KEEPING GOVERNMENT TRANSPARENT:
A Citizens Guide to Indiana's
Open Door & Public Records Access Laws

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Prepared for Public Use by the

Legal Environmental Aid Foundation of Indiana, Inc. (LEAF)

Law Center for Indiana's Environment

The Legal Environmental Aid Foundation of Indiana, Inc. (LEAF) provides legal support to environmental activists and groups seeking to protect Indiana's natural heritage. Through legal advocacy, LEAF empowers Indiana's citizens with the tools they need to hold government and corporate polluters accountable.

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First Edition

Table of Contents

INTRODUCTION: Open Government and the Environment

Sustainable development and environmental protection starts with open government. When an informed public actively participates in the decision-making process, local governing bodies are forced to take a meaningful look at the type of growth and land use they are considering. With public oversight, governing bodies will feel pressure to take necessary time to review development and permitting proposals, consider the best interests of the impacted community, and avoid unnecessary environmental harm.

Unfortunately, public agencies have a strong incentive to limit informed public participation to avoid controversy, long delays and general headaches for both developers and officials. To limit public controversy, government agencies often take steps to make land use and permitting decisions "behind closed doors" and without public involvement, whether by issuing weak notices for public meetings, relying on closed sessions, or attempting to gather information outside of the official public process.

To address these negative incentives the General Assembly enacted Indiana's Open Door Law ("IODL") in 1977 and the Indiana Access to Public Records Act (IAPRA) in 1983. The basic principles of Indiana's Open Government laws are straight-forward: all government meetings must be open to the public unless specifically exempted by statute[1] and all persons are entitled to full and complete information regarding the affairs of government.[2] Seldom has our state legislature spoken such a clear a voice when it passed IAPRA and proclaimed that:

> [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.[3]

While the standards of Indiana's open government laws are clear, they can only serve their intended purpose if the public understands the laws' provisions and is committed to enforcing them. This Guide provides a clear look at the legal standards for government meetings and public records access and identifies classic agency violations. With these tools, communities can keep government decisions impacting the environment and quality of life in the public eye and with public input, on the path toward a sustainable future.

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[1] Indiana Code § 5-14-1.5-1 (2008). The reader is reminded that Indiana's Open Door Law and Access to Public Records Act do not apply to federal government agencies.
[2] I.C. § 5-14-3-1.
[3] *Id.*

I. INDIANA'S OPEN DOOR LAW

The Indiana Open Door Law (IODL) requires all public agencies and their governing bodies to hold all meetings in open session unless subject to one of the statute's exceptions. However, not all gatherings are "meetings" that are subject to the Open Door Law. The scope of the Open Door Law depends on a series of definitions and exceptions[4] that are often confused, leading to unknowing violations. Before you attend a local meeting, take time to understand these definitions and exceptions and keep your officials on task.

A. WHAT IS A PUBLIC AGENCY AND WHAT IS A GOVERNMENT BODY?

The Open Door Law applies only to public agencies and the agencies' government bodies. A **"public agency"** includes:

> [a]ny 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;
>
> 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;
>
> any entity which is subject to either: budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or audit by the state board of accounts that is required by statute, rule, or regulation;
>
> 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 medical staffs or the committees of any such staff;
>
> the Indiana gaming commission. . . including any department, division, or office of the commission; and
>
> the Indiana horse racing commission . . . including any department, division, or office of the commission.[5]

A **"governing body"** means "Governing body" means:

> two (2) or more individuals who are: a public agency that is a board, a commission, an authority, a council, a committee, a body, or other entity; and takes official action on public business; the board, commission, council, or other body of a public agency which takes official action upon public business; or 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.[6]

[4] I.C. § 5-14-1.5-2.
[5] *Id.*
[6] I.C. § 5-14-1.5-2

Whether an entity considers itself a public agency or government body is irrelevant. The Open Door Law focuses on what the body does and how it was created.

What is Not a Public Agency?

