

ANNUAL REPORT OF THE INDIANA PUBLIC ACCESS COUNSELOR  
To the Indiana General Assembly

July 1, 2018 through June 30, 2019

Pursuant to Ind. Code § 5-14-4-12, the Indiana Public Access Counselor (“PAC”) hereby submits this annual report of activities for the time period covering July 1, 2018 through June 30, 2019.<sup>1</sup> This report is presented in three parts: in Part I a narrative summary of the activities of the PAC; in Part II the information required to be submitted pursuant to Ind. Code § 5-14-4-12; and in Part III appendices listing presentations given and advisory opinions issued in the past year.

PART I  
Annual Report Narrative

Mission

The Public Access Counselor provides advice and assistance concerning Indiana's public access laws to members of the public and government officials and their employees.

Vision

The Office of the Public Access Counselor is dedicated to carrying out its mission by employing the following philosophy:

“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.” -Indiana Code § 5-14-3-1 through 5-14-3-10

“...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...” -Indiana Code 5-14-1.5-1.

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<sup>1</sup> All data were compiled as of 5:00 p.m. on Friday, June 28, 2018.

## Public Access Counselor and Staff

Public Access Counselor Luke H. Britt was appointed by Governor Mike Pence to serve as Indiana's Seventh PAC. He was reappointed for a second four-year term in October 2018 by Governor Eric Holcomb. Britt previously served as an attorney and operations manager for the Indiana State Department of Health and as an attorney for the Indiana Department of Child Services. The PAC employs a full-time Program Director position, Kristopher Cundiff, who also serves as Deputy PAC and chief of staff. The office of the Public Access Counselor also utilizes the assistance of seasonal interns and has requested part-time clerical assistance as well. The Office foresees a structural reorganization in 2019 based upon increased funding levels. Additional staff and reorganization will improve process flow and result in increased constituent services.

## Advisory Opinions

The PAC has received 364 formal complaints in FY18, a slight decrease from 377 in FY17. From July 1, 2018, to June 30, 2019, the PAC anticipates issuing 130 written advisory opinions in response to formal complaints (23 are pending at the time of the submission of the report). *See* Ind. Code 5-14-5 regarding the complaint process. Pursuant to Ind. Code § 5-14-5-9, an advisory opinion must be issued within thirty business days of receipt of a formal complaint. All but nine opinions met that benchmark. The deadline for priority complaints is seven days. *See* Ind. Code § 5-14-5-10; 62 IAC 1.

Similar to FY 17, the Office took a much more proactive position in resolving complaints during the adversarial complaint process. This cut down on the number of opinions issued. This allowed the PAC to focus on crafting higher quality opinions and focus on newer or complex issues which have not been addressed in the past. The size of the opinions has doubled, providing the reader with a better understanding of the issue at hand.

Additionally, efforts have been made to “weed out” unmeritorious complaints that do not meet statutory requirements for grounds for a complaint. This discretion has helped drastically reduced the number of opinions published thereby increasing the quality of those which are written and released. Reasons for declining a complaint are predicated upon issues relating to timeliness, unclear narrative, defective public records requests and duplicative factual matters.

## Informal Opinions

In addition to advisory opinions in response to formal complaints, the PAC issues written informal opinions pursuant to Ind. Code § 5-14-4-10(5). The PAC issued twelve (12) informal opinions for the period July 1, 2018 to June 30, 2019.

## Telephone and Electronic Mail Inquiries

Our most important metric is interaction with the public. The PAC Office has experienced steady activity in relation to FY 2017 which represents nearly a 400% increase since 2012. From July 1, 2018 to June 30, 2018, the two PAC staff members received and responded to 7,141 inquiries via telephone and

electronic mail, as compared to 7,287 in FY 2017. 100% of all general inquiries were responded to within 72 business hours. All inquiries prior to June 26, 2019 are currently resolved.

Of the inquiries and requests for assistance received, 3,527 were from the public at large, 2,828 from government agencies and 786 from media.

