporation organized solely to finance school corporations. (Ind. Code 21-5-11 or Ind. Code 21-5-12.)

***Example 2:*** A convention and visitor commission of an Indiana county that is supported primarily by tax dollars is subject to the requirement for public notice of meetings and records of meetings mandated by the Open Door Law.

The scope of the Open Door Law is not so broad that it would include all contact or meetings between public officials. Only the "governing body" of a public agency must make its meetings open to the public.

***Example*:** The mayor, public works director and council president meet to discuss financial matters. These persons, although public officials, are not a governing body. Therefore, their meeting would not be covered by the law.

### What is a "governing body"?

The phrase "governing body" is defined at Indiana Code 5-14-1.5-2(b). A governing body is two or more individuals who are:

*A public agency that is a board, commission, authority, council, committee, body, or other entity which takes official action on public business.*

*The board, commission, council, or other body*

*of a public agency that takes official action upon public business.*

*Any committee directly appointed by the governing body or its presiding officer to which authority to take official action upon public business has been delegated, except for agents appointed by a governing body to conduct collective bargaining on behalf of the governing body.*

In each of these definitions, for an entity to be considered a governing body, it must take official action on public business.

***Example 1:*** Staff members of the state department of transportation meet to discuss new requirements under federal highway laws. A representative of a local engineering company wants to sit in on the meeting, but is refused admittance. This meeting is not subject to the requirements of the Open Door Law because staff members of a government agency do not constitute a "governing body" that is responsible for taking official action on public business.

***Example 2*:** Employees of the State Department of Health conduct a meeting. The employees conducting the meeting are not members of the State Board of Health or of any advisory committee directly appointed by that Board. The meeting is not subject to the requirements of the Open Door Law.

***Example 3:*** A curriculum committee appointed by a school superintendent that is to report its findings to the school board is **not** subject to the Open Door Law because the superintendent is not the presiding officer of the school board. The same committee appointed by the school board president, however, would be subject to the Law. Indiana Code 5-14-1.5-2(b).

## What is a "meeting"?

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon business.

The following are examples that help define what a meeting is:

***Example 1*:** A majority of a city's police commissioners gather to discuss previously interviewed job candidates prior to a formal vote on the matter. This qualifies as a "meeting" under the Open Door Law.

***Example 2*:** Prior to a public meeting, a majority of members of a city zoning appeals board held a private session with the board's attorney. Board members questioned the attorney on legal matters related to a construction project that was the subject of a public session. The private session constituted a meeting and violated the Open Door Law.

***Example 3*:** A private foundation whose charge is the betterment of education holds a forum to release its most recent report regarding the quality of education within a particular school corporation. Four of seven school board members from the subject city want to attend to hear the presentation. This is a "meeting" of the school board because the four members constitute a "governing body" that is taking "official action" (receiving information) on "public business" (their school corporation).

## What is not a "meeting"?

The Open Door Law lists four types of gatherings that *are not* considered "meetings." A meeting does not include: (1) any social or chance gathering not intended to avoid the requirements of the Open Door law; (2) any on-site inspection of a project or program; (3) traveling to and attending meetings of organizations devoted to the betterment of government; or (4) a caucus.

***Example 1***: Before a tax measure is voted upon in the General Assembly, members of the majority party meet to discuss the party's position. The meeting is not subject to the Open Door Law. A political caucus is not transformed into a meeting subject to public scrutiny under the Open Door Law merely because persons attending such caucuses happen to constitute a majority of a governing body.

***Example 2*:** A drainage committee decides to meet one evening in a troubled area to obtain a first-hand look at the problem. This is not a meeting and is not subject to the law as long as the committee does no more than *inspect* the problem.

***Example 3*:** A park board decides to make an on-site inspection of its new lake, but it does not give public notice of its meeting. While at the lake, the board members decide to appropriate funds for a boat dock. The on-site inspection has become a meeting, and thus is subject to the requirements of the Open Door Law.

***Example 4*:** A majority of the town board travels to meetings together and reaches agreement on the outcome of various issues. The board members claim that this was not a meeting because they were traveling to and from a national meeting of town boards. The actions of the board during their travel did violate the Open Door Law because the members took official action on public business and did not simply travel to and from the meeting.

***Example 5*:** A local cafe is a popular spot for morning coffee and several members of a town board are among the regulars. Frequently, the conversation turns to matters of local concern on the agenda for the next board meeting. The group discusses the issues and often decides "what should be done." This discussion violates the Open Door Law if the board members constitute a majority of the governing body. By deciding issues beforehand, the board members have deprived the public of the opportunity to hear the debate leading to a decision.

## What is "official action"?

As mentioned above, a group is a governing body and subject to the Open Door Law only if it takes "official action". "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. There are also several other terms defined by the Open Door Law; for a complete listing, see Section Two of this guide, Indiana Code 5-14-1.5-2.

***Example 1*:** A city council schedules a meeting to set hiring and firing guidelines for city employees. The meeting involves official action since policy is being established.

***Example 2*:** A zoning board hears a presentation from an architectural firm regarding the designation of historic preservation areas. No proposals are made nor are votes taken. Yet, the board does take official action because the board is receiving information on public business.

## What if the need for a public meeting is uncertain?

All doubts under the Open Door Law must be resolved in favor of requiring a public meeting, and all exceptions to the rule requiring open meetings must be interpreted narrowly.

## What is significant about executive sessions?

Executive sessions are significant because the Open Door Law permits governing bodies to meet privately under certain circumstances. "Executive session" means a meeting from which the public is excluded, except that the governing body may admit those persons necessary to carry out its purpose. Indiana Code 5-14-1.5-6.1(b) sets out the specific matters about which a public agency can hold an executive session. These include situations such as government strategy discussions with respect to collective bargaining and litigation, interviews of prospective employees, job performance evaluations, and the purchase or lease of property by the public agency. For a complete listing see Section Two of this guide, Indiana Code 5-14-1.5-6.1(b).

***Example 1*:** A local public works board decides to meet in executive session before considering a tax proposal because there has been talk that the measure may be challenged on constitutional grounds. Unless litigation is actually pending or threatened in writing, this is a violation of the Open Door Law.

***Example 2*:** A local school board meets in executive session to discuss alleged sexual harassment of a fellow employee by a teacher in the district. The board calls the teacher into the executive session to discuss the complaint. This is a permissible executive session, so long as the board limits its action to discussion of the complaint and does not take any final disciplinary action against the teacher.

***Example 3*:** A town board meets in executive session with its attorney and the attorney for a person who has filed a civil rights action against the town. The purpose of the meeting is to discuss settlement of the lawsuit. This violates the Open Door Law because the meeting includes *adversaries*. In addition, a public agency may not include bargaining adversaries in any executive sessions that are held to discuss the strategy involved in purchasing or leasing real property or in collective bargaining.

***Example 4*:** A local public works board decides to meet in executive session to open bids for a sewer project. Unless authorized by federal or state statute, or the bids are classified as confidential by statute, the executive session would violate the Open Door Law.

***Example 5*:** The governing body of a state agency decides to meet in executive session to discuss records containing trade secrets. Under the Access to Public Records Act, which is discussed in Sections 3 and 4 of this guide, such records are exempt from public inspection. This discussion is appropriate for an executive session.

## When must a public agency give notice of an executive session?

Public notice of an executive session must be given 48 hours in advance of every session, excluding Saturday, Sundays and legal holidays, and must state the time, date, location and subject matter by reference to the specific statutory exception under which an executive session may be held.

***Example:*** A commission posts notice that it will meet in executive session to discuss " personnel matters authorized under the Open Door Law." Unless the specific statutory exception is identified, this is a violation.

## When can a governing body take final action on

### SOMETHING THAT IS THE SUBJECT OF AN EXECUTIVE SESSION?

Final action must be taken at a meeting open to the public.

***Example*:** A board meets in executive session to review an individual's job performance. At the next regular board meeting, the presiding officer announces that the individual has been fired. This is a violation of Indiana Code 5-14-1.5-6.1(c). The board's vote, or final action, was not taken at an open meeting.

## A Public Agency's Responsibilities Under the Open Door Law

The Open Door Law requires public agencies to schedule and conduct meetings in a fashion that enhances the public's access to and understanding of governmental meetings. The following questions explore these requirements.

### WHEN CAN I SEE A COPY OF THE MEETING AGENDA SO THAT I UNDERSTAND THE ORDER OF PROCEEDINGS?

A governing body of a public agency is not required to use an agenda, but if it chooses to utilize one, the agency must post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. In addition, the public agency must describe each agenda item specifically during a meeting and may not refer solely to an agenda item by number. The Open Door Law does not prohibit a public agency from changing or adding to its agenda during the meeting.

***Example*:** The presiding officer of a meeting announces the next vote by saying, "Now we will vote on Item 2, the purchase of property at 200 Main Street." This was not a violation because the reference was not to the item number *alone*.

### SUPPOSE I AM UNABLE TO ATTEND THE OPEN MEETING AND WANT TO FIND OUT WHAT I MISSED, WHAT CAN I DO?

You can obtain a copy of the meeting memoranda. The Open Door Law requires the following memoranda to be kept: date, time, and place of the meeting; the members of the governing body recorded as either present or absent; the general substance of all matters proposed, discussed, or decided; and a record of all votes taken, by individual members, if there is a roll call. The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings.

### MUST A GOVERNING BODY KEEP MINUTES OF ITS MEETINGS?

There is no requirement under the Open Door Law that a public agency keep minutes during its meeting. Minutes of a meeting, if any, are to be open for public inspection and copying. A public agency may not deny access to minutes of a meeting simply because they are still in "draft" form or have not yet been approved. Such documents are disclosable public records under the Public Records Act. See, Sections 3 and 4 of this guide.

### WHAT IF ERRORS OCCUR IN THE ENTRIES OF THE OPEN MEETING'S MINUTES?

The governing body may correct minutes of its meetings and make corrections to the record where errors have occurred in properly recording the minutes. Furthermore, modifications and amendments may be made to entries of minutes.

### HOW WILL I KNOW IF AN OPEN MEETING HAS BEEN SCHEDULED?

The Open Door Law requires public notice of date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours, excluding Saturdays, Sundays, and legal holidays, before the meeting. A public agency must post a notice of meetings at the principal office of the agency, and if no such office exists, at the place where the meeting is to be held. See, Section 2 of this guide, Indiana Code 5-14-1.5-5. State agencies are also required to provide electronic access to meeting notices on the Internet. There may also be other statutes that govern notices of particular meetings. See Appendices D and E for sample meeting notices.

### WHAT IF A MEETING IS NECESSARY TO DEAL WITH AN EMERGENCY? HOW MUCH NOTICE MUST BE GIVEN?

If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of governmental activity under the public agency's jurisdiction, the 48-hour notice requirement does not apply. However, news media that requested notice of meetings in accordance with Indiana Code 5-14-1.5-5(b)(2) must be given the same notice as members of the governing body and the public must be provided notice by the posting of the notice outside the principal office of the public agency.

### WHAT SPECIAL NOTICE REQUIREMENTS APPLY FOR THE MEDIA?

For governing bodies holding regularly scheduled meetings, notice need only be given once each year to all news media who have made a timely request. Notices for executive sessions must be delivered 48 hours before a meeting to news media that properly requested such notices.

### May a governing body vote by secret ballot?

During meetings of public agencies, the governing body cannot vote by secret ballot.

***Example*:** A commission votes by written ballot, which may be signed, initialed or left unsigned at the individual's discretion. This is a secret ballot and thus a violation.

### In what manner should a vote be taken?

The Open Door Law does not require votes to be taken in any particular manner, so long as it is not a secret ballot.

***Example*:** At a meeting of all three members of the board of county commissioners, one commissioner suggests that John Doe would make a good county bridge superintendent. The other two commissioners agree, and the staff is directed to inform Mr. Doe that he is the new bridge superintendent. No formal motion is made and seconded, and no formal vote is taken. The appointment is valid because the Open Door Law does not require the commissioners to take a formal vote.

### May I bring my video camera or tape recorder to an open proceeding to record the meeting?

A citizen has the right under the Open Door Law to be present at a public meeting, other than an executive session, and to record the meeting by videotape, shorthand, or any other method of recording, subject to reasonable restrictions as to equipment and use that may be imposed. Rules and regulations that prohibit the use of cameras, tape recorders or other recognized means of recording a meeting are void.