Perhaps the best way to identify a "public agency" is to understand what agencies are not considered public agencies. According to the IODL, the following are **NOT** public agencies:

A provider of goods, services, or other benefits that meets the following requirements:

The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements: the agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits; the amount of fees received by the entity under the agreement is not based upon or does not involve a consideration of the tax revenues or receipts of the state, county, or municipality; the amount of the fees are negotiated by the entity and the state, county, or municipality; the state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

The provider is not required by statute, rule, or regulation to be audited by the state board of accounts.[7]

What Public Agencies and Government Bodies Make Land Use Decisions?

Land use and development decisions will often involve a County, City or Town Council, Commission, Plan Commission, or Zoning Appeals Board. These are all consdiered public agencies and/or government bodies and their meetings must be fully open to the public as required by the IODL.

B. WHAT IS A PUBLIC MEETING?

A “public meeting” is defined as "a gathering of a majority of the governing body of a public agency for the purpose of **taking official action upon public business.**"[8] Although it may seem easy to identify a "public meeting," the line between meetings and informal gatherings in some cases is not clear. Indeed, the legal definition of a **public meeting does not include:**

Any social or chance gathering [not intended to avoid open door laws];

On-site inspections of any project, program; or facilities of applicants for incentives or assistance from the governing body;

Traveling to and attending meetings of organizations devoted to betterment of government;

A caucus;

[7]I.C. § 5-14-1.5-2.1
[8]I.C. § 5-14-1.5-2

> A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources;
>
> An orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action; or a gathering for the sole purpose of administering an oath of office to an individual."[9]

Its is important to note that **the name of the meeting is irrelevant** in determining whether it is a "public" meeting that must be open to the public. Indeed, the IODL considers a governing body to have committed a **violation** if:

> its members participate in a series of at least two (2) gatherings (including participation by telephone or other electronic means, excluding e-mail) of members wherein:
>
> one (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members and the other gatherings include at least two (2) members of the governing body;
>
> the sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body; all the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days; and
>
> the gatherings are held to take official action on public business.[10]

Therefore, if the numbers are present, then you need to decide whether the members were meeting to take "official action" on "public business." **"Official action"** means to "receive information; deliberate; make recommendations; establish policy; make decisions; or take final action."[11] **"Public business"** is "any function upon which the public agency is empowered or authorized to take official action."[12]

C. WHAT IS AN OPEN MEETING?

"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."[13] At an open meeting, **"secret ballot votes" may not be taken.** In addition, members of governing bodies who are attending "by telephone, computer, videoconferencing or any other electronic means of communication" **may not participate** in any final action taken at the meeting and **are not considered present** at the meeting unless expressly authorized by statute.[14]

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[9] I.C. § 5-14-1.5-2
[10] I.C. § 5-14-1.5-3.1
[11] I.C. § 5-14-1.5-2
[12] *Id.*
[13] I.C. § 5-14-1.5-3
[14] *Id.*

D. WHAT RECORDS MUST BE KEPT DURING A MEETING?

A governing body is required to post an agenda at the entrance of the meeting location, only **if an agenda is used**. The open door law **does not require a governing body to use an agenda**.[15] However, the IODL **does require** a governing body to record the following information in a **memoranda:**

The 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.[16]

The meeting memoranda must be made available **within a reasonable period of time** after the meeting for the purpose of informing the public of the governing body's proceedings and **the minutes, if any**, are to be open for public inspection and copying.[17]

While the IODL **does not** guarantee that an individual will have an opportunity to speak at a meeting, governing bodies often provide an opportunity for comments or discussion. Furthermore, **citizens may record meetings** with the use of videotape, tape recorders, handwritten notes, etc. However, the use of recording equipment may be subject to restrictions.

E. WHAT TYPE OF NOTICE IS REQUIRED?

Public notice of the **date**, **time**, and **place** of any meetings, executive sessions, or of any rescheduled or reconvened meetings, shall be given at **least forty-eight (48) hours** (excluding Saturdays, Sundays, and legal holidays) before the meeting.[18]

Proper public notice is provided when the governing body posts 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 delivers notice to all news media who have submitted a written request for notice to the public agency.

Failure to provide proper notice is a **violation** of the Open Door Law.

(Note: other statutes often governing the substance of public meetings may require additional notice.)