### Education and Presentations

The Public Access Counselor made 35 educational presentations in FY 2017. The focus of this Public Access Counselor has been expanding educational awareness on the Access to Public Records Act and the Open Door Law to the public and government officials. These educational presentations have given the Public Access Counselor the opportunity to travel across the state, speaking to audiences ranging from small town halls to the Indiana General Assembly. Luke Britt has also expanded the use of technology in the Office by participating in Webinars; phone, television and radio interviews; and through the use of the website.

### Handbook and Other Educational Materials

The *Handbook on Indiana's Public Access Laws* was revised in FY 2016, last revised and printed in FY 2013. The *Handbook* is issued by the PAC and the Office of the Attorney General pursuant to Ind. Code § 5-14-4-10(3). The Hoosier State Press Association assisted significantly with the production of the *Handbook*. The *Handbook* is a resource utilized by many public officials and the public at large, and the PAC receives many requests for the print version of the *Handbook*. The *Handbook* is posted on the PAC's website, [www.IN.gov/pac](http://www.IN.gov/pac), and the PAC encourages individuals and agencies to download it from the website at no charge.

In addition to the *Handbook*, the Counselor also prepared slides and handouts for participants at the educational seminars to which the Counselor was invited. Because the PAC budget will not allow the PAC to provide copies of slides and handouts to attendees at all events (some of which number in the hundreds), the PAC generally asks the sponsoring organization to provide copies for attendees. The PAC makes copies of all slide presentations available via the PAC website.

The PAC does not anticipate revising the hard copy of the handbook until at least FY20 due to only minor changes in the access laws.

### Public Access Counselor Website

The Office of the Public Access Counselor maintains a website at [www.in.gov/pac](http://www.in.gov/pac). The website contains formal advisory and informal opinions that have been issued since 1998. In addition to the resources listed in previous paragraphs, the website contains upcoming and past presentations of the PAC, sample letters and meeting notices, frequently asked questions, previous year's Annual Reports, and other resources.

The PAC and his staff has expended a significant amount of resources in updating the materials on the PAC website – most of which had not been updated since 2008. These materials are currently up to date as of June 2019.

### Oversight Committee on Public Records

Pursuant to Ind. Code § 5-15-5.1-18, the Public Access Counselor is a member of the Oversight Committee on Public Records, the governing body for the Indiana Commission on Public Records (“OCPR”). The OCPR is a governor-appointed committee which sets public records retention schedules for Indiana state and local governments. Luke Britt served four consecutive terms as elected chairman of the Commission but stepped down in 2019 to a regular member due to statutory term limitations.

### PART II Annual Report

- (1) Total number of formal complaints received (includes pending complaints): 364
- (2) Total number of formal complaints that have been withdrawn, rejected or lawsuit/post-conviction filed:

Withdrawn: 30  
Rejected: 134<sup>2</sup>  
Lawsuit Filed: 60

- (3) Number of formal complaints received about each of the following (includes pending and withdrawn complaints but not rejections):

(A) State agencies:	139 <sup>3</sup>
(B) County agencies:	72
(C) City agencies:	79
(D) Town agencies:	28
(E) Township agencies:	15
(F) School corporations:	16
(G) Other local agencies:	15

- (4) Number of formal complaints received concerning each of the following (includes pending and withdrawn complaints):

(A) Public records:	256
(B) Public meetings:	105
(C) Both:	3

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<sup>2</sup> REJECTED COMPLAINTS ARE THOSE WITH NO GENUINE ISSUE OF LAW OR ARE OTHERWISE UNMERITORIOUS

<sup>3</sup> THE MAJORITY OF STATE AGENCY FILINGS ARE AGAINST THE INDIANA DEPARTMENT OF CORRECTION. A VAST MAJORITY ARE DISMISSED FOR THE REASONS STATE ABOVE

(5) Number of formal complaints received each from the public, media and government agencies (includes pending and withdrawn complaints):

- (A) Public: 292
- (B) Media: 62
- (C) Government: 10

(6) Total number of written formal advisory opinions issued (does not include written informal opinions):

- (A) Opinions Issued: 136
- (B) Opinions Pending: 23