### Do I have the right to speak at open meetings?

The Open Door Law does not guarantee the right to speak at public meetings. Although an individual has the right to attend and observe all public proceedings, there is no specific statutory authority that allows an individual to appear before and address a governing body. A governing body may, however, provide an opportunity for comments or discussion at any time, or allow a limited number of commenters or limited amount of time for comments on matters under consideration. During certain meetings, a provision for public comment may be required by statute.

### May a meeting be set at any time?

The answer to this question greatly depends on the specific circumstances of the meeting; the Open Door Law does not define any particular time period for a meeting as inappropriate. However, the Law states that a public agency may not delay the start of a meeting to the extent that the delay frustrates the public's right to attend and observe the agency's proceedings.

***Example 1*:** A city council wants to transmit a proposed expenditure to the department of local government finance for its approval before the calendar year expires. Because of this, the council also wants to schedule a third reading of an appropriation as promptly as possible following the second reading. Therefore, the city schedules a city council meeting for 11:00 p.m. The city has not violated the Open Door Law.

***Example 2:*** A town board gives notice of an executive session for 4:30 p.m. with a public meeting to follow at 5:00 p.m. The board does most of its work in executive session and convenes the public meeting four hours late at 9:00 p.m. This is contrary to the Open Door Law because the delay may have frustrated the public's right to attend, observe and record the public meeting.

### Where can meetings be held?

Meetings can be held anywhere that is accessible to the public. The Open Door Law prohibits a public agency from holding a meeting at a location that is not accessible to an individual with a disability. A public agency should also ensure that no other barriers to access exist, such as locked outside doors at a meeting site.

***Example:*** The state natural resources commission wants to hold its meetings at a state park. This would be permissible only if those attending the meeting are not required to pay the park entrance fee.

### Must a public agency adjourn its meeting?

The Open Door Law does not require that a public agency formally adjourn its meetings. However, this does not relieve the public agency of the requirement that it post notice of its meetings 48 hours in advance as prescribed by Indiana Code 5-14-1.5-5(a).

## Remedies for Violations of the Open Door Law

### What can I do if I think a governing body has violated the Indiana Open Door Law?

An action may be filed by any person in any court of competent jurisdiction against the governing body that allegedly violated the Open Door Law. The plaintiff need not allege or prove special damage different from that suffered by the public at large. The General Assembly has provided this private right of action. In addition, any person may contact the Office of the Public Access Counselor for an informal response or to file a formal complaint. *See*, Sections 5 and 6 of this booklet

for more details.

### What remedies are available if the Indiana Open Door Law is found to have been violated?

Judicial remedies available include obtaining a declaratory judgment; enjoining continued, threatened, or future violations of the Open Door Law; or, declaring a policy, decision, or final action void. The Counselor may also provide informal or formal advice, but that advice is not binding on public agencies.

### Are there any time limits on filing a legal action?

There are time limits only on filing actions under the Open Door Law to declare any policy, decision, or final action of a governing body void or to enter an injunction that would invalidate the public agency's policy, decision or final action, on the basis that these acts violated the Law. The action must be commenced either prior to the time that the governing agency delivers any warrants, notes, bonds, or final actions that the legal action seeks to enjoin or declare void, or the action must be commenced within thirty (30) days of either the date that the act or failure to act complained of occurred or the date the plaintiff knew or should have known that the act or failure to act complained of had occurred.

### Who pays for my attorney if my legal action is successful? What if I lose?

In any action filed under the Open Door Law, a court must award reasonable attorney's fees, court costs, and other reasonable litigation expenses to the complainant if the person who filed the action prevails and that person sought the advice of the Counselor prior to filing the court action. If the public agency prevails and the court finds that the legal action is frivolous and vexatious, these fees, costs and expenses may be assessed against the person who filed the legal action.

## Conclusion

This guide is published with the hope that it will help public officials and individual citizens understand and apply Indiana's Open Door Law. It should be noted that the examples and explanations used in this guide are meant to be illustrative of the law's provisions, and that they can in no way address every conceivable factual situation. When confronted with a question of interpretation, the law should be liberally construed in favor of openness.

## Section Two:
# The Open Door Law and Legal Commentary

This section contains the text of the Open Door Law, Indiana Code 5-14-1.5-1 *et seq.*, which is current as of the close of the 2003 Session of the Indiana General Assembly. After those sections that have been interpreted by Indiana courts, the Office of the Attorney General, or the Office of the Public Access Counselor, we have provided legal commentary. These commentaries are included merely to provide the reader with practical guidance on how the law has been interpreted and are not intended to be a substitute for specific legal advice.

### Indiana Code 5-14-1.5-1: Purpose

Section 1. In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. 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. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy. (A*s added by Acts 1977, P.L. 57, § 1; Amended by P.L. 67-1987, § 1.*)

### Commentary:

*It is the court's duty when construing the provisions of the Open Door Law to do so in a manner that is consistent with its declared policy and to give effect to the intention of the General Assembly.* Common Council of the City of Peru v. Peru Daily Tribune*, 440 N.E.2d 726 (Ind. Ct. App. 1990).*

### Indiana Code 5-14-1.5-2: Definitions

Section 2. For the purposes of this chapter:

(a) "Public agency" means the following:

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts.

(4) Any building corporation of a political subdivi-

sion of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by Indiana Code 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by Indiana Code 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for the purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

(1) any social or chance gathering not intended to avoid this chapter;

(2) any on-site inspection of any project or program;

(3) traveling to and attending meetings of organizations devoted to the betterment of government; or

(4) a caucus.

(d) "Official action" means to:

(1) receive information;
(2) deliberate;
(3) make recommendations;
(4) establish policy;
(5) make decisions; or
(6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under Indiana Code 5-3-1, all new services (as defined in Indiana Code 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity. (*As added by Acts 1977, P.L. 57, § 1; Amended by 1979, P.L. 39, § 1; P.L. 33-1984, § 1; P.L. 67-1987, § 2; P.L. 8-1993, § 56; P.L. 277-1993(ss), § 127; P.L. 1-1994, § 20; P.L. 50-1995, § 14; P.L. 1-1998, § 71; P.L. 90-2002,§ 16; P.L. 35-2003, § 1.)*

## Commentary:

*In* Robinson v. Indiana University*, 638 N.E.2d 435 (Ind. Ct. App. 1994), the Court of Appeals held that the definition of a governing body included committees that are directly appointed by the governing body or its presiding officer.*

*A group of state employees who meet to conduct business under state or federal law is not a governing body under the Open Door Law.* Indiana State Board of Health v. Journal-Gazette Co., 608 N.E.2d 989 (Ind. Ct. App. 1993), aff'd 619 N.E.2d 273 (Ind. 1993).

*If a majority of the members of a governing body attend a political "caucus," this is not converted to a meeting under the Open Door Law unless official action is taken.* Evansville Courier v. Willner, 563 N.E.2d 1269 (Ind. 1990).

*City residents who sought access to a county development corporation's records had the burden of proving that the corporation was a public agency within the meaning of the Public Records Act. The fact that a county development corporation's fees are paid by government clients whose fees are derived from public funds does not transform the corporation into a public agency within the meaning of the Public Records Act.* Perry County Dev. Corp. v. Kempf, 712 N.E.2d 1020, 1023-25 (Ind. Ct. App. 1999).

*When a university hospital and a private hospital consolidated to form a private, nonprofit corporation that: (1) assumed all the liabilities of the university hospital; (2) would not receive any State funds; and (3) would engage non-public employees, the corporation formed is not a public "entity" subject to Indiana State Board of Accounts' audits and is not subject to the Open Door Law. However, to the extent that a portion of the newly formed private, nonprofit corporation is a "public office" subject to Indiana State Board of Accounts' audits, that portion of the corporation will be subject to the Open Door Law.* Indiana State Bd. of Accounts v. Consolidated Health Group, Inc., 700 N.E.2d 247, 251-53 (Ind. Ct. App. 1998).

*Failure to give notice of an on-site inspection is not a violation of the Open Door Law.* Opinion of the Public Access Counselor 98-FC-03.

*Attendance by the majority of a governing body at a workshop conducted by a private consulting firm is a "meeting" under the Open Door Law.* Opinion of the Public Access Counselor 99-FC-03.

## Indiana Code 5-14-1.5-3: Open meetings; secret ballot votes

Section 3. (a) Except as provided in section 6.1 of this chapter, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.

(b) A secret ballot vote may not be taken at a meeting.

(c) A meeting conducted in compliance with Indiana Code 5-1.5-2-2.5 does not violate this section. (*As added by Acts 1977, P.L. 57, § 1; Amended by P.L. 38-1988, § 6; P.L. 1-1991, § 1.*)

### Commentary:

*Governing bodies may not ban the use of cameras and tape recorders at public meetings.* Berry v. Peoples Broadcasting Corp., 547 N.E.2d 231 (Ind. 1989).

*Hammond Board of Works and Public Safety violated the Open Door Law when it conferred with its legal counsel off the record during the course of an administrative hearing.* Hinojosa v. Board of Public Works & Safety for the City of Hammond, Indiana, 789 N.E.2d 533, 549 (Ind. ).

## Indiana Code 5-14-1.5-4: Posting of agenda; memoranda of meetings; public inspection of minutes

Section 4. (a) A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.

(b) As the meeting progresses, the following memoranda shall be kept:

(1) The date, time, and place of the meeting.

(2) The members of the governing body recorded as either present or absent.

(3) The general substance of all matters proposed, discussed, or decided.

(4) A record of all votes taken, by individual members if there is a roll call.

(5) Any additional information required under Indiana Code 5-1.5-2-2.5 or Indiana Code 20-12-63-7.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying. (*As added by Acts 1977, P.L. 57, § 1; Amended by P.L. 38-1988, § 7; P.L. 76-1995, § 1.)*

### Commentary

*Draft copies of minutes taken during a public meeting are disclosable public records despite not being in final form.* Opinions of the Public Access Counselor 98-08, 99-02.

## Indiana Code 5-14-1.5-5: Public notice of meetings

Section 5. (a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

(1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail.

(C) Transmitting the notice by facsimile (fax).

If a governing body comes into existence after January 1, it shall comply with this subdivision upon receipt of a written request for notice. In addition, a state agency (as defined in Indiana Code 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the intelenet commission under Indiana Code 5-21-2.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings must be given the same notice as is given to members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to this section.

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to:

(1) the department of local government finance, the Indiana board of tax review, or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation; or

(2) the executive of a county or the legislative body of a town if the meetings are held 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.

(g) This section does not apply to the General Assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. (A*s added by Acts 1977, P.L. 57, § 1; Amended by 1979, P.L. 39, § 2; P.L. 67-1987, § 3; P.L. 3-1989, § 29; P.L. 8-1989, § 22; P.L. 46-1990, § 1; P.L. 251-1999, §* 4; *P.L. 90-2002, § 17*, P.L 200-2003, *§1.*)

## COMMENTARY:

*Action taken at a city council meeting was not void simply because the meeting was held at 11 p.m.* Blinn v. City of Marion, 390 N.E.2d 1066 (Ind. Ct. App. 1979).

*Notice of a county council meeting was adequate despite the failure to post the notice on the door of the meeting room when the council posted the notice outside the courthouse where notices are usually posted and notified the daily newspaper, which published news articles on three separate days.* Pepinsky v. Monroe County Council, 461 N.E.2d 128 (Ind. Ct. App. 1984).

*A court's inquiry does not end with the determination that meetings subject to the Open Door Law were not in "technical compliance" with the law.* Turner v. Town of Speedway, 528 N.E. 2d 858 (Ind. Ct. App. 1988). *Instead, a*

*court may look for "substantial compliance" which includes: (1) the extent to which the violation denied or impaired access to a meeting; and (2) the extent to which public knowledge or understanding of the public business conducted was impeded.* Town of Merrillville v. Blanco, 687 N.E.2d 191 (Ind. Ct. App. 1998) (*Town violated the technical requirements of the Open Door Law by failing to post notice at least 48 hours in advance of its meetings at the city hall but was not in substantial compliance since a police officer's termination was a matter of primary interest to the general public; the town's failure to give adequate notice about this public matter restricted interested spectators' access to the hearing).* See also, Riggin v. Board of Trustees of Ball State University, 489 N.E.2d 616 (Ind. Ct. App. 1988)(*substantial compliance standard met).*

*County commissioners do not meet in continuous session and must post notice of their meetings 48 hours in advance of the meetings.* Opinion of the Public Access Counselor 98-FC-05.