F. HOW DOES THE OPEN DOOR LAW RELATE TO LAND USE DECISIONS?

Open, public meetings are key to any successful challenge to a governing body's land use decision. Residents must be able to voice their concerns to their representatives and government officials regarding the

[15] I.C. § 5-14-1.5-4
[16] *Id.*
[17] *Id.*
[18] I.C. § 5-14-1.5-5

environmental, economic, community and public health impacts of the considered development proposal **before** a decision has been made. Unfortunately, the process of approving large commercial and residential developments often involves closed sessions, disguised as **"executive sessions,"** rapid decisions and other actions that prevent public involvement. In certain cases, these actions cross the line and violate the Open Door Law.

Specifically, community members should watch for the following Open Door Law issue:

* **Development Agreements and the Improper Use of Executive Sessions for "Competitive and/or Bargaining Reasons."**[19]

Commercial and residential developers often start the negotiating process long before the impacted community knows that the idea for development in their midst even exists. In such a case, community members do not hear about a proposed project until the plans are ready and the city or county has expressed its intent to annex the land, rezone the property or approve a conditional use permit in a Developers Agreement, Memorandum of Understanding, or a Pre-Annexation Agreement - agreements that are generally created in a closed, executive session then released to the public after such an agreement has been reached between the developer and the city or county. Consequently, public input is received after the governmental body has already committed to a project and formed its opinion. By the time impacted community members find out, they are contending with what appears to be a done deal.

Plan Commissions and Zoning Boards often cite the Open Door Law exception for conducting public business with competitive or bargaining implications as a basis for not allowing public participation. While this practice has not been challenged in Indiana, other state courts interpreting similar state open door law provisions have held that this exception to the requirement for open meetings is often stretched far from the narrow interpretation it deserves.[20] Specifically, these other state court decisions rejected many of the following classic justifications used by local government bodies in Indiana to hold executive sessions outside the public purview:

1. the applicant requested confidentiality regarding its plans;

2. the City/County needed to protect negotiations from other cities/counties that may be competing for the same development;

3. negotiations involved a private landowner and a private land deal;

4. the public will have a chance to comment after negotiations are complete.

Like the open door law provisions challenged in those other states, Indiana's Open Door Law expressly provides that executive sessions are reserved for situations when competitive and/or bargaining reasons *require* a closed, executive session for *discussion of strategy.*[21] Those other state courts interpreted this language to mean that

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[19]I.C. § 5-14-1.5-6.1 (Open Door Law provision allowing for closed "executive sessions" for "strategy discussions . . . necessary for competitive or bargaining reasons").

[20]*State ex rel. Citizens for Responsible Development v. City of Milton,* 300 Wis.2d 649, 731 N.W.2d 640 (Wis.App. 2007)*; Berlickij v. Town of Castleton,* 248 F. Supp.2d 335 (D.Vt. 2003); *Oshry v. Zoning Bd. of Appeals of Inc. Village of Lawrence,* 276 A.D.2d 491, 713 N.Y.S.2d 564, (N.Y.A.D. 2 Dept. 2000) ; *Stewart v. Planning Bd. of Tp. of Manalapan,* 334 N.J.Super. 123, 756 A.2d 1082 (N.J.Super.L.1999).

[21]I.C. § 5-14-1.5-6.1

government bodies may meet in executive session for the limited purpose of discussing negotiation strategy **but must conduct all negotiations with applicants at an open public meeting.**

F. WHAT SHOULD I DO IF I FIND A VIOLATION?

If you discover that a public agency or governing body violated any provision of the Open Door Law, you may file a lawsuit in a court of competent jurisdiction against the agency or governing body for a declaratory judgment rendering the at issue policy decision or final action void, and for injunctive relief to enjoin the continued, threatened, or future violations of the Open Door Law.[22] You can bring such a suit without having to show that you suffered any damages different from those suffered by the general public.

