

# Commissioner's Handbook

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2025

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Bloomington Housing Authority  
Summit Hill Community Development Corporation



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# Board of Commissioners Orientation Checklist

- ☐ Orientation meeting with the Executive Director
- ☐ Complete city board application <https://bloomington.in.gov/onboard/>
- ☐ Review the BHA Commissioners Handbook
- ☐ Review our website at <https://bhaindiana.net/>
- ☐ Explore the HUD Lead the Way training at <https://www.hudexchange.info/trainings/courses/lead-the-way-pha-governance-and-financial-management/>
- ☐ Familiarize yourself with the NAHRO (National Association of Housing & Redevelopment Officials) training and advocacy resources at <https://www.nahro.org/advocacy/>
- ☐ Request a BHA and SHCDC property tour
- ☐ Read the NAHRO Handbook for Commissioners, 3rd Edition (a copy will be provided)

# The Job of the Commissioner

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*“Again, it cannot be emphasized too strongly that the role of the board is that of policy maker. It is the executive director who is responsible for the authority’s administration.”*

*--- A Commissioner*

Commissioners serve as the governing officers of a public corporation that functions as a developer and landlord of local low-income housing programs. Among their principal responsibilities are:

- Providing leadership and advocating for public housing;
- Setting policies governing the operations of the public housing authority and charting the direction of current and future programs;
- Ensuring, through independent reviews and audits, that BHA operates within the law according to HUD regulations, taking into consideration the economy and efficiency of operations;
- Hiring a qualified Executive Director to manage the day-to-day operations;
- Obtaining and managing monies to support the authority;
- Adopting operating budgets; and
- Establishing policies to prevent fraud, abuse, mismanagement and discrimination and ensuring that the BHA acts legally and with integrity in its daily operations.

# Board of Commissioners Directory

Name & Address	Appointment Start Date	Appointment End Date	Phone/Fax	Email Address
<b>Elaine Amerson, Chair</b>	3/9/2018	1/31/25	847-454-6428	elaine.amerson@gmail.com
<b>Sherry Clay, Vice Chair</b>	1/31/2020	1/31/24	812-727-6274	raven51516@yahoo.com
<b>Jerry Cravens</b>	2/16/2023	1/31/27	812-606-4547	jcravens@ocsbank.com
<b>Tracee Lutes</b>	5/24/2022	1/31/26	812-322-2650	tracee@traceelutes.com
<b>Nordia McNish</b>	7/7/2022	1/31/26	812-581-6216	mcnish@alumni.iu.edu
<b>Mary Morgan</b>	5/24/2022	1/31/26	734-645-5368	mary@monroeunitedway.org
<b>Susan P. Wanzer</b>	2/1/2019	1/31/27	812-929-2408	susanpwanzer@gmail.com

## 2025 Board Meeting Dates

All regular meetings are held on the fourth Thursday of each month at 8:30 a.m. in the Bloomington Housing Authority's Community Room at 1007 N. Summit St. Bloomington, IN 47404. For cancellations or changes, please refer to Public Notices in the Herald Times or our Facebook page the Monday prior to a scheduled meeting.

January 28th, 2025	July 22, 2025
February 25th, 2025	No meeting the month of August
March 25th, 2025	September 23, 2025
April 22nd, 2025	October 28, 2025
May 27th, 2025	November meets on December 2nd, 2025
June 24, 2025	December 23rd, 2025



## Bloomington Housing Authority

1007 N Summit St  
Bloomington, IN 47404

(812) 339-3491  
fax: (812) 339-7177

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Dear Commissioner,

On behalf of the Board of Commissioners, BHA staff and those we serve, it is my great pleasure to welcome you to our team. Your appointment as a Bloomington Housing Authority Commissioner is both an honor and a responsibility, and we are excited to have your expertise, perspective, and dedication contributing to our mission.

As a Commissioner, you will play a vital role in guiding our policies, ensuring fiscal responsibility, and upholding our commitment to providing safe, affordable, and quality housing. Your voice will help shape decisions that impact the lives of many individuals and families, and your leadership will be instrumental in advancing our vision for equitable housing opportunities.

We encourage you to familiarize yourself with our programs, strategic goals, and the regulations that guide our work. This handbook is intended to provide a broad introduction to the housing authority and the work that we do. Please take some time to review the handbook and resource materials and follow-up with me with any questions. Our staff and fellow Commissioners are here to support you as you settle into your role, and we look forward to your active participation in meetings, committees, and community engagement efforts.

Thank you for stepping forward to serve. Your commitment to public service will make a meaningful difference, and we are confident that your contributions will strengthen the Bloomington Housing Authority.

Warm regards,

Nathan Ferreira  
Executive Director

*Strengthening opportunity - beginning, but not ending, with housing.*

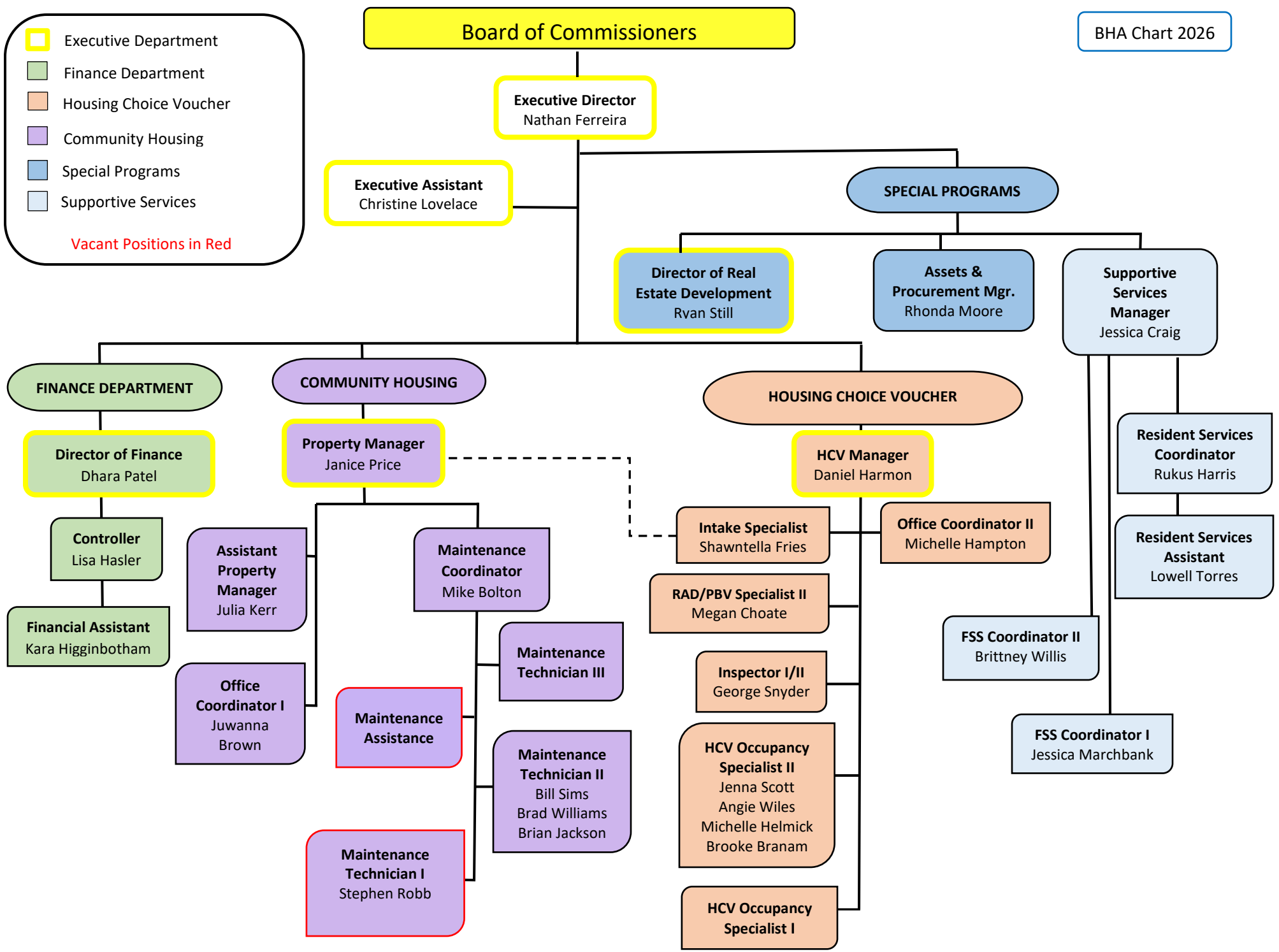
bhaindiana.net

EQUAL  
OPPORTUNITY  
EMPLOYER



Executive Department
 Finance Department
 Housing Choice Voucher
 Community Housing
 Special Programs
 Supportive Services

Vacant Positions in Red







## Bloomington Housing Authority Staff Directory-Direct Lines

### Housing Choice Voucher Program (HCVP)

Job Title	Client by Last Name Initial	Employee Name	Extension	Email Address	Direct Line
HCV Occupancy Specialist, VASH	A-Di	Angie Wiles	114	awiles@blha.net	812-335-2201
HCV Occupancy Specialist	Do-J	Brooke Branam	132	bbranam@blha.net	812-335-2203
HCV Occupancy Specialist,	K-Rh	Michelle Helmick	127	mhelmick@blha.net	812-335-2202
HCV Occupancy Specialist, VASH	Ri-Z	Jenna Scott	130	jscott@blha.net	812-335-2204
HCV Inspector		George Snyder	119	gsnyder@blha.net	812-335-2205
Intake Specialist		Shawntella Fries	133	sfries@blha.net	812-335-2206
PBV Specialist		Megan Choate	138	mchoate@blha.net	812-545-7057
Office Coordinator		Michelle Hampton	110	mhampton@blha.net	812-545-7037
HCV Director		Daniel Harmon	113	dharmon@blha.net	812-545-7058

### Supportive Services

Job Title	-	Employee Name	Extension	Email Address	Direct Line
Supportive Services Manager		Jessica Craig	117	jcraig@blha.net	812-545-7056
FSS Coordinator II		Brittney Willis	128	bwillis@blha.net	812-545-7038
FSS Coordinator I		Jessica Marchbank	120	jmarchbank@blha.net	c.812-269-4021
Resident Service Coordinator		Rukus Harris	139	rharris@blha.net	812-545-7039
Resident Service Assistant		Lowell Torres	140	ltorres@blha.net	812-545-7040
					c. 812-269-4017
					812-545-7042
					c. 812-269-4022

### RAD/Property Management

Job Title	-	Employee Name	Extension	Email Address	Direct Line
Property Manager		Janice Price	112	jprice@blha.net	812-545-7052
Assistant Property Manager		Julia Kerr	118	jkerr@blha.net	812-545-7051
Office Coordinator		Juwanna Brown	131	jbrown@blha.net	812-545-7048
Capital Assets Manager		Rhonda Moore	135	rmoore@blha.net	812-545-7053
Maintenance Coordinator		Mike Bolton	121	mbolton@blha.net	812-545-7049
Maintenance Assistant		TBD	134	TBD@blha.net	812-545-7061
Inventory Room		Inventory	136		812-545-7054

### Finance

Job Title	-	Employee Name	Extension	Email Address	Direct Line
Finance Assistant		Kara Ooley	137	kooley@blha.net	812-545-7055
Finance Controller		Lisa Hasler	125	lhasler@blha.net	812-545-7043
Director of Finance		Dhara Patel	129	dpatel@blha.net	812-545-7044

### Executive

Job Title	-	Employee Name	Extension	Email Address	Direct Line
Executive Director		Nathan Ferreira	124	nferreira@blha.net	812-545-7047
Director of Real Estate		Ryan Still	116	rstill@blha.net	812-545-7041
Executive Assistant		Christine Lovelace	123	clovelace@blha.net	812-545-7046

BHA Main Line  
812.339.3491

BHA Fax Lines  
812.339.7177  
812.335.2207

1007 N. Summit Street  
Bloomington, IN  
47404



# BOARD COMMISSIONER TRAINING

## Board Roles and Responsibilities



**2021**

Developed in 2021 using HUD's Lead the Way training, adapted by Econometrica, as well as other sources.

**ECONOMETRICA, INC.**

# Learning Objectives

After completing this module, you should be able to:

- Describe the role and functions of the Board.
- Discuss what Boards should know, including the history of the agency, mission, developments and property, regulations and policies, and more.
- Discuss the basics of public housing and Housing Choice Voucher (HCV) programs.
- Summarize the relationship between commissioners, public housing authority (PHA) staff, U.S. Department of Housing and Urban Development (HUD) and residents.
- Define the regulations for public housing conflicts of interest (COIs) and nepotism and the purpose of the Hatch Act.
- Understand unethical behavior in landlords and how to respond.
- Explain procedures for reporting litigation to HUD.
- Understand how Board meetings should operate.



# Today's Agenda



- Public Housing Basics
- Roles and Responsibilities
- Ethics
- Meeting Protocols
- Know Your PHA



# Public Housing Basics



# Statutes and Regulations

## U.S. Housing Act of 1937:

- Established permanent public housing funded by the federal government.
- Allows creation of municipal housing organizations/corporations (PHAs).
- Goal is to provide decent and affordable housing for all citizens.
- Created the Public and Indian Housing program.
- Now provides affordable housing to more than 2.9 million families.





# Public Housing Overview

- **Purpose:** Provide decent, safe, sanitary rental housing for low-income families.
- **Ownership:** Funded by federal government. Established by state law. PHA holds property title but prohibited from leasing, selling, or mortgaging property under Annual Contributions Contract (ACC) without HUD approval.
- **Financing:** By federal subsidy (operating, capital, and special purpose), rental income from tenants and grants.



# Public Housing Overview (Continued)

- **PILOT:** Payments in lieu of taxes to the city instead of taxes for local public services.
- **Rent:** Based on 30 percent of a family's monthly adjusted income.
- **Duration:** As long as compliant with lease and financially eligible for assistance.
- **Resident Services:** Programs that provide families with services and promote self-sufficiency.





# Housing Choice Voucher, Section 8 Program Basics

- **Purpose:** Assist very low-income families to afford decent, safe, and sanitary housing in the private market.
- **Eligibility:** Determined by total annual gross income adjusted for family size. Families at less than 50 percent of area median income are eligible, but most served are at 30 percent of median income or below.
- **Housing:** Private market owned that meets HUD standards.



# Housing Choice Voucher, Section 8 Program Basics (Continued)

- **Rent/Housing Subsidy:** PHA sets rent based on a local payment standard. The tenant pays 30 percent of their adjusted income toward the rent and HUD pays the remainder as a subsidy to the landlord.
- **Voucher Allocation:** Varies based on the amount of budget authority provided by HUD and the subsidy amount needed on each voucher.
- **Subsidy:** PHA calculates the maximum amount of housing assistance allowable based on Fair Market Rent and the PHA determined payment standard.



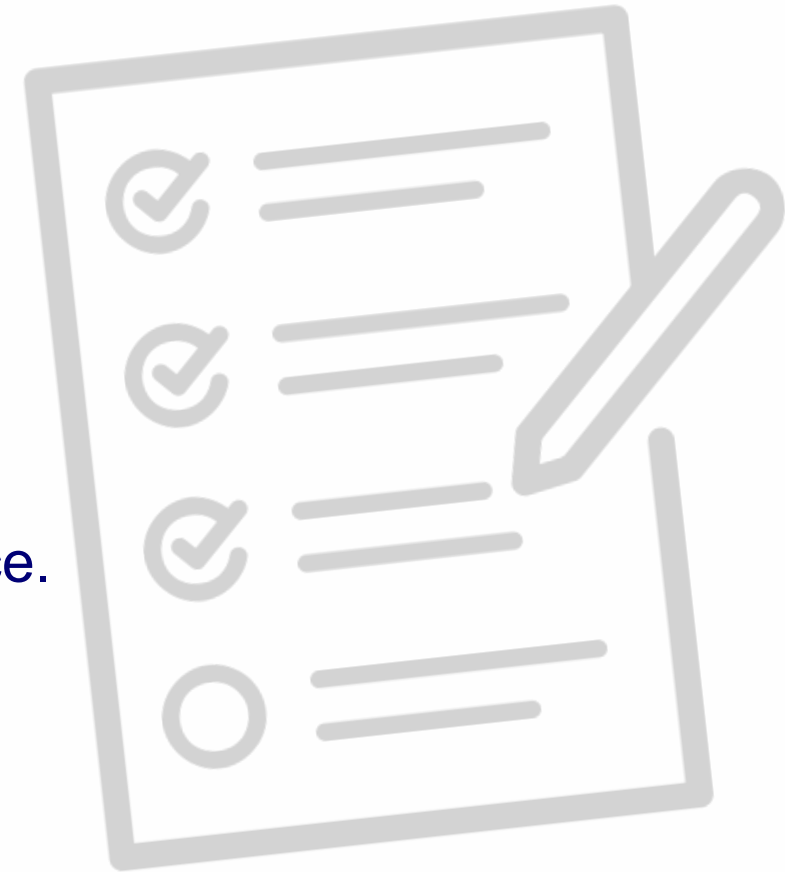
# Annual Contributions Contract (ACC)

- Mechanism for receiving HUD funding.
- The ACC provides the terms and conditions between the PHA and HUD.
- HUD and the PHA's authorized official enter a Consolidated ACC.



# PHA's Mission, Goals, and Plan

- Annual Plan and 5-Year Plan – PHA Plan.
- Documents:
  - Housing needs (waiting lists, including site-based).
  - Various PHA policies.
  - Homeownership programs.
  - Designated housing.
  - Project-based assistance.
  - Conversion of public housing to tenant-based assistance.
  - Capital improvement funding, including demolition and disposition, repositioning, and/or development.
- Must consult with Resident Advisory Board, public, and other stakeholders.
- Obtain Board approval.





# Roles and Responsibilities



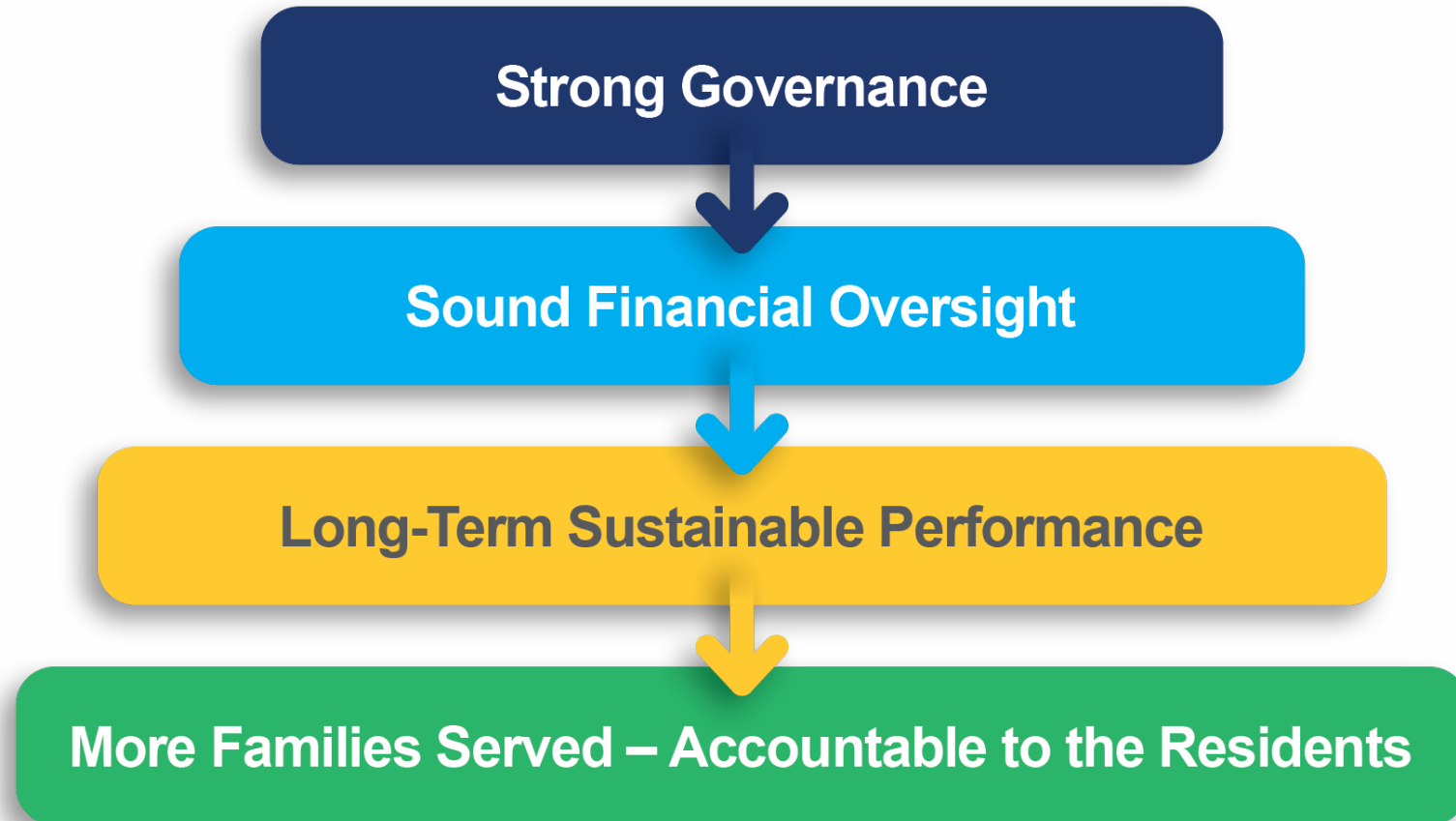
# Board Appointment

- Individual state laws dictate Board of Commissioners composition and size.
- Most appointed by the local elected official(s).
- Federal law dictates the Board must have at least one resident member.\*
  - Individuals who are residents of public housing are appointed to the Board through open elections.
  - Individuals bring unique skills and assets and perspective of living in public housing and the concerns of fellow residents.