## Indiana Code 5-14-1.5-6.1: Executive Sessions

Section 6.1. (a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or

(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

(1) Where authorized by federal or state statute.

(2) For discussion of strategy with respect to any of the following:

(A) Collective bargaining.
(B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.
(C) The implementation of security systems.
(D) The purchase or lease of real property by the governing body up to the time of a contract or option to purchase or lease is executed by the parties.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety measures, plans, and systems.

(4) Interviews with industrial or commercial prospects or agents of industrial or commercial prospects by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and
(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:
(i) a physician; or
(ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of an individual employee. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.
(B) Consider applications.
(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding Indiana Code 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with Indiana Code 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of

prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under Indiana Code 15-5-1.1 or Indiana Code 25.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection. (*As added by P.L. 1-1991, § 37; P.L. 10-1991, § 8; P.L. 48-1991, § 1. As amended by P.L. 37-2000, § 1; P.L. 200-2003, §2.)*

## Commentary:

*Public agencies may not seek legal advice from their attorneys in private about matters which are not related to litigation.* Simon v. City of Auburn, 519 N.E.2d 205 (Ind. Ct. App. 1988).

*The term "employee," as used in the Open Door Law, does not include an independent contractor with the agency and, therefore, a public agency may not hold an executive session to receive information about that independent contractor.* Opinion of the Indiana Attorney General, 1997, No. 2 (OAG 97-02); *Municipal board applicants are not prospective "employees," but prospective officers and executive sessions to interview these applicants are not permitted under the Open Door Law.* Common Council of the City of Peru v. Peru Daily Tribune, Inc., 440 N.E.2d 726 (Ind. Ct. App. 1982).

*Police commissioners board could conduct a hearing on police disciplinary charges in executive session because the police disciplinary statute authorizes a hearing, rather than a public hearing, and the Open Door Law authorizes executive sessions for the purpose of receiving information about alleged misconduct and to discuss, before determination, a person's employment status.* Town of Merrillville, Lake County v. Peters, 655 N.E.2d 341, 343 (Ind. 1995).

*The only official action that cannot take place in executive session is a final action, which must take place at a meeting open to the public.* Baker v. Town of Middlebury, 753 N.E. 2d 67, 71 (Ind. Ct. App. 2001). *The act of compiling a rehire list in an executive session, and excluding the town marshal from that list, was appropriate according to both the language and goals of the statute and did not constitute impermissible final action.* Id. at 73.

*Notice of an executive session which refers to "legal matters" and "FOI requests" does not comply with the Open Door Law.* Gary/Chicago Airport Board of Authority v. Maclin, 772 N.E.2d 463, 468 (Ind. Ct. App. 2002). *The Court of Appeals found that the Board's argument that it substantially complied with the Open Door Law lacked merit because Indiana Code section 5-14-1.5-6.1 requires that the Board identify the subject matter by specific reference to subsection (b).* Id.

*A county council may not post the required notice of executive sessions on an annual basis; instead, council must specify each executive session as falling within a permissible statutory exception.* Opinion of the Public Access Counselor 99-FC-23.

*Final actions of a public agency, including selection of a Town Council President and discussion of an employee's termination, that were taken during executive sessions were taken in violation of the Open Door Law.* Opinions of the Public Access Counselor 99-FC-04; 00-FC-06.

## Indiana Code 5-14-1.5-6.5: Collective bargaining meetings; applicable requirements

Section 6.5. (a) Whenever a governing body, or any person authorized to act for a governing body, meets with an employee organization, or any person authorized to act for an employee organization, for the purpose of collective bargaining or discussion, the following apply:

(1) Any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of

opinion based upon factual information.

(2) If a mediator is appointed, any report the mediator may file at the conclusion of mediation is a public record open to public inspection.

(3) If a fact-finder is appointed, any hearings the fact-finder holds must be open at all times for the purpose of permitting members of the public to observe and record them. Any findings and recommendations the fact-finder makes are public records open to public inspection as provided by Indiana Code 20-7.5-1-13(e) or any other applicable statute relating to fact-finding in connection with public collective bargaining.

(b) This section supplements and does not limit any other provisions of this chapter. *(As added by Acts 1979, P.L. 39, § 4; P.L. 67-1987, § 5.)*

## Indiana Code 5-14-1.5-7: Violations; remedies; limitations; costs and fees

Section 7. (a) An action may be filed by any person in any court of competent jurisdiction to:

(1) obtain a declaratory judgment;

(2) enjoin continuing, threatened, or future violations of this chapter; or

(3) declare void any policy, decision, or final action:

(A) taken at an executive session in violation of section 3(a) of this chapter;

(B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;

(C) that is based in whole or in part upon official action taken at any executive session in violation of section 3(a) of this chapter or at any meeting of which notice is not given in accordance with section 5 of this chapter; or

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the Public Access Counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged

action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the Public Access Counselor concerning a violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff prevails; or

(2) the defendant prevails and the court finds that the action is frivolous and vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court shall expedite the hearing of an action filed under this section. (*As added by Acts 1977, P.L. 57, § 1. Amended by Acts 1979, P.L. 39, § 5; P.L. 67-1987, § 6; P.L. 38 1992, § 1; P.L. 70-1999, § 1; P.L. 191-1999, § 1.*)

### Commentary:

*A party challenging the action of a public agency need not prove special damage that is different from the public at-large in order to obtain an injunction under this section of the Open Door Law.* Common Council v. Peru Daily Tribune, Inc., 440 N.E.2d 726 (Ind. Ct. App. 1982).

*A city resident was entitled to file a taxpayer's action and initiate proceedings to force the city council's compliance with the Open Door Law.* Reichhart v. City of New Haven, 674 N.E.2d 27, 32 (Ind. Ct. App. 1996).

*Whether to invalidate any policy, decision, or final action taken by a public agency in violation of the Open Door Law is left to the court's discretion.* Town of Merrillville v. Blanco, 687 N.E.2d 191 (Ind. Ct. App. 1998).

### Indiana Code 5-14-1.5-8: Accessibility to individuals with disabilities

Section 8. (a) This section applies only to the following public agencies:

(1) A public agency described in section 2(a)(1) of this chapter.

(2) A public agency:

(A) described in section 2(a)(5) of this chapter; and

(B) created to advise the governing body of a public agency described in section 2(a)(1) of this chapter.

(b) As used in this section, "accessible" means the design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (41 C.F.R. 101-19.6, App. A (1991)) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (56 Fed. Reg. 35605 (1991)).

(c) As used in this section, "individual with a disability" means an individual who has a temporary or permanent physical disability.

(d) A public agency may not hold a meeting at a location that is not accessible to an individual with a disability. (*As added by Acts P.L. 38-1992, § 2.)*

### Commentary:

*Indiana Code 5-14-1.5-8 mandates that public agency hearings must be held in facilities that permit barrier-free physical access to the physically handicapped; the statute does not make allowances for agencies who plan to accommodate disabled individuals only when those individuals express interest in attending the meetings.* Town of Merrillville v. Blanco, 687 N.E.2d 191, 198 (Ind. App. 1998).

## Section Three:
# Overview of the Indiana Access to Public Records Act
## Introduction

The Access to Public Records Act (Act), originally passed by the Indiana General Assembly in 1983, was enacted to permit the citizens of Indiana broad and easy access to public documents. By providing the public with the opportunity to review and copy public documents, the citizens of Indiana

have the opportunity to obtain information relating to their government and to more fully participate in the governmental process. In order for the Act to be useful to the public, it is important that the public understands the Act. This guide sets forth the basic elements of the Act and provides answers to common questions. This guide does not, however, contain specific answers to specific questions. For more detailed guidance, please consult the provisions of the Indiana Code, Indiana Code 5-14-3, *et seq.*, set forth at Section Four of this guide.

## Commonly Asked Questions About the Indiana Access to Public Records Act

The following are commonly asked questions about the Access to Public Records Act. It is important to note that the answers are not the final authority on a particular issue as the facts will vary from situation to situation. Indeed, laws and court interpretations of the law are ever-changing. Therefore, it is important to remember that the answers to these questions are only guides for the public, may only apply to specific situations, and are subject to change.

### Who may access public records?

The explicit policy statement and statutory language of the Act permit all persons access to public records. A "person" includes individuals as well as corporations, limited liability companies, partnerships, associations and governmental entities.

***Example*:** A corporation may access minutes of a commission meeting just as an individual may.

### What kinds of documents may be accessed?

To be accessible, a document must be a public record from a public agency. The Act defines a public record as:

*. . . 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. IND. CODE 5-14-3-2.*

Indiana Code 5-14-3-2 defines public agency very broadly to include boards, commissions, departments and offices exercising administrative, judicial or legislative power; counties, townships, cities, law enforcement agencies; school corporations; advisory commissions, committees and bodies; license branches; the Lottery Commission and the Indiana Gaming Commission. Additionally, any entity that is subject to audit by the State Board of Accounts is a public agency for purposes of the Act. An entity that is maintained or supported, in whole or in part, by public funds may fall within the Act, and, therefore, its records are accessible.

***Example:*** The following public records are generally accessible from public agencies: applications for permits and licenses, contracts to which the state or local unit of government is a party, survey plats, commission, board and committee reports and recommendations, and transcripts of public hearings in which testimony was taken.

***Example:*** A person may obtain a copy of a property record card maintained by a county or township assessor.

### What kind of documents are not accessible?

The stated policy of the Act and its broad definition of public records renders most documents accessible to the public. However, the Act specifically excludes certain types of documents from disclosure and, therefore, from public access. These exceptions can be found in Indiana Code 5-14-3-4. In determining whether a particular document is excepted from disclosure under the Act, Indiana courts are to interpret these exceptions narrowly.

Under Indiana Code 5-14-3-4(a), the following documents cannot be disclosed to the public by a public agency unless the disclosure is specifically required by state or federal statute, or is ordered by a court under the rules of discovery. The exceptions found in Indiana Code 5-14-3-4(a) include:

1. Documents made confidential by state statute;
2. Documents made confidential by rule adopted by a public agency under specific statutory authority;
3. Documents made confidential by federal law;
4. Documents containing trade secrets;
5. Documents containing confidential financial information received upon request from a person;
6. Documents containing information concerning research, including research conducted under the auspices of an institution of higher learning;
7. Grade transcripts and license examination scores;
8. Documents made confidential by rules adopted by the Indiana Supreme Court;
9. Patient medical records and charts created by a health care provider unless the patient provides written consent for the record's disclosure;
10. Application information declared confidential by the Twenty-First Century research and technology fund board; and
11. A photograph, a video recording, or an audio recording of an autopsy.

In certain circumstances, the Act grants public agencies some discretion in determining which public records should be disclosed. Indiana Code 5-14-3-4(b) provides public agencies the discretion to withhold the following records from public access:

1. Investigatory records of law enforcement agencies (*Under Indiana Code Section 5-14-3-5, certain factual information relating to the identity of a person arrested or jailed and the agency's response to a complaint, accident or incident must be made available to the public.)*
***Example:*** Statements made to police by witnesses of a crime.
2. The work product of an attorney employed by the state or a public agency who is representing a public agency, the state, or an individual in reasonable anticipation of litigation;
***Example:*** A letter written by a school board attorney to the board, advising the board of his strategy regarding pending litigation.
3. Test questions, scoring keys and examination data used in administering licensing examinations before the examination is given;
4. Test scores if the person is identified by name and has not consented to the release of the scores;
5. Certain records from public agencies relating to negotiations created while the negotiations are in process;
6. Intra-agency or interagency advisory or deliberative materials that express opinions and are used for decision-making;
***Example:*** A memo from a staff member to the mayor expressing the staff member's opinion on a proposed change in office policy.
7. Diaries, journals or other personal notes;
***Example:*** The written contents of a county employee's calendar, used at her office for the purpose of maintaining a daily log of activity.
8. Certain information contained in the files of public employees and applicants for public employment;
***Example:*** An employee's job performance evaluation kept in his personnel file.
9. Minutes or records of hospital staff meetings;
10. Certain administrative or technical information that would jeopardize a record keeping or security system;
***Example:*** A diagram of the security system for the State Museum's artifacts.
11. Certain software owned by the public agency;
12. Records specifically prepared for discussion in executive sessions;
13. Work product of the legislative services agency;
14. Work product of the general assembly and its staff;
15. The identity of a donor of a gift made to a public agency if the donor or the donor's family requests non-disclosure;
16. Certain information identifying library patrons or material deposited with the library or archives;
17. The identity of a person contacting the Bureau of Motor Vehicles regarding the ability of a driver to operate a motor vehicle safely;
18. Information including school safety and security measures and school emergency preparedness plans.
19. Information disclosure of which would threaten public safety by exposing a vulnerability to a terrorist attack; and
20. Personal information concerning a customer of a municipally owned utility, including the customer's telephone number, address, and Social Security number.

