

# **PUBLIC RECORDS REQUEST GUIDE FOR OFFENDERS**

**Office of the Indiana Public Access Counselor  
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Public Access Counselor  
Indiana Government Center South W470  
402 West Washington Street  
Indianapolis, Indiana 46204

Toll Free: 800-228-6013  
Telephone: 317-234-0906  
Facsimile: 317-233-3091  
E-mail: [pac@opac.in.gov](mailto:pac@opac.in.gov)

[www.IN.gov/pac](http://www.IN.gov/pac)

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## Introduction

The Office of Public Access Counselor is pleased to provide you with a copy of this “Public Records Request Guide,” created to address the questions and issues offenders face when seeking access to records. The Indiana General Assembly created the Public Access Counselor’s office by statute in July 1999, after Governor Frank O’Bannon had created the office by executive order in 1998. The role of the office, among other things, is to prepare and distribute interpretive and educational materials such as this guide. This guide is available in PDF format on our website, [www.IN.gov/pac](http://www.IN.gov/pac).

In this guide, you will find information about requesting documents and filing a formal complaint with this office. It will provide guidelines on completing the complaint form, what the process is once the complaint is received, what to expect after the opinion is issued and helpful tips for requesting documents. It is the hope of the Office of the Public Access Counselor that this guide will answer questions which may arise as records are requested and complaints are filed.

This guide addresses many issues but is not intended to be a substitute for seeking advice from legal counsel. While this office cannot serve as legal counsel for any person, we are available to answer questions related to Indiana’s public access laws. Please feel free to contact this office using the contact information provided on the front of this guide if you have any questions or problems related to the public access statutes.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Britt', with a stylized flourish extending from the bottom left.

Luke Britt  
Indiana Public Access Counselor

## **Tips for requesting documents**

Many offenders file complaints with the Office of the Public Access Counselor because the public agency did not respond to their request. In most cases, the agency did not receive the document request. The following are tips for requesting records from a public agency. While the APRA does not require all these actions, they will help in obtaining the records requested.

### **Make sure you have the proper agency.**

An agency is not required to provide a record it does not maintain, nor is the agency required to forward the request to the appropriate agency. It is crucial to ensure the request is sent to the agency maintaining the record(s) you seek. Guessing which agency is responsible for maintaining the record generally will not yield the desired results.

### **Have the correct contact information.**

Make sure the mailing address is correct. An agency may require a request be submitted in writing or on a specific form (I.C. § 5-14-3-3(a)(2)), so having the correct contact information is necessary.

### **Send it to the right person.**

It may be helpful to determine to whom the request should be directed. Several public agencies have public information officers or attorneys who handle public records requests. Directing the request to this person will help ensure the timely response to a request.

### **Do not send record requests to the Public Access Counselor.**

The Public Access Counselor cannot find records or determine what agency may have a record. The Public Access Counselor cannot obtain the record for you from another agency.

### **Be particular about the records.**

A record request must identify the record(s) you are seeking with reasonable particularity. I.C. § 5-14-3-3(a)(1). This means the requestor must provide as much information about the record as possible so the agency can clearly identify what records are being requested. An agency may deny a request if it does not know what the request is asking.

### **Follow up on the request.**

Following up on a request is an excellent way to ensure the agency received and is aware of the request. The request can then be resubmitted if it was not previously received.

Following these simple tips will help ensure record requests are received and documents are provided. Additionally, utilizing the tips may assist in avoiding the formal complaint procedure.

## **Purpose for Filing a Formal Complaint**

The formal complaint process exists to allow any person to seek and receive interpretation by the Public Access Counselor of issues relating to the Open Door Law and the Access to Public Records Act. The process provides an alternative to litigation for retrieving requested records or settling an issue from a public meeting.

## **Common types of denial**

The formal complaint process first begins with an alleged denial and/or violation of the public access laws. Common types of denials are the following:

- ✓ Wrongly denied records
- ✓ Information incorrectly redacted
- ✓ No response from the agency
- ✓ Unreasonable amount of time for record production
- ✓ Excessive copy fees

### **Wrongly Denied Records**

If an agency denies a record request submitted in writing, it must provide the statute or federal law allowing it to deny the record. I.C. § 5-14-3-9(c)(2). If the agency fails to provide this or you feel wrongly denied, a formal complaint may be filed.

