

ANNUAL REPORT OF THE INDIANA PUBLIC ACCESS COUNSELOR
To the Indiana General Assembly
July 1, 2021 through June 30, 2022

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, 2020 through June 30, 2022.¹ 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.

¹ All data were compiled as of 5:00 p.m. on Thursday, June 20, 2022.

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 2017 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 two full-time positions: Kristopher Cundiff, who also serves as Deputy PAC and chief of staff; and Kaitlyn Holmecki, a program coordinator. The office of the Public Access Counselor also utilizes the assistance of seasonal interns from time to time. The Office underwent a structural reorganization in 2019 based upon increased funding levels. The addition of a program coordinator greatly improved process flow and result in increased efficiency in regard to constituent services.

Advisory Opinions

The PAC has received 547 formal complaints in FY21, an increase from 403 in FY 19. From July 1, 2021, to June 30, 2022, the PAC anticipates issuing 190 written advisory opinions in response to formal complaints (several 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. The majority of opinions issued meet that benchmark although several are stayed due to circumstances, including continuances requested by the parties. Some matters of significant complexity also factor into the timeline.

Similar to prior years, 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. A large majority of these opinions are DOC inmates who are seeking post-conviction relief (with its own discovery mechanism) or have a misunderstanding of this office's jurisdiction. 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 fifteen (15) informal opinions for the period July 1, 2021 to June 30, 2022.

Telephone and Electronic Mail Inquiries

Our most important metric is interaction with the public. The PAC Office has experienced steady activity compared to prior years. From July 1, 2021 to June 30, 2022, the three PAC staff members received and responded to approximately 10,000 inquiries via telephone and electronic mail. 100% of all general inquiries were responded to within 72 business hours. All inquiries prior to June 30, 2022 are currently resolved. Of the inquiries and requests for assistance received, around a third were from the public at large, fifty percent from government agencies and the remainder from media.

Education and Presentations

The Public Access Counselor gave 47 educational presentations in FY 2022; a marked year-over-year increase. 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.

Handbook and Other Educational Materials

The printed Handbook on Indiana's Public Access Laws was revised in FY 2017 as the access laws have not changed dramatically since that time. 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, and the PAC encourages individuals and agencies to download it from the website at no charge. This online version was updated in 2022.

In addition to the Handbook, the Counselor also prepares 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 anticipates revising the hard copy of the handbook in 2022 due to some significant changes in the access laws.

Public Access Counselor Website

The Office of the Public Access Counselor maintains a website at www.in.gov/pac. The website contains formal advisory and informal opinions that have been issued since 1999. 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, including guidance for updated legislation.

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): 574

(2) Total number of formal complaints that have been withdrawn, rejected or lawsuit/postconviction filed:

Withdrawn: 69

Rejected²: 258

Lawsuit Filed: at least 10

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

(A) State agencies³: 259

(B) County agencies: 89

(C) City agencies: 94

(D) Town agencies: 22

(E) Township agencies: 25

(F) School corporations: 81

(G) Other local agencies⁴: 4

² Rejected complaints are those which lack grounds for a complaint or are otherwise unmeritorious.

³ The bulk of state agency filings are against the Indiana Department of Correction. A significant majority are dismissed for reasons stated in the narrative.

⁴ Conservation districts; regional boards, etc.

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

- (A) Public records: 396
- (B) Public meetings: 174
- (C) Both: 4

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

- (A) Public: 494
- (B) Media: 64
- (C) Government: 16

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

- (A) Opinions Issued: 135
- (B) Opinions Pending: 50