

Indiana's Access to Public Records Act

Ind. Code §5-14-3-1 *et seq.*

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Office of the Public Access Counselor

- What we do
 - Advise
 - Mediate
 - Educate
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Public Access Counselor: Establishment and Authority

- Ind. Code 5-14-4 Office established; 1999
- Powers and duties
- Train public officials
- Educate members of the public
- Respond to informal inquiries
- Issue advisory opinions
- Make recommendations to General Assembly on ways to improve access

Access to Public Records Act (APRA)

- Key definitions:
 - “Public Record” means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency *and*
 - which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.”
 - Indiana Court of Appeals has added to this definition materials created *for or on behalf of* a public agency.
 - “Inspect” includes the right to make notes, abstracts and memoranda, and in the case of aural public records, to listen and manually transcribe or make notes.
 - “Copy” includes photocopying, transcribing by hand, and duplicating electronic data onto disk, and reproducing by any other means, including by digital camera or handheld scanner.

APRA: General Rule

- 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.
- A request must (1) identify the record with *reasonable particularity*; (2) be, at the discretion of the agency, in writing or on agency form.
- The agency shall either make the requested copy (if the agency has reasonable access to a copy machine) or allow the person to make a copy on the agency's equipment or on the person's own equipment.
- Electronic data storage systems--agency shall make reasonable efforts to provide copy of data to a person if medium requested is compatible with agency's system.

Public agency's responsibility under APRA:

- Respond to requests in person or over telephone within 24 hours of receipt;
- Respond to mailed, faxed, or e-mailed requests within 7 calendar days of receipt;
- Best practice is to respond in writing to all requests; must respond in writing to deny written requests for records.
- If denying records, state reason for denial with citation to authority and give name and title or position of person responsible for denial.
- Produce records in reasonable time; communication with person requesting is key
- If time for production will be lengthy, provide groups of records in the interim as they are available.

Exemptions to Disclosure: I.C. § 5-14-3-4

- 4(a) Confidential categories:
 - Declared confidential by state statute
 - Required to be kept confidential by federal law
 - Declared confidential by rule
 - Patient medical records created by a provider
 - A social security number contained in an agency's records
- 4(b) Discretionary categories:
 - Investigatory Records of Law Enforcement
 - Attorney work product
 - Inter or intra-agency deliberative material
 - Expressions of opinion or speculative in nature *and* communicated for purpose of decisionmaking
 - Personnel file information may be withheld, but some portions must be disclosed:
 - Name, compensation, job title, business address, business telephone number, job description, education and training, previous work experience, or dates of first and last employment;
 - Information relating to status of formal charges against employee; and
 - 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.
 - *Personnel file must always be made available to the affected employee or applicant.

Denial of Access

- If denying records, state reason for denial with citation to authority, and give name and title or position of person responsible for denial.
- Agency bears the burden of proving the records are excepted from disclosure under the APRA or other applicable authority.

Copying Fees

- State agencies may charge \$.10 per page.
- Other political subdivisions may enact an ordinance charging actual cost
- Some of APRA's general provisions regarding fees are superseded by a specific statute allowing other fees. For example, \$5 fee for motor vehicle accident report. I.C. § 9-29-11-1.
- Agencies may require advance payment

Remedies for Violations: I.C. § 5-14-3-9

- A person may file lawsuit to compel the agency to permit inspection and copying.
- Court shall expedite hearing.
- Attorney fees, court costs, and reasonable expenses of litigation to prevailing plaintiff but must seek and receive PAC advisory or informal inquiry response.

Common Problems in APRA

- Improperly requiring a subpoena from the requester. The law does not require that a person obtain a subpoena in order to get disclosable records.
- When records contain partially disclosable and partially nondisclosable information, denying access to entire record; the agency must separate and disclose the public portion of the record.
- Not responding within prescribed time
- Denying access to records but not indicating the statutory authority
- Not regularly communicating with requester when the request is voluminous and agency is taking time to review and compile records
- Requiring requester to indicate why he/she wants the records
- Assuming certain records are confidential or proprietary absent legal authority

Complaint Procedures

- Ind. Code 5-14-5
- Complaint must be timely filed
- Complaint must allege denial of access
- PAC must send complaint to agency
- No statutory requirement to invite or consider response, but it is our practice to do so
- PAC must issue advisory opinion within 30 days, or 7 days if priority (62 IAC 1)

Enforcement Authority

- Opinions are advisory only
- A public agency is required to cooperate with counselor in any investigation or proceeding (I.C. § 5-14-5-5)
- Attorney fees, costs, and reasonable expenses of litigation are preserved for prevailing plaintiffs in a lawsuit (I.C. § 5-14-1.5-7; I.C. § 5-14-3-9)