With the exception of adoption records, public records classified as confidential are available for public inspection and copying 75 years after they were created. If a public agency argues that a document is not disclosable, the agency bears the burden of proving that the document does not fall within the scope of the Act.

## May I request information in the form of a list?

The Act provides that a public agency is not required to create and release a list of names and addresses upon request. If a list of names has been compiled, or if a public agency maintains a list of information under some statutory requirement, the list is accessible to the public. In general, however, a public agency does not have to create a "list" to satisfy a public records request. However, an agency that maintains its records on an "electronic data storage system" must make a reasonable effort to satisfy a request for information from that system.

When a commercial entity requests a list that contains the names and addresses of: (1) the employees of a public agency, (2) the names of the people attending conferences or meetings at a state institution of higher education, or (3) students enrolled in a public school corporation which adopts a policy that such information need not be released, the public agency may not permit a commercial entity access to the list when the list is sought for a commercial purpose.

***Example:*** A request is received by the county highway department for "the dates that County Road 500 North has been paved between the years 1995 and 1997." This request asks for information that would need to be created in list form. If the county does not have such a list, it need not create one.

The requestor would, however, be entitled to access any of the county's documents that may provide pertinent information to satisfy his request.

### When can public records be accessed?

The Act permits the public access to public records during the regular business hours of the particular public agency from which the records are sought. On occasion, part-time public officials may have limited business hours. The Public Records Act does not require a public agency to be open for any particular hours of the day, but it is the responsibility of the public official to ensure there is adequate time for persons who wish to inspect and copy records. Once a public agency responds that there are disclosable public records that will be provided to comply with a request, the compilation and copying of any such documents may not unreasonably interfere with the other business of that agency.

***Example:*** A citizen requests access and copies of numerous records of a state agency. The agency responds to the request by stating the estimated time for preparation of the copies and the estimated copying fee. So long as the copies will be provided within a reasonable period of time after the request is made, the agency is in compliance with the Act.

### How can public records be accessed?

A request for the inspection or copying of public records must identify with reasonable particularity the record being requested. The public agency, in its discretion, may require the request to be in writing on or in a form provided by the agency. It is advisable to first contact the public agency to determine if a request form is required and/or if specific information is required to quickly locate particular documents.

## Enhanced Access to Public Records

In l993, the Indiana General Assembly added a new dimension to accessing public records-enhanced access. Enhanced access permits individuals who enter into a contract with a public agency to obtain access to public records by means of electronic devices. Essentially, the enhanced access provision allows individuals who frequently use information from a public agency to examine public records using their own computer equipment.

State agencies may provide enhanced access only through a computer gateway established by the state intelenet commission, unless an exception has been made by the state data processing oversight commission. All other public agencies covered by the Act may provide enhanced access to their records either directly through an individual's computer gateway, by contracting with a third party to serve as the agency's gateway or through the gateway established and approved by the state intelenet commission. Any provision of enhanced access, whether by contract or otherwise, must provide that the public agency, the user or a third party gateway provider will not engage in unauthorized enhanced access or alteration of public records and will not lead to the disclosure of confidential information.

## A Public Agency's Response to a Request

### What are the public agency's responsibilities when I file a request?

If a requestor is physically present in the office of the public agency or makes a request by telephone or requests enhanced access to a document, the public agency must respond to the request within 24 hours after any employee of the agency receives the request. If a request is mailed or sent by facsimile, a public agency must respond within 7 calendar days of the receipt of that request. The Act requires only a response, and not the actual production of records, within a specified time period. See Appendix B for a checklist for agencies responding to requests under the Act.

### May a public agency deny an appropriate request?

In general, if a requested document:

(1) is a public record from a public agency;
(2) is not exempt from disclosure, and
(3) the individual has identified a record with reasonable particularity pursuant to Indiana Code 5-14-3-3(a),

the public agency cannot deny access to the document.

If access to a public record would reveal disclosable and nondisclosable information, the information that is disclosable must be made available for inspection. The public agency must separate, or redact, the nondisclosable information.

Oral requests made by telephone or in person may be denied orally. If a request is made in writing, by facsimile or through enhanced access, or if an oral request that was denied is renewed in writing or by facsimile, the public agency must deny the request in writing. A denial **must** include a statement of the specific statutory reason for nondisclosure of the information, and the name and title of the person responsible for the denial.

### What if a public agency denies my request?

The Act authorizes an individual who has been denied access to a public record to file a civil lawsuit in the circuit or

superior court of the county in which the denial occurred. The purpose of the lawsuit is to compel disclosure of the records sought. When such a lawsuit is filed, the public agency must notify each person who supplied a part of the public record in dispute that a request for its release has been denied. The burden of proof then falls upon the public agency to establish that it properly denied access to the public record because the record falls outside the scope of the Act. If certain conditions are met, the prevailing party is entitled to reasonable attorney fees, court costs and other litigation expenses. ***Prior to filing a lawsuit, a person should contact the Office of the Public Access Counselor for an informal response or to file a formal complaint.*** *See*, Sections 5 and 6 of this guide for more information.

### May a public agency charge individuals a fee for inspecting and copying public records?

The Act provides that a public agency cannot charge for inspection or a search for records unless it is authorized to do so by statute. For copies of paper documents at the state level, the Indiana Department of Administration has established that the copying fee for agencies under the executive branch is $0.10 per page. The state judicial and legislative branches set their own fees.

For local agencies covered by the Act, the fiscal body of the agency is required to establish a fee schedule for the certification, copying or facsimile transmission of documents that does not exceed the actual cost of certification, copying or facsimile transmission. **"Actual cost"** is defined as the cost of the paper plus the per-page cost of use of the copying or fax machine. It does not include costs of labor or overhead. In addition, the fee must be uniform to all purchasers.

***Example:*** A county auditor receives a voluminous request for documents in her office. She anticipates that her deputy auditor, normally part-time, will need to spend several hours of overtime work preparing the requested documents. The auditor may only charge the actual cost of the paper documents, and may not charge an extra fee for the time the deputy auditor needs to fulfill the request. Indiana Code 5-14-3-8.

Copies of public records may also be provided in other forms. For a duplicate of a computer tape, disc, microfilm or similar record system containing public records, an agency may charge a fee as prescribed by statute. Indiana Code 5-14-3-8(g). An agency may also provide enhanced access to a public record and charge a reasonable fee under the provisions governing enhanced access, Indiana Code 5-14-3-3.5 and Indiana Code 5-14-3-3.6.

### What happens if confidential records are disclosed or there is a failure to protect public records from destruction?

It is a Class A misdemeanor for a public official or employee or employees of contractors with public agencies to knowingly or intentionally disclose records that are confidential by state statute. In addition, a public employee can be disciplined in accordance with agency personnel guidelines for reckless disclosure or failure to protect information classified as confidential by state statute.

## Conclusion

The Access to Public Records Act provides the people of Indiana with broad access to the public documents maintained by public agencies. Access to public documents is the rule - not the exception. This guide is published with the hope that it will help public officials and individual citizens understand and apply Indiana's Access to Public Records Act. The examples and explanations used in the guide are meant to be illustrative of the law's provisions; they can in no way address every conceivable factual situation. When confronted with a question of interpretation, the law should be liberally construed in favor of openness.

## Section Four:
# The Access to Public Records Act and Legal Commentary

This section contains the text of the Access to Public Records Act, IC 5-14-3-1 *et seq.*, which is current as of the close of the 2003 Session of the Indiana General Assembly. After those sections which have been interpreted by Indiana courts, the Office of the Attorney General, or the Public Access Counselor, we have provided legal commentary. These commentaries are included merely to provide the reader with practical guidance on how the law has been interpreted and are not intended to be a substitute for specific legal advice.

### Indiana Code 5-14-3-1: Public policy; construction; burden of proof for non-disclosure

Section 1. 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. *(As added by P.L. 19-1983, § 6; Amended by P.L. 77-1995, § 1.)*

## Commentary:

*The Access to Public Records Act clearly provides that the public is to have access to the affairs of government and actions of officials who represent them.*

*A liberal construction of the Act does not mean that expressed exceptions specified by the legislature are to be contravened.* Heltzel v. Thomas, 516 N.E.2d 103 (Ind. Ct. App. 1987).

*A public agency has the burden to establish that a requested record is included in categories not disclosable under the Act.* Indianapolis Convention and Visitors Association, Inc. v. Indianapolis Newspapers, Inc., 577 N.E.2d 208 (Ind. 1991).

## Indiana Code 5-14-3-2: Definitions

Section 2. As used in this chapter:

"Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum or any other medium of electronic data storage, and reproducing by any other means.

"Direct Cost" means one hundred five percent (105%) of the sum of the cost of:

(1) The initial development of a program, if any;

(2) The labor required to retrieve electronically stored data; and

(3) Any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

"Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

"Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

(1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or

(2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

"Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

"Inspect" includes the right to do the following:

(1) Manually transcribe and make notes, abstracts, or memoranda.

(2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.

(3) In the case of public records available:

(A) By enhanced access under section 3.5 of this chapter; or

(B) To a governmental entity under section 3(c)(2) of this chapter;

to examine and copy the public records by use of an electronic device.

(4) In the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

"Investigatory record" means information compiled in the course of the investigation of a crime.

"Patient" has the meaning set out in Indiana Code 16-18-2-272(d).

"Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

"Provider" has the meaning set out in Indiana Code 16-18-2-295(a) and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

"Public agency" means the following:

(1) 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.

(2) any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;
(B) political subdivision (as defined by Indiana Code 36-1-2-13); or
(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or
(B) an audit by the state board of accounts.

(4) any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, and the security division of the state lottery commission;

(7) any license branch staffed by employees of the bureau of motor vehicles commission under Indiana Code 9-16;

(8) the state lottery commission, including any department, division, or office of the commission;

(9) the Indiana gaming commission established under Indiana Code 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by Indiana Code 4-31, including any department, division, or office of the commission.

"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.

"Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8-1/2) inches by eleven (11) inches or eight and one-half (8-1/2) inches by fourteen (14) inches.

"Trade secret" has the meaning set forth in Indiana Code 24-2-3-2.

"Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation and includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter. *(As added by P.L. 19-1993, § 6. Amended by P.L. 34-1984, § 1; P.L. 54-1985, § 1; P.L. 50-1986, § 1; P.L. 42-1986, § 2; P.L. 341-1989(ss), § 6; P.L. 2-1991, § 29; P.L. 2-1992, § 53; P.L. 2-1993, § 49; P.L. 58-1993, § 1; P.L. 8-1993, § 57; P.L. 277-1993(ss), § 128; P.L. 1-1994, § 21; P.L. 77-1995, § 2; P.L. 50-1995, § 15, P.L. 1-1999, § 6; P.L. 256-1999, § 1; P.L. 90-2002 § 18; P.L. 261-2003, § 5.)*

### Commentary:

*Coroner's office is a "law enforcement agency" due to various statutes under which he or she performs investigations into deaths often involving crimes.* Heltzel v. Thomas, 516 N.E.2d 103 (Ind. Ct. App. 1987).

*The Act applies to a municipally owned utilities as public agencies.* Opinion of the Attorney General, 1984, No. 7, page 106.

## Indiana Code 5-14-3-3: Right to inspect and copy public agency records

Section 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for inspection or copying must:

(1) identify with reasonable particularity the record being requested; and

(2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). The public agency shall either:

(1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on his own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

(1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.

(2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map (as defined by Indiana Code 5-14-3-2).