### **Information incorrectly redacted**

Another form of denial is when information is incorrectly redacted from the records requested. The agency must provide the state or federal law allowing it to redact certain information. If it does not provide the statute, a formal complaint may be filed.

### **No response from agency**

There are specific time restrictions for agencies to follow when **responding** to requests. An agency has seven (7) days after **receipt** to respond to a written request that is mailed, faxed or emailed. A response **does not** have to be a production of records. It can simply be an acknowledgement of receipt of the request. If an agency does not respond to a request within the allotted time frames, a formal complaint may be filed.

### **Unreasonable amount of time for record production**

There are no prescribed timeframes as to when the records must be produced by a public agency. It has been determined by the Public Access Counselor that records must be produced within a “reasonable amount of time” based on the facts and circumstances. If an agency takes an unreasonable amount of time to produce records, a formal complaint may be filed.

### **Excessive copy fees**

The Access to Public Records Act allows a public agency to set a fee schedule for copies of records. These fees cannot exceed the cost of the actual cost to the agency of copying the document and the fee must be uniform for all requesters. There are some statutes, such as those regarding the records maintained by county clerks and recorders, which allow a specific amount to be charge for certain documents. *Nothing in the APRA*

*allows a requester to receive records free of charge due to indigency.* If you believe a copy fee exceeds what the statute allows, a formal complaint may be filed.

## **Prior to filing a formal complaint**

The formal complaint process first begins with an alleged violation of either the Access to Public Records Act or the Open Door Law. Once this occurs, several details must be considered prior to filing the complaint:

- ✓ Do I have the correct complaint form?
- ✓ Do I have all the necessary information?
- ✓ Is my complaint an Access to Public Records Act or Open Door Law complaint?
- ✓ Is the complaint within the statutory time limits?

### **Do I have the correct complaint form?**

The Public Access Counselor prescribes a form on which formal complaints must be submitted. You must file a formal complaint using the formal complaint form. The Public Access Counselor will not accept a complaint in the form of a letter. You may request copies of this form by writing to the Office of the Public Access Counselor. This form provides space for all the information necessary for the Office of the Public Access Counselor to process the complaint and for the Public Access Counselor to issue an opinion.

### **Do I have all the necessary information?**

All spaces must be completed. You must describe the alleged denial of access in the space on the form. You can use additional sheets if necessary, and you can send copies of documentation such as the agency's written denial of the record. It is usually not helpful to explain why the record is needed or to complain about the agency's conduct because the opinion seldom concerns those matters. Any information provided to the Office of the Public Access Counselor is considered public record unless a specific statutory exemption applies.

### **Is my complaint an Access to Public Record Act or Open Door Law issue?**

The complaint must concern an issue which is related to the Access to Public Records Act, Open Door Law, or other public access statute. The Public Access Counselor will not accept complaints dealing with issues outside these areas. Also, the agency the complaint is against must be a public agency as defined by statute. The Public Access Counselor cannot accept complaints against private agencies, individuals or corporations.

### **Is the complaint within the statutory time limits?**

A formal complaint must be file within thirty (30) days of the denial of records or receiving information regarding a meeting held in secret or without notice. I.C. § 5-14-5-7(a). Complaints filed beyond thirty (30) days are untimely and will be returned.

## **Why Complaints are rejected or returned**

When a complainant fails to provide all the necessary information or follow the previously addressed guidelines, the complaint may be returned for more information or rejected because the complaint does not state a matter subject to the opinion of the Public Access Counselor.

### **Rejected Complaints**

Reasons complaints are rejected include the following:

- ✓ Untimely
- ✓ Not a public agency
- ✓ Not a valid complaint
- ✓ Duplicate or similar complaints
- ✓ Issue previously addressed
- ✓ Unsigned and undated complaints

#### **Untimely**

A complaint is considered untimely if it is filed more than thirty (30) days after the denial occurred. I.C. § 5-14-5-7. The Public Access Counselor cannot accept untimely complaints.