However, there are express **time limits** for bringing actions under the IODL. Specifically, you must bring such an action:

> 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 with respect to any other subject matter, **within thirty (30) days** of either the date of the act or failure to act complained of;
>
> or the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred, whichever is later.[23]

If you hire an attorney and win, you are entitled to recover reasonable attorney's fees, court costs, and other reasonable litigation expenses **as long as you first seek the advice of the Public Access Counselor prior to filing the court action.** The only exception to this requirement is where filing the action is necessary to prevent a violation of the Open Door Law.[24]

The **Office of the Public Access Counselor (PAC)** provides another avenue for pursuing remedies for non-compliance and provides advice and information for citizens and public officials. Therefore, before pursuing legal action, you must contact the Office of the Public Access Counselor at:

> Indiana Government Center South, 402 West Washington Street, Room W460
> Indianapolis, Indiana 46204; Toll Free: 800-228-6013; Telephone: 317-234-0906
> Facsimile: 317-233-3091

To file a formal complaint with the PAC, you must use the PAC's form complaint available through the PAC's website at http://www.in.gov/pac/. Please note that filing a formal complaint with the Public Access Counselor **is not the same** as filing a court action to declare a final action or decision of a public agency void. Contact LEAF for further help in determining which course of action is appropriate.

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[22] I.C. § 5-14-1.5-7.

[23] *Id.* **(But Note:**"if the challenged policy, decision, or final action **is recorded in the memoranda or minutes, . . . 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."**)

[24] *Id*.

II. THE INDIANA ACCESS TO PUBLIC RECORDS ACT

The Indiana Access to Public Records Act (IAPRA) sets forth the public's right to view and/or copy state governmental records. In passing IAPRA, the General Assembly intended liberal construction of the statute placing the "burden of proof for nondisclosure of a public record on the public agency" denying access to the record and not on the person requesting the record.[25]

Unless a record falls within a specific statutory exemption, the public has the right to inspect or copy any record held by the government. The following sections provide information on the type of records that can be requested, the time line and procedure for requesting and receiving records, and the important role a public records request can have in shaping land-use and environmental permitting decisions in Indiana.

A. WHAT IS A PUBLIC RECORD?

The IAPRA allows "any person" to "inspect and copy the *public records* of any *public agency* during the regular business hours of the agency."[26] But what exactly is a "public record"?

A "public record" includes:

> 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.[27]

A "public record" does not include:

* records declared confidential by state statute;
* records declared confidential by a public agency rule under specific statutory authority to classify public records as confidential;
* records required to be kept confidential by federal law;
* records containing trade secrets;
* confidential financial information obtained from a person, not including information filed with or received by a public agency pursuant to state statute;
* information concerning research, including actual research documents, conducted under the auspices of a state educational institution;
* grade transcripts and license examination scores obtained as part of a licensure process;

[25] I.C. § 5-14-3-1.
[26] I.C. § 5-14-3-3
[27] I.C. § 5-14-3-2

* records declared confidential by the Indiana Supreme Court;

* patient medical records and charts created by a provider, unless the patient gives written consent;

* application information declared confidential by the board of the Indiana economic development corporation;

* a photograph, a video recording, or an audio recording of an autopsy;

* a Social Security number contained in the records of a public agency.[28]

In certain circumstances, IAPRA provides **public agency discretion** to withhold the following records from public access:

* Investigatory records of law enforcement agencies;

* 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;

* Test questions, scoring keys and examination data used in administering licensing examinations before the examination is given;

* Test scores if the person is identified by name and has not consented to the release of the scores;

* Certain records from public agencies relating to negotiations created while the negotiations are in process;

* Intra-agency or inter-agency advisory or deliberative materials that express opinions and are used for decision-making;

* Diaries, journals or other personal notes;

* Certain information contained in the files of public employees and applicants for public employment;

* Minutes or records of hospital staff meetings;

* Certain administrative or technical information that would jeopardize a record keeping or security system;

* Certain software owned by the public agency;

* Records specifically prepared for discussion in executive sessions;

* Work product of the legislative services agency;

[28]I.C. § 5-14-3-4.