(e) A state agency may adopt a rule under Indiana Code 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person (as defined in Indiana Code 5-14-3-2) for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commerical entites to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(g) A public agency may not enter into or renew a contract or an obligation:

(1) For the storage or copying of public records; or

(2) That requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract obligation, license,or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(h) If this section conflicts with Indiana Code 3-7, the provisions of Indiana Code 3-7 apply. *(As added by P.L. 19-1983, § 6. Amended by P.L. 54-1985, § 2; P.L. 51-1986, § 1, P.L. 58-1993, § 2; P.L. 77-1995, § 3; P.L. 261-2003, § 6.)*

**COMMENTARY:**

*"Regular business hours" is not defined by the Public Records Act; although it is understandable that part-time public officials may have limited hours of operation, it is nevertheless the responsibility of a public official to ensure that there is adequate opportunity and time for persons who wish to inspect and copy records.* Opinion of the Public Access Counselor, 98-FC-04.

## INDIANA CODE 5-14-3-3.5: ENHANCED ACCESS TO PUBLIC RECORDS; STATE AGENCIES

Section 3.5. (a) As used in this section, "state agency" has the meaning set forth in Indiana Code 4-13-1-1. The term does not include the office of the following elected state officials:

(1) Secretary of State.
(2) Auditor.
(3) Treasurer.
(4) Attorney General.
(5) Superintendent of Public Instruction.
(6) Clerk of the Supreme Court.

However, each state office described in subdivisions (1) through (6) may use the computer gateway administered by the intelenet commission established under Indiana Code 5-21-2, subject to the requirements of this section.

(b) As an additional means of inspecting and copying public records, a state agency may provide enhanced access to public records maintained by the state agency.

(c) If the state agency has entered into a contract with a third party under which the state agency provides enhanced access to the person through the third party's computer gateway or otherwise, all of the following apply to the contract:

(1) The contract between the state agency and the third party must provide for the protection of public records in accordance with subsection (d).

(2) The contract between the state agency and the third party may provide for the payment of a reasonable fee to the state agency by either:

(A) the third party; or
(B) the person.

(d) A contract required by this section must provide that the person and the third party will not engage in the following:

(1) Unauthorized enhanced access to public records.

(2) Unauthorized alteration of public records.

(3) Disclosure of confidential public records.

(e) A state agency shall provide enhanced access to public records only through the computer gateway administered by the intelenet commission established under Indiana Code 5-21-2, except as permitted by the data process oversight commission established under Indiana Code 4-23-16-1. *(As added by P.L. 58-1993, § 3; Amended by P.L. 77-1995, § 4; P.L. 19-1997, § 2.)*

**COMMENTARY:**

*While there are no reported decisions on enhanced access, in 1997, the Indiana General Assembly amended this section to apply only to state agencies and created a new section, Indiana Code 5-14-3-3.6, to govern enhanced access to records of other public agencies covered by the Act.*

## INDIANA CODE 5-14-3-3.6: ENHANCED ACCESS TO PUBLIC RECORDS; PUBLIC AGENCIES

Section 3.6. (a) As used in this section, "public agency" does not include a state agency (as defined in section 3.5(a) of this chapter).

(b) As an additional means of inspecting and copying public records, a public agency may provide enhanced access to public records maintained by the public agency.

(c) A public agency may provide a person with enhanced access to public records if any of the following apply:

(1) The public agency provides enhanced access to the person through its own computer gateway and provides for the protection of public records under subsection (d).

(2) The public agency has entered into a contract with a third party under which the public agency provides enhanced access to the person through the third party's computer gateway or otherwise, and the contract between the public agency and the third party provides for the protection of public records in accordance with subsection (d).

(d) A contract entered into under this section and any provision of enhanced access must provide that the third party and the person will not engage in the following:

(1) Unauthorized enhanced access to public records.

(2) Unauthorized alteration of public records.

(3) Disclosure of confidential public records.

(e) A contract entered into under this section or any provision of enhanced access may require the payment of a reasonable fee to either the third party to a contract or to the public agency, or both, from the person.

(f) A public agency may provide enhanced access to public records through the computer gateway administered by the intelenet commission established under Indiana Code 5-21-2. *(As added by P.L 19-1997, § 3.)*

### Indiana Code 5-14-3-4: Records excepted from disclosure requirements; names and addresses; time limitations; destruction of records.

Section 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under Indiana Code 16-39.

(10) Application information declared confidential by the Twenty-First Century research and technology fund board under Indiana Code 4-4-5.1.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be

available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.
(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:
(A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
(B) Information relating to the status of any formal charges against the employee; and
(C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under Indiana Code 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:
(A) the donor requires nondisclosure of his identity as a condition of making the gift; or
(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:
(A) which can be used to identify any library patron; or
(B) deposited with or acquired by a library upon a condition that the records be disclosed only:
(i) to qualified researchers;
(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or
(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to Indiana Code 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans

developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;
(B) vulnerability assessments;
(C) risk planning documents;
(D) needs assessments;
(E) threat assessments;
(F) domestic preparedness strategies;
(G) the location of community drinking water wells and surface water intakes;
(H) the emergency contact information of emergency responders and volunteers;
(I) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and
(J) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection without the prior approval of the public agency. The public agency that owns, occupies, leases, or maintains the airport:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and
(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(19)(I) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.
(B) Address.
(C) Social Security number.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under Indiana Code 5-15; or

(2) public records not subject to Indiana Code 5-15 may be destroyed in the ordinary course of business.

*(As added by P.L. 19-1983, § 6. Amended by P.L. 57-1983, § 1; P.L. 34-1984, § 2; P.L. 54-1985, § 3; P.L. 50-1986, § 2; P.L. 20-1988, § 12; P.L. 11-1990, § 111; P.L. 1-1991, § 38; P.L. 10-1991, § 9; P.L. 50-1991, § 1; P.L. 49-1991, § 1; P.L. 1-1992, § 11; P.L. 2-1993, § 50; P.L. 58-1993, § 4; P.L. 190-1999, § 2; P.L. 37-2000, §5; P.L. 271-2001, § 1; P.L. 201-2001, § 1; P.L. 1-2002, § 17; P.L. 261-2003, § 7; P.L. 208-2003, § 1; P.L. 200-2003, § 3.)*

## COMMENTARY:

*The rules of discovery do not allow discovery of privileged matters such as those protected by the attorney-client privilege, and therefore, Indiana Code 5-14-3-4(a) does not permit a court to order disclosure of such privileged information.* Board of Trustees of Public Employees' Retirement Fund of Indiana v. Morley, 580 N.E.2d 371 (Ind. Ct. App. 1991).

*Animal research applications and references in a*

*university committee's meeting minutes are exempt from disclosure under Indiana Code 5-14-3-4(a)(6) of the Act.* Robinson v. Indiana University, 659 N.E.2d 153 (Ind. Ct. App. 1995).

*A board of voters registration is not required to publish a list of registered voters by statute and, therefore, is not required to create or provide a copy of its computer tapes. The general public is entitled to inspect the board's records and make memoranda abstracts from those computer records.* Laudig v. Marion County Board of Voters Registration, 585 N.E.2d 700 (Ind. Ct. App. 1992).

*Subpoenas do not automatically fall within the investigatory records of a law enforcement agency exception under Indiana Code 5-14-3-4(b)(1). The State must prove that nondisclosure is essential by submitting appropriate evidence.* Evansville Courier v. Prosecutor, Vanderburgh County, 499 N.E.2d 286 (Ind. Ct. App. 1986).

*In* Robinson v. Indiana Univ., 659 N.E.2d 153, 157 (Ind. Ct. App. 1995) *the court held that information from research applications was information concerning research conducted under a university's auspices and therefore not subject to disclosure under Indiana's Access to Public Records Act.*

*City has the burden of proving that its denial of access to 1993 phone records was supported by statutory authority. The court in* City of Elkhart v. Agenda: Open Gov't, Inc., 683 N.E.2d 622, 627 (Ind. Ct. App. 1997) *found that the public records access statute exception prohibiting disclosure of administrative or technical information which would jeopardize record keeping or security systems did not include telephone numbers contained on public officials' cellular phone bills.*

*University staff member's compliance log, which included solely that member's personal notes and was shared with select others on occasion, was exempt from disclosure under the Access to Public Records Act's diary, journal, or personal notes exception.* Journal Gazette v. Bd. of Trustees of Purdue Univ., 698 N.E.2d 826, 829 (Ind. Ct. App. 1998).

*Grievances and any investigative documents generated in response to those grievances which are retained for decision-making purposes are excluded from the Access to Public Records Act's disclosure requirement.* Journal Gazette v. Bd. of Trustees of Purdue Univ., 698 N.E.2d 826, 830 (Ind. Ct. App. 1998).

*Invoices and invoice vouchers which were collected and retained by an athletic department as part of its investigation of alleged NCAA violations are interagency documents used for decision-making purposes and are exempt from the Access to Public Records Act's disclosure requirement.* Journal Gazette v. Bd. of Trustees of Purdue Univ., 698 N.E.2d 826, 831-32 (Ind. Ct. App. 1998).

*The APRA provides law enforcement agencies with the discretion to disclose certain categories of documents, called "investigatory records." A law enforcement agency must be conscious of the fact that, upon review of the denial of access based upon the investigatory record exception, the person denied access can bring forward proof that the denial was "arbitrary and capricious" under Indiana Code section 5-14-3-9(f). For this reason, it is important that a law enforcement agency exercise consistency in any policies concerning the disclosure of public records.* Opinion of the Public Access Counselor, 99-7.

*The Court in* South Bend Tribune v. South Bend Community School Corporation, 740 N.E. 2d 937, 938 (Ind. Ct. App. 2000) *found that Indiana Code section 5-14-3-4(b)(8)(A) requires public agencies to disclose designated information only with regard to present or former officers or employees of the agency. According to the Court, applicants for public employment are specifically excepted from the disclosure requirements.*

*The Marion County Prosecutor's written manual of plea negotiations policies for criminal cases are exempt from disclosure as deliberative materials.* Newman v. Bernstein, 766 N.E. 2d 8, 12 (Ind. Ct. App. 2002).

*Investigatory records of law enforcement agencies are exempt from disclosure even though there was designated evidence of little or no chance of prosecution because the plain language of Indiana Code section 5-14-3-4(b)(1) makes no mention of the likelihood of prosecution.* An Unincorporated Operating Division of Indiana Newspapers, Inc. v. The Trustees of Indiana University, 787 N.E. 2d 893, 902 (Ind. Ct. .App. 2003).

*The Court of Appeals found that the Family Educational Rights and Privacy Act of 1974 ("FERPA") requires education records be kept confidential.* An Unincorporated Operating Division of Indiana Newspapers, Inc. v. The Trustees of Indiana University, 787 N.E. 2d 893, 904 (Ind. Ct. .App. 2003). *Further, the Court of Appeals found that both the Indiana Access to Public Records Act and FERPA require redaction of nondisclosable information.* Id. at 908. *Specifically, information identifying or which could lead to the identity of a former*

*or present student must be redacted.* Id. at 909.

*The Court of Appeals determined that when a document contains both factual and deliberative materials the public agency must separate the factual information from the non-disclosable and make the factual information available for public access.* See generally, An Unincorporated Operating Division of Indiana Newspapers, Inc. v. The Trustees of Indiana University, 787 N.E. 2d 893, 913-914 (Ind. Ct. .App. 2003).

### Indiana Code 5-14-3-4.3: Job title or job descriptions of law enforcement officers

Section 4.3. Nothing contained in section 4(b)(8) of this chapter requires a law enforcement agency to release to the public the job title or job description of law enforcement officers. *(As added by P.L. 35-1984, § 1.)*

### Indiana Code 5-14-3-5: Information relating to arrest or summons; jailed persons; agency records; inspection and copying

Section 5(a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

(1) Information that identifies the person including the person's name, age, and address.

(2) Information concerning any charges on which the arrest or summons is based.

(3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:

(A) time and location of the arrest or the issuance of the summons;
(B) investigating or arresting officer (other than an undercover officer or agent); and
(C) investigating or arresting law enforcement agency.

(b) If a person is received in a jail or lock-up, the following information shall be made available for inspection and copying:

(1) Information that identifies the person including the person's name, age, and address.

(2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held.

(3) The time and date that the person was received and the time and date of the person's discharge or transfer.

(4) The amount of the person's bail or bond, if it has been fixed.

(c) An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

(1) The time, substance, and location of all complaints or requests for assistance received by the agency.