#### **Not a public agency**

Because only public agencies are subject to the Access to Public Records Act, the Public Access Counselor cannot accept complaints against private corporations, individuals or non-profit organizations. An agency must fit the definition of a public agency in the Access to Public Records Act. I.C. § 5-14-3-2(1). Companies or corporations which provide services or conduct business with public agencies are not necessarily subjected to the Access to Public Records Act.

#### **Not a valid complaint**

The Public Access Counselor cannot accept complaints irrelevant to the Access to Public Records Act or the Open Door Law. The scope of the Office of the Public Access Counselor does not reach beyond public access laws. The office will not process complaints regarding treatment or alleged denial of food, medical care or other services provided by a correctional facility. Those complaints may be made to the Indiana Department of Correction Ombudsman Bureau. The Bureau's contact information is as follows:

Indiana Ombudsman Bureau  
402 W. Washington St., Room W479  
Indianapolis, IN 46204  
Tel: (317) 232-3055 Email: [Ombud@idoa.in.gov](mailto:Ombud@idoa.in.gov)

**Duplicate or similar complaints**

The Public Access Counselor will not accept duplicate complaints. Once the Public Access Counselor writes an opinion, the issue is closed. Duplicate complaints from the same complainant addressing the same issue will not be accepted.

**Issue previously addressed**

Many of the complaints submitted by offenders are similar to other complaints. The Public Access Counselor will not accept the complaint, but will respond by providing a copy of a previously written opinion.

**Unsigned and/or undated complaint forms**

The Public Access Counselor will not accept unsigned or undated complaint forms. Those forms will be returned to the offender for completion. Upon completion, the offender may return the form to the Office of the Public Access Counselor for processing. Additionally, in order to have your complaint processed by this office, the complaint must be made within thirty (30) days of the denial to access. I.C. § 5-14-5-7. A complaint filed beyond the thirty (30) day timeline will be rejected.

**Returned Complaints**

Occasionally complaints are filed which cannot be rejected but also cannot be accepted. These complaints are returned to the complainant for more information. The reasons complaints may be returned include the following:

- ✓ Improper form
- ✓ Insufficient information
- ✓ Narrative is unclear
- ✓ Request originally sent to wrong agency or address
- ✓ No actual denial has occurred/Not enough time has elapsed since the request

**Improper Form**

As indicated previously in this guide, the Public Access Counselor prescribes a form for submitting complaints. The Office will not accept complaints submitted without the form. Complaints must be filed on this form in order to provide the Counselor with all the necessary information.

**Insufficient information**

It is important for the complainant to provide all the information requested on the form. The complaint will be returned if the form is not completed in its entirety. The Office of the Public Access Counselor does not have the resources to research the contact information for every complaint it receives. It also is important the information is provided in the allotted spaces and not only in the narrative portion or on some separate form.

**Narrative is unclear**

On the complaint form, there is space to provide the Public Access Counselor with details of what occurred. Additional sheets may be used if necessary, and copies of



documentation like meeting notices or the agency's written denial of the record may be included with the complaint. Please keep the narrative as brief as possible. It is usually not helpful to explain why the record is needed or to complain about the agency's conduct. Simply providing documents does not fulfill the narrative requirement.

### **Request originally sent to wrong agency or address**

Once a complaint is received, if the Public Access Counselor believes the original request was sent to the wrong address or agency, the complaint will be returned. The complainant will be asked to resubmit the request to the proper agency and/or address. If there is still no response to the request or a denial still occurs, the complainant may resubmit the complaint to the Office of the Public Access Counselor.

### **No actual denial has occurred**

A complaint will be returned if the complainant has not allowed a sufficient amount of time to pass for a denial to occur. A public agency has seven (7) days to respond to a request delivered by mail. I.C. § 5-14-3-9. A complaint may not be filed based on lack of response before this time limit has passed. *The prison mail system typically takes longer than normal mail, so an offender should allow the agency a couple extra days to respond before filing a complaint.*

### **Formal Complaint Process**

Once a complaint is filed and accepted, the Office of the Public Access Counselor notifies the public agency. The agency is given approximately two (2) weeks to respond.

I.C. § 5-14-5-9 requires the Public Access Counselor to issue an opinion in response to the complaint within thirty (30) days of receiving it. Due to the volume of complaints the office receives, the opinions are not typically issued earlier than the due date.