* Work product of the general assembly and its staff;

* The identity of a donor of a gift made to a public agency if the donor or the donor's family requests non-disclosure;

* Certain information identifying library patrons or material deposited with the library or archives;

* The identity of a person contacting the Bureau of Motor Vehicles regarding the ability of a driver to operate a motor vehicle safely;

* Information including school safety and security measures and school emergency preparedness plans;

* Information disclosure of which would threaten public safety by exposing a vulnerability to a terrorist attack; and

* Personal information concerning a customer of a municipally owned utility, including the customer's telephone number, address, and Social Security number.[29]

It is important to keep in mind that generally content, not "form or characteristics" determines whether a document is a public record.[30] Moreover, while it may seem obvious, the record must exist. Records custodians are not expected to create a record by compiling information from other records.[31] The requested information will often be given to you as it exists in the record archives of the agency, whether or not the applicable information is easily accessible within the document.

B. WHAT IS A PUBLIC AGENCY?

According to IAPRA, any person may obtain public records from a **"public agency"** defined as:

* 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;

* Any 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;

* Any political subdivision or 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;

* Any entity or office that is subject to budget review by either the department of local sgovernment finance or the governing body of a county, city, town, township, or school corporation; or an audit by the state board of accounts that is required by statute, rule, or regulation;

[29]I.C. § 5-14-3-4.
[30]I.C. § 5-14-3-2.
[31]I.C. § 5-14-3-3.

* Any building corporation of a political subdivision 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 medical staffs or the committees of any such staff;

* 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, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission;

* Any license branch staffed by employees of the bureau of motor vehicles commission;

* The state lottery commission;

* The Indiana gaming commission;

* The Indiana horse racing commission.

C. HOW DO I REQUEST PUBLIC RECORDS?

Generally, there is no particular form that must be used to make a public records request unless the public agency requires that a particular form be used.[32] Requests must identify the requested documents "with reasonable particularity"[33] and can be submitted by mail, in person, by facsimile or other means that ensures its arrival. Furthermore, a public agency may not deny a request simply because a requester refuses to state the purpose of the request.[34]

Written versus Oral Requests:

Requests may be oral or written. However, **a written request is better** in that it will prevent confusion during the process and will allow the requester to refer to specific portions of the request if the agency's response does not meet the original request.

More importantly, **written requests require a written response from the agency** thereby documenting the agency's thought process. Indeed, if a public agency denies a written request for records, **the agency's denial must in writing** and "**the denial must include** a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial."[35] For guidance in drafting your own records request, please refer to the attached Sample Public Records Request.

[32] I.C. § 5-14-3-3
[33] *Id.*
[34] *Id.*
[35] I.C. § 5-14-3-9

D. HOW LONG DOES IT TAKE FOR THE AGENCY TO RESPOND?

The IAPRA requires the public agency to respond **within specified time limits** which vary depending on whether you make your records request in person at the public agency's office, by telephone, or in writing by mail or facsimile. An agency's failure to respond to your request within these specified time periods serves as a formal "denial of disclosure" which you may challenge in court. (See "Violations and Enforcement of IAPRA" section below)

Specifically, a public records request made **in person** at the office of the agency **or by telephone** are considered **denied** by the agency if**:**

> **the person designated by the agency with authority to make such decisions refuses** to permit inspection and copying of the requested records (i.e. immediately upon refusal); or
>
> after **twenty-four (24) hours** of any **employee of the public agency refusing** to permit inspection and copying of the requested records

whichever occurs first.

A public records request made by **mail or by facsimile** is denied if the agency does not respond to the **request within seven (7) days** of receiving the request.[36]

Keep in mind that a decision to disclose a record is based on the record's content, not its format.[37] Records custodians should not view the document as a whole, but rather the content as separate pieces of information. Therefore, the records custodian cannot deny access to a record just because part is non-disclosable and may not refuse to redact non-disclosable portions of a record just because the agency believes that redacting the information is burdensome.