(2) The time and nature of the agency's response to all complaints or requests for assistance.

(3) If the incident involves an alleged crime or infraction:

(A) the time, date, and location of occurrence;
(B) the name and age of any victim, unless the victim is a victim of a crime under Indiana Code 35-42-4;
(C) the factual circumstances surrounding the incident; and
(D) a general description of any injuries, property, or weapons involved.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

(d) This chapter does not affect Indiana Code 5-2-4, Indiana Code 10-13-3, or Indiana Code 5-11-1-9. *(As added by P.L. 19-1983, § 6. Amended by P.L. 39-1992, § 1; P.L. 2-2003, § 24.)*

### Commentary:

*A police department's duty to disclose the location of rape in daily record did not require the exact street address. The department's obligation was satisfied by giving the most specific location which also reasonably protected the privacy of the victim.* Post-Tribune v. Police Department of City of Gary, 643 N.E.2d 307 (Ind. 1994).

### Indiana Code 5-14-3-5.5: Sealing of certain records by court; hearing; notice

Section 5.5. (a) This section applies to a judicial public record.

(b) As used in this section, "judicial public record" does not include a record submitted to a court for the sole purpose of determining whether the record should be sealed.

(c) Before a court may seal a public record not declared confidential under section 4(a) of this chapter, it must hold a

hearing at a date and time established by the court. Notice of the hearing shall be posted at a place designated for posting notices in the courthouse.

(d) At the hearing, parties or members of the general public must be permitted to testify and submit written briefs. A decision to seal all or part of a public record must be based on findings of fact and conclusions of law, showing that the remedial benefits to be gained by effectuating the public policy of the state declared in section 1 of this chapter are outweighed by proof by a preponderance of the evidence by the person seeking the sealing of the record that:

(1) a public interest will be secured by sealing the record;

(2) dissemination of the information contained in the record will create a serious and imminent danger to that public interest;

(3) any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;

(4) there is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and

(5) it is reasonably necessary for the record to remain sealed for a period of time.

Sealed records shall be unsealed at the earliest possible time after the circumstances necessitating the sealing of the records no longer exist. *(As added by P.L. 54-1985, § 4. Amended by P.L. 68-1987, § 1.)*

## Indiana Code 5-14-3-6: Partially disclosable records; computer or microfilm record systems; fees

Section 6. (a) If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying.

(b) If a public record stored on computer tape, computer disks, microfilm, or a similar or analogous record system is made available to:

(1) a person by enhanced access under section 3.5 of this chapter; or

(2) a governmental entity by an electronic device;

the public agency may not make the record available for inspection without first separating the material in the manner required by subsection (a).

(c) A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if:

(1) the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and

(2) the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information.

(d) A public agency is not required to reprogram a computer system to provide:

(1) enhanced access; or

(2) access to a governmental entity by an electronic device.

*(As added by P.L. 19-1983, § 6. Amended by P.L. 54-1985, § 5; P.L. 58-1993, § 5; P.L. 77-1995, § 5.)*

## Indiana Code 5-14-3-6.5: Confidentiality of public records

Section 6.5. A public agency that receives a confidential public record from another public agency shall maintain the confidentiality of the public record. *(As added by P.L. 34-1984, § 3.*)

## Indiana Code 5-14-3-7: Protection against loss, alteration, destruction and unauthorized enhanced access

Section 7. (a) A public agency shall protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.

(b) A public agency shall take precautions that protect the contents of public records from unauthorized enhanced access, unauthorized access by an electronic device, or alteration.

(c) This section does not operate to deny to any person the rights secured by section 3 of this chapter. *(As added by P.L. 19-1983, § 6. Amended by P.L. 58-1993, § 6.*)

## Indiana Code 5-14-3-8: Fees; copies

Section 8. (a) For the purposes of this section, "state agency" has the meaning set forth in Indiana Code 4-13-1-1.

(b) Except as provided in this section, a public agency may not charge any fee under this chapter:

(1) to inspect a public record; or

(2) to search for, examine, or review a record to determine whether the record may be disclosed.

(c) The Indiana department of administration shall establish a uniform copying fee for the copying of one (1) page of a standard-sized document by state agencies. The fee may not exceed the average cost of copying records by state agencies or ten cents ($0.10) per page, whichever is greater. A state agency may not collect more than the uniform copying fee for providing a copy of a public record. However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized documents.

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in Indiana Code 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification, copying, or facsimile machine transmission of documents. The fee may not exceed the actual cost of certifying, copying, or facsimile transmission of the document by the agency and the fee must be uniform throughout the public agency and uniform to all purchasers. As used in this subsection, "actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs.

(e) If:

(1) a person is entitled to a copy of a public record under this chapter; and

(2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record;

the public agency must provide at least one (1) copy of the public record to the person. However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance.

(f) Notwithstanding subsection (b), (c), (d), (g), (h), or (i), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.

(g) Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following:

(1) The agency's direct cost of supplying the information in that form.

(2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

(3) In the case of the legislative services agency, a reasonable percentage of the agency's direct cost of maintaining the system in which the information is stored. However, the amount charged by the legislative services agency under this subdivision may not exceed the sum of the amounts it may charge under subdivisions (1) and (2).

(h) This subsection applies to the fee charged by a public agency for providing enhanced access to a public record. A public agency may charge any reasonable fee agreed on in the contract under section 3.5 of this chapter for providing enhanced access to public records.

(i) This subsection applies to the fee charged by a public agency for permitting a governmental entity to inspect public records by means of an electronic device. A public agency may charge any reasonable fee for the inspection of public records under this subsection or the public agency may waive any fee for the inspection.

(j) Except as provided in subsection (k), a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision.

(k) The fee charged by a public agency under subsection (j) to cover costs for maintaining, upgrading, and enhancing an electronic map may be waived by the public agency if the electronic map for which the fee is charged will be used for a noncommercial purpose, including the following:

(1) Public agency program support.

(2) Nonprofit activities.

(3) Journalism.

(4) Academic research.

*(As added by P.L. 19-1983, § 6. Amended by P.L. 54-1985, § 6; P.L. 51-1986, § 2; P.L. 58-1993, § 7; P.L. 78-1995, § 1; P.L. 151-1999, § 1 ; P.L. 89-2001, § 1.)*

### Indiana Code 5-14-3-8.3: Enhanced access fund; establishment by ordinance; purpose

Section 8.3. (a) The fiscal body of a political subdivision having a public agency that charges a fee under section 8(h) or 8(i) of this chapter shall adopt an ordinance establishing an enhanced access fund. The ordinance must specify that the fund consists of fees collected under section 8(h) or 8(i) of this chapter. The fund shall be administered by the public agency or officer designated in the ordinance or resolution. Money in the fund must be appropriated and expended in the manner authorized in the ordinance.

(b) The fund is a dedicated fund with the following purposes:

(1) The replacement, improvement, and expansion of capital expenditures.

(2) The reimbursement of operating expenses incurred in providing enhanced access to public information.

*(As added by P.L. 58-1993, § 8.)*

### Indiana Code 5-14-3-8.5: Electronic map generation fund; establishment by ordinance; purpose

Section 8.5. (a) The fiscal body of a political subdivision having a public agency that charges a fee under section 8(j) of this chapter shall adopt an ordinance establishing an electronic map generation fund. The ordinance must specify that the fund consists of fees collected under section 8(j) of this chapter. The fund shall be administered by the public agency that collects the fees.

(b) The electronic map generation fund is a dedicated fund with the following purposes:

(1) The maintenance, upgrading, and enhancement of the electronic map.

(2) The reimbursement of expenses incurred by a public agency in supplying an electronic map in the form requested by a purchaser. *(As added by P.L. 58-1993, § 9.*)

### Indiana Code 5-14-3-9: Denial of disclosure; action to compel disclosure; intervenors; burden of proof; attorney's fees and costs

Section 9. (a) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;

whichever occurs first.

(b) If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request.

(c) If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

(1) the denial is in writing or by facsimile; and

(2) the denial includes:

(A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and

(B) the name and the title or position of the person responsible for the denial.

(d) This subsection applies to a board, a commission, a department, a division, a bureau, a committee, an agency, an office, an instrumentality, or an authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state. If an agency receives a request to inspect or copy a record that the agency considers to be excepted from disclosure under section 4(b)(19) of this chapter, the agency may consult with the counterterrorism and security council established under IC 4-3-20. If an agency denies the disclosure of a record or a part of a record under section 4(b)(19) of this chapter, the agency or the counterterrorism and security council shall provide a general description of the record being withheld and of how disclosure of the record would have a reasonable likelihood of threatening the public safety.

(e) A person who has been denied the right to inspect or copy a public record by a public agency may file an action in

the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue:

(1) that a request for release of the public record has been denied; and

(2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the Public Access Counselor.

Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied the right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.

(f) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

(g) If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

(A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and

(B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

(h) The court may review the public record in camera to determine whether any part of it may be withheld under this chapter.

(i) In any action filed under this section, a court shall award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff substantially prevails; or

(2) the defendant substantially prevails and the court finds the action was frivolous or vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary because the denial of access to a public record under this chapter would prevent the plaintiff from presenting that public record to a public agency preparing to act on a matter of relevance to the public record whose disclosure was denied.

(j) A court shall expedite the hearing of an action filed under this section. *(As added by P.L. 19-1983, § 6. Amended by P.L. 54-1985, § 7; P.L. 50-1986, § 3; P.L. 68-1987, § 2; P.L. 58-1993, § 10; P.L. 19-1997, § 4; P.L. 70-1999 § 2; P.L. 191-1999 § 2; P.L. 173-2003, § 6; P.L. 261-2003, § 8.)*

### Commentary:

*If a coroner could not satisfy one of the conditions listed in the autopsy statute, nor demonstrate that the requested records are otherwise related to a criminal investigation, the records are not "investigatory records," and the requesting party may have access to the records on the grounds that the coroner's denial of access was arbitrary and capricious.* Althaus v. Evansville Courier Co., 615 N.E.2d 441 (Ind. Ct. App. 1993).

*In* Indianapolis Newspapers v. Indiana State Lottery Commision, *the Indiana Court of Appeals noted that the statute does not require that the attorney fees be awarded to or from the public agency when it is clear that the statute contemplates the involvement of third parties.* 739 N.E. 2d 144, 156 (Ind. Ct. App. 2001).

## Indiana Code 5-14-3-10: Classified confidential information; unauthorized disclosure or failure to protect; offense; discipline

Section 10. (a) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency, except as provided by Indiana Code 4-15-10, who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor.

(b) A public employee may be disciplined in accordance with the personnel policies of the agency by which the employee is employed if the employee intentionally, knowingly, or recklessly discloses or fails to protect information classified as confidential by state

statute.

(c) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency who unintentionally and unknowingly discloses confidential or erroneous information in response to a request under Indiana Code 5-14-3-3(d) or who discloses confidential information in reliance on an advisory opinion by the Public Access Counselor is immune from liability for such a disclosure.

(d) This section does not apply to any provision incorporated into state law from a federal statute. *(As added by P.L. 17-1984, § 2. Amended by P.L. 54-1985, § 8; P.L. 68-1987, § 3; P.L. 77-1995, § 6; P.L. 191-1999, § 3.*

## Section Five:

# Overview of the Office of the Public Access Counselor and Formal Complaint Act

## Introduction

Effective July 1, 1999, the Indiana General Assembly created the Office of Public Access Counselor. This Office serves as a resource for members of the public and public officials and their employees on Indiana's laws governing access to meetings of public bodies and to the records of public agencies. The Office provides advice, assistance, training and education on the Indiana Open Door Law and Indiana Access to Public Records Act, and any other state statutes or rules governing access to public meetings and public records. The Office does not have binding authority, but is intended to serve as a resource for members of the public as well as public agencies throughout the state.

This section provides an overview of the Office and its functions. For more detailed information, consult the provisions of the Indiana Code, Indiana Code 5-14-4, *et seq*., and Indiana Code 5-14-5, *et seq.*, set forth at Section Six of this guide.