The thirty (30) day response time means the response will be issued by the thirtieth (30<sup>th</sup>) day and sent as soon as possible after issuance. This does not mean the complainant will receive the opinion on the thirtieth (30<sup>th</sup>) day. It may take a few days to receive the opinion if it is sent by mail, especially considering delivery through the prison mail system is generally slower than other mail.

For a quicker response time, a complainant may request priority status for the complaint and receive an opinion within seven (7) days rather than thirty (30) days. I.C. § 5-14-5-10. **Specific conditions must be met in order for priority status to be granted.** The Public Access Counselor Administrative Rule, 62 IAC 1-1-3, states the following conditions must be met for a complaint to receive priority status:

- (1) The complainant intends to file an action in court under I.C. § 5-14-1.5-7,
- (2) The complainant files a complaint about the conduct of a meeting or an executive session of a public agency which has not yet taken place, or
- (3) The complainant files a complaint concerning denial of access to public records and at least one of the public records requested was sought for use in proceedings of another public agency.

## **After the opinion is issued**

The “response” the Public Access Counselor provides is called a formal opinion. Once the opinion is issued, a copy is forwarded to the public agency. The opinion is also sent to the complainant, along with a copy of the response from the public agency.

All formal opinions are based on the facts presented to the Public Access Counselor. The Office does not have the resources to conduct an extensive investigation beyond the information provided by the public agency and the complainant.

The opinions issued by the Public Access Counselor are advisory only. The Public Access Counselor has no statutory authority to compel a public agency to produce records. Only a court may compel action. The only method for forcing compliance by a governmental agency is to file a lawsuit.

The complainant may send a letter to refute the opinion of the Public Access Counselor. However, the Public Access Counselor deems a matter closed upon the issuance of a formal opinion. Because the counselor issues only an opinion, there is no appeal process. Any information filed after the opinion is issued will be added to the complaint file for future reference or public inspection.

## **Issues relevant to Offenders**

The majority of complaints from offenders against public agencies regard the time taken to respond to a request, copy fees for documents, and the agency wrongly denying the request. Offenders also request action from the Public Access Counselor, including requests to obtain documents for them and enforce the Access to Public Records Act.

Public agencies have seven (7) days to respond to a written records request upon receiving the request, **not from the date the request was sent.** I.C. § 5-14-3-9. Because of the length of time it takes mail to travel through the prison mail system, the requestor should allow at least three (3) days for delivery time on each end of the request. In other words, it is best to wait at least ten (10) days before submitting a formal complaint. As stated previously, this response does not have to be a production of documents. It can simply be an acknowledgement of receipt of the request by the public agency.

Another issue raised by offenders is receiving no response from the public agency. The Office of the Public Access Counselor finds many offenders do not have the correct address for the public agency or even the appropriate public agency responsible for maintaining the requested record. A public agency does not have to respond to a request it does not receive. It is important to have all the correct contact information, so the requestor may obtain the records requested and avoid the formal complaint process.

The Access to Public Records Act allows for agencies to charge copy fees for records. Many county agencies pass ordinances which establish copy fees. State agencies are not allowed to charge more than \$.10 per copy. Some agencies, such as the county circuit court clerks and county recorders, have state laws requiring them to charge certain fees. Some offenders believe they should not be required to pay for copies of records because

they are indigent. *There is no provision in the APRA entitling an offender or anyone else to copies of public records at no charge.*

Many offenders file complaints when their request is simply denied. Agencies must withhold some records which are confidential by either state statute or federal law. The Access to Public Records Act also allows for some records to be withheld by the discretion of the agency.

Agencies can also deny a request if the request is for documents which are not maintained by the agency. While the agency can refer the requester to the correct agency, the agency is not required to do so by law. It is the duty of the requestor to find the correct agency in which to send the request.

Offenders often assume the Public Access Counselor can either grant a records request or compel an agency to provide documents. The Public Access Counselor can do neither. Records must be requested directly from the agency which maintains them. Requests sent to the Public Access Counselor will be responded to by a letter stating the request must be sent to the correct agency. As discussed previously, the Public Access Counselor has no statutory authority to compel production of documents. Only a court may do so.