\* This exception does not apply to PHAs of less than 300 units, Section 8 only PHAs and in other unique situations.

# Governance and Role of the Board





# Board Role Components

- Leadership
  - Set and champion the mission.
  - Provide strategic direction.
  - Ensure financial solvency.
  - Speak up regarding concerns.
- Oversight
  - Compliance: Statutory, regulatory, contractual.
  - Financial: Budgets, financial documents, corrective actions, audits, expenditures.
  - Performance: Quality of the housing, services, and adherence to policies.
- Board proceedings/Board conduct/minutes/resolutions

# How to Be an Effective Commissioner



# Commissioner Responsibilities

- Stay informed on issues facing the PHA.
- Support, monitor, and evaluate the Executive Director.
- Represent the PHA within the community.
- Dedicate sufficient time to the job; review the materials, get training, and read trade publications.
- Provide fiduciary oversight; keep up to date on the agency financials.
- Ensure that the PHA remains financially viable.
- Evaluate PHA progress and recommend corrective actions when needed.
- Inspect the sites periodically.
- Respect staff, Board, and tenant confidentiality.

# What Should You Know



**Roles and responsibilities of the Board and key staff.**



**Governing documents: laws, regulations, and ACC.**



**Agency history, mission, vision, values, strategic direction.**



**Financials.**



**Programs and basic program requirements.**



**Agency properties.**



**Meeting procedures and requirements.**

# Responsibilities: Question 1



All the following are part of your oversight responsibilities **except**:

- a. Knowing the guidelines and policies that guide your PHA.
- b. Oversight of PHA finances.
- c. Being aware of the pitfalls that a PHA and its Board can face.
- d. The day-to-day operations of the PHA.
- e. Following your ethical and legal responsibilities.

# Role of the Executive Staff, HUD, and Residents

Executive Director/ Managers	HUD
Manages PHA and staff.	Interprets congressional laws.
Oversees day-to-day operations.	Develops regulations.
Oversee PHA finances.	Resource for PHAs.
Executes Board-approved policies.	Distributes the funding to PHAs.
Ensures compliance with federal laws and guidance.	
Acts as a bridge between the Board, HUD, staff, residents, and the community.	
Responsible for all personnel functions.	
Maintains units and programs.	
Keeps commissioners informed.	

## Responsibilities: Question 2



Which stakeholder in public housing provides an important voice to guide Board oversight?

- a. Other commissioners.
- b. Executive staff.
- c. Residents.
- d. HUD Field Office, Regional Office, and Headquarters.
- e. All of the above.



# Commissioner Compensation

## **Annual Contributions Contract (ACC)**

Part A, Section 14 Part (B), states, “No funds of any project may be used to pay any compensation for the services of members of the Board of Commissioners.”



## Responsibilities: Question 3



### **True or False:**

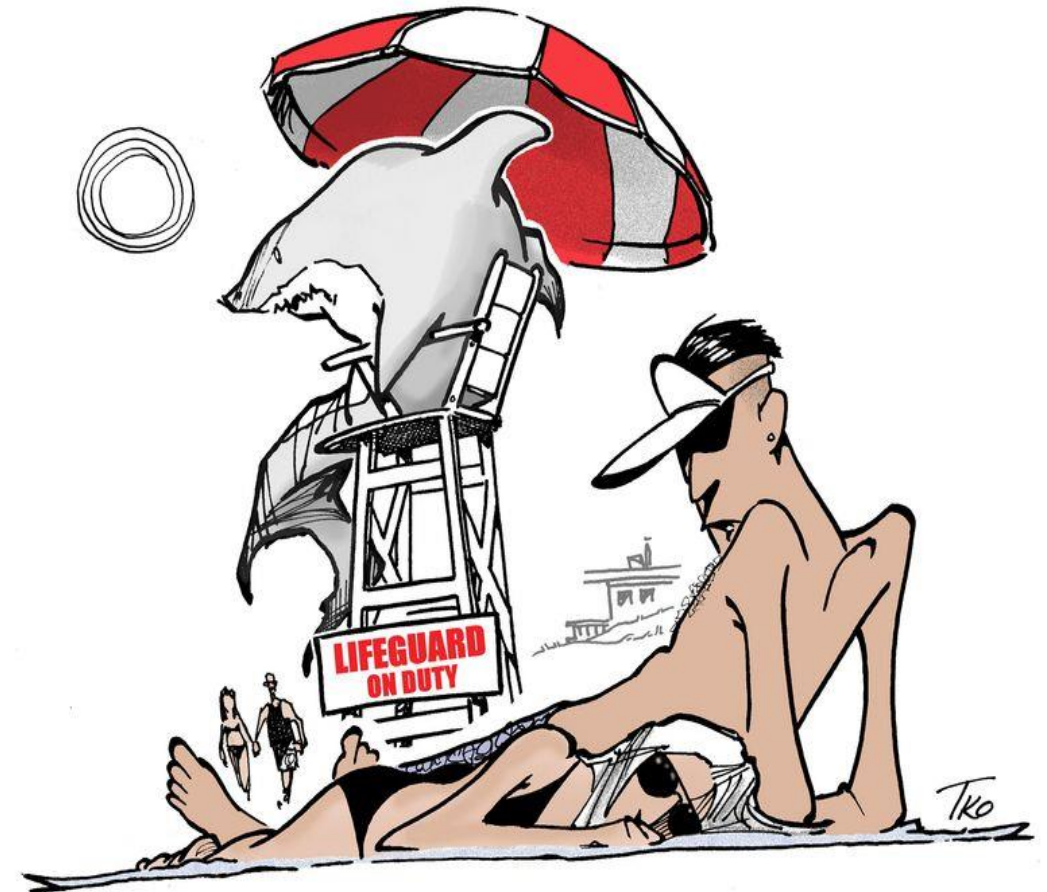
The Executive Director and commissioners should keep communication minimal, so that the commissioners do not get bombarded with day-to-day operational issues.

# Ethics



# Public Housing COIs

- Federal and state laws –  
Most strict rule applies.
  - NC Statute Chapter 157.7
- 2 CFR 200.317–326 –  
Procurement.
- ACC – HUD-53012A, 7/95.



*“So, I’m the only one who sees a  
conflict of interest here?”*

# Procurement COIs

- **PHA Employee or Representative (Board Member) may not participate in contract selection IF:**
  - They may be awarded the contract.
  - They have financial or other interest in the firm selected for award.
  - The firm awarded employs or is about to employ them.*7460.8 rev. 2/ and 2 CFR 200.318(c)*
- **PHA may not enter into contract if the following individuals have an interest in the firm during or 1 year after their PHA tenure:**
  - Present or former PHA staff or Board members.
  - Public officials, state or local legislators, or family associated with the PHA.
  - PHA employees or immediate family members who were involved in procurement.*ACC Section 19(A)(D)*

# Scenario 1: Harrisboro Case Study



- Harrisboro Housing Authority is well run by Executive Director Bill Watts and has solid performance scores.
- The PHA put out an RFP for parking lot sealing using Doty & Sons Engineering to oversee the contract. Doty & Sons is owned by Ben Doty.
- Jones Construction was selected for the contract. Arnold Jones owns Jones Construction.
- Ben Doty and Arnold Jones are stepbrothers.



# Scenario 1: Question 1



- Can Harrisboro Housing Authority award the contract?
- a. Yes, because although the owners of the two companies are stepbrothers, Harrisboro Housing Authority secured the bid by sealed competitive bid.
  - b. Yes, because Ben Doty and Arnold Jones are not immediate family members.
  - c. No, a COI exists because Ben Doty and Arnold Jones are immediate family members.
  - d. No, because Ben Doty will be administering funds being paid to Jones Construction.

*Note: This is a procurement of construction services allowed under 2 CFR 200.317 through 2 CFR 200.326.*



# Other COIs

Member of Congress	Resident Council (RC) Officers
No member of Congress can participate in ACC or benefit from it. <i>(ACC Section 20)</i>	RC Officers may not serve as contractors or employees if they are in policymaking or supervisory roles at PHA. <i>(24 CFR 964.145)</i>

Mixed Finance
<b>The PHA must certify in its mixed-finance proposal that it will:</b>
Use open and competitive process.
Ensure there is no COI in partner/owner selection.
Partners must comply with procurement and COI requirements.
<i>(24 CFR 905.604)</i>

# Ethics Question 1



Are there limits on the political activities you can be involved in as a commissioner?

- a. No, as long as you disclose your role on the Board to the Election Commission.
- b. Yes, there are limitations. For example, you cannot run in a local election where PHA-appointing officials may be elected.
- c. Yes, there are limitations. For example, you cannot run for office as the candidate of a political party.

# Lobbying

- No lobbying with PHA funds.
  - Payments for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress.
- Must certify that it will not lobby.
  - Use Standard Form LLL—Disclosure of Lobbying Activities.



# Public Housing Nepotism

- ACC Section 19(B).
- The PHA may not hire an employee if they are an immediate family member of:
  - A present or former member or officer of the Board.
  - An employee of the PHA who makes policy or influences decisions.
  - A public official who exercises functions or responsibilities with the PHA.



"We were very impressed by your resume.  
Especially the part where you mention that your grandfather is our CEO."

# Public Housing Nepotism (Continued)

- The prohibition applies during and for 1 year after the Board member's term.
- Board members must disclose family ties to the PHA and to HUD.



"We were very impressed by your resume.  
Especially the part where you mention that your grandfather is our CEO."

## Scenario 2: Family Conflict Scenario

- Anxious Annie, the City US HA Executive Director, is worried that if her brother wins election to the City Council, there will be an actual or perceived COI.
- The PHA has more than 200 units of public housing under ACC with HUD.



Should Annie be worried?

- a. Yes
- b. No

# HCV COI Regulations

## Procurement Restrictions

**None of the following people shall have direct or indirect interest in an HCV contract during their tenure or for 1 year thereafter, and PHA contractors/subcontractors may not enter into contract in connection HCV programs if any of the following people have interest:**

Present or former members/officers of PHA (except tenant).

Employees, contractors, subs, agents who are in decision-making role.

Public officials who have functions regarding program.

Members of Congress.

*24 CFR 982.161 Conflict of Interest, Section 8 HAP Contract, ACC Section 2.18 (Moderate Rehabilitation)*

Within the Section 8 HAP contract, there are many different HAP contracts and HAP COI provisions that govern PHAs that administer Project-Based Assistance.

# HCV COI Regulations (continued)

- COIs must be disclosed to the PHA and to HUD.
- COI prohibitions may be waived by the HCV office in HUD Headquarters on a case-by-case basis.





## Scenario 3: Harrisboro Case Study

Lucille Hanson, the owner of a large real estate business in town, also administers two apartment projects that participate in HUD's HCV program through the Harrisboro Housing Authority.

The mayor of Harrisboro just released a list of possible new commissioners, and Lucille, based on her real estate expertise, has been included on that list.



## Scenario 3: Question 1



Can Lucille Hanson accept the position as commissioner as offered by the mayor?

- a. Yes. There is no COI as long as she does not abuse her dual role as commissioner and administrator.
- b. Yes, because the commissioner does not directly oversee HCV program funding.
- c. No, a COI exists. She must resign as administrator or not accept the commissioner offer.

# HCV Integrity Issues

## Participant

- ✓ Nondisclosure of income
- ✓ Nondisclosure of family members
- ✓ Not using unit as prime residence

## PHA

- ✓ Ghost tenants
- ✓ Waiting list fraud
- ✓ Inspectors seeking/taking bribes

## Landlords

- ✓ Require side payments
- ✓ Misrepresent ownership
- ✓ Owner lives in assisted unit
- ✓ Owner receives HAP after tenant vacates
- ✓ Require tenant pay utilities included in rent
- ✓ Attempt to evict tenant for unpaid HAP
- ✓ Bribe or attempt to bribe PHA staff

# Hatch Act

- To prohibit employees in the executive branch of the federal government from engaging in partisan political activity.

## As a public housing Board member:

### YES

- Be a candidate in nonpartisan elections.
- Attend political meetings/conventions.
- Contribute money.
- Campaign in partisan elections.
- Hold office in political parties.

### NO

- Be a candidate in partisan elections.
- Use political influence to interfere in elections.
- Coerce political contributions from subordinates in support of political parties/candidates.

# Litigation Reporting

- All litigation, such as a settlement with a terminated employee, or suit against a contractor, among others, must be reported to HUD.
- HUD Regional Counsel must approve any legal action or contract with private legal counsel.



## Ethics Question 2



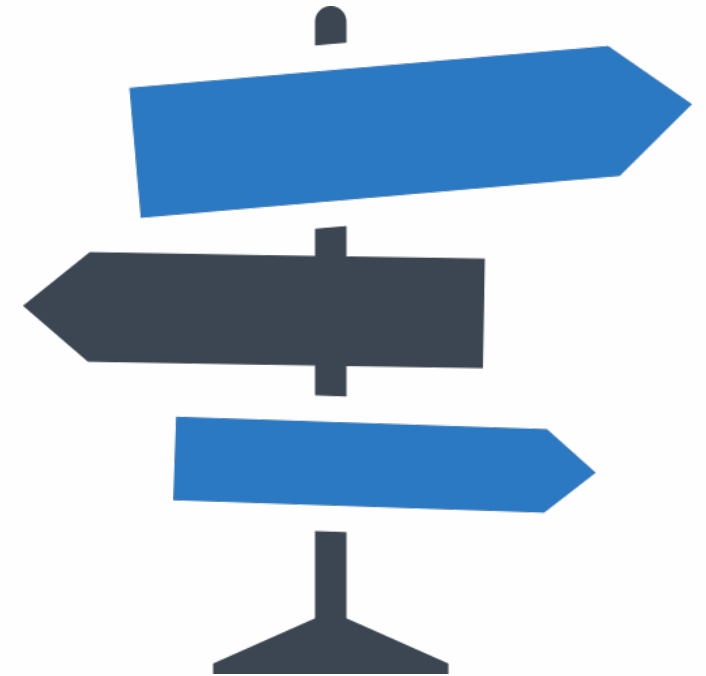
Which of the following are allowable in your position as a commissioner?

- a. Visit housing developments and get to know residents.
- b. Find a job for a friend.
- c. Influence the PHA to do something that financially benefits a family member.



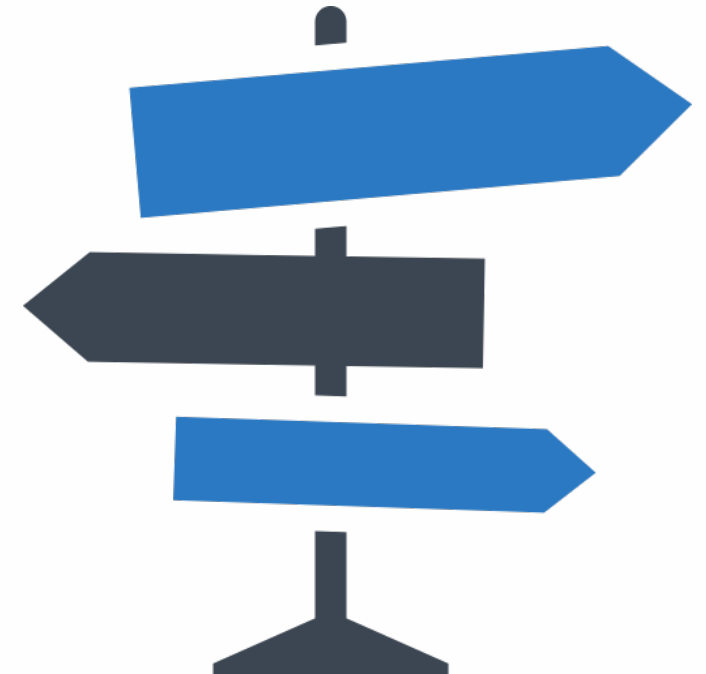
# Responding to Unethical Behavior

- What to do?
  - Have the PHA code of ethics as part of your bylaws and personnel policy and consult it when needed.
  - Speak with the PHA legal counsel.
  - DO NOT contact the suspected individual; allow an investigative body to investigate.
  - Observe strict confidentiality.



# Responding to Unethical Behavior (Continued)

- Possible Repercussions:
  - Follow the sanctions in the bylaws or personnel policy.
  - Some states have laws regarding public ethics standards.
  - Oral or written warnings or reprimands.
  - Suspension with or without pay for a period.
  - Termination of employment.
  - Dismissal from official/agency position.



## Ethics Question 3



What should you do as a commissioner if you think there might be a COI involving another commissioner, the Executive Director, or other staff?

- a. Confront the person of interest and ask for clarification about the suspected behavior – it might all be a big misunderstanding.
- b. Review the housing authority's bylaws and consult the PHA's legal counsel.
- c. Do a little investigating on your own to determine if your concerns have any validity.
- d. Contact local law enforcement so that they might conduct their own independent investigation.



# Meeting Protocols



# PHA Bylaws

- At a minimum, establish:
  - Definition of a quorum.
  - How often Board meets.
  - Location of meetings.
  - Meeting date and time.
  - Meeting attendance policy.
  - Regular agenda.



# PHA Bylaws (Continued)

- May also include:
  - Requirements for Board seat retention and attendance.
  - Participation on a committee or Board leadership.
  - Annual certification requirements for ethics, procurement, COIs, and others.
  - Training requirements.
  - Board selection and removal process.





# Who Makes Up the Board of Commissioners?

- Recommended skills/attributes of a commissioner:
  - Administration (financial, reporting, legal).
  - Outreach and marketing (speakers, media contacts).
  - Service provision (service experts, training contacts).
  - Avoid political entanglements.
- Recommended experience of a commissioner:
  - Past service to other agencies in the public, private, and nonprofit sectors.
  - Real estate, housing, education, workforce development, social service, building/development.
  - Known positive reputation.
  - Community connections.

# Board Meeting Basics

- Meetings must be conducted in a businesslike manner, using parliamentary procedures.
- Annual meetings must be held in accordance with the bylaws.
  - Officers are elected at the annual meeting.
- Board meetings are open to the public (i.e., Sunshine Law/Public Meetings Act).
- Notice of regular and special Board meetings must be provided in advance.
- All Board actions require a majority vote to pass.
- A quorum is required to hold regular, annual, and special meetings.
- Standardize agendas, minutes, and reporting; follow examples in the bylaws.
- Minutes must be approved and signed by the Board Chair and Secretary/Treasurer.

# Sample Agenda

- Call to order, roll call.
- Approval of the agenda.
- Approval of previous meeting minutes.
- Public comment.
- Report of the Secretary-Treasurer.
  - Financials.
  - Program performance.
  - Compliance: Corrective action plan status, audit findings, HUD reviews, other concerns.
  - Approval of financial statements/disbursements.
  - Correspondence.
- Reports of committees.
- Old business.
- New business.
  - Resolutions.
- Executive session (if necessary).
- Adjournment.



## Annually:

- Election of officers.
- Executive Director appraisal.

# Meeting Rules

- Follow Robert's Rules of Order and Public Meetings Act.
- Include meeting rules in bylaws.
- The Chair or Secretary-Treasurer run meetings and follow the agenda.
- Questions should be asked before an issue is voted on and approved. All votes should be recorded.
- Public comments should have time limits per speaker but allow for all those who wish to be heard have that opportunity.



# Board Packet

- PHA.
  - Copy of the agenda, prior meeting minutes, resolutions, and other materials to include financial, performance and compliance reports to be discussed at meeting.
  - Received at least several days prior to meeting.
  - Include written reports from the Executive Director and major departments, all of which can be data driven and brief.
- Board members.
  - Review materials prior to meeting.
  - Prepare questions.



# Meeting Minutes

- Minutes are the official record of Board meetings.
- The Board Secretary is responsible.
- Completed within 1 week of meeting so Board Chair can follow up on action items in a timely manner.
- Maintained in binders and ideally online.
- Chair and Secretary-Treasurer sign, date, and seal the minutes.





# Meeting Minutes (Continued)

- Minutes should follow the agenda and record:
  - Date and time.
  - Type of meeting.
  - Board members and PHA staff in attendance.
  - Votes for previous minute approval and business matters, including how each Board members votes (yea or nay).
  - Summary of discussions and other notable items, including questions from the Board and audience (not word-for-word transcription).
  - Public comments.