### What is the role of the public access counselor?

The Public Access Counselor has several powers and duties under Indiana Code 5-14-4-10:

1. To establish and administer a program to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under public access laws.
2. To conduct research.
3. To prepare and distribute interpretative and education materials, such as this guide, and conduct programs in cooperation with the Office of the Attorney General.
4. To respond to informal inquiries made by the public and public agencies concerning the public access laws.
5. To interpret the public access laws and to issue advisory opinions upon the request of a person or a public agency. The counselor may not issue an advisory opinion concerning a matter if a lawsuit has been filed under the Indiana Open Door Law or the Access to Public Records Act.
6. To make recommendations to the General Assembly concerning ways to improve public access.

In addition to these powers and duties, the Public Access Counselor is required to prepare an annual report by June 30th concerning the activities of the Office over the past year. This report is filed with the Legislative Services Agency.

### Who may utilize the services of the office?

Members of the public, including the media, and representatives of public agencies may contact the Office for the purpose of making an informal inquiry or filing a formal complaint.

### What is the process for filing a formal complaint for denial of access?

A formal complaint may be filed against any public agency for denial of access to a public record or denial of the right to attend a public meeting of a public agency in violation of the Access to Public Records Act, the Indiana Open Door Law or any other statute or rule that governs access to public records or public meetings. If a person is denied the right to inspect documents under Indiana Code 5-14-3, or denied the right to attend an otherwise public meeting as defined in Indiana 5-14-1.5, he may a file a formal complaint with the counselor.

A formal complaint must be filed within 30 days after:

1. the denial; or
2. the person filing the complaint receives notice that a meeting was held by a public agency and that the meeting was held secretly or without notice.

A complaint is considered filed on the date that it is received by the Public Access Counselor or the date of the postmark, if the date of receipt is later than 30 days after the date of the denial. Once received, the complaint will be forwarded to the public agency that is the subject of the complaint and the Counselor will request a response from the agency. The Public Access Counselor has 30 days to issue an advisory opinion on the complaint. If the complaint has priority, as determined under the administrative rules adopted by the Counselor, then an advisory opinion will be issued within 7 days following receipt of the complaint. See, Section 6 of this guide for the text of the administrative rule. See Appendix E for the Formal Complaint Form.

***NOTE:*** The filing of a formal complaint **does not** delay the running of any statute of limitation that applies to lawsuits filed under the Indiana Open Door Law or the Access to Public Records Act concerning the subject matter of that complaint.

### Must I file a formal complaint to obtain assistance?

Members of the public and representatives of public agencies need not file a formal complaint against a public agency to seek assistance from the Office. Informal inquiries, questions about rights to access or the responsibilities of public officials, are submitted when there is no need for a formal written opinion. The informal inquiry may concern a general question about the state's public access laws or a question or complaint about a public agency. If necessary, the Counselor will contact the public agency in question in an effort to resolve the matter without issuing a written formal opinion.

### What is the significance of filing a formal complaint or seeking an informal inquiry from the counselor?

Under the 1999 statutory amendments to the Indiana Open Door Law and the Access to Public Records Act, contacting the Public Access Counselor through an informal inquiry or by filing a formal complaint is significant for both members of the public and representatives of public agencies**.**

A person or a public agency seeking access to a public meeting or public record may contact the Counselor, but since the Counselor's opinions are not binding on public agencies, the person may wish to file a civil action under Indiana Code 5-14-1.5-7 (Open Door Law) or Indiana Code 5-14-3-9 (Access to Public Records Act). If the person seeking access prevails in the court action, the judge must award reasonable attorney's fees, court costs and cost of litigation. If the person has not contacted the Counselor prior to filing a civil action, these fees and costs will not be awarded unless the person can show that the filing of an action was necessary:

1. to prevent a violation of the Open Door Law; or

2. because the denial of access to a public record would prevent the person from presenting that record to another public agency preparing to act on a related matter. *See,* Ind. Code 5-14-1.5-7(f) and Ind. Code 5-14-3-9(h).

For public agencies it may also be significant to contact the Counselor. Under the Open Door Law, a court will consider whether the public agency acted in accordance with an informal inquiry response or an advisory opinion in its determination as to whether to declare any action or policy void. *See*, Ind. Code 5-14-1.6-7(d)(4). In cases concerning denial of access to public records, the public agency is required to notify any person who has supplied any part of the public record at issue and inform that person whether the denial was in compliance with an informal or formal response from the Counselor. *See*, Ind. Code 5-14-3-9(d)(2).

### How do I contact the counselor?

You may contact the Public Access Counselor by telephone, e-mail, facsimile or by mail with informal inquiries. The addresses and telephone/facsimile numbers appear at the back of this guide.

If you wish to file a formal complaint, you must use the form prescribe under Indiana Code 5-14-5-11. A copy of the complaint form is included in this guide and is available through the webpage for the Office: **www.IN/gov/pac.**

## Section Six:
# Office of the Public Access Counselor and Formal Complaint Act and Legal Commentary

### Indiana Code 5-14-4: Public Access Counselor

### Indiana Code 5-14-4-1: "Counselor" defined

Section 1. As used in this chapter, "counselor" refers to the public access counselor appointed under section 6 of this chapter. (*As added by P.L. 70-1999 sec. 4 and P.L. 191-1999, sec 4).*

### Indiana Code 5-14-4-2: "Office" defined

Section 2. As used in this chapter, "office" refers to the office of the public access counselor established under section 5 of this chapter. (*As added by P.L. 70-1999, sec 4 and P.L. 191-1999, sec 4).*

### Indiana Code 5-14-4-3: "Public Access Laws" defined

Section 3. As used in this chapter, "public access laws" refers to:

(1) Indiana Code 5-14-1.5;

(2) Indiana Code 5-14-3; or

(3) any other state statute or rule governing access to public meetings or public records.

(*As added by P.L. 70-1999, sec 4 and P.L. 191-1999, sec 4).*

### Indiana Code 5-14-4-4: "Public Agency" defined

Section 4. As used in this chapter, "public agency" has the meaning set forth in :

(1) Indiana Code 5-14-1.5-2 for purposes of matters concerning public meetings; and

(2) Indiana Code 5-14-3-2 for purposes of matters concerning public records.

(*As added by P.L. 70-1999, sec 4 and P.L. 191-1999, sec 4.)*

### Indiana Code 5-14-4-5: Establishment of office

Section 5. The office of the public access counselor is established. The office shall be administered by the public access counselor appointed under section 6 of this chapter. (*As added by P.L. 70-1999, sec 4 and P.L. 191-1999, sec 4.)*

### Indiana Code 5-14-4-6: Appointment; term

Section 6. The governor shall appoint the public access counselor for a term of four (4) years at a salary to be fixed by the governor. (*As added by P.L. 70-1999, sec 4, and P.L. 191-1999, sec 4.)*

### Indiana Code 5-14-4-7: Removal for Cause

Section 7. The governor may remove the counselor for cause. (*As added by P.L. 70-1999, sec 4, and P.L. 191-1999, sec 4.)*

### Indiana Code 5-14-4-8: Vacancies in Office

Section 8. If a vacancy occurs in the office, the governor shall appoint an individual to serve for the remainder of the counselor's unexpired term. (*As added by P.L. 70-1999, sec 4, and P.L. 191-1999, sec 4.)*

### Indiana Code 5-14-4-9: Requirements for Position

Section 9. (a) The counselor must be a practicing attorney.

(b) The counselor shall apply the counselor's full efforts to the duties of the office and may not be actively engaged in any other occupation, practice, profession, or business. (*As added by P.L. 70-1999, sec 4, and P.L. 191-1999, sec 4.)*

### Indiana Code 5-14-4-10: Powers and Duties

Section 10. The counselor has the following powers and duties:

(1) To establish and administer a program to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. The counselor may contract with a person or a public or private entity to fulfill the counselor's responsibility under this subdivision.

(2) To conduct research.

(3) To prepare interpretive and educational materials and programs in cooperation with the office of attorney general.

(4) To distribute to newly elected or appointed public officials the public access laws and educational materials concerning the public access laws.

(5) To respond 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.

(6) To issue advisory opinions to interpret the public access laws upon the request of a person or a public agency. However, the counselor may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Indiana Code 5-14-1.5 or Indiana Code 5-14-3.

(7) To make recommendations to the general assembly concerning ways to improve public access. (*As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.)*

### Commentary

*In* Azhar v. Town of Fishers, *the Court stated that Indiana Code section 5-14-4-10(6) prohibits the issuance of an advisory opinion concerning a matter with respect to which a lawsuit has been filed under Indiana Code section 5-14-1.5 or Indiana Code section 5-14-3.* 744 N.E. 2d 947, 951 (Ind. Ct. App. 2001). *The Court, however, stated that Indiana Code section 5-14-4-10(6) does not prohibit the filing of an affidavit by the Counselor outlining the dictates of an advisory opinion issued prior to the filing of the such lawsuit.* Id.

*A response as defined in Indiana Code Section 5-14-1.5-7(f) does not mean that the public access counselor must state affirmatively whether the public access laws have been violated.* Gary/Chicago Airport Board of Authority v. Maclin, 772 N.E. 2d 463, 471 (Ind. Ct. App. 2002).

### Indiana Code 5-14-4-11: Additional personnel

Section 11. The counselor may employ additional personnel necessary to carry out the functions of the office subject to the approval of the budget agency. (*As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.)*

### Indiana Code 5-14-4-12: Annual report by counselor

Section 12. The counselor shall submit a report not later than June 30 of each year to the legislative services agency concerning the activities of the counselor for the previous year. The report must include the following information:

(1) The total number of inquiries and complaints received.

(2) The number of inquiries and complaints received each from the public, the media, and government agencies.

(3) The number of inquiries and complaints that were resolved.

(4) The number of complaints received about each of the following:

(A) State agencies.
(B) County agencies.
(C) City agencies.
(D) Town agencies.
(E) Township agencies.
(F) School corporations.
(G) Other local agencies.

(5) The number of complaints received concerning each of the following:

(A) Public records.
(B) Public meetings.

(6) The total number of written advisory opinions issued and pending. (*As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.)*

### Indiana Code 5-14-4-13: Statute of limitations

Section 13. An informal inquiry or other request for assistance under this chapter does not delay the running of a statute of limitation that applies to a lawsuit under Indiana Code 5-14-1.5 or Indiana Code 5-14-3 concerning the subject matter of the inquiry or other request. (*As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.)*

## Formal Complaints to the Public Access Counselor

### Indiana Code 5-14-5: Formal Complaint Procedure

### Indiana Code 5-14-5-1: "Counselor" defined

Section 1. As used in this chapter, "counselor" refers to the public access counselor appointed under Indiana Code 5-14-4-6. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

### Indiana Code 5-14-5-2: "Person" defined

Section 2. As used in this chapter, "person" means an individual, a business, a corporation, an association, or an organization. The term does not include a public agency. (*As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

### Indiana Code 5-14-5-3: "Public Agency" defined

Section 3. As used in this chapter, "public agency" has the meaning set forth in:

(1) Indiana Code 5-14-1.5-2, for purposes of matters concerning public meetings; and

(2) Indiana Code 5-14-3-2, for purposes of matters concerning public records. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

### Indiana Code 5-14-5-4: Complaint not required to file action

Section 4. A person or a public agency is not required to file a complaint under this chapter before filing an action under Indiana Code 5-14-1.5 or Indiana Code 5-14-3. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

### Indiana Code 5-14-5-5: Cooperation from public agencies

Section 5. A public agency shall cooperate with the counselor in any investigation or proceeding under this chapter. (*As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

### Indiana Code 5-14-5-6: Grounds for Complaint

Section 6. A person or a public agency denied:

(1) the right to inspect or copy records under Indiana Code 5-14-3;

(2) the right to attend any public meeting of a public agency in violation of Indiana Code 5-14-1.5; or

(3) any other right conferred by Indiana Code 5-14-3 or Indiana code 5-14-1.5 or any other state statute or rule governing access to public meetings or public records;

may file a formal complaint with the counselor under the procedure prescribed by this chapter or may make an informal inquiry under Indiana Code 5-14-4-10(5). (*As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

### Commentary:

*See*, Opinion of the Public Access Counselor 00-FC-11 for a discussion of standing to file a formal complaint.