### **Opinions in response to complaints filed by offenders**

The Public Access Counselor has previously addressed many issues that are frequently raised by offenders. Below are some examples of those opinions.

#### **Receiving copies free of charge**

In *Opinion of the Public Access Counselor 07-FC-172*, the complainant requested records from the Marion County Clerk. He included an affidavit of indigence with the request and believed he should receive the records without paying the copy fees. The Public Access Counselor stated there is nothing in the APRA allowing the requester to receive documents free of charge because he is indigent.

#### **Repeated requests**

In *Opinion of the Public Access Counselor 09-FC-181*, the complainant claimed he was being denied records. The public agency already provided him with all the records responsive to his request. The Public Access Counselor stated the public agency is not required to provide more than one (1) copy of a document.

#### **Names of employees of correctional facilities**

In *Opinion of the Public Access Counselor 08-FC-221*, the complainant requested the names of employees of the Wabash Valley Correctional Facility. The APRA provides a discretionary exception to disclosure for most personnel file information. While certain personnel file information must be disclosed, the exception provides that the subdivision requiring such disclosure “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.” I.C. § 5-14-3-4(b)(8).

### **No records responsive**

In *Opinion of the Public Access Counselor 09-FC-104*, the complainant claimed he was denied records. However, the public agency from which he requested records did not maintain the records. A person must request records from the agency which maintains them. If an agency does not have the records requested, it is not required to provide those records. That is why it is necessary for a requestor to know the correct agency from which to request records.

### **Agency did not receive request**

In *Opinion of the Public Access Counselor 09-FC-139*, the complainant did not receive a response from the agency from which he requested records. The agency never received the request. As stated earlier, an agency is not required to respond to a request it does not receive. Having the correct contact information is very important.

### **Correctional Facility procedure for requesting records**

In *Opinion of the Public Access Counselor 08-FC-11*, the complainant stated he did not receive a response. The public agency stated the request was not received because the complainant did not follow the correct procedure for requesting records. A request for inspection or copying must be, at the discretion of the agency, in writing on or in a form provided by the agency. I.C. § 5-14-3-3(a)(2).

## **Frequently Asked Questions**

### **Do I have to file a formal complaint to get assistance from the Public Access Counselor?**

No. The Public Access Counselor can advise you about your rights via the telephone or by e-mail ([www.in.gov/pac/contact](http://www.in.gov/pac/contact)). In addition, you can send a letter asking for an "informal inquiry response."

### **Can the Public Access Counselor compel production of records, fine a public official for withholding a record, or declare a board's action void?**

No. The Public Access Counselor's office is advisory only. There is no authority for fining a public official who violates the access laws. Under certain circumstances, a court could reverse a decision made in violation of the Open Door Law. The only method for forcing compliance by a governmental agency is to file a lawsuit.

### **Can the Public Access Counselor provide legal representation?**

No. The Public Access Counselor cannot provide legal representation to private citizens or public officials.

### **Is there a process to appeal an opinion of the Public Access Counselor?**

No. Because the Public Access Counselor cannot compel action or impose

any sanctions, the Public Access Counselor deems a matter closed after the issuance of a formal opinion. Because the counselor issues only an opinion, there is no appeal process. If there is evidence which may change the Public Access Counselor's opinion, he/she will review the information and may make necessary amendments to the opinion; however, this is a rare occurrence.

**How long do I have to file a formal complaint?**

Generally you must file a formal complaint within thirty (30) days of the denial of your right to attend a meeting or from the day you were denied access to a record. A complaint filed after this time limit will be deemed untimely and rejected. Complaints filed before any denial has occurred (i.e. filed before the seven (7) day time limit to respond has passed) will be returned. The complaint may be resubmitted once the seven (7) day time limit has passed.

**Can I be charged for a copy of a record?**

For a record from state agencies, the current fee allowed is \$.10 per page for 8 ½ by 11 or 8 1/2 by 14 inch sheets of paper. Other agencies may charge the actual cost of copying, which includes only the cost of the paper and the per-page cost for use of the equipment to reproduce the record. The agency cannot charge anything to allow you to inspect the record. Further, the agency cannot charge a fee to search for the record or any fee to examine or review a record to determine whether the record is disclosable. The fee must be uniform throughout the agency and uniform to all purchasers.