# Board Best Practices

- Provide a training and orientation to all new Board members prior to their first meeting.
- Provide each Board member with a notebook, which should include, at a minimum:
  - List and contact information for all Board members and PHA staff.
  - Board bylaws.
  - PHA ACCs.
  - Current PHA operating budget, Financial Data Schedule, and audit report.
  - Current PHA Plan and Capital Fund Plan/budget.
  - All current PHA policies (i.e., Procurement, Admission and Continued Occupancy Policy (ACOP), Administrative Plan, Personnel, Financial Management).
  - PHA lease.
  - Latest PHAS, Section 8 Management Assessment Program (SEMAP), and Real Estate Assessment Center (REAC) scores.
  - Executive Director position description and performance evaluation form.
  - Last several Board packets.
- Ethics materials, a HUD acronym list, any management plans, or prior Board training is also helpful.

# Executive Directors and Boards Working Together





# Know Your PHA



# Key Resources

- Admission & Continued Occupancy Policy (ACOP).
- Section 8 HCV Administrative Plan.
- PHA Plan (Annual and 5-year).
- Capital Fund Plan (Annual and 5-year).
- PHA bylaws and code of ethics.
- Other policies:
  - Maintenance
  - Personnel.
  - Procurement.
  - Travel.
  - Vehicle.
  - Capitalization.
  - Drug-free workplace.
  - Financial management and internal controls.
  - Investments.
  - Nonsmoking housing policy.



# How Do I know?

- List some of the major plans and projects that your PHA is undertaking.
- What are some of the upcoming projects?
- Have they been scheduled?
- Is the proper funding and budgeting in place to support these projects?
- Do you know why you have the designation that you have (“troubled,” “standard,” or “high performer”)?
- Do you know what to look for and how to make it better?



**Thank you**  
for your commitment and service to  
your PHA and its residents!





# **BY-LAWS OF THE HOUSING AUTHORITY OF THE CITY OF BLOOMINGTON, INDIANA**

## **ARTICLE I. THE AUTHORITY**

Section 1. Name of Authority. The name of the Authority shall be the "Housing Authority of the City of Bloomington, Indiana."

Section 2. Seal of Authority. The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and the year of its organization.

Section 3. Office of Authority. The offices of the Authority shall be at such place or places in the City of Bloomington, Indiana, as the Authority may from time to time designate by resolution.

## **ARTICLE II. DECLARATION OF POLICY**

Section 1. General Policy.

It shall be the settled policy of the Board of Commissioners to determine only matters of general policy to include, but not be limited to, procurement, personnel, financial, and property use; and to delegate the execution of such general policies and administrative duties to the Executive Director and the staff of the Authority. The Executive Director is charged with the day-to-day responsibility of operating the Authority and executing its policies.

Section 2. Procurement.

Any contract above \$50,000.00 shall require the signatures of the Chairperson and the Executive Director; any contract above \$50,000.00 shall be brought before the Board. In case of an emergency or urgent matter the Executive Director and Director Finance can make the decision to sign as long as it is disclosed to the Board and ratified at the next Board meeting.

## **ARTICLE III. COMMISSIONERS**

Section 1. Composition.

The Authority shall have seven (7) Commissioners, one (1) of which shall be a resident in good standing of the Authority. The Commissioners shall be appointed by the Mayor. No more than four of the Commissioners may be of the same political party. Appointments are for a term of four years.

Section 2. Powers and Responsibilities.

The Board of Commissioners shall have general power to control and manage the affairs of the Authority consistent with the Authority's personnel policies, and

these Bylaws. The Board of Commissioners shall also have the responsibility to provide oversight to ensure adherence of all pertinent legal and fiscal matters of the Authority including oversight of the Executive Director.

### Section 3. Election of Officers.

The Chairperson and the Vice-Chairperson shall be elected by a simple majority vote at the Annual Meeting of the Authority from among the Commissioners of the Board, and shall hold office for one year or until their successors are elected or qualified. The Chairperson and Vice Chairperson shall have at least 2 years of experience on the Board before being eligible for consideration of these positions. In the absence or incapacity of both the Chairperson and Vice-Chairperson, the other Commissioners of the Authority may elect an Acting Chairperson to serve during the period of absence or incapacity of the Chairperson and Vice-Chairperson.

### Section 4. Vacancies.

Should the offices of Chairperson or Vice-Chairperson become vacant, the Authority shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office. When the office of Secretary becomes vacant, the Authority shall appoint an interim successor until a new Executive Director is hired.

### Section 5. Duties – Housing Authority Chairperson.

The Chairperson shall be a Commissioner of the Authority and qualified and willing to accept responsibilities outlined in these Bylaws, as follows:

- a. Preside at all Meetings of the Authority. At such meetings, the Chairperson shall submit recommendations and information that may be considered proper concerning the business, affairs, and policies of the Authority.
- b. Except as otherwise authorized by resolution of the Authority, the Chairperson shall sign all contracts, deeds, and such other instruments made by the Authority.
- c. With the approval of the Board, appoint all Standing and Ad Hoc Committees and their members and Chairs.
- d. Present at each Annual Meeting of the Authority a report of the condition of the business and affairs of the Authority.
- e. Call Regular and Special Meetings of the Authority in accordance with these Bylaws.
- f. See that all books, reports, statements, and certificates required by law are properly kept, made and filed according to law. A list of these reports, statements and certificates shall be provided to the Chairperson at the beginning of each term in accordance with the deadlines and due dates required.

- g. Enforce these Bylaws and perform all duties incidental to the position of Chairperson as is required by law.
- h. Perform such other duties and functions as may from time to time be required by the By-Laws, rules and regulations of the Authority, or other authorization of the Authority.

#### Section 6. Duties—Housing Authority-Vice-Chairperson.

The Vice-Chairperson of the Housing Authority shall be a Commissioner of the Authority and qualified and willing to accept all the responsibilities of the position as outlined in these Bylaws. In the event of the absence or inability of the Chairperson to exercise the office of the Chairperson, the Vice- Chairperson of the Housing Authority shall become the Acting Chairperson of the Housing Authority's Board of Commissioners, with all the rights, privileges, and powers had the Vice- Chairperson been duly elected in accordance with these Bylaws. Acting Chairperson shall serve until such time as the Authority shall appoint a new Chairperson.

#### Section 7. Appointment and Duties—Secretary

The Secretary shall be the Executive Director of the Authority. The Board shall appoint a Secretary based on the Executive Director's job description. The Board shall determine the compensation and tenure based on qualifications and experience. The Board shall execute a contract with the Secretary. No Commissioner of the Authority shall be eligible for the Office of Secretary except on an interim basis as provided in these Bylaws. The Secretary shall have the following duties:

- a. The Secretary shall keep the record of the Authority, shall act as Secretary of the meetings of the Authority and record all votes, and shall keep minutes of the proceedings of the Authority, and shall perform all duties incident to the Secretary's office. The Secretary shall keep in safe custody, the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority.
- b. The Secretary shall provide general supervision over the Authority's operations and the administration of its operations and the administration of its business and affairs subject to the direction of the Authority. The Secretary shall give such bond for the faithful performance of assigned duties as the Authority may determine.
- c. The Secretary may act as the Treasurer of the Authority or may choose to create a separate position for the role of Treasurer. The Treasurer shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select, shall sign all orders and checks for the payment of money and shall pay out and disburse such moneys under

the direction of the Authority. Except as otherwise authorized by resolution of the Authority, all such orders and checks shall be countersigned by the Chairperson or Vice-Chairperson. The Treasurer shall keep regular books of accounts showing receipts and expenditures and shall render to the Authority at each regular meeting (or more often if requested), an account of all transactions and also of the financial condition of the Authority. The Treasurer shall give such bond for the faithful performance of assigned duties as the Authority may determine. The signature of the Secretary or Treasurer or designee shall be required on Purchase Orders and on Travel Orders for all travel, except documents from HUD, which specifically require other signatures.

- d. In the event of a vacancy in the Office of the Secretary, The Authority may designate from time to time an employee of the Authority to perform the duties of the Secretary on an interim basis.
- e. The Secretary shall appoint an Assistant Secretary who shall perform the duties of the Secretary in the temporary absence or incapacity of the Secretary, providing that if no Assistant Secretary has been appointed and the Secretary is temporarily absent or incapacitated, the Chairperson may designate an employee of the Authority to act on an interim basis.
- f. The Secretary shall comply with all professional training and development requirements within the specified time period.
- g. The Secretary shall have general supervision over the administration of the business and affairs of the Authority, subject to the direction of the Authority. The Executive Director shall be charged with the management of the programs of the Authority. The Secretary shall be charged with the development and management of the housing communities of the Authority.
- h. The Secretary shall sign all contracts, deeds, and such other instruments as may be authorized by resolution of the Authority.
- i. Assume an active role in Community leadership.
- j. Assume responsibility for strong quality management practices to include:
  - 1. The Authority,
  - 2. Staff, prospective residents (waiting list and admission-related concerns), and
  - 3. Residents.
- k. Carry out all duties and responsibilities and shall meet the standards as outlined by the Housing Authority's Executive Director's job description, resulting in the effective management and operation of the Housing Authority.
- l. Employ or discharge all employees of this Authority in accordance with the Personnel Policy and any other binding agreements.
- m. Implement all organizational policies as established by the Board of Commissioners.

- n. Report to the Board on Authority activities at every Board meeting and provide other reports as requested by the Board to include the preparation of an Annual Report to be presented to the Board of Commissioners.

#### Section 8. Employment of Executive Director.

##### Additional Personnel.

The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the Housing Authorities Act of the State of Indiana and all other laws of the State of Indiana applicable thereto. The selection and compensation of such personnel (including the Secretary) shall be determined by the Authority subject to the laws of the State of Indiana.

#### Section 9. Committees.

The only Standing Committee shall be the Executive Committee, which will consist of the Officers of the Authority. The Executive Committee may act for the Board between meetings. The Executive Committee will report to the Board at its next meeting on all actions taken, and the Board will ratify or revoke such actions.

- a. The Board may from time to time create Special Committees to review and make recommendations on administrative and economic practices of the Authority in collaboration with the Secretary/Executive Director.
- b. All Special Committees will report to the Board at its Regular and Special Meetings. The Board will at times ratify or revoke the action of the Special Committees.
- c. Three (3) members of the Board of Commissioners shall constitute a committee and a quorum of such committee. A majority vote of said three (3) members shall be sufficient for a determination.

#### Section 10. Training Requirements.

All Commissioners are required to complete a comprehensive training program consisting of ethics and other required courses. Commissioners must complete their training within 18 months of appointment. The Secretary/Executive Director must complete the required training within two years of appointment. The Secretary/Executive Director should present a form of evidence, this may be waived if the Secretary/Executive Director has evidence of prior completion.

## **ARTICLE IV. MEETINGS**

### **Section 1. Regular Meetings.**

Regular meetings shall be held, with public notice provided in conformance with the State of Indiana Open Door Law, at such times and places as may from time to time be determined by resolution of the Authority.

### **Section 2. Special Meetings.**

The Chairperson of the Authority may, when the Chairperson deems it expedient, and shall, upon the request of three Commissioners of the Authority, call a special meeting of the Authority for the purpose of transacting any business designated in the call. Public Notice shall be provided in accordance with the State of Indiana Open Door Law. At such special meeting, no business shall be considered other than as designated in the Public Notice of the call.

### **Section 3. Annual Meetings.**

Annual meetings shall be held in the first month of the year for the purposes of Elections of Officers, review of the Authority's performance and accomplishments, setting goals and objectives for the coming year, and to conduct such other business as may come before the meeting. Annual meetings may be held in conjunction with a Regular Meeting.

### **Section 4. Executive Session Meetings.**

The Chairperson of the Board of Commissioners shall, upon motion of any Board member, recess a Regular or Special meeting to go into executive session to discuss only those matters permitted by law. The Board may meet in executive session at such other times appropriate times using the same call procedure for special meetings. The executive session shall meet the requirements of applicable law. These meetings are not open to the public. No member shall disclose the content of the discussions. Minutes will be prepared identifying only the persons present and the subject matter considered, and shall include a certification that no other subject matter was discussed. The Board may make a report upon returning to the Regular or Special Meeting. No final action and no voting shall take place during an executive session. The Minutes of the Regular or Special meeting shall reflect the time the Board recessed and returned to the Regular or Special Meeting.

### **Section 5. Quorum.**

At all meetings of the Authority, a majority of the Commissioners of the Authority shall constitute a quorum for the purpose of transacting business. No business shall be conducted in the absence of a quorum.

### **Section 6. Order of Business.**

At the regular meetings of the Authority the following shall be the order of business:

1. Call to Order
2. Roll Call

3. Approval of Agenda
4. Reading and approval of the minutes of the previous meeting
5. Matters Arising from the Minutes
6. Director's Report
7. Financial Statements
8. Unfinished Business
9. New Business
10. Reports of Committees (if applicable)
11. Resolutions
12. Adjournment
13. Executive Session (if applicable)

#### Section 7. Resolutions.

All resolutions shall be in writing and shall be included in the minutes of the proceedings of the Authority.

#### Section 8. Amendments to the Agenda.

The Agenda may be amended by majority vote of the Board Members present at a regular or Special Meeting.

#### Section 9. Manner of Voting.

Action items coming before any meeting of the Commissioners shall be presented in the form of motions or resolutions. Action items of substance shall be determined by resolutions, the vote on such resolutions to be by roll call. The vote of a majority of Commissioners present shall be required to approve or adopt any motion or resolution.

#### Section 10. Notice of Meetings.

In addition to that provided herein, a public notice may be distributed to additional media outlets regarding Regular, Subcommittee, Executive, Special and Annual meetings of the Board of Commissioners.

#### Section 11. Electronic Participation.

A Commissioner who is not physically present at a meeting of the Authority, but who communicates with the other Commissioners during the meeting by telephone, computer, videoconferencing, or any other electronic means of communication that permits the Commissioner to simultaneously communicate with the other Commissioners and public present at the meeting, may participate in any Authority discussion and is considered to be present at the meeting for purposes of establishing a quorum provided the following conditions are met:

1. At least fifty percent (50%) of the Commissioners must be physically present at the place where the meeting is conducted;
2. The minutes of the meeting must state the name of each Commissioner who was physically present at the place where the meeting was conducted, participated in the meeting by using any electronic means of communication, and was absent;



3. The minutes of the meeting must identify the electronic means of communication by which Commissioners participated in the meeting and the public attended and observed the meeting, if the meeting was not held in executive session; and
4. All votes of the Commissioners during the electronic meeting must be taken by roll call vote.

Any Commissioner participating in a meeting electronically may participate in any final action taken at the meeting only if the Commissioner can be seen and heard.

A Commissioner may not electronically attend more than fifty percent (50%) of the meetings in each calendar year unless the electronic participation is due to:

1. military service;
2. illness or other medical condition;
3. death of a relative; or
4. an emergency involving actual or threatened injury to persons or property.

A Commissioner may attend two (2) consecutive meetings (a set of meetings) by electronic communication, but must physically attend at least one (1) meeting between sets of meetings attended electronically unless the electronic participation is due to:

1. military service;
2. illness or other medical condition;
3. death of a relative; or
4. an emergency involving actual or threatened injury to persons or property.

A Commissioner may not participate in a meeting electronically if the meeting involves final action to:

1. adopt a budget;
2. make a reduction in personnel;
3. initiate a referendum;
4. establish or increase a fee;
5. establish or increase a penalty;
6. use the governing body's eminent domain authority; or
7. establish, raise, or renew a tax.

In the event a Commissioner must participate electronically, the Commissioner shall make every effort to advise the Executive Director at least 24 hours in advance so that the necessary logistical arrangements may be made for electronic participation.

## Section 12. Board Member Attendance At Annual, Regular, And Special Meetings.

In order to promote the continued successful and efficient operation of the Housing Authority, all Commissioners of the Housing Authority's Board are encouraged to attend scheduled, Executive, Regular and Special Meetings.

Should any Commissioner of the Housing Authority have three (3) consecutive absences, the Board of Commissioners may direct that a statement be sent to the Mayor advising the Mayor of this fact and requesting that a replacement be designated. The number of absences may be extended by an affirmative vote of the Board, at any time, at the discretion of the Chairperson.

## **ARTICLE V. AMENDMENTS**

### **Section 1. Amendments to The Bylaws.**

The Bylaws of the Authority shall be amended only with the approval of at least four (4) of the members of the Board of Commissioners at a Regular Meeting or at a Special Meeting, but no such amendments shall be adopted unless notice of the amendment(s) have been submitted in writing at the previous Regular Meeting of the Authority.

Section 2. All previous resolutions adopted by the Authority inconsistent with these Bylaws are hereby repealed.

## **ARTICLE VI. CODE OF ETHICS AND INDEMNIFICATION**

### **Section 1.**

All Commissioners of the Housing Authority Board shall act in a professional and ethical manner in carrying out their official duties. They shall be bound by the rules and regulations and principles of the Housing Authority Code of Ethics as well as the State Ethics Law.

### **Section 2.**

If the Board of the Housing Authority finds that any Commissioner has violated the Code of Ethics and Professional Conduct or the State Ethics Law, the Board of Commissioners, by resolution, may petition the Mayor that Commissioner's removal.

### **Section 3.**

All Commissioners shall, on an annual basis at the Annual Board Meeting, pledge themselves to the Housing Authority Code of Ethics and Professional Conduct set forth in ADDENDUM 1 of these Bylaws.

### **Section 4.**

The objective of the Code of Ethics is to encourage professional performance by Housing Authority Commissioners. The Code describes objectives which, when

accepted and followed, will help to foster a beneficial relationship between the Commissioners and staff, as well as those they serve.

## Section 5.

Indemnification of Commissioners and Officers. To the extent not inconsistent with Indiana law as in effect from time to time, every person (and the heirs and personal representatives of such person), who is or was a Commissioner or Officer of the Authority shall be indemnified by the Authority against all liability and reasonable expense that may be incurred by the Commissioner in connection with or resulting from any claim, action, suit or proceeding: (1) if such Commissioner or Officer is wholly successful with respect thereto, or (2) if not wholly successful, then if such Commissioner or Officer is determined, as provided in Subsection 1.4 below to have not willfully and recklessly breached the obligation and duty to act in good faith, in what such person reasonably believes to be the best interest of the Authority, and in addition, with respect to any criminal action or proceeding is determined to have had no reasonable cause to believe that the Commissioner's or Officer's conduct was unlawful. The termination of any claim, action, suit or proceeding, by judgment, settlement (whether with or without court approval), or conviction or upon a plea of guilty or of *nolo contendere*, or its equivalent, shall not create a presumption that an Commissioner or Officer did not meet the standards of conduct set forth in this Section.

- 5.1 The terms "claim," "action," "suit," or "proceeding" shall include every claim, action, suit or proceeding and all appeals thereof (whether brought by or on behalf of this Authority or any other person or entity), civil, criminal, administrative investigative, or threat thereof, in which a Commissioner or Officer of the Authority (or such person's heirs and personal representatives) may become involved, as a party or otherwise: (1) by reason of such person being or have been a Commissioner or Officer of this Authority or of any other entity which he or she has served as such at the request of the Authority, or (2) by reason of such person acting or having acted in any capacity in a partnership, association, trust, or other organization or entity where he or she served as such at the request of this Authority, or (3) by reason of any action taken or not taken by the Commissioner in any such capacity, whether or not he or she continues in such capacity at the time such liability or expense shall have been incurred.
- 5.2 The terms "liability" and "expense" shall include, but shall not be limited to, counsel fees and disbursements and amounts of judgments, fines or penalties against, and amounts paid in settlement by or on behalf of, an officer, employee or agent.
- 5.3 The term "wholly successful" shall mean: (1) termination of any action, suit, or proceeding against the person in question without

finding of liability or guilt against such person, (2) approval by a court, with knowledge of the indemnity herein provided, of a settlement of any action, suit, or proceeding, or (3) expiration of a reasonable period of time after making of any claim or threat of any action, suit or proceeding without the institution of the same, without any payments or promise to induce settlement.

- 5.4 Every person claiming indemnification hereunder (other than one who has been wholly successful with respect to any claim, suit, or proceeding) shall be entitled to indemnification, if special independent legal counsel, which may be regular counsel of the Authority or other disinterested person or persons, in either case selected by a majority in interest of the Authority (such counsel or person or persons being hereafter called the "referee"), shall deliver to the Authority a written finding that such officer, employee or agent has met the standards of conduct set forth in ADDENDUM 1. The person claiming indemnification shall, if requested, appear before the referee, answer questions which the referee deems relevant and shall be given ample opportunity to present to the referee evidence upon which such person relies for indemnification. The Authority shall, at the request of the referee, make available facts, opinions or other evidence in any way relevant to the referee's finding which are within the possession or control of the Authority.
- 5.5 The rights of indemnification provided in this Article V shall be in addition to any rights to which any such Commissioner or Officer may otherwise be entitled. Irrespective of the provisions of this Article V, the Authority may, at any time and from time to time, approve indemnification of Commissioners, Officers, employees or other persons to the full extent permitted by the provisions of Indiana law at the time in effect, whether on account of past or future transactions.
- 5.6 Expenses incurred with respect to any claim, action, suit, or proceeding may be advanced by the Authority (by action of the Chairperson and Secretary) prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amount unless he or she is entitled to indemnification.
- 5.7 The provisions of this Article V shall be applicable to claims, actions, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after the adoption hereof.