### Indiana Code 5-14-5-7: Time for Filing Complaint

Section 7. (a) A person or a public agency that chooses to file a formal complaint with the counselor must file the complaint not later than thirty (30) days after:

(1) the denial; or

(2) the person filing the complaint receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice. (*As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

(b) A complaint is considered filed on the date it is:

(1) received by the counselor; or

(2) postmarked, if received more than thirty (30) days after the denial that is the subject of the complaint. (*As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

### Indiana Code 5-14-5-8: Complaint Forwarded to Public Agency

Section 8. When the counselor receives a complaint under section 7 of this chapter, the counselor shall immediately forward a copy of the complaint to the public agency that is the subject of the complaint. (*As added by P.L. 70-1995, § 5 and P.L. 191-1999, § 5.)*

### Indiana Code 5-14-5-9: Advisory Opinion

Section 9. Except as provided in section 10 of this chapter, the counselor shall issue an advisory opinion on the complaint not later than thirty (30) days after the complaint is filed. (*As added by P.L. 70-1995, § 5 and P.L. 191-1999, § 5.)*

### Indiana Code 5-14-5-10: Priority of complaints

Section 10. (a) If the counselor determines that a complaint has priority, the counselor shall issue an advisory opinion on the complaint not later than seven (7) days after the complaint is filed.

(b) The counselor shall adopt rules under Indiana Code 4-22-2 establishing criteria for complaints that have priority. *(As added by P.L. 70-1999,§ 5 and P.L.191-1999, § 5.)*

### Indiana Code 5-14-5-11: Form of complaint

Section 11. The public access counselor shall determine the form of a formal complaint filed under this chapter. *(As added by P.L. 70-1999, § 5 and P.L.191-1999, § 5.)*

### Indiana Code 5-14-5-12: Statute of limitations

Section 12. The filing of a formal complaint under this chapter does not delay the running of a statute of limitation that applies to a lawsuit under Indiana Code 5-14-1.5 or Indiana Code 5-14-3 concerning the subject matter of the complaint. *(As added by P.L. 70-1999, § 5 and P.L.191-1999, § 5.)*

# APPENDICES

*Appendix A*

# Office of the Public Access Counselor Administrative Rule

## 62 IAC 1-1-1: Definitions

Authority: IC 5-4-5-10
Affected: IC 5-14-1.5; IC 5-14-3; IC 5-14-5
Section 1. The following definitions apply through out this rule:
(1) "Complainant" means a person who files a complaint under 5-14-5.
(2) "Formal complaint" means a complaint filed under IC 5-14-5.

## 62 IAC 1-1-2: Formal Complaints that have priority; procedure

Section 2. (a) Formal complaints may be filed with the public access counselor by hand delivery, United States Mail, facsimile, or electronic mail.

(b) A complainant shall file a formal complaint on the form prescribed by the public access counselor. If any of the criteria for priority enumerated in section 3 of this rule are met, the complainant shall include the information in the complaint.

(c) A formal complaint is considered received when date stamped by the office of the public access counselor.

(d) If a formal complaint meets any of the criteria for priority listed under section 3 of this rule, the public access counselor shall issue a written advisory opinion within seven (7) days of receipt of that complaint. (Office *of the Public Access Counselor; 62 IAC 1-1-3; filed May 26, 2000, 8:43 a.m.; 23 IR 1423)*

## 62 IAC 1-1-3 Priority complaints; criteria

Section 3. A formal complaint has priority if one (1) of the following criteria are met:

(1) The complainant intends to file an action in circuit or superior court under IC 5-14-1.5-7 to declare void any policy, decision, or final action of a governing body or seek an injunction that would invalidate any policy, decision, or final action based upon a violation of IC 5-14-1.5. A formal complaint must be filed under this subsection:

(A) before the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect of invalidating those warrants, notes, bonds, or obligations; or

(b) within thirty (30) days of either:

(i) the date of the act or failure to act complained of; or
(ii) the date the complaintant knew or should have known that the act or failure to act complained of had occurred.

(2) The complainant has filed a complaint concerning the conduct of a meeting or an executive session of a public agency for which notice has been posted, but the meeting or executive session has not yet taken place.

(3) The complainant has filed a complaint concerning denial of access to public records and at least one (1) of the public records requested was sought for the purpose of presenting the public record in a proceeding to be conducted by another public agency.

(*Office of the Public Access Counselor; 62 IAC 1-1-3; filed May 26, 2000, 8:43 a.m.; 23 IR 1423)*

# CHECKLIST FOR PUBLIC AGENCIES RESPONDING TO REQUESTS FOR ACCESS TO OR COPIES OF PUBLIC RECORDS

## Time Period for Response[1]

If the request was made orally or a written request was hand-delivered, the public agency must respond within ***24 business hours*** after the request was received.

If a written request was received by the public agency by facsimile, mail, or electronic mail, the public agency must respond ***within 7 calendar days*** after the request was received.

## Substance of Response

Any or all of these statements that apply to the subject request should be included in the response. *If a statement does not apply, you need not include it in your response*.

***(A) A statement identifying the public records maintained by the agency that will be provided in response to the request and the estimated date the records will be produced.***

***(B) A statement indicating that the record request is denied and the record will be withheld because the record is confidential or nondisclosable, and the statutory authority for the statement that the record is confidential or otherwise nondisclosable.***

***(C) A statement that the public agency does not have a record that is responsive to the records request.***

***(D) A statement that the public agency may have records that are responsive to the request and is in the process of:***

***(i) reviewing the agency's files;***

***(ii) retrieving stored files; or***

***(iii) both items (i) and (ii);***

***in response to the request and that an additional response will be provided on or before specific date to advise the requestor of the agency's progress on the request.***

## Copy Fees[2]

***Notify the requestor of the estimated copy fee, if any and whether the fee must be provided before the copies of public records will be produced*** *or* ***if the fee can be paid upon delivery of the public records.***

## Denial of Access to Any or All of the Public Records Requested

**If the public agency is denying access to any or all of the requested public records, the response should include the name and title of the person responsible for the nondisclosure of the records and how that person may be contacted.**

**If the request was made in writing, or if an oral request was renewed in writing, any denials must be made in writing by the public agency.**

*Appendix C*

# SAMPLE LETTER
## Requesting Access or Copy of Public Record

Date

Public Official
Title
Address
City, Indiana Zip Code

Dear Public Official:

Pursuant to the Indiana Access to Public Records Act (IC 5-14-3), I would like to (*inspect or obtain a copy of*) the following public records:

(*Be sure to describe the records sought with enough detail for the public agency to be able to respond.*)

I understand that if I seek a copy of this record, there may be a copying fee. Could you please inform me of that cost prior to making the copy. I can be reached at (*phone number*).

According to the statute, you have ____ days to respond to this request. *(If this letter was delivered personally to the public official's office, the agency has 24 hours to respond to the request. If the letter is delivered by U.S. Mail or facsimile, the agency has seven days to respond to the request.)* If you choose to deny the request, then you are required to respond in writing and state the statutory exception authorizing the withholding of all or part of the public record and the name and title or position of the person responsible for the denial.

Thank you for your assistance on this matter.

Respectfully,

# SAMPLE NOTICES

## Regular or Special Meetings Open to the Public

Meeting (or Special Meeting) of the

**AnyTown City Council**

**Monday, April 16, 2001**

**5:30 p.m.**

**City Hall Meeting Room**

## SAMPLE EXECUTIVE SESSION NOTICE

**Notice of Executive Session of the**

**Anytown City Council**

**Monday, April 16, 2001**

**5:30 p.m.**

**City Hall Meeting Room**

**The Council will meet to discuss a job performance evaluation of an individual employee as authorized under Indiana Code section 5-14-1.5-6.1(b)(9)**

*Appendix E*

## NOTICE OF EXECUTIVE SESSION

Name of Governing Body

**Date, Time and Place**

The Governing Body will hold an Executive Session as authorized under Indiana Code section 5-14-1.5-6.1(b):

**___An executive session is authorized under:**

**Indiana Code section(s):_____**

**___An executive session is authorized under:**

**United States Code section(s):_____**

**___For discussion* of strategy with respect to any of the following:**

**___Collective bargaining.**
___The initiation of litigation or litigation that is either pending or has been threatened specifically in writing.
**___The implementation of security systems.**
**___The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.**

***The strategy discussions are necessary for competitive or bargaining reasons and will not include competitive or bargaining adversaries.***

**___To receive information about and interview prospective employees.**

**___With respect to any individual over whom the governing body has jurisdiction:**

(A) to receive information concerning the individual's alleged misconduct; and
**(B)to discuss, before a determination, the individual's status as an employee, student, or an independent contractor who is a physician.**

**___For discussion of records classified as confidential by state or federal statute.**

**___To discuss a job performance evaluation** of individual employees.**

***This does not include discussion of the salary, compensation, or benefits of employees during a budget process.***

**___For the consideration of the appointment of a public official, to do the following:**

**__Develop a list of prospective appointees.**
**__Consider applications.**
__Make one (1) initial exclusion*** of prospective appointees from further consideration.

****The initial exclusion of prospective appointees from further consideration will not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective will be conducted at a meeting that is open to the public.***

## Nonexclusive List of Helpful Statutes

**Records Access Restricted**

| | |
|---|---|
| 4-6-9-4 | Complaints and correspondence with Consumer Protection Division of the Attorney General's Office are confidential with certain exceptions. |
| 5-2-4-6 | Criminal intelligence information is confidential. |
| 5-2-9-6 | County clerks and sheriffs information about a protected order is confidential. |
| 6-1.1-35-9 | All information concerning earnings, profits, losses or expenditures and which is either given by a person to an assessing official is confidential. |
| 6-4.1-12-12 | The Department of Revenue shall not divulge any information disclosed concern ing inheritance taxes with exceptions. |
| 6-8.1-7-1 | Department of Revenue, may not divulge amount of tax paid, terms of settlement agreement, investigation records/reports, or other information disclosed by reports filed under the law relating to any of the listed taxes |
| 9-14-3.5-7 | Personal information, social security number, in connection with a motor vehicle record is nondisclosable. |
| 9-26-3-4 | Accident reports filed with the ISP by a driver involved in an accident are confidential. |
| 10-13-3-27 | Restrictions on the release of limited criminal histories. |
| 31-39-1-2 | Except under certain circumstances (see IC 31-39-2) juvenile court records are confidential. |
| 31-39-3-4 | Exception under certain circumstances (see IC 31-39-3-2, 31-39-3-3, and 31-39-4) juvenile law enforcement records are confidential. |
| 35-38-1-13 | Presentence reports or memoranda; report of physical/mental exam are confidential. |
| 36-8-16-16 | Certain information supplied by customers of enhanced emergency telephone system may not be dislcosed. |

**Records Specifically Required to be Disclosed**

| | |
|---|---|
| 3-7-28-7 | Voter registration lists are available for public access. |
| 9-26-2-3 | Accident reports filed with the Indiana State Police by a law enforcement agency are disclosable public records. |
| 15-5-9-4 | List of dogs and names of dog owners must be made available for public inspection. |
| 16-31-2-11 | Ambulance report or record regarding an emergency patient that must be disclosed if services provided by or under a contract with a public agency. |
| 20-6.1-4-3 | Contracts entered into by a teacher are open to inspection by the people of each school corporation. |
| 36-2-14-18 | Information required to be disclosed by a coroner regarding the investigation of a death. |

**Meetings**

| | |
|---|---|
| 20-5-3-2 | Limitation on location of school board meetings. |
| 36-2-2-9 | Limitations on the location of county commissioner meetings. |

**Fees**

| | |
|---|---|
| 9-29-11-1 | Sets a minimum of $3.00 as fee for accident reports. |
| 33-19-6-1(b) | Clerk's fee-$1.00 for copies of court records. |
| 36-2-7-10 | Sets fee for county recorders. |

# *WHAT CAN I DO IF I HAVE QUESTIONS ABOUT THESE LAWS?*

If you have a question or concern about obtaining access to public meetings or to public records, you may contact the state's Public Access Counselor for advice or assistance.

**Public Access Counselor**
**Indiana Government Center South**
**402 West Washington Street W074**
**Indianapolis, Indiana 46204**

**Toll Free: 800-228-6013**
**Telephone: 317-233-9435**

**Facsimile: 317-233-3091**

**E-mail: pac@icpr.state.in.us**

**website**
**www.IN.gov/pac**

**UPDATED DECEMBER 2003**

The cover of this booklet pictures the Posey County Courthouse. The photograph was taken by Richard Fields for Outdoor Indiana Magazine.

COVER PHOTOGRAPH COURTESY OF THE INDIANA DEPARTMENT OF NATURAL RESOURCES