E. HOW MUCH SHOULD IT COST TO OBTAIN PUBLIC RECORDS?

Government agencies **may not charge any fee** to inspect, search for, examine, or review a record **to determine whether the record may be disclosed**.[38] Copying and certification fees vary for "state agencies" (i.e. executive/administrative agencies not judicial or legislative departments) versus "public agencies that are not a state agencies."[39]

For a **"state agency,"** the **fee may not exceed the average cost** of copying records set by the Indiana Department of Administration or ten cents **($0.10) per page**, whichever is greater**.** Also, a **"reasonable fee"** may be charged for copying nonstandard-sized documents.[40]

A **"public agency that is not a state agency"** may not charge more than five dollars **($5) per document** for document **certification** and no more than ten cents **($0.10) per page for black and white copies** and twenty-five cents **($0.25) per page for color copies**; or the "**actual cost"** to the agency for copying the

[36] I.C. § 5-14-3-9
[37] I.C. § 5-14-3-2
[38] I.C. § 5-14-3-8
[39] *Id.*
[40] *Id.*

document.**"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.

NOTE: Under state environmental law, the **Indiana Department of Environmental Management (IDEM)** or any environmental board **may reduce or waive copying fees** if IDEM or the board determines that the fee reduction or waiver **is in the public interest.**[41]

F. VIOLATIONS AND ENFORCEMENT OF IAPRA

If you suspect that a request has been unlawfully denied or your access delayed or unreasonably restricted, you have legal recourse through the Indiana Public Access Counselor and/or by filing a lawsuit to compel disclosure. This section describes the procedure generally.

The Indiana Public Access Counselor:

The Public Access Counselor trains public agencies to adhere to the public access laws and counsels citizens about their rights under the public access laws. The Counselor also prepares and distributes educational materials, responds to informal inquiries about public access laws, issues advisory opinions regarding public access laws and makes recommendations to the General Assembly about potential improvements for public access laws.[42] Any member of the public may contact the counselor to make an informal inquiry or file a formal complaint.

If you are denied access to public records, **you should first contact the Public Access Counselor** to either file a formal complaint **or** make an informal inquiry.

A **formal complaint** must be filed within **30 days** of the denial. The counselor will send your complaint to the public agency that issued the denial and allows the agency to respond to the complaint. The counselor will then have 30 days to respond to you with an **advisory opinion**, which will provide advice about future actions you should take, if any.

If you do not wish to make a formal complaint, you may still contact the counselor to make an **informal inquiry** regarding your denial. The counselor will answer informal questions about denials, and may even contact the public agency that issued the denial to resolve any issues.

Filing a lawsuit:

After contacting the counselor about the denial, you may file a lawsuit in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit inspection of the requested public record.[43] A court is required to expedite the hearing on such an action.[44] If you prevail, the court may award attorney's fees, court costs, and other reasonable expenses, **only if** you first consulted with the public access counselor and received an informal inquiry response or an advisory opinion.

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[41]I.C. § 13-14-11-2

[42]I.C. § 5-14-4-10
[43]I.C. § 5-14-3-9
[44]*Id.*

While this section describes generally the procedure for filing an action, you should contact LEAF or another law office to discuss your full rights and remedies.

G. HOW DOES THE IAPRA IMPACT LAND USE DECISIONS?

Land use decisions involve proposed plans, developer agreements, permit applications, letters, emails and more. Copies of these records are vital if you want to stay informed and involved in the decision-making process. In addition, every time a member of the public requests copies of correspondence between the members of a plan commission or city council and developers, the decision-making process becomes more transparent. Regardless of whether you are promoting or contesting a development project, let the governmental body know that you are watching. Access to key information and open discussion is the key to a fair and informed process.

CONCLUSION

Although not always apparent, public agencies and local governments work for you. As a member of the public, you have the right and, arguably, the obligation to hold your government officials accountable for their actions and to make sure they are doing the job you elected them to do.

Members of plan commissions and zoning boards are elected/appointed to make land use decisions and enact/enforce zoning laws. When doing their job, they have a legal duty to protect the public, health, safety and welfare. Likewise, IDEM and other state environmental regulatory agencies have a duty to properly implement and enforce federal and state environmental statutes and regulations for protection of our natural resources.

If all land use, environmental permitting and enforcement decisions are made after an open and honest debate with an informed public, governing bodies and agencies will feel pressure to consider the best interests of the impacted community and avoid unnecessary environmental harm. To make sure this happens, understand and use Indiana's Open Door and Public Records Access Laws as tools to ensure your government officials and state agencies are making informed, objective and responsible decisions based on thorough, educated and open analysis.

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