## Section 6. Conflicts of Interest.

- 6.1 Every Commissioner shall comply with all state and federal laws governing conflicts of interest. Notwithstanding any requirements of state and federal laws, in the event that any matter comes before the Authority as to which any Commissioner has or may have a conflict of interest, that Commissioner shall disclose such conflict of interest and shall recuse him or herself from consideration or voting with respect to such matter.
- 6.2 A conflict of interest shall include, but not be limited to, any transaction of the Authority, including any acquisition of property, employment of any individual, engagement of any company or individual, in relation to which a Commissioner or any member of the family of a Commissioner (including parents, siblings, spouse or former spouse or children or persons married to such relatives or the children of such relatives) shall be a direct beneficiary. A direct beneficiary shall mean a person who shall be the subject of employment or contracting party in the transaction in question or shall be an officer, director, member, partner or principal owner of a company which shall be the contracting party in the transaction in question with the Authority. A shareholder, member, partner or other owner not active in a company and not having direct or indirect control of such company shall not be considered a principal owner.
- 6.3 If a Commissioner shall disclose a potential conflict of interest, and the remaining Commissioners, following consideration in which the disclosing Commissioner is not present, shall determine by majority vote that a conflict of interest does not exist or shall be waived, then the disclosing Commissioner may participate fully in further consideration and voting on the matter in question.
- 6.4 No Housing Authority Board member shall have right to, or interest in, the Housing Authority's property or assets. No Commissioner shall, by reason of the Commissioner's office, be entitled to receive any unapproved salary or unapproved compensation.

## Deleted Article VII Amendments

## **ADDENDUM 1.**

### **HOUSING AUTHORITY CODE OF ETHICAL AND PROFESSIONAL CONDUCT STANDARDS.**

#### **SECTION 1. HOUSING AUTHORITY CODE OF CONDUCT.**

A Commissioner shall be bound by the following pledge:

- I pledge myself to professional conduct on the Board through my efforts and through the mutual efforts of my colleagues and by all other proper means available.
- I pledge to view my service on the Board of the Housing Authority as an opportunity to serve my community, the State of Indiana, and my nation because I support the objectives of providing a decent, safe, and sanitary home and a suitable living environment for every American family.
- I pledge my responsibilities are to serve in this capacity as a Government official, a community leader, and an advocate for the Authority, its programs, and its objectives.
- I pledge myself to seek and maintain an equitable, honorable, and cooperative association with fellow public housing officials and all others who are concerned with the proper and professional management of public housing developments.
- I pledge to try to make decisions in terms of the most economical and efficient method toward the best interests of all citizens, particularly those of low- and moderate-income. Decisions will provide an equal opportunity to all citizens, regardless of race, creed, sex, nationality, place of birth or age.
- I will recognize that my responsibility is not to make the day-to-day management decisions of the Authority, but to see that the Housing Authority is well run by carrying out policy making, planning, and appraisal functions, and by providing direction and taking formal action in support of these functions.
- I pledge to refuse to represent special interests or partisan politics or to use this Board for personal gain or for the gain of friends or supporters. I recognize that although I have been appointed by the Mayor, my responsibility is to the entire community.
- I pledge that I shall not receive, directly or indirectly, any fee, rebate, commission, discount, gratuity, or any other benefit, whether monetary or otherwise, for the proper professional discharge of my duties, except authorized expenses and other benefits.
- I will arrive at conclusions only after I have discussed matters fully with members of the professional staff and other Board members. Once a decision

has been reached by the majority of the Board assembled at a meeting, I will support it graciously.

- I will recognize that the Housing Authority is vested with the whole Board assembled in meetings and that the powers of the Board shall be vested with the Board thereof in office at any time.
- I pledge to support and to protect authority personnel in the performance of their duties. Where and when Commissioners are involved in the employment of staff, I will vote to hire only competent and trained personnel who have been recommended by the Executive Director, otherwise I will support the Executive Director in the hiring and the handling of personnel matters without inappropriate involvement by the Board.
- I pledge to refer all complaints, including my personal criticisms, to the Executive Director, and only after the failure of administrative solution, will pursue such matters outside the Board while also recognizing the individual rights of a Commissioner as a citizen appointee and the responsibilities such appointment implies.
- I pledge to observe and enforce local and Federal laws and regulations, these Bylaws and all other pertinent rules and regulations pertaining to the Board and the Authority and housing represented by those entities.
- I pledge to respect the limited intent and scope of executive session and respect privileged communications from executive session and other sources for the privacy of the personnel and clients with whom we are involved.
- I pledge myself to place honesty, integrity, industriousness, compassion, and understanding above all else; to pursue my gainful efforts by study and dedication to the service to the Housing Authority and the people I serve shall always be maintained at the highest possible level.
- I pledge to make diligent use of the time of the Board as a whole and to faithfully attend all meetings barring unforeseen conflicts, in which case I shall promptly notify the Chairperson or designee while respecting the rights and commitments of other Commissioners and the Housing Authority the Board represents.
- I pledge myself to comply with the rules and regulations and principals of this Code of Ethics and Professional Conduct, and I pledge myself to comply with all training and professional development requirements to retain my eligibility to be a Board member of the Authority.

## **SECTION 2. ETHICAL STANDARDS.**

All Board of Commissioners and Housing Authority staff shall be bound by the following Ethical Standards:

### **(a) The U.S. Department and Urban Development (HUD).**

1. Public Housing Annual Contributions Contract (ACC):
  - a. In addition to any other applicable conflict of interest requirements, neither the Housing Authority nor any of its



contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under this ACC in which any of the following classes of people that the Housing Authority has an interest, direct or indirect, during his or her tenure or for one year thereafter:

- i. Any present or former member or officer of the governing body of the Housing Authority, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant Commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the Housing Authority, or a business entity.
  - ii. Any employee of the Housing Authority who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
  - iii. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the Housing Authority.
- b. Any member of these classes of persons must disclose the member's interest or prospective interest to the Housing Authority and HUD.
  - c. The requirements of this may be waived by HUD for good cause, if permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract to which the waiver pertains.
  - d. The provisions of this subsection shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.
  - e. Nothing in this section shall prohibit a tenant of the Housing Authority from serving on the governing body of the Housing Authority.
  - f. The Housing Authority may not hire an employee in connection with a project under the ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

- i. Any present or former member or officer of the governing body of the Housing Authority. There shall be excepted from this prohibition any former tenant Commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the Housing Authority.
  - ii. Any employee of the Housing Authority who formulates policy or who influences decisions with respect to the project(s).
  - iii. Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the Housing Authority.
- g. The prohibition shall remain in effect throughout the class member's tenure and for one year thereafter.
- h. The class member shall disclose to the Housing Authority and HUD the member's familial relationship to the prospective employee.
- i. The requirements of this subsection may be waived by the Housing Authority Board of Commissioners for good cause, provided that such waiver is permitted by State and local law.
- j. For purposes of this section, the term "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative or as a "half" or "step" relative, e.g., a half-brother or stepchild).

**(b) State Conflict of Interest. The Housing Authority and its Board will comply with all State and local Conflict of Interest and Ethics laws.**

**2. Uniform Administrative Requirements for State and Local Governments (2 CFR 200):**

- a. Conflicts of Interest. The Housing Authority, including the Board of Commissioners, must disclose in writing any potential conflict of interest in violation of (a). 1., above, to HUD.
- b. Mandatory Disclosures. The Authority must disclose, in a timely manner, in writing to HUD all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the grants from HUD. Failure to make the required disclosure can result in remedies described at 2 CFR 200.338.

**BYLAWS  
OF  
SUMMIT HILL COMMUNITY DEVELOPMENT CORPORATION**

**ARTICLE 1  
THE CORPORATION**

Section 1.01 Name of Corporation. The name of the Corporation shall be *Summit Hill Community Development Corporation*.

Section 1.02 Principal Office. The Corporation's principal office shall be fixed, and located at such place within the county of Monroe as the Board of Directors (the "Board") shall determine. The Board is granted full power and authority to be designated by resolution to change the principal office from one location to another within the county of Monroe.

Section 1.03 Other Offices. Branch or subordinate offices may be established at any place or places by the Board at any time within the State of Indiana.

Section 1.04 Seal of Corporation. The seal of the Corporation shall be in the form of a circle and shall bear the name of the Corporation and the year of its organization.

**ARTICLE 2  
PURPOSE**

Section 2.01 Purpose. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law.

The purposes for which this corporation is formed include but are not limited to promoting the general welfare and improvement of the quality of life of the residents of the City of Bloomington and Monroe County, Indiana.

The specific purposes of this corporation are as follows:

1. To provide very low, low, and moderate-income persons, elderly persons, and persons with disabilities with affordable housing by acquiring or developing low and moderate-income property and renting such housing to the aforementioned persons;
2. To provide very low, low, and moderate-income persons, elderly persons, and persons with facilities and services related to housing; and
3. To take such other action, in cooperation with private and public persons or agencies, as may reasonably promote the cause of housing very low, low, and moderate-income persons, elderly persons, and persons with disabilities.
4. To provide community economic development insomuch as it promotes the cause of affordable housing for low and moderate-income persons.

5. To promote maintenance and reinvestment activities in support of its low and moderate-income affordable housing activities.
6. To provide augmentation or upgrading of neighborhood services in support of low and moderate affordable housing activities.
7. To provide community revitalization through various means that further the provision of low and moderate-income affordable housing.
8. To preserve the affordability of housing and related community assets for low and moderate-income people in perpetuity.

Section 2.02. Prohibited Activities. Notwithstanding any other provision of these Articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation, and this corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law, or (2) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law.

No substantial part of the activities of this corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and this corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

### **ARTICLE 3 MEMBERSHIP**

Section 3.01 Members. The Corporation shall have no members. Any action which would otherwise by law require approval by a majority of all members or approval by the members shall require only the approval of the Board. All rights which would otherwise by law vest in the members shall vest in the Board.

### **ARTICLE 4 DIRECTORS**

Section 4.01 Powers.

- (a) General Corporate Powers. Subject to the limitations of the Articles of Incorporation and these Bylaws, the activities and affairs of the Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of the Corporation to any person(s), a management company, or committees however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

- (b) Board's Ultimate Authority. No assignment, referral, or delegation of authority by the Board or anyone else shall preclude the Board from exercising the authority required to meet its responsibility for the conduct of the activities of the Corporation and the Board shall retain the right to rescind any such delegation.
- (c) Without limiting the foregoing general powers, the Board shall have the following powers:
- i. To select and remove any of the officers, agents, and employees of the Corporation, prescribe such powers and duties for them as may not be inconsistent with the Indiana Nonprofit Public Benefit Corporation Law, the Articles of Incorporation, or the Bylaws, and require from them security for faithful service;
  - ii. To conduct, manage and control the affairs and business of the Corporation, and to make such rules and regulations and to take such other actions therefore not inconsistent with the law, the Articles of Incorporation, or the Bylaws, as the Board may deem best;
  - iii. To administer the distribution of grants and gifts from public and private sources, to borrow money and incur indebtedness for the purposes of the Corporation, loan money and cause to be executed and delivered for them in the Corporate name promissory notes, bonds debentures, deeds of trust, mortgages, pledges, hypothecation, or other evidence of debt and securities;
  - iv. To establish standing or ad hoc committees for advising or assisting the Corporation, or Board;
  - v. To apply for city permits, participate in or contract for the purchase, installation, or construction of public benefit improvements on publicly or privately owned land; and
  - vi. To incur indebtedness, borrow money, enter into contracts, lease space, own property, and other powers cited in the Articles of Incorporation as needed.

Section 4.02 Number, Composition, Selection, and Term of Directors.

- (a) The number of directors shall be nine (9), not including the Executive Director, until changed by an amendment to these Bylaws.
- (b) The board composition shall consist of two categories of representatives:
1. At least five director positions shall be held by Bloomington Housing Authority Commissioners. Director terms will run concurrently with each Director's Commissioner appointment and term.
  2. The remaining director positions will be General Representatives.
    - a. General Representative board members will be solicited, reviewed, and selected by the Corporation's Governance and Nominations Committee;
    - b. General Representative board member terms will be four years.

- (c) The Executive Director of the Summit Hill Community Development Corporation is a non-voting board member and holds the office of Secretary.
- (d) The term of office of directors who hold office by virtue of their position as an Officer of Summit Hill Community Development Corporation shall hold office for two years or until their successors are elected and qualified. In case of the absence or incapacity of both the President and Vice-President, the other Officers of the Corporation may elect an Acting President to serve during the period of absence or incapacity of the President and Vice-President.
- (e) The term of the Executive Director shall, by virtue of their position, expire at the time such person no longer holds their respective position. Their successors to such directors shall assume office upon their designation by the Summit Hill Community Development Corporation. If the Executive Director is absent or the position is vacant, the Corporation may designate another individual to serve as Secretary until such time as the Executive Director returns or is replaced. No Officer of the Corporation shall be appointed as Secretary. Any person appointed to fill the office of Secretary shall have such term as the Corporation fixes.
- (f) No Resident Member Representative or General Member Representative or Public Representative shall serve as a member of the Board of Directors for more than three consecutive full terms. After an absence from the Board of one year, a former director may return to the board, if reelected. They shall then be allowed to serve as a member of the Board for no more than two consecutive full terms.

Section 4.03 Additional Duties. The Officers of the Corporation shall perform such other duties and functions as may from time to time be required by the Bylaws, rules, and regulations of the Corporation, or other authorization of the Corporation.

Section 4.04 Vacancies and Nomination

- (a) Events Causing Vacancy. A vacancy or vacancies on the Board shall be deemed to exist at the end of the board member's term, in the case of the death or resignation of any director or if the authorized number of directors is increased. The Board may declare vacant the office of a director who has been absent from three (3) or more consecutive meetings, whether regular or special, without having been excused, or has been declared of unsound mind by a final order of the court, or convicted of a felony, or found by a final order or judgment of any court to have breached any duty arising.
- (b) Filling Vacancies. Vacancies on the Board shall be filled in the same manner as the director. Each director so appointed shall hold office until the expiration of the term of the replaced director and until a successor has been appointed and qualified.

(c) Nomination of Directors

1. The names of persons to fill all General Representative vacancies on the Board of Directors shall be solicited, reviewed, and selected by the Corporation's Governance and Nominations Committee, which shall serve as the Nominating Committee for the purpose of filling Board vacancies.

Section 4.05 Regular Meetings. Regular meetings shall be held, with, at such times and places as may from time to time be determined by resolution of the Corporation.

Section 4.06 Special Meetings. The President of the Corporation may, when he/she deems it expedient, or shall, upon the request of three directors of the Corporation, call a special meeting of the Corporation for the purpose of transacting any business designated in the call. Notice shall be provided in accordance with the State of Indiana law governing nonprofit organizations. At such special meeting, no business shall be considered other than as designated in the Notice of the call.

- (a) A special meeting may be held in any place designated by Notice or may be held solely by means of remote communication. The board of directors may either:
  - (1) Determine the location of the special meeting; or
  - (2) Elect that the special meeting will not be held at any place, but solely by means of remote communication.
- (b) To conduct a special meeting by means of remote communication, all directors must be able to simultaneously hear each other and the Corporation must do the following:
  - (1) Implement reasonable measures to verify the identity of each director considered present and permitted to vote at the meeting.
  - (2) Implement reasonable measures to ensure all directors have an opportunity to participate and vote on matters discussed at the meeting, including an opportunity to read or hear the proceedings.
  - (3) Maintain minutes of the meeting, including a record of any votes cast or actions taken by a director.

Section 4.07 Quorum. At all meetings of the Corporation, a majority of the directors of the Corporation shall constitute a quorum for the purpose of transacting business, provided that a smaller number may meet and adjourn to some other time or until a quorum is obtained. In accordance with Indiana law, a director who is participating in the meeting through electronic means shall be deemed present at such meeting so long as the directors may simultaneously hear each other during the meeting.

Section 4.08 Manner of Voting. All questions coming before any meeting of the Board shall be presented in the form of motions or resolutions. Questions of substance shall be determined by resolutions. The vote of a majority of the directors present shall be required to approve or adopt any motion or resolution.

- (a) In accordance with Indiana Law, voting by Proxy is not allowed.



(b) Any votes cast electronically should be ratified at the next board meeting.

Section 4.09 Compensation. The members of the Board of Directors shall serve without compensation (except for reimbursement of actual authorized expenses).

## **ARTICLE 5 COMMITTEES**

Section 5.01 Board Committees. The Board may, by resolution, create one or more standing or advisory committees, each consisting of at least three (3) persons, at least one (1) but not more than two (2) of whom shall be a member(s) of the Board, to serve at the pleasure of the Board. Appointments to such Board committees shall be by a majority vote of the directors then in office, and the chairman of such Board committees shall be appointed by the president. Committees may recommend action to the Board, but no action may be taken at committee meetings except as specifically delegated by the Board.

Section 5.02 Meetings and Action of Board Committees. No written notice is required for committee meetings so long as less than a majority of the Board members are members of the committee. Oral notice must be given to each committee member at least twenty-four (24) hours prior to the meeting.

## **ARTICLE 6 OFFICERS**

Section 6.01 Officers. The Officers of the Corporation shall be a President, Vice-President, Secretary, and Treasurer. The Corporation may also have, at the discretion of the Board, a chairman of the Board, additional Vice-Presidents, one or more assistant Secretaries, one or more assistant treasurers, and such other Officers as may be elected or appointed in accordance with the provisions of Section 6.03. All Officers except those elected or appointed under Section 6.03 must be directors. Any number of offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the President of the Board.

Section 6.02 Election. The Officers of the Corporation, except such Officers as may be elected or appointed in accordance with the provisions of Section 6.03 or Section 6.06, shall be chosen at the annual meeting by and shall serve at the pleasure of the Board, and shall hold their respective offices until their resignation, removal or other disqualification from service, or until the board representative has reached the end of their term.

Section 6.03 Subordinate Officers. The Board may elect, and may empower the President to appoint, such other Officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 6.04 Removal. Any officer may be removed, either with or without cause, by the Board at any time. Any such removal shall be without prejudice to the rights, if any, of such officer under any contract of employment.

Section 6.05 Resignation. Any officer may resign at any time by giving written notice to the Board, but without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.06 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 6.07 President. The President shall preside at all meetings of the Board. The President has the general powers and duties of management usually vested in the office of President of a Corporation and such other powers and duties as may be prescribed from time to time by the Board.

Section 6.08 Vice-President. In the absence or disability of the President, the Vice-President shall perform all the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon, the President. The Vice-President shall have other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 6.09 Secretary/Treasurer. The Executive Director, as appointed by the Board, shall serve as the Secretary/Treasurer.

- (a) Book of Minutes and Seal. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of the Board and its committees with the time and place of holding whether regular or special, and if special, how authorized, the notice thereof given, the names of those present, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office in the State of Indiana, the original or a copy of the Corporation's Articles and Bylaws, as amended to date. The Secretary shall keep the seal of the Corporation and shall affix the same on such papers and instruments as may be required in the regular course of business, but failure to affix it shall not affect the validity of any instrument.
- (b) Notices and Other Duties. The Secretary shall give, or cause to be given notice of all meetings of the Board and any committees thereof required by these Bylaws or by law to be given, and shall distribute the minutes of meetings of the Board to all directors promptly after the meetings. The Secretary shall see that all reports, statements, and other documents required by law are properly kept or filed, except to the extent the same are to be kept or filed by the Treasurer. In

general, the Secretary shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

- (c) Books of Account. The Treasurer of the Corporation shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, and disbursements. The books of account shall at all times be open to inspection by any Director.
- (d) Deposit and Disbursement of Money and Valuables. The Treasurer of the Corporation shall deposit all monies and other valuables in the name and to the credit of the Corporation with such depositories as may be designated from time to time by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, and shall render to the president and Directors, upon request, an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall present to the Board at all regular meetings an operating statement and report since the last preceding regular meeting of the Board. The Treasurer shall cause the books of account to be audited or reviewed each year by a Certified Public Accountant and a report of such audit or review shall be presented to the Board not later than the fourth month following the close of the fiscal year. The Treasurer shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

## **ARTICLE 7**

### **INDEMNIFICATION AND CONFLICTS OF INTEREST**

Section 7.01 Indemnification of Directors. Any current or former Director of the Corporation shall be indemnified by the Corporation to the extent permitted by applicable law governing nonprofit corporations.

Section 7.02 Conflicts of Interest. Every Officer shall comply with all state and federal laws governing conflicts of interest. Notwithstanding any requirements of state and federal laws, in the event that any matter comes before the Corporation as to which any Officer has or may have a conflict of interest, that Officer shall disclose such conflict of interest and shall recuse him or herself from consideration or voting with respect to such matter. A conflict of interest shall include, but not be limited to, any transaction of the Corporation, including any acquisition of property, employment, or any individual, engagement of any company or individual, in relation to which an Officer or any member of the family of Officers (including parents, siblings, spouse or former spouse or children or persons married to such relatives or other children of such relatives) shall be a direct beneficiary. A direct beneficiary shall mean a person who shall be an Officer, Director, member, partner, or principal owner of a company which shall be the contracting party in the transaction in question with the Corporation. A shareholder, member, partner, or other owners not active in a company and not having direct or indirect control of such company shall not be considered a principal owner. If an Officer shall disclose a potential conflict of interest, and the remaining Officers, following consideration in which the disclosing

Officer is not present, shall determine by majority vote that a conflict of interest does not exist or shall be waived, then the disclosing Officer may participate fully in further consideration and voting on the matter in question.

## **ARTICLE 8 AMENDMENTS**

Section 8.01 Amendments to Bylaws. The Bylaws of the Corporation shall be amended only with the approval of at least four of the directors of the Corporation at a regular meeting or at a special meeting.

## **ARTICLE 9 OTHER PROVISIONS**

Section 9.01 Validity of Instruments. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instruments in writing and any assignment or endorsement thereof executed or entered into between the Corporation and any other person, when signed by the President or Vice-President and the Secretary or Treasurer of the Corporation, shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that the signing Officers had no authority to execute the same. Any such instruments may be signed by another person(s) and in such manner as from time to time shall be determined by the Board and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 9.02 Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions shall govern the construction of these Bylaws. Words of these Bylaws shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions and headings in these Bylaws are for convenience only and are not intended to limit or define the scope or effect of any provision.

Section 9.03 Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

Section 9.04 Property. The property of this Corporation is irrevocably dedicated to charitable purposes and no part of the net earnings or assets of this Corporation shall ever inure to the benefit of any of its directors, trustees, officers, or members, or to the benefit of any private person.

Section 9.05. Dissolution. On the winding up and dissolution of this Corporation, after paying or adequately providing for the debts, obligations, and liabilities of this Corporation, the remaining assets of this corporation shall be distributed to the Bloomington Housing Authority of the City of Bloomington or successor nonprofit fund, foundation or corporation, organized and operated exclusively for charitable purposes and which has established and maintained its tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law, as may be designated in the event the Bloomington Housing Authority cannot receive such distribution.

## **ARTICLE 10 STEWARDSHIP OF LAND**

Section 10.01 Lease of Land. The Board of Directors shall convey the right to use land owned by the Corporation:

- (a) To facilitate access to land by landless people and others in need of its use, with special concern for those whose need is greatest;
- (b) To provide for the environmental health and preservation of the land and natural community on and around it; and
- (c) To guarantee the common stewardship of the land for the common good, in the present and the future.

In making such conveyances, the Board shall consider the real personal needs of potential lessees, and shall attempt to effect a just distribution of land use rights.

The Directors shall establish policies and procedures for the Corporation's staff to a) supervise the use of the land and provide for periodic inspection of all leased lands; and b) terminate the leases if necessary for the protection of the land, the surrounding community, or the rights of future generations.

Section 10.02 Use of Natural Resources. The decision to convey or authorize the use of any minerals, timber, or other natural resources, except for reasonable personal use by lessees, shall require the agreement of at least two-thirds of the members of the Board. Notice of the proposed conveyance of natural resources must be given to all Directors at least two weeks in advance of the meeting at which a decision is to be made.

Section 10.03 Encumbrance of Land. The decision to mortgage or otherwise encumber land owned by the Corporation shall require the approval of two-thirds of the Board of Directors and the consent of any Leaseholder whose house is located on the land being encumbered.

Section 10.04 Sale of Land. The sale of land does not conform to the philosophy or purposes of this Corporation. For this reason, the land shall not be sold except in extraordinary circumstances, and then only in accordance with the following guidelines:

- (a) A parcel of land may be sold pursuant to a resolution adopted by an affirmative vote by at least two-thirds of the entire Board of Directors, a quorum having been established, at a regular or special Board meeting, provided that (i) the Corporation has owned the parcel for no more than ninety (90) days at the time the vote is taken, (ii) the parcel is not leased to any party, and (iii) the resolution states that the location or character of the parcel is determined by the Board to be such that the charitable purposes of the Corporation are best served by selling the land and applying the proceeds to the support of other activities serving those purposes.

- (b) A parcel of land may be sold pursuant to a resolution adopted by an affirmative vote by at least two-thirds of the entire Board of Directors, a quorum having been established, at a regular or special Board meeting, provided that (i) the Board resolution states that the Board has determined in connection with a particular transaction that it is essential to the transaction and in the best interest of the Corporation and its mission to include a sale of land as part of the transaction and the parcel has not been leased to any party at the time of the sale.
- (c) A parcel of land may be sold when the parcel's sale was a condition of an agreement to acquire and develop the property, provided that lot sales are complete prior to the development's completion.
- (d) In all other circumstances a parcel of land may be sold only with the 2/3 agreement of the entire Board of Directors and the consent of all Leaseholders of the land to be sold.

## **ARTICLE 11**

### **PROCEDURE TO AMEND THE LIMITED APPRECIATION FORMULA**

Section 11.1 – Introduction. The procedure set forth in this Article for amending the limited appreciation formula, as embodied in the legal documents used by the Corporation to convey title to improvements located on land owned by the Corporation or to convey title to housing units encumbered with a Housing Subsidy Covenant has been set down by the Board of Directors of the Corporation, lessees, and Covenantors in consideration of the following:

- a) The concept of limited appreciation is the cornerstone on which the Corporation, lessees, and Covenantors rely to meet the stated purposes of this organization as set forth in Article I, Section 2 of these Bylaws.
- b) The term "limited appreciation" is used to describe the concept of moderating the rate at which real estate, (i.e., land and improvements) increases in value, to the extent that an unrestricted rate of increase is recognized by the Directors of the Corporation as a major obstacle to occupancy by and resale among low- and moderate-income persons of safe, decent and affordable housing. The "limited appreciation formula" is the method by which the Corporation, lessees, and Covenantors implement the concept of limited appreciation.
  - 1. Any formula devised to accomplish the goals embodied in the concept of limited appreciation necessarily affects the ability of the Corporation, its lessees, and Covenantors to realize the mutually-held goal of promoting the occupancy by and resale among low- and moderate-income persons of safe, decent and affordable housing.

Therefore, the procedure set forth in Section 2 of this Article shall govern any action by the Board of Directors to amend the limited appreciation formula.

## SECTION 2 – Procedure for Amending the Limited Appreciation Formula

- a) Any discussion by the Board of Directors relative to amending the limited appreciation formula shall be noted as an agenda item and each Director shall receive ten (10) days' notice of the Board meeting at which this item is scheduled for discussion.
- b) Any motion by a Director to amend the limited appreciation formula shall be made only after two-thirds of the Board of Directors, a quorum having been established, find that the current formula may be detrimental to the mutually-held purposes of the Corporation, lessees, and Covenantors as established by these Bylaws, including this Article.
- c) If two-thirds of the Board of Directors finds that the current limited appreciation formula may be detrimental to the mutually-held purposes of the Corporation, lessees, and Covenantors, the Board may propose and vote on a specific amendment to the current limited appreciation formula which addresses the Board's concerns. Any such amendment must be adopted by a vote of two-thirds of the Board of Directors. Any such amendment shall not affect or impair any agreement involving a limited appreciation formula that is in effect on the date of the Amendment.

## **CERTIFICATE OF ADOPTION OF BYLAWS**

Passed by the Board of Directors on July 19, 2018, by Resolution #2018-02.

Amended by the Board of Directors on June 17, 2022, by Resolution # 2022-04

Amended by the Board of Directors on February 23, 2023, by Resolution # 2023-02.

ETHICS RULES

from the Indiana Code of Ethics (Effective July 1, 2015)

See [www.in.gov/ig](http://www.in.gov/ig) for definitions and the complete Code of Ethics (42 IAC 1-5)

42 IAC 1-5-1 Gifts; travel expenses; waivers

THE GIFT RULE:

(a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee’s or special state appointee’s agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

EXCEPTIONS

(b) The following shall not be subject to this rule:

- (1) Gifts, favors, services, entertainment, food, drink, travel expenses or registration fees from public agencies or public institutions.
- (2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:
  - (A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;
  - (B) the employee is giving a speech or participating in a presentation in the employee’s official capacity; or
  - (C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.
- (3) Mementos or souvenirs of nominal value.
- (4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.
- (5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:
  - (A) the gifts or other items of value are not deducted as a business expense; and
  - (B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person’s official capacity.
- (6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.
- (7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:
  - (A) has a business relationship; or
  - (B) seeks to influence official action with the employee’s or special state appointee’s agency.
- (8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.

WAIVERS

(c) An employee’s or special state appointee’s state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:

- (1) be in writing; and
- (2) identify the following:
  - (A) The employee . or special state appointee.
  - (B) The nature and value of the gift.
  - (C) The donor of the gift.
  - (D) Why acceptance of the gift is in consistent with the public interest.

(d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency’s ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

42 IAC 1-5-2 Donor Restrictions

A person who has a business relationship with an employee’s or a special state appointee’s agency shall not provide any:

- (1) gifts;
  - (2) favors;
  - (3) services;
  - (4) entertainment;
  - (5) food;
  - (6) drink;
  - (7) travel expenses; or
  - (8) registration fees
- to such employee or special state appointee if the employee or special state appointee would not be permitted to accept the gift, favor, service, entertainment, food, drink, travel expenses or registration fees under this rule.

42 IAC 1-5-3 Honoraria

An employee shall not personally accept an honorarium for any activity that may be considered part of the state employee’s official duties. However, a state employee may accept an honorarium on behalf of the state. The employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. An employee may personally accept an honorarium for activities not done in connection with the employee’s official duties and that are prepared on the employee’s own time and without the use of state resources. However, in no case may an

employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee’s agency.

42 IAC 1-5-4 Political activity

(a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

- (1) another employee or special state appointee; or
- (2) any other person when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

(c) A state employee or special state appointee shall not solicit political contributions at any time from:

- (1) persons whom the employee or special state appointee knows to have a business relationship with the employee’s or the special state appointee’s agency; or
- (2) state employees or special state appointees directly supervised by the employee or the special state appointee.

(d) The appointing authority of an agency and all employees or special state appointees with purchasing or procurement authority on behalf of the state shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

42 IAC 1-5-5 Moonlighting (IC 4-2-6-5.5)

(a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual’s recusal from matters so central or critical to the performance of the individual’s official duties that the individual’s ability to perform those duties would be materially impaired;
- (2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or
- (3) use or attempt to use the individual’s official position to secure unwarranted privileges or exemptions that are:

- (A) of substantial value;
- (B) and not properly available to similarly situated individuals.

(b) A written advisory opinion issued by the commission stating that an individual’s outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual’s outside employment is not in violation of subsection (a)(1) or (a)(2).

42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)

(a) A state officer, an employee, or a special state appointee may not participate in



any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:
  - (1) seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
    - (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
    - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
  - (2) File a written disclosure statement with the commission that:
    - (A) details the conflict of interest;
    - (B) describes and affirms the implementation of a screen established by the ethics officer;
  - (C) is signed by both:
    - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
    - (ii) the agency ethics officer;
  - (D) includes a copy of the disclosure provided to the appointing authority; and
  - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict. A written disclosure filed under this subsection shall be posted on the inspector general's website.
- (c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

**42 IAC 1-5-7 Conflicts of interest; contracts (IC 4-2-6-10.5)**

- (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.
- (b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who

- (1) does not participate in or have contracting responsibility for the contracting agency; and
- (2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.
- (c) A statement filed under subsection (b)(2) must include the following for each contract:
  - (1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.
  - (2) An affirmation that the contract:
    - (A) Was made after public notice and, if applicable, through competitive bidding; or
    - (B) Was not subject to notice and bidding requirements and the basis for that conclusion.
  - (3) A statement making full disclosure of all related financial interests in the contract.
  - (4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.
  - (5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported

- (d) A state officer, employee, or special state appointee who:
  - (1) fails to file a statement required by rule or this section; or
  - (2) files a deficient statement;before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

**42 IAC 1-5-8 Additional Compensation**

A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

**42 IAC 1-5-9 Bribery**

A state officer, employee or special state appointee shall not pay or offer to pay any compensation for the performance of a state officer's, employee's or special state appointee's official duties except as permitted by law.

**42 IAC 1-5-10 Benefiting from confidential information**

A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

**42 IAC 1-5-11 Divulging confidential information**

A state officer, employee or special state appointee shall not divulge information of a confidential nature except as permitted by law.

**42 IAC 1-5-12 Use of state property (IC 4-2-6-17)**

- (a) A state officer, employee or special state appointee shall not make use of state materials, funds, property, personnel, facilities or equipment for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit the policy or rule.
- (b) An individual who violates this section is subject to action under section 12 of this chapter.

**42 IAC 1-5-13 Ghost Employment**

A state officer, employee or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

**42 IAC 1-5-14 Post-employment restrictions (IC 4-2-6-11)**

- (a) As used in this section, "particular matter" means any of the following:
  - (1) an application;
  - (2) a business transaction;
  - (3) a claim;
  - (4) a contract;
  - (5) a determination;
  - (6) an enforcement proceeding;
  - (7) an investigation;
  - (8) a judicial proceeding;
  - (9) a lawsuit;
  - (10) a license;
  - (11) an economic development project; or
  - (12) a public works project.The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.
- (b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:
  - (1) as a lobbyist;
  - (2) from an employer if the former state officer, employee, or special state appointee was:
    - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
    - (B) in a position to make a discretionary decision affecting the:
      - (i) outcome of the negotiation; or
      - (ii) nature of the administration;
  - (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the

employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of the individual’s duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) consultation by;
- (3) representation by; or
- (4) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

**EXCEPTIONS**

(f) Subsection (b) does not apply to the following:

- (1) a special state appointee who serves only as a member of an advisory body.
- (2) A former state officer, employee, or special state appointee who has:
  - (A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and
  - (B) is no longer active.

**WAIVERS**

(g) An employee’s or a special state appointee’s state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. A waiver must satisfy all of the following:

- (1) The waiver must be signed by an employee’s or special state appointee’s:
  - (A) State officer or appointing authority authorizing the waiver; and
  - (B) Agency ethics officer attesting to form.
- (2) The waiver must include the following information:
  - (A) Whether the employee’s prior job duties involved substantial decision-making authority over policies, rules, or contracts.
  - (B) The nature of the duties to be performed by the employee for the prospective employer.
  - (C) Whether the prospective employment is likely to involve substantial contact with the employee’s former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.

(D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.

(E) The extent of economic hardship to the employee if the request for a waiver is denied.

(3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.

(4) The waiver must be limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c). The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

**ALJs**

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

- (1) Made decisions as an administrative law judge; or
- (2) Presided over information gathering or order drafting proceedings; that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service; The disclosure must:

- (1) be signed by the former state officer, employee, or special state appointee;
- (2) certify that the former state officer, employee, or special state appointee is not an employee of the entity;
- (3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position,

**42 IAC 1-5-15 Nepotism (IC 4-2-6-16)**

(a) This chapter does not prohibit the continuation of a job assignment that existed on July 1, 2012.

(b) As used in this section, "employed" refers to all employment, including full-time, part-time, temporary, intermittent, or hourly. The term includes service as a state officer or special state appointee.

(c) An individual employed in an agency may not hire a relative.

(d) Except as provided in subsection (e), an individual may not be employed in the same agency in which an individual's relative is the appointing authority.

(e) An individual may be employed in the same agency in which the individual's relative is the appointing authority, if the individual has been employed in the same agency for at least twelve (12) consecutive months

immediately preceding the date the individual's relative becomes the appointing authority.

(f) Except as provided in subsection (e), an individual may not be placed in a relative's direct line of supervision.

(g) An individual employed in an agency may not contract with or supervise the work of a business entity of which a relative is a partner, executive officer, or sole proprietor.

(h) Any person within an agency who knowingly participates in a violation of this chapter is subject to the penalties set forth in section 12 of this chapter.

**42 IAC 1-5-16 Communications by state officers (IC 4-2-6-15)**

(a) This section does not apply to the following:

- (1) A communication made by the governor concerning the public health or safety.
- (2) A communication:
  - (A) that a compelling public policy reason justifies the state officer to make; and
  - (B) the expenditure for which is approved by the budget agency after an advisory recommendation from the budget committee.

(b) This section does not prohibit a state officer from using in a communication the title of the office the state officer holds.

(c) As used in this section, "communication" refers only to the following:

- (1) An audio communication.
- (2) A video communication.
- (3) A print communication in a newspaper (as defined in IC 5-3-1-0.4).

(d) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with appropriations made by the general assembly, regardless of the source of the money.

(e) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with:

- (1) money from the securities division enforcement account established under IC 23-19-6-1(f); or
- (2) appropriations from the state general fund made under IC 23-19-6-1(f).

**42 IAC 1-4-1 Training requirements**

(a) All state officers, employees, and special state appointees, shall be properly trained in the code of ethics as described in this article. All persons who have a business relationship with a state agency are obligated to abide by the code of ethics.

(b) Each agency’s appointing authority shall do the following:

- (1) Require all new employees and special state appointees to participate in ethics training within six (6) weeks of the employee’s starting employment and the special state appointee’s appointment date with the agency.
- (2) Require all employees and special state appointees to participate in ethics training at least every two (2) years during an employee’s and special state appointee’s tenure with the agency.
- (3) Maintain documentation to demonstrate an employee’s and special state appointee’s compliance with subdivisions (1) and (2).

END.

## **IC 4-2-6-0.1 Repealed**

*As added by P.L.220-2011, SEC.14. Repealed by P.L.63-2012, SEC.1.*

## **IC 4-2-6-1 Definitions**

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

- (1) "Advisory body" means an authority, a board, a commission, a committee, a task force, or other body designated by any name of the executive department that is authorized only to make nonbinding recommendations.
- (2) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic set up as an instrumentality of the state and a private, nonprofit, government related corporation. The term does not include any of the following:
  - (A) The judicial department of state government.
  - (B) The legislative department of state government.
  - (C) A state educational institution.
  - (D) A political subdivision.
- (3) "Appointing authority" means the following:
  - (A) Except as provided in clause (B), the chief administrative officer of an agency. The term does not include a state officer.
  - (B) For purposes of section 16 of this chapter, "appointing authority" means:
    - (i) an elected officer;
    - (ii) the chief administrative officer of an agency; or
    - (iii) an individual or group of individuals who have the power by law or by lawfully delegated authority to make appointments.
- (4) "Assist" means to:
  - (A) help;
  - (B) aid;
  - (C) advise; or
  - (D) furnish information to;a person. The term includes an offer to do any of the actions in clauses (A) through (D).
- (5) "Business relationship" includes the following:
  - (A) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:
    - (i) a pecuniary interest in a contract or purchase with the agency; or
    - (ii) a license or permit requiring the exercise of judgment or discretion by the agency.
  - (B) The relationship a lobbyist has with an agency.
  - (C) The relationship an unregistered lobbyist has with an agency.
- (6) "Commission" refers to the state ethics commission created under section 2 of this chapter.
- (7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.
- (8) "Direct line of supervision" means the chain of command in which the superior affects, or has the authority to affect, the terms and conditions of the subordinate's employment, including making decisions about work assignments, compensation, grievances, advancements, or performance evaluation.
- (9) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(11) "Financial interest" means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

- (A) obtained by reason of the position or office held; and
- (B) which:
  - (i) a public agency is prohibited from disclosing under [IC 5-14-3-4\(a\)](#);
  - (ii) a public agency has the discretion not to disclose under [IC 5-14-3-4\(b\)](#) and that the agency has not disclosed; or
  - (iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(14) "Political subdivision" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.

(15) "Property" has the meaning set forth in [IC 35-31.5-2-253](#).

(16) "Relative" means any of the following:

- (A) A spouse.
- (B) A parent or stepparent.
- (C) A child or stepchild.
- (D) A brother, sister, stepbrother, or stepsister.
- (E) A niece or nephew.
- (F) An aunt or uncle.
- (G) A daughter-in-law or son-in-law.

For purposes of this subdivision, an adopted child of an individual is treated as a natural child of the individual. For purposes of this subdivision, the terms "brother" and "sister" include a brother or sister by the half blood.

(17) "Represent" means to do any of the following on behalf of a person:

- (A) Attend an agency proceeding.
- (B) Write a letter.
- (C) Communicate with an employee of an agency.

(18) "Special state appointee" means a person who is:

- (A) not a state officer or employee; and
- (B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:
  - (i) is authorized by statute or executive order; and
  - (ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

(19) "State officer" means any of the following:

- (A) The governor.
- (B) The lieutenant governor.
- (C) The secretary of state.
- (D) The auditor of state.
- (E) The treasurer of state.
- (F) The attorney general.
- (20) The masculine gender includes the masculine and feminine.
- (21) The singular form of any noun includes the plural wherever appropriate.

(b) The definitions in [IC 4-2-7](#) apply throughout this chapter.

*Formerly: Acts 1974, P.L.4, SEC.2. As amended by P.L.13-1987, SEC.4; P.L.5-1988, SEC.18; P.L.9-1990, SEC.1; P.L.15-1992, SEC.1; P.L.8-1993, SEC.7; P.L.22-1995, SEC.1; P.L.5-1996, SEC.1; P.L.44-2001, SEC.1; P.L.222-2005, SEC.1; P.L.89-2006, SEC.1; P.L.2-2007, SEC.19; P.L.105-2012, SEC.1; P.L.114-2012, SEC.7; P.L.123-2015, SEC.21; P.L.43-2021, SEC.8.*

#### **IC 4-2-6-2 Commission; creation; membership; vacancies**

Sec. 2. (a) There is created a state ethics commission.

(b) The commission is composed of five (5) members appointed by the governor.

(c) No more than three (3) commission members shall be of the same political party. A person who:

- (1) holds an elected or appointed office of the state;
- (2) is employed by the state; or
- (3) is registered as a lobbyist under [IC 4-2-7](#);

may not be a member of the commission. The governor shall designate one (1) member of the commission as the chairperson. Each appointment to the commission is for a period of four (4) years. A vacancy shall be filled by the governor for the unexpired term.

(d) The inspector general shall provide rooms and staff assistance for the commission.

*Formerly: Acts 1974, P.L.4, SEC.2. As amended by P.L.13-1987, SEC.5; P.L.222-2005, SEC.2; P.L.89-2006, SEC.2.*

#### **IC 4-2-6-2.1 Compensation of members**

Sec. 2.1. Each member of the commission is entitled to the minimum salary per diem provided by [IC 4-10-11-2.1](#)(b). A member is entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

*As added by P.L.9-1990, SEC.2.*

#### **IC 4-2-6-2.5 Jurisdiction of commission; abolished office of a state officer**

Sec. 2.5. (a) The commission has jurisdiction over the following persons:

- (1) A current or former state officer.
- (2) A current or former employee.
- (3) A person who has or had a business relationship with an agency.
- (4) A current or former special state appointee.

(b) If the office of a state officer is abolished, the following apply:

- (1) The commission continues to have jurisdiction over a person who held the office before the office was abolished to the same extent that the commission would have had jurisdiction over the person if the office had not been abolished.
- (2) The following continue to apply to a person who held the office before the office was abolished to the same extent that the following would have applied to the person if the office had not been abolished:

(A) This chapter.

(B) [IC 4-2-7](#).

(C) [IC 4-2-8](#).

*As added by P.L.9-1990, SEC.3. Amended by P.L.15-1992, SEC.2; P.L.222-2005, SEC.3; P.L.43-2021, SEC.9.*

### **IC 4-2-6-3 Repealed**

*Formerly: Acts 1974, P.L.4, SEC.2. As amended by P.L.13-1987, SEC.6. Repealed by P.L.222-2005, SEC.50.*

### **IC 4-2-6-4 Commission; powers and duties; inspector general; complaints open to public inspection after finding probable cause; exceptions**

Sec. 4. (a) The commission may do any of the following:

(1) Upon a vote of four (4) members, refer any matter within the inspector general's authority to the inspector general for investigation.

(2) Receive and hear any complaint filed with the commission by the inspector general that alleges a violation of:

(A) this chapter;

(B) a rule adopted under this chapter;

(C) [IC 4-2-7](#);

(D) a rule adopted under [IC 4-2-7](#);

(E) [IC 4-2-8](#); or

(F) a rule adopted under [IC 4-2-8](#).

(3) Obtain information and, upon a vote of four (4) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued.

(4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, special state appointees, and persons who have business relationships with agencies.

(5) Adopt rules under [IC 4-22-2](#) to implement this chapter.

(6) Accept and file information:

(A) voluntarily supplied; and

(B) that exceeds the requirements of this chapter.

(7) Conduct research.

(b) The commission shall do the following:

(1) Act as an advisory body by issuing advisory opinions to interpret this chapter, [IC 4-2-7](#), or the rules adopted under this chapter or [IC 4-2-7](#), upon:

(A) request of:

(i) a state officer or a former state officer;

(ii) an employee or a former employee;

(iii) a person who has or had a business relationship with an agency;

(iv) a special state appointee or former special state appointee; or

(v) the inspector general; or

(B) motion of the commission.

(2) Conduct its proceedings in the following manner:

(A) When a complaint is filed with the commission, the commission may:

(i) reject, without further proceedings, a complaint that the commission considers frivolous or inconsequential;

(ii) reject, without further proceedings, a complaint that the commission is satisfied has been dealt with appropriately by an agency;

- (iii) upon the vote of four (4) members, determine that the complaint does not allege facts sufficient to constitute a violation of this chapter or the code of ethics and dismiss the complaint; or
  - (iv) forward a copy of the complaint to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the appointing authority, or other appropriate person for action, and stay the commission's proceedings pending the other action.
- (B) If a complaint is not disposed of under clause (A), a copy of the complaint shall be sent to the person alleged to have committed the violation.
- (C) If the complaint is not disposed of under clause (A), the commission may promptly refer the alleged violation for additional investigation by the inspector general. If the commission finds by a majority vote that probable cause exists to support an alleged violation, it shall set a public hearing on the matter. The respondent shall be notified within fifteen (15) days of the commission's determination. Except as provided in this section, the commission's evidence relating to an investigation is confidential.
- (D) A complaint filed with the commission is open for public inspection after the commission finds that probable cause exists. However, a complaint filed by the inspector general that contains confidential information under [IC 4-2-7-8](#) may be redacted to exclude the confidential information. Every hearing and other proceeding in which evidence is received by the commission is open to the public. Investigative reports by the inspector general that are not filed with the commission may be kept confidential.
- (E) A:
- (i) complaint that is filed with; or
  - (ii) proceeding that is held by;
- the commission before the commission has found probable cause is confidential unless the target of the investigation elects to have information disclosed, or the commission elects to respond to public statements by the person who filed the complaint.
- (F) The commission may acknowledge:
- (i) the existence and scope of an investigation before the finding of probable cause; or
  - (ii) that the commission did not find probable cause to support an alleged violation.
- (G) If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with [IC 4-21.5](#), including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.
- (H) After the hearing, the commission shall state its findings of fact. If the commission, based on a preponderance of the evidence, finds by a majority vote that the respondent has violated this chapter, [IC 4-2-7](#), [IC 4-2-8](#), or a rule adopted under this chapter, [IC 4-2-7](#), or [IC 4-2-8](#), it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public.
- (I) If the commission, based on a preponderance of the evidence, finds by a majority vote a violation of this chapter, [IC 4-2-7](#), [IC 4-2-8](#), or a rule adopted under this chapter, [IC 4-2-7](#), or [IC 4-2-8](#), the commission may also take any of the actions provided in section 12 of this chapter.
- (J) The report required under clause (H) shall be presented to:
- (i) the respondent;
  - (ii) the appointing authority or state officer of the employee, former employee, or special state appointee;
  - (iii) the appointing authority or state officer of an agency or office that has a business relationship with the person sanctioned; and
  - (iv) the governor.
- (K) The commission may also forward the report to any of the following:
- (i) The prosecuting attorney of each county in which the violation occurred.

- (ii) The state board of accounts.
- (iii) The state personnel director.
- (iv) The attorney general.
- (v) A state officer.
- (vi) The appointing authority of the state employee or agency that has a business relationship with the person sanctioned.
- (vii) Any other appropriate person.

(L) If the commission finds the respondent has not violated a code or statutory provision or a rule adopted under this chapter, [IC 4-2-7](#), or [IC 4-2-8](#), it shall dismiss the charges.

(3) Review all conflict of interest disclosures received by the commission under [IC 35-44.1-1-4](#), maintain an index of those disclosures, and issue advisory opinions and screening procedures as set forth in section 9 of this chapter.

(c) Notwithstanding [IC 5-14-3-4\(b\)\(8\)\(C\)](#), the records of the commission concerning the case of a respondent that are not confidential under [IC 5-14-3-4\(b\)\(2\)\(C\)](#) shall be available for inspection and copying in accordance with [IC 5-14-3](#).

*Formerly: Acts 1974, P.L.4, SEC.2. As amended by P.L.12-1983, SEC.4; P.L.13-1987, SEC.7; P.L.5-1988, SEC.19; P.L.9-1990, SEC.4; P.L.15-1992, SEC.3; P.L.44-2001, SEC.2; P.L.222-2005, SEC.4; P.L.89-2006, SEC.3; P.L.126-2012, SEC.1.*

#### **IC 4-2-6-4.3 Meetings**

Sec. 4.3. The commission may not conduct a hearing under section 4(b)(2)(G) of this chapter by using electronic communication under [IC 5-14-1.5-3.6](#).

*As added by P.L.89-2006, SEC.4. Amended by P.L.134-2012, SEC.1.*

#### **IC 4-2-6-4.5 Violations reported; report to commission of action taken**

Sec. 4.5. Whenever an appointing authority or a state officer receives a report under section 4(b)(2)(H) of this chapter, the appointing authority or state officer shall report to the commission the action taken in response to the report. The commission may require in the report that the appointing authority or the state officer submit the response required by this section in a reasonable, specified amount of time.

*As added by P.L.13-1987, SEC.8. Amended by P.L.9-1990, SEC.5; P.L.89-2006, SEC.5.*

#### **IC 4-2-6-5 Repealed**

*Formerly: Acts 1974, P.L.4, SEC.2. Repealed by P.L.222-2005, SEC.50.*

#### **IC 4-2-6-5.5 Conflict of interest; advisory opinion by commission**

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
  - (A) of substantial value; and
  - (B) not properly available to similarly situated individuals outside state government.



(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

*As added by P.L.222-2005, SEC.5. Amended by P.L.89-2006, SEC.6; P.L.123-2015, SEC.22.*

#### **IC 4-2-6-6 Present or former state officers, employees, and special state appointees; compensation resulting from confidential information**

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

*Formerly: Acts 1974, P.L.4, SEC.2. As amended by P.L.15-1992, SEC.4; P.L.89-2006, SEC.7.*

#### **IC 4-2-6-7 State officers and employees; excess compensation for sale or lease; advisory body member exception**

Sec. 7. (a) This section does not apply to a special state appointee who serves only as a member of an advisory body.

(b) A state officer, employee, or special state appointee may not receive compensation:

- (1) for the sale or lease of any property or service which substantially exceeds that which the state officer, employee, or special state appointee would charge in the ordinary course of business; and
- (2) from any person whom the state officer, employee, or special state appointee knows or, in the exercise of reasonable care and diligence should know, has a business relationship with the agency in which the state officer, employee, or special state appointee holds a position.

*Formerly: Acts 1974, P.L.4, SEC.2. As amended by P.L.9-1990, SEC.6; P.L.89-2006, SEC.8.*

#### **IC 4-2-6-8 Financial disclosure; filing false statement; penalty**

Sec. 8. (a) The following persons shall file a written financial disclosure statement:

- (1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and attorney general.
- (2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.
- (3) Any person who is the appointing authority of an agency.
- (4) The director of each division of the Indiana department of administration.
- (5) Any purchasing agent within the procurement division of the Indiana department of administration.
- (6) Any agency employee, special state appointee, former agency employee, or former special state appointee with final purchasing authority.
- (7) The chief investment officer employed by the Indiana public retirement system.
- (8) Any employee of the Indiana public retirement system whose duties include the recommendation, selection, and management of:
  - (A) the investments of the funds administered by the Indiana public retirement system;
  - (B) the investment options offered in the annuity savings accounts in the public employees' retirement fund and the Indiana state teachers' retirement fund;
  - (C) the investment options offered in the legislators' defined contribution plan; or
  - (D) investment managers, investment advisors, and other investment service providers of the Indiana public retirement system.

(9) An employee required to do so by rule adopted by the inspector general.

(b) The statement shall be filed with the inspector general as follows:

- (1) Not later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).

(2) If the individual has not previously filed under subdivision (1) during the present calendar year and is filing as a candidate for a state office listed in subsection (a)(1), before filing a declaration of candidacy under [IC 3-8-2](#) or [IC 3-8-4-11](#), petition of nomination under [IC 3-8-6](#), or declaration of intent to be a write-in candidate under [IC 3-8-2-2.5](#), or before a certificate of nomination is filed under [IC 3-8-7-8](#), in the case of a candidate for one (1) of the state offices (unless the statement has already been filed when required under [IC 3-8-4-11](#)).

(3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.

(4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.

The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or employee who leaves office or employment, the period since a previous statement was filed:

(1) The name and address of any person known:

(A) to have a business relationship with the agency of the state officer or employee or the office sought by the candidate; and

(B) from whom the state officer, candidate, or the employee, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).

(2) The location of all real property in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars (\$5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or the employee's net worth or the net worth of that individual's spouse or unemancipated children. An individual's primary personal residence need not be listed, unless it also serves as income property.

(3) The names and the nature of the business of the employers of the state officer, candidate, or the employee and that individual's spouse.

(4) The following information about any sole proprietorship owned or professional practice operated by the state officer, candidate, or the employee or that individual's spouse:

(A) The name of the sole proprietorship or professional practice.

(B) The nature of the business.

(C) Whether any clients are known to have had a business relationship with the agency of the state officer or employee or the office sought by the candidate.

(D) The name of any client or customer from whom the state officer, candidate, employee, or that individual's spouse received more than thirty-three percent (33%) of the state officer's, candidate's, employee's, or that individual's spouse's nonstate income in a year.

(5) The name of any partnership of which the state officer, candidate, or the employee or that individual's spouse is a member and the nature of the partnership's business.

(6) The name of any corporation (other than a church) of which the state officer, candidate, or the employee or that individual's spouse is an officer or a director and the nature of the corporation's business.

(7) The name of any corporation in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000). However, if the stock is held in a blind trust, the name of the administrator of the trust must be disclosed on the statement instead of the name of the corporation. A time or demand deposit in a financial institution or insurance policy need not be listed.

(8) The name and address of the most recent former employer.

(9) Additional information that the person making the disclosure chooses to include.

Any such state officer, candidate, or employee may file an amended statement upon discovery of additional information required to be reported.

(d) A person who:

- (1) fails to file a statement required by rule or this section in a timely manner; or
- (2) files a deficient statement;

upon a majority vote of the commission, is subject to a civil penalty at a rate of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

(e) A person who intentionally or knowingly files a false statement commits a Class A infraction.

*Formerly: Acts 1974, P.L.4, SEC.2. As amended by P.L.12-1983, SEC.5; P.L.13-1987, SEC.9; P.L.9-1990, SEC.7; P.L.3-1993, SEC.237; P.L.44-2001, SEC.3; P.L.14-2004, SEC.180; P.L.222-2005, SEC.6; P.L.89-2006, SEC.9; P.L.23-2011, SEC.2; P.L.219-2017, SEC.9; P.L.8-2019, SEC.8; P.L.43-2021, SEC.10.*

#### **IC 4-2-6-9 Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter.

The commission shall:

- (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
  - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (2) File a written disclosure statement with the commission that:
    - (A) details the conflict of interest;
    - (B) describes and affirms the implementation of a screen established by the ethics officer;
    - (C) is signed by both:
      - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
      - (ii) the agency ethics officer;
    - (D) includes a copy of the disclosure provided to the appointing authority; and
    - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

*Formerly: Acts 1974, P.L.4, SEC.2. As amended by P.L.9-1990, SEC.8; P.L.15-1992, SEC.5; P.L.22-1995, SEC.2; P.L.222-2005, SEC.7; P.L.123-2015, SEC.23.*

#### **IC 4-2-6-10 Repealed**

*Formerly: Acts 1974, P.L.4, SEC.2. Repealed by Acts 1978, P.L.2, SEC.428.*

#### **IC 4-2-6-10.5 Prohibition against financial interest in contract; exceptions; disclosure statement; penalty for failure to file statement**

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

- (1) does not participate in or have contracting responsibility for the contracting agency; and
- (2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

- (1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.
- (2) An affirmation that the contract:
  - (A) was made after public notice and, if applicable, through competitive bidding; or
  - (B) was not subject to notice and bidding requirements and the basis for that conclusion.
- (3) A statement making full disclosure of all related financial interests in the contract.
- (4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.
- (5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

- (1) fails to file a statement required by rule or this section; or
- (2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

*As added by P.L.222-2005, SEC.8. Amended by P.L.123-2015, SEC.24.*

#### **IC 4-2-6-11 One year restriction on certain employment or representation; advisory opinion; exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office**

Sec. 11. (a) As used in this section, "particular matter" means any of the following:

- (1) An application.
- (2) A business transaction.
- (3) A claim.
- (4) A contract.
- (5) A determination.
- (6) An enforcement proceeding.
- (7) An investigation.

- (8) A judicial proceeding.
- (9) A lawsuit.
- (10) A license.
- (11) An economic development project.
- (12) A public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
  - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
  - (B) in a position to make a discretionary decision affecting the:
    - (i) outcome of the negotiation; or
    - (ii) nature of the administration; or

(3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of the individual's duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) consultation by;
- (3) representation by; or
- (4) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to the following:

- (1) A special state appointee who serves only as a member of an advisory body.
- (2) A former state officer, employee, or special state appointee who has:
  - (A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and
  - (B) any contract that:
    - (i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and

(ii) is no longer active.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. A waiver must satisfy all of the following:

- (1) The waiver must be signed by an employee's or a special state appointee's:
  - (A) state officer or appointing authority authorizing the waiver; and
  - (B) agency ethics officer attesting to form.
- (2) The waiver must include the following information:
  - (A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.
  - (B) The nature of the duties to be performed by the employee for the prospective employer.
  - (C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.
  - (D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.
  - (E) The extent of economic hardship to the employee if the request for a waiver is denied.
- (3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.
- (4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under [IC 4-22-2](#) to establish criteria for post employment waivers.

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

- (1) made decisions as an administrative law judge; or
- (2) presided over information gathering or order drafting proceedings;

that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service. The disclosure must:

- (1) be signed by the former state officer, employee, or special state appointee;
- (2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and
- (3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

*As added by P.L.9-1990, SEC.9. Amended by P.L.15-1992, SEC.6; P.L.222-2005, SEC.9; P.L.89-2006, SEC.10; P.L.1-2007, SEC.3; P.L.123-2015, SEC.25.*

#### **IC 4-2-6-11.5 Lobbyists prohibited from serving on executive branch boards, commissions, authorities, or task forces; exception for advisory bodies**

Sec. 11.5. (a) This section applies only to a special state appointee appointed after January 10, 2005.

(b) Except as provided in subsection (c), a lobbyist may not serve as a special state appointee.

(c) A lobbyist may serve as a member of an advisory body.

*As added by P.L.222-2005, SEC.10. Amended by P.L.89-2006, SEC.11.*

#### **IC 4-2-6-12 Violations; penalties; sanctions**

Sec. 12. If the commission finds a violation of this chapter, [IC 4-2-7](#), or [IC 4-2-8](#), or a rule adopted under this chapter [IC 4-2-7](#), or [IC 4-2-8](#), in a proceeding under section 4 of this chapter, the commission may take any of the following actions:

- (1) Impose a civil penalty upon a respondent not to exceed three (3) times the value of any benefit received from the violation.
- (2) Cancel a contract.
- (3) Bar a person from entering into a contract with an agency or a state officer for a period specified by the commission.
- (4) Order restitution or disgorgement.
- (5) Reprimand, suspend, or terminate an employee or a special state appointee.
- (6) Reprimand or recommend the impeachment of a state officer.
- (7) Bar a person from future state employment as an employee or future appointment as a special state appointee.
- (8) Revoke a license or permit issued by an agency.
- (9) Bar a person from obtaining a license or permit issued by an agency.
- (10) Revoke the registration of a person registered as a lobbyist under [IC 4-2-8](#).
- (11) Bar a person from future lobbying activity with a state officer or agency.

*As added by P.L.9-1990, SEC.10. Amended by P.L.15-1992, SEC.7; P.L.222-2005, SEC.11; P.L.89-2006, SEC.12.*

#### **IC 4-2-6-13 Retaliation against employee or former employee for filing complaint or furnishing information or testimony**

Sec. 13. (a) Except as provided in subsection (b), a state officer, an employee, or a special state appointee shall not retaliate or threaten to retaliate against an employee, a former employee, a special state appointee, or a former special state appointee because the employee, former employee, special state appointee, or former special state appointee did any of the following:

- (1) Filed a complaint with the commission or the inspector general.
- (2) Provided information to the commission or the inspector general.
- (3) Testified at a commission proceeding.

(b) A state officer, an employee, or a special state appointee may take appropriate action against an employee who took any of the actions listed in subsection (a) if the employee or special state appointee:

- (1) did not act in good faith; or
- (2) knowingly or recklessly provided false information or testimony to the commission.

(c) A person who violates this section is subject to action under section 12 of this chapter and criminal prosecution under [IC 35-44.2-1-2](#).

*As added by P.L.15-1992, SEC.8. Amended by P.L.44-2001, SEC.4; P.L.222-2005, SEC.12; P.L.89-2006, SEC.13; P.L.126-2012, SEC.2.*

#### **IC 4-2-6-14 Prohibitions; criminal penalty**

Sec. 14. (a) A person may not do any of the following:

- (1) Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a commission proceeding or investigation conducted by the inspector general to do any of the following:

- (A) Withhold or unreasonably delay the production of any testimony, information, document, or thing.

- (B) Avoid legal process summoning the person to testify or supply evidence.
- (C) Fail to appear at a proceeding or investigation to which the person has been summoned.
- (D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.
- (2) Alter, damage, or remove a record, document, or thing except as permitted or required by law, with the intent to prevent the record, document, or thing from being produced or used in a commission proceeding or investigation conducted by the inspector general.
- (3) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

(b) A person who violates subsection (a) is subject to criminal prosecution under [IC 35-44.2-1-3](#).

*As added by P.L.44-2001, SEC.5. Amended by P.L.222-2005, SEC.13; P.L.126-2012, SEC.3.*

#### **IC 4-2-6-15 Communications paid for with appropriations or from securities division enforcement account; use of state officer's name or likeness prohibited; exceptions**

Sec. 15. (a) This section does not apply to the following:

- (1) A communication made by the governor concerning the public health or safety.
- (2) A communication:
  - (A) that a compelling public policy reason justifies the state officer to make; and
  - (B) the expenditure for which is approved by the budget agency after an advisory recommendation from the budget committee.
- (3) A communication:
  - (A) posted or maintained on a state owned Internet web site; or
  - (B) that relates to the official duties of the state officer and that is not made for commercial broadcast or dissemination to the general public.
- (4) Information posted on social media in accordance with section 15.5 of this chapter.

(b) This section does not prohibit a state officer from using in a communication the title of the office the state officer holds.

(c) As used in this section, "communication" refers only to the following:

- (1) An audio communication.
- (2) A video communication.
- (3) A print communication in a newspaper (as defined in [IC 5-3-1-0.4](#)).

(d) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with appropriations made by the general assembly, regardless of the source of the money.

(e) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with:

- (1) money from the securities division enforcement account established under [IC 23-19-6-1\(f\)](#); or
- (2) appropriations from the state general fund made under [IC 23-19-6-1\(f\)](#).

*As added by P.L.58-2010, SEC.33. Amended by P.L.114-2010, SEC.1; P.L.108-2019, SEC.41.*

#### **IC 4-2-6-15.5 Social media; use of state funds; official duties**

Sec. 15.5. (a) The following definitions apply throughout this section:

- (1) "Social media" means an Internet web page or any other form of electronic communication through which users create or use online communities to share information.
- (2) "State funds" means funds derived, in whole or in part, from:
  - (A) appropriations made by the general assembly;
  - (B) money from the securities division enforcement account established by [IC 23-19-6-1\(f\)](#); or



(C) appropriations from the state general fund made under [IC 23-19-6-1\(f\)](#).

(b) Except as provided in subsection (c), a state officer may use state funds to create, develop, and post information on social media if the information relates to the official duties of the state officer. Notwithstanding section 15(e) of this chapter, information posted on social media may include the name and likeness of the state officer.

(c) A state officer may not use state funds to:

(1) post information on social media if the social media service provider requires payment for the posting, without approval from the budget committee established by [IC 4-12-1-3](#), consistent with the requirements set forth in section 15(a)(2) of this section; or

(2) pay a nongovernmental entity to create, develop, or post information on social media;

if the post includes the name or likeness of the state officer. However, this subsection does not prohibit the state officer from using state funds to pay a nongovernmental entity that is not the social media service provider for ancillary or de minimis expenses incurred in posting information on social media, such as the costs of transmitting data by means of the Internet or a cellular telephone network to the social media service provider.

*As added by P.L.108-2019, SEC.42.*

#### **IC 4-2-6-16 Nepotism**

Sec. 16. (a) This chapter does not prohibit the continuation of a job assignment that existed on July 1, 2012.

(b) As used in this section, "employed" refers to all employment, including full-time, part-time, temporary, intermittent, or hourly. The term includes service as a state officer or special state appointee.

(c) An individual employed in an agency may not hire a relative.

(d) Except as provided in subsection (e), an individual may not be employed in the same agency in which an individual's relative is the appointing authority.

(e) An individual may be employed in the same agency in which the individual's relative is the appointing authority, if the individual has been employed in the same agency for at least twelve (12) consecutive months immediately preceding the date the individual's relative becomes the appointing authority.

(f) Except as provided in subsection (e), an individual may not be placed in a relative's direct line of supervision.

(g) An individual employed in an agency may not contract with or supervise the work of a business entity of which a relative is a partner, executive officer, or sole proprietor.

(h) Any person within an agency who knowingly participates in a violation of this chapter is subject to the penalties set forth in section 12 of this chapter.

*As added by P.L.105-2012, SEC.2.*

#### **IC 4-2-6-17 Use of state property for other than official business; exceptions; violations**

Sec. 17. (a) Subject to [IC 4-2-7-5](#), a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

*As added by P.L.123-2015, SEC.26.*

<https://iga.in.gov/laws/2021/ic/titles/4#4-2-6>



Bloomington Housing Authority

1007 North Summit, Bloomington, Indiana 47404  
812-339-3491 fax 812-339-7177

## Conflict of Interest & Code of Conduct

The Bloomington Housing Authority Board of Commissioners has adopted the following Code of Conduct that all Board members agree to adhere to by signing below:

### Procedures for Managing Conflicts of Interest

No member of the BHA Board of Commissioners shall derive any personal profit or gain, directly or indirectly, by reason of his or her service as a Board member with the BHA Board of Commissioners. Members of the board shall conduct their personal affairs in such a manner as to avoid any possible conflict of interest with their duties and responsibilities as members of the Board. Nevertheless, conflicts may arise from time to time.

- a. When there is a decision to be made or an action to be approved that will result in a conflict between the best interests of BHA Board of Commissioners and the Board member's personal interests, the Board member has a duty to immediately disclose the conflict of interest so that the rest of the Board's decision making will be informed about the conflict.
- b. Any conflicts of interest, including, but not limited to financial interests, on the part of any Board Member, shall be disclosed to the Board when the matter that reflects a conflict of interest becomes a matter of Board action, and through an annual procedure for all Board members to disclose conflicts of interest.
- c. Any Board Member having a conflict of interest shall not vote or use his or her personal influence to address the matter, and he or she shall not be counted in determining the quorum for the meeting.
- d. All conflicts disclosed to the Board will be made a matter of record in the minutes of the meeting in which the disclosure was made, which shall also note that the Board member with a conflict abstained from the vote [and was not present for any discussion, as applicable] and was not included in the count for the quorum for that meeting.
- e. Any new Board member will be advised of this policy during board orientation and all Board members will be reminded of the Board Member Code of Conduct and of the procedures for disclosure of conflicts and for managing conflicts on a regular basis, at least once a year.
- f. Hiring practices should avoid favoritism towards family members of Board members or other influential individuals within the BHA.
- g. This policy shall also apply to any Board member's immediate family or any person acting on his or her behalf.

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Printed Name

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Signature

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Date



## UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT

State Form 54266 (R2 / 6-15) / Form 236  
STATE BOARD OF ACCOUNTS

### Indiana Code 35-44.1-1-4

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from IC 35-44.1-1-4. Care should be taken to review IC 35-44.1-1-4 in its entirety.

1. Name and Address of Public Servant Submitting Statement: \_\_\_\_\_

\_\_\_\_\_

2. Title or Position With Governmental Entity: \_\_\_\_\_

3. a. Governmental Entity: \_\_\_\_\_

b. County: \_\_\_\_\_

4. This statement is submitted (check one):

a. ☐ as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or

b. ☐ as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

5. Name(s) of Contractor(s) or Vendor(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Description(s) of Contract(s) or Purchase(s) *(Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship.)*:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. **Description of My Financial Interest** *(Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.):*

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*(Attach extra pages if additional space is needed.)*

8. **Approval of Appointing Officer or Body** *(To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university.):*

I (We) being the \_\_\_\_\_ of  
*(Title of Officer or Name of Governing Body)*

\_\_\_\_\_ and having the power to appoint  
*(Name of Governmental Entity)*

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in Indiana Code 35-44.1-1-4; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

_____	_____
_____	_____
_____	_____
Elected Official	Office

9. **Effective Dates** *(Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.):*

_____	_____
Date Submitted <i>(month, day, year)</i>	Date of Action on Contract or Purchase <i>(month, day, year)</i>

10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: \_\_\_\_\_  
(Signature of Public Servant)

Date: \_\_\_\_\_  
(month, day, year)

Printed Name: \_\_\_\_\_  
(Please print legibly.)

Email Address: \_\_\_\_\_

Within fifteen (15) days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts by uploading it here [https://gateway.ifionline.org/sboa\\_coi/](https://gateway.ifionline.org/sboa_coi/) which is the preferred method of filing, or by mailing it to the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204-2765 and the Clerk of the Circuit Court of the county where the governmental entity took final action on the contract or purchase.

THE FOLLOWING INFORMATION IS FOR YOUR INFORMATION ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE. IT IS THE PROPERTY OF THE U.S. GOVERNMENT AND IS LOANED TO YOU BY THE U.S. GOVERNMENT. IT IS TO BE RETURNED TO THE U.S. GOVERNMENT WHEN YOU NO LONGER NEED IT. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM THE U.S. GOVERNMENT.

1. NAME

2. ADDRESS

3. CITY

4. STATE

5. ZIP

6. PHONE NUMBER

7. DATE OF BIRTH

8. DATE OF DEATH

9. DATE OF INTERVIEW

10. DATE OF REVIEW



## Rental Assistance Demonstration Use Agreement

U.S. Department of Housing and  
Urban Development  
Office of Housing  
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0276), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information is required to apply to the Rental Assistance Demonstration program as authorized by the Consolidated and Further Continuing Appropriations Act of 2012 and subsequent appropriations. Requirements for RAD were established in Notice H-2019-09 PIH-2019-23 (HA) and related notices. This information will be used as the binding agreement between the owner and HUD and sets out affordability and use restrictions for the converted projects. There are no assurances of confidentiality.

**This Rental Assistance Demonstration Use Agreement** (hereinafter called the "Agreement") is made for the benefit of and agreed to by the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (hereinafter called "HUD") by Bloomington RAD II, LP, ("Project Owner"), and the Housing Authority of the City of Bloomington, Indiana, ("PHA"). This Agreement is effective as of the date agreed upon by the parties for closing of the RAD conversion (the "Closing Date"), which date is March 1, 2022. Owner shall cause this Use Agreement to be submitted for recording promptly following the Closing Date and in no event later than 30 days following the Closing Date. If no Closing Date is specified in this paragraph, recordation shall be conclusive evidence of the Closing Date having occurred.

**Whereas**, the Rental Assistance Demonstration (hereinafter called "RAD") provides for the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance.

**Whereas**, the PHA is the fee owner of the real property described on Exhibit A (the "Property") and the Project Owner is the leasehold owner of the Property, upon which is or will be located improvements owned or to be owned by Project Owner receiving assistance converted pursuant to RAD, which project will commonly be known as Crestmont (the "Project"). The Project will

11008963  
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contain 204 dwelling units, of which 40 dwelling units (the “Assisted Units”) are subject to a RAD Housing Assistance Payment contract, as the same may be renewed, amended or replaced from time to time (“RAD HAP Contract”).

**Whereas**, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011, as amended from time to time, the “RAD Statute”); and its implementing program requirements and guidance including, without limitation, the Rental Assistance Demonstration – Final Implementation, Revision 4 Notice, H-2019-09 PIH-2019-23 (HA) as amended from time to time, and any successor document and/or regulations (hereinafter called the “RAD Notice”), which this Agreement incorporates by this reference, the PHA and/or the Project Owner, as applicable, has agreed to encumber the Property and the Project Owner has agreed to operate the Project in accordance with this Agreement in exchange for HUD’s agreement to execute or permit the execution of the RAD HAP Contract and the assistance provided thereby;

**Whereas**, in accordance with the RAD Statute and RAD Notice, except as otherwise agreed in writing by HUD, this Agreement is to be recorded superior to other liens on the Property and shall encumber the Property throughout the term of the RAD HAP Contract (including any renewal terms and the terms of any replacement Housing Assistance Payment (“HAP”) contracts).

**Now Therefore**, in consideration of the foregoing, conversion of assistance pursuant to RAD, provision of rental assistance pursuant to the RAD HAP Contract and other valuable consideration, the parties hereby agree as follows:

1. **Definitions.** All terms used in this Agreement and not otherwise defined have the same meaning as set forth in the RAD Notice.
2. **Term.** The initial term of this Agreement commences upon the effective date set forth above. It is the intention of the parties that this Agreement shall remain in effect for a term not less than the stated term of the RAD HAP Contract, including the initial term of the RAD HAP Contract and any subsequent renewal terms of the RAD HAP Contract or any replacement HAP contracts. The term of this Agreement shall not be affected by the premature termination of the RAD HAP Contract (by way of illustration and not limitation, for breach or non-compliance) prior to its stated term (whether the initial term, any renewal term, or the term of any replacement HAP contracts). In furtherance of the foregoing, unless otherwise approved by HUD this Agreement shall remain in effect until and unless released by HUD and such release is recorded as contemplated by Section 8 of this Agreement. Such release shall be the evidence of the determination not to execute a replacement HAP contract and of the termination of this Agreement. The RAD Statute and RAD Notice require that, upon expiration of the initial RAD HAP Contract and each renewal RAD HAP Contract or any replacement HAP contracts, the Secretary shall offer and the owner of the property shall accept renewal of the HAP contract.
3. **Use Restriction and Tenant Incomes.** The Assisted Units shall be leased in accordance with the RAD HAP Contract, including any applicable eligibility and/or income-targeting requirements. In the case that the RAD HAP Contract is terminated prior to the release of this Agreement, for the remainder of the term of this Agreement new tenants leasing the Assisted



Units (except if any of the Assisted Units is a HUD-approved manager unit) must have incomes at or below 80 percent of the Area Median Income (AMI) at the time of admission ("Eligible Tenants"). Additionally, rents for such Assisted Units must not exceed 30% of 80% of the AMI for households of the size occupying an appropriately sized unit. Notwithstanding the foregoing, in the event the Project Owner so requests and is able to demonstrate to HUD's satisfaction that despite the Project Owner's good faith and diligent efforts to do so, the Project Owner is unable either (1) to rent a sufficient percentage of Assisted Units to Eligible Tenants in order to satisfy the restrictions in this paragraph, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Project Owner and HUD. Any such modification of the restrictions listed in this paragraph shall be evidenced by a written amendment to this Agreement executed by each of the parties hereto.

**4. Survival.** This Agreement shall survive foreclosure and bankruptcy. Unless otherwise approved by HUD, this Agreement will survive abatement of assistance or termination of the RAD HAP Contract at any point other than the natural expiration of its term.

**5. Fair Housing and Civil Rights Requirements.** The Project Owner and its agents, where applicable, shall ensure that the Project complies with applicable federal fair housing and civil rights laws, regulations, and other legal authorities, including those identified at 24 C.F.R. § 5.105.

**6. Accessibility Requirements.** The Project Owner and its agents, where applicable, shall ensure that the Project complies with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively.

**7. Restrictions on Transfer.**

- A. HUD has been granted and is possessed of an interest in the above described Project. Except as authorized below, the Project Owner and, if a party hereto, the PHA, shall not transfer, convey, encumber, demolish, or permit or suffer any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project and/or Property or any part thereof without prior written consent of HUD. Notwithstanding the foregoing, HUD hereby authorizes (a) leases in the normal operation of the Project, (b) subordinate liens contemplated by a RAD Conversion Commitment executed in connection with the Project, whether such liens are recorded concurrent with the recordation of this Use Agreement or recorded subsequent hereto (such as permanent financing to replace construction-period financing), and (c) conveyance or dedication of land for use as streets, alleys, or other public rights-of-way and grants and easements for the establishment, operation and maintenance of public utilities. Except as otherwise approved in writing by HUD, any lien on the Project and/or Property shall be subject and subordinate to this Agreement. Unless this Agreement is released by HUD, any transferee of the Project and/or Property shall take title subject to this Agreement.

- B. In the event of a default under the RAD HAP Contract including, without limitation, upon any transfer of the Property or Project without HUD consent, upon expiration of any applicable notice and/or cure periods, HUD may terminate the Owner's interest in the RAD HAP Contract, including all of the Owner's rights and obligations therein, and transfer the RAD HAP Contract to another "Owner," as defined in section 8(f)(1) of the United States Housing Act of 1937, to ensure the continuation of rental assistance, as authorized under the RAD HAP Contract.

**8. Amendment or Release.** This Agreement may not be amended without HUD consent. This Agreement shall remain as an encumbrance against the Property unless and until HUD executes a release for recording. This Agreement may only be released by HUD in its sole discretion. In the event that the RAD HAP Contract is, in accordance with all applicable laws and RAD program requirements, not renewed or replaced, HUD shall not unreasonably fail to provide such a release upon the completion of the applicable term of this Agreement.

**9. Enforcement.** In the event of a breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy within the Project, or the Secretary or his or her successors or delegates, shall provide the Owner written notice of the breach. Upon failure to cure such breach within sixty (60) days of notice thereof or, if the breach cannot be cured pursuant to commercially reasonable efforts to do so within the prescribed sixty (60) day period, such longer time as the enforcing party reasonably determines to be required by the circumstances, which longer period shall not be unreasonably withheld, conditioned or delayed, the enforcing party may declare an event of default and may institute proper legal action to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate. Upon an event of default, the enforcing party shall have all remedies available to it under statute, at law or in equity. The enforcing party shall have the right to seek specific performance and/or to enjoin any breach, which rights shall be in addition to all other remedies available at law or in equity.

**10. Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.

**11. Conflicts.** Any conflicts between this Agreement and the RAD HAP Contract or any other applicable HUD program requirements shall be conclusively resolved by the Secretary.

**12. Section 18 Non-RAD PBV Rider.** If a Section 18 Non-RAD PBV Rider to the Rental Assistance Demonstration (RAD) Use Agreement is attached to this Agreement, such rider is made a part hereof and incorporated by reference.

**13. Execution of Other Agreements.** The Project Owner and, if a party hereto, the PHA, agrees that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other conflicting requirements.

**14. Subsequent Statutory Amendments.** If revisions to the provisions of this Agreement are necessitated by subsequent statutory amendments, the Project Owner and, if a party hereto, the

PHA, agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. HUD may implement any such statutory amendment through rulemaking or notice as permitted by statute. Except with respect to statutory amendments implemented through regulation, if any future notice, future updates, changes, and amendments to the RAD Notice and guidance are made, they shall be applicable only to the extent that they interpret, clarify, and implement the terms of this Agreement rather than add or delete provisions from this Agreement.

**15. Books and Records.** The Project books and records shall be established and maintained in accordance with HUD requirements. The Project Owner shall furnish any information and reports pertinent to compliance with this Use Agreement and applicable HUD requirements as reasonably may be required from time to time by HUD, in a manner prescribed by HUD. Following receipt of appropriate and reasonable notice, the Project Owner shall permit HUD or any of their duly authorized representatives to have access to the premises and, for the purposes of audit and examination, to have access to any books, documents, papers, and records of the Project Owner that are pertinent to compliance with this Agreement.

**16. Lender Provisions.**

A. Nothing in this Agreement prohibits any holder of a mortgage or other lien against the Property or Project from foreclosing its lien or accepting a deed in lieu of foreclosure or exercising other rights and remedies available to it. Any lien holder shall give HUD, as a courtesy, written notice prior to declaring an event of default. Any lien holder shall provide HUD concurrent notice with any written filing of foreclosure filed in accordance with state law provided that the foreclosure sale shall not occur sooner than sixty days (60) days after such notice to HUD. The Notice to HUD may be personally delivered or sent by U.S. certified or registered mail, return receipt requested, first class postage prepaid, addressed as follows:

U.S. Department of Housing and Urban Development  
451 7th Street SW, Room 4100  
Washington, DC 20410  
Attention: Office of the Assistant Secretary for Public and Indian Housing -  
Rental Assistance Demonstration

B. Notwithstanding any lien holder's foreclosure rights, this Agreement survives foreclosure and any new owners of the Property or the Project take ownership subject to this Agreement.

C. Transfer of title to the Property or the Project may be grounds for termination of assistance under the RAD HAP Contract. However, HUD may permit, through prior written consent by HUD, the new owner of the Property or the Project to assume the RAD HAP Contract, subject to the terms included therein, or enter into a new HAP contract. Any HUD consent to continued HAP assistance is subject to the RAD Statute and other RAD program requirements.

D. Each entity interested in purchasing the Property in a foreclosure sale administered under state foreclosure law may submit a written request to HUD to continue RAD

HAP Contract assistance in the event of such entity's successful acquisition at the foreclosure sale. Such request shall be submitted by the latter of ten business days after first publication of the foreclosure sale or 60 days prior to such foreclosure sale.

**17. Successors and Assigns.** This Agreement shall be binding upon the Project Owner and, if a party hereto, the PHA, and all future successors and assigns of either with respect to any portion of the Property or the Project.

**In Witness Whereof**, the parties hereto, by their respective duly authorized representatives, have caused their names to be subscribed hereto.

*The below parties hereby certify that the information provided on this form and in any supporting documentation submitted herewith is true and accurate. The undersigned understand that any misrepresentations may be subject to civil and/or criminal penalties including, but not limited to, fine or imprisonment, or both under the provisions of Title 18, United States Code, Sections 1001 and 1010. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD, and may be relied upon by HUD as a true statement of facts contained therein.*

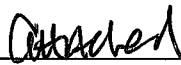
**Project Owner:**

**BLOOMINGTON RAD II, LP,**  
an Indiana limited partnership

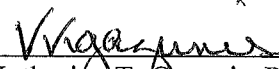
By: Bloomington RAD II Manager, LLC,  
an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C.,  
an Illinois limited liability company, its manager  
and a member

By: RJS Real Estate Services, Inc.,  
an Illinois corporation, its member

By:   
Richard Sciortino, President

By: Summit Hill RAD II, LLC,  
an Indiana limited liability company, a member

By:   
Katherine T. Gazunis, President

[Acknowledgment Pages Follow]

**In Witness Whereof**, the parties hereto, by their respective duly authorized representatives, have caused their names to be subscribed hereto.

*The below parties hereby certify that the information provided on this form and in any supporting documentation submitted herewith is true and accurate. The undersigned understand that any misrepresentations may be subject to civil and/or criminal penalties including, but not limited to, fine or imprisonment, or both under the provisions of Title 18, United States Code, Sections 1001 and 1010. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD, and may be relied upon by HUD as a true statement of facts contained therein.*

**Project Owner:**

**BLOOMINGTON RAD II, LP,**  
an Indiana limited partnership

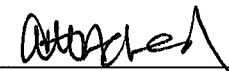
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By: Summit Hill RAD II, LLC,  
an Indiana limited liability company, a member

By:   
Katherine T. Gazunis, President

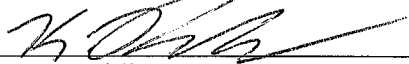
[Acknowledgment Pages Follow]

State of Indiana                                 )  
 County of Monroe                            ) ss:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, hereby certify that Katherine T. Gazunis, who is personally well known to me (or satisfactorily proven) to be the person who signed the foregoing instrument and acknowledged same to be the act and deed of said corporation and that she executed, acknowledged, sealed and delivered the same as such.

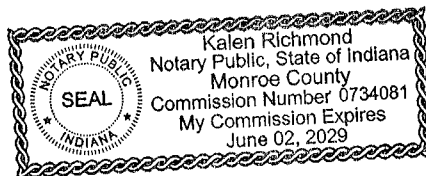
Witness my hand and notarial seal this March 21, 2022

My Commission expires:

  
 Notary Public

[SEAL]

[Acknowledgment Page – K. Gazunis – RAD Use Agreement]



State of ~~Indiana~~ **Illinois** )  
 County of ~~Monroe~~ **Cook** ) ss:

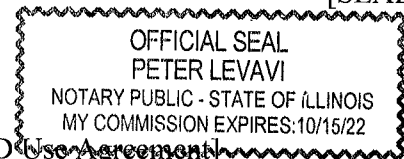
I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, hereby certify that Richard Sciortino, who is personally well known to me (or satisfactorily proven) to be the person who signed the foregoing instrument and acknowledged same to be the act and deed of said corporation and that she executed, acknowledged, sealed and delivered the same as such.

Witness my hand and notarial seal this March 21, 2022

Peter Levavi  
 Notary Public

My Commission expires:

[SEAL]



[Acknowledgment Page – R. Sciortino – RAD Use Agreement]



PHA:

**HOUSING AUTHORITY OF THE CITY OF  
BLOOMINGTON, INDIANA**, an Indiana municipal  
corporation

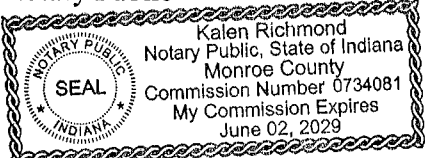
By: *Katherine T. Gazunis*  
Name: Katherine T. Gazunis  
Title: Executive Director

State of Indiana                    )  
County of Monroe                ) ss:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, hereby certify that Katherine T. Gazunis, who is personally well known to me (or satisfactorily proven) to be the person who signed the foregoing instrument and acknowledged same to be the act and deed of said corporation and that she executed, acknowledged, sealed and delivered the same as such.

Witness my hand and notarial seal this March 21, 2022

My Commission expires:

*K. Richmond*  
Notary Public  
 [SEAL]

[Acknowledgment Page – K. Gazunis – RAD Use Agreement]

## Department of Housing and Urban Development

By:

Thomas R. Davis

Name: Thomas R. Davis

Title: Director, Office of Recapitalization

Date: March 17, 2022

*A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.*

Washington

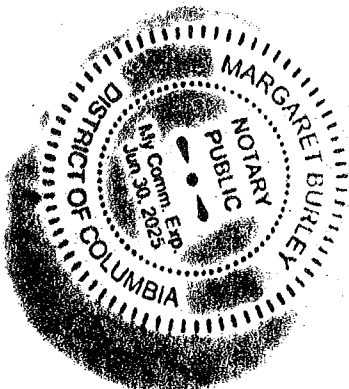
SS.

District of Columbia

On MARCH 27, 2022, before me, a Notary Public for the above jurisdiction, personally appeared Thomas R. Davis, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the above jurisdiction that the foregoing paragraph is true and correct. Witness my hand and official seal.

Notary Public

Print Name: MARGARET BURLEYMy commission expires: 6/30/2025

District of Columbia

Signed and Sworn to (or affirmed) before me on 3/17/2022 (Date)  
by Thomas R. Davis  
(Name(s) of Individual(s) Making Statement)

Signature of Notarial Officer: Margaret BurleyTitle of Office: NotaryMy Commission Expires: 6/30/2025

Prepared by and after recording return to:

Kathie Soroka  
Nixon Peabody LLP  
55 W 46<sup>th</sup> St  
New York, NY 10036

I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Kathie Soroka

## Section 18 Non-RAD PBV Rider to RAD Use Agreement

U.S. Department of Housing  
and Urban Development

**Public reporting burden** for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0276), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information is required to apply to the Rental Assistance Demonstration program as authorized by the Consolidated and Further Continuing Appropriations Act of 2012 and subsequent appropriations. Requirements for RAD were established in Notice H-2019-09 PIH-2019-23 (HA) and subsequent notices. The information will be used to set out affordability and use restrictions for projects approved through Section 18 in conjunction with RAD and that will be preserved with project-based assistance. There are no assurances of confidentiality.

### Section 18 Non-RAD PBV Rider to the Rental Assistance Demonstration (“RAD”) Use Agreement

**Whereas**, this Section 18 Non-RAD PBV Rider to RAD Use Agreement is part of the RAD Use Agreement to which it is appended, and capitalized terms shall have the meaning ascribed to them in the RAD Use Agreement.

**Whereas**, the Bloomington Housing Authority (the “PHA”) owned and operated one hundred ninety-six (196) dwelling units at Crestmont, more particularly described in Exhibit A to the RAD Use Agreement (the “**Disposition Property**”);

**Whereas**, the PHA owned and operated the Disposition Property as low-rent public housing with financial assistance provided by HUD under the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq. (the “**Act**”);

**Whereas**, construction and/or operation of the Disposition Property was financed in part by HUD under the Act;

**Whereas**, the PHA requested HUD approval of the conveyance of the Disposition Property in accordance with RAD and Section 18 of the Act, and specifically based on Section 3) A.2.e of PIH Notice 2021-07: “Blending Section 18 Disposition Approvals with Rental Assistance Demonstration (RAD) Conversion” as amended or replaced from time to time. Specifically, the PHA is converting a portion of the public housing units at the Disposition Property under RAD and is replacing the units proposed for disposition under Section 18 of the Act with Section 8 project-based voucher (“**PBV**”) assistance in accordance with 24 CFR part 983. The aggregate number of replacement units (RAD and PBVs) meets the RAD “substantial conversion of assistance” requirements.

**Whereas**, as part of the RAD conversion, the Project Owner will own and operate the Project containing a total of two hundred and four (204) dwelling units, of which forty (40) dwelling

units (the “**RAD Units**”) will be subject to the RAD HAP Contract and one hundred fifty-six (156) dwelling units (the “**Non-RAD PBV Units**”) received HUD’s disposition approval under Section 18 of the Act. Of the Non-RAD PBV Units, 152 will be subject to a non-RAD Section 8 PBV Housing Assistance Payments contract as of the date hereof and 4 units will receive Project-Based Voucher assistance upon the completion of construction. In addition, eight (8) units will be created through construction and will receive Project-Based Voucher assistance from the PHA’s pre-existing Housing Choice Voucher authority (“**Additional PBV Units**”).

**Now Therefore**, in consideration of the foregoing and other good and valuable consideration, the parties hereby agree as follows:

1. **Applicability of RAD Use Agreement.** Except as noted or clarified in this Rider, all terms and conditions of the RAD Use Agreement applicable to the Project, the Project Owner and the Assisted Units also apply to the Non-RAD PBV Units.

2. **Section 18 Disposition Approval Use Restriction.** In accordance with the terms and conditions of HUD’s approval of the conveyance of the Non-RAD PBV Units for below fair market value based on a finding of commensurate public benefit pursuant to 24 CFR 970.19, the Non-RAD PBV Units must be used exclusively as housing for low-income families under the Section 8 PBV program for a period of not less than 40 years. For purposes of this Rider, the term "low-income families" is defined at Section 3(b)(2) of the Act and means families with incomes at or below 80% of median income for the area.

3. **Term.**

- a. Section 2 of the RAD Use Agreement regarding the Term is modified to specify that the following excerpt does not apply to the Non-RAD PBV Units:

*It is the intention of the parties that this Agreement shall remain in effect for a term not less than the stated term of the RAD HAP Contract, including the initial term of the RAD HAP Contract and any subsequent renewal terms of the RAD HAP Contract or any replacement HAP contracts. The term of this Agreement shall not be affected by the premature termination of the RAD HAP Contract (by way of illustration and not limitation, for breach or non-compliance) prior to its stated term (whether the initial term, any renewal term, or the term of any replacement HAP contracts). In furtherance of the foregoing, unless otherwise approved by HUD this Agreement shall remain in effect until and unless released by HUD and such release is recorded as contemplated by Section 8 of this Agreement. Such release shall be the evidence of the determination not to execute a replacement HAP contract and of the termination of this Agreement. The RAD Statute and RAD Notice require that, upon expiration of the initial RAD HAP Contract and each renewal RAD HAP Contract or any replacement HAP contracts, the Secretary shall offer and the owner of the property shall accept renewal of the HAP contract.*

- b. The applicability of this Rider shall extend for any periods that are coterminous with any extended HAP contract applicable to the Non-RAD PBV Units. The parties intend to exercise the rights to extend the HAP contract to the maximum extent as may be permitted by section 8(o)(13)(G) of the Act, as amended; 24 CFR part 983, as amended; and 82 Fed. Reg. 5458, 5468, as such requirements may be amended from time to time.

4. **Transfers.** Non-RAD PBV Units are not subject to any of the provisions set forth in the RAD Notice which allow and govern a transfer of assistance. Section 7 of the RAD Use Agreement regarding restrictions on transfer is modified to specify that the following excerpt does not apply to the Non-RAD PBV Units:

*In the event of a default under the RAD HAP Contract including, without limitation, upon any transfer of the Property or Project without HUD consent, upon expiration of any applicable notice and/or cure periods, HUD may terminate the Owner's interest in the RAD HAP Contract, including all of the Owner's rights and obligations therein, and transfer the RAD HAP Contract to another "Owner," as defined in section 8(f)(1) of the United States Housing Act of 1937, to ensure the continuation of rental assistance, as authorized under the RAD HAP Contract.*

[End of Rider to RAD Use Agreement]

**EXHIBIT A**  
**Property Subject to this RAD Use Agreement**

THE LEASEHOLD ESTATE CREATED BY THE GROUND LEASE, EXECUTED BY AND BETWEEN THE HOUSING AUTHORITY OF THE CITY OF BLOOMINGTON, INDIANA, AN INDIANA MUNICIPAL CORPORATION ORGANIZED UNDER THE LAWS OF INDIANA, AS LANDLORD, AND BLOOMINGTON RAD II, LP, AN INDIANA LIMITED PARTNERSHIP, AS TENANT, DATED AS OF MARCH 1, 2022, WHICH LEASE DEMISES THE FOLLOWING DESCRIBED PROPERTY FOR A TERM OF 99 YEARS.

ALL OF THE LAND WHICH COMPRISES DYER FIRST ADDITION TO THE CITY OF BLOOMINGTON, INDIANA, PLAT CABINET B, ENVELOPE 110, IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA.

EXCEPTING THEREFROM:

BEGINNING AT A POINT THAT IS AT THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF THIRTEENTH STREET AND THE WEST RIGHT OF WAY LINE OF SUMMIT STREET; THENCE ALONG THE NORTH RIGHT OF WAY OF SAID THIRTEENTH STREET SOUTH 89 DEGREES 13 MINUTES 15 SECONDS WEST 75.00 FEET; THENCE NORTH 01 DEGREES 04 MINUTES 45 SECONDS WEST 220.91 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 44.00 FEET; THENCE SOUTH 73 DEGREES 02 MINUTES 06 SECONDS EAST 18.65 FEET; THENCE NORTH 90 DEGREE 00 MINUTES 00 SECONDS EAST 8.01 FEET; THENCE SOUTH 68 DEGREES 30 MINUTES 07 SECONDS EAST 17.85 FEET TO THE WEST RIGHT OF WAY OF SAID SUMMIT STREET; THENCE SOUTHWESTERLY 58.34 FEET ALONG SAID RIGHT OF WAY ON A CURVE TO THE LEFT HAVING A RADIUS OF 150.00 FEET AND BEING SUBTENDED BY A CHORD BEARING SOUTH 10 DEGREES 03 MINUTES 52 SECONDS WEST 57.97 FEET; THENCE CONTINUING ALONG SAID RIGHT OF WAY SOUTH 01 DEGREES 04 MINUTES 45 SECONDS EAST 150.81 FEET AND TO THE POINT OF BEGINNING.

53-05-32-200-060.000-005

*CIT IN005828 #4*

Rental Assistance Demonstration  
Use Agreement  
(Reverend Butler)

Made by Bloomington RAD I, LP  
And the Housing Authority of the City of Bloomington

For the benefit of  
The United States Department of Housing and Urban Development

Dated as of May 1, 2020



**Rental Assistance  
Demonstration  
Use Agreement**

**U.S. Department of Housing  
and Urban Development**  
Office of Housing  
Office of Public and Indian Housing

**OMB Approval No. 2502-0612  
(Exp. 04/30/2020)**

**Public reporting burden** for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0276), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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**This Rental Assistance Demonstration Use Agreement** (hereinafter called the “Agreement”) is made as of May 1<sup>st</sup>, 2020, for the benefit of and agreed to by the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (hereinafter called “HUD”) by Bloomington RAD I, LP, (“Project Owner”), and the Housing Authority of the City of Bloomington (“PHA”).

**Whereas**, Rental Assistance Demonstration (hereinafter called “RAD”) provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access to private debt and equity to address immediate and long-term capital needs.

**Whereas**, the PHA is the fee owner of the real property described on Exhibit A (the “Property”), upon which is or will be located improvements owned or to be owned by Project Owner receiving assistance converted pursuant to RAD, which project will commonly be known as Reverend Butler (the “Project”). The Project will contain 56 dwelling units, of which 42 (“Assisted Units”) are subject to a RAD Housing Assistance Payment contract, as the same may be renewed, amended or replaced from time to time (“RAD HAP contract”).

**Whereas**, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011, as amended from time to time, the “RAD Statute”); and the corresponding PIH Notice 2012-32, rev-2, as amended from time to time, and any successor document and/or regulations (hereinafter called the “RAD Notice”), which this Agreement incorporates by this reference, the PHA and/or the Project Owner, as applicable, has agreed to encumber the Property and the Project Owner has agreed to operate the Project in

accordance with this Agreement in exchange for HUD's agreement to execute or permit the execution of the RAD HAP contract and the assistance provided thereby;

**Whereas**, in accordance with the RAD Statute and RAD Notice, except as otherwise agreed in writing by HUD, this Agreement is to be recorded superior to other liens on the Property, run until the conclusion of the initial term of the RAD HAP contract, automatically renew upon each extension or renewal of the RAD HAP contract for a term that runs with each renewal term of the RAD HAP contract, and remain in effect even in the case of abatement or termination of the RAD HAP contract for the term the RAD HAP contract would have run, absent the abatement or termination.

**Now Therefore**, in consideration of the foregoing, conversion of assistance pursuant to RAD, provision of rental assistance pursuant to the RAD HAP contract and other valuable consideration, the parties hereby agree as follows:

**1. Definitions.** All terms used in this Agreement and not otherwise defined have the same meaning as set forth in the RAD Notice.

**2. Term.** The initial term of this Agreement commences upon the date this Agreement is entered into and shall run until the conclusion of the initial term of the RAD HAP contract. The RAD HAP contract is effective for 20 years. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term of the RAD HAP contract and for additional periods to coincide with any renewal term of the RAD HAP contract or any replacement HAP contract. It is the intention of the parties that the RAD HAP and this Agreement shall each renew upon the completion of its initial term. Therefore, this Agreement shall remain in effect until a release is recorded as contemplated by Section 8. Such release shall be the evidence of the non-renewal of the HAP Contract, of the determination not to execute a replacement HAP contract and of the termination of this Agreement. This Agreement will survive abatement of assistance or termination of the RAD HAP contract unless otherwise approved by HUD.

**3. Use Restriction and Tenant Incomes.** The Assisted Units shall be leased in accordance with the RAD HAP contract, including any applicable eligibility and/or income-targeting requirements. In the case that the RAD HAP contract is terminated prior to the completion of the term or renewal term, if applicable, of this Agreement (by way of illustration and not limitation, for breach or non-compliance), for the remainder of the term of this Agreement new tenants leasing the Assisted Units (except if any of the Assisted Units is a HUD-approved manager unit) must have incomes at or below 80 percent of the Area Median Income (AMI) at the time of admission ("Eligible Tenants"). Additionally, rents for such Assisted Units must not exceed 30% of 80% of the AMI for households of the size occupying an appropriately sized unit. Notwithstanding the foregoing, in the event the Project Owner so requests and is able to demonstrate to HUD's satisfaction that despite the Project Owner's good faith and diligent efforts to do so, the Project Owner is unable either (1) to rent a sufficient percentage of Assisted Units to Eligible Tenants in order to satisfy the restrictions in this paragraph, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Project Owner and HUD. Any such modification of the restrictions listed

in this paragraph shall be evidenced by a written amendment to this Agreement executed by each of the parties hereto.

**4. Survival.** This Agreement will survive foreclosure and bankruptcy.

**5. Fair Housing and Civil Rights Requirements.** The Project Owner and its agents, where applicable, shall ensure that the Project complies with applicable federal fair housing and civil rights laws, regulations, and other legal authorities, including those identified at 24 C.F.R. § 5.105.

**6. Accessibility Requirements.** The Project Owner and its agents, where applicable, shall ensure that the Project complies with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively.

**7. Restrictions on Transfer.** HUD has been granted and is possessed of an interest in the above described Project. Except as authorized below, the Project Owner and, if a party hereto, the PHA, shall not transfer, convey, encumber or permit or suffer any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project and/or Property or any part thereof without prior written consent of HUD. Notwithstanding the foregoing, HUD hereby authorizes (a) leases in the normal operation of the Project, (b) subordinate liens contemplated by a RAD Conversion Commitment executed in connection with the Project, whether such liens are recorded concurrent with the recordation of this Use Agreement or recorded subsequent hereto (such as permanent financing to replace construction-period financing), and (c) conveyance or dedication of land for use as streets, alleys, or other public rights-of-way and grants and easements for the establishment, operation and maintenance of public utilities. Except as otherwise approved in writing by HUD, any lien on the Project and/or Property shall be subject and subordinate to this Agreement. Unless this Agreement is released by HUD, any transferee of the Project and/or Property shall take title subject to this Agreement. In the event of a default under the RAD HAP contract including, without limitation, upon any transfer of the Property or Project without HUD consent, upon expiration of any applicable notice and/or cure periods, HUD may transfer the RAD HAP contract and the rental assistance contemplated therein to another entity and/or Property and/or Project. The Project Owner has constituted HUD as its attorney-in-fact to effect any such transfer.

**8. Amendment or Release.** This Agreement may not be amended without HUD consent. This Agreement shall remain as an encumbrance against the Property unless and until HUD executes a release for recording. This Agreement may only be released by HUD in its sole discretion. In the event that the RAD HAP is, in accordance with all applicable laws and RAD program requirements, not renewed or replaced, HUD shall not unreasonably fail to provide such a release upon the completion of the applicable term of this Agreement.

**9. Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy within the Project, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of

such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.

**10. Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.

**11. Conflicts.** Any conflicts between this Agreement and the RAD HAP contract or any other applicable HUD program requirements shall be conclusively resolved by the Secretary.

**12. Execution of Other Agreements.** The Project Owner and, if a party hereto, the PHA, agrees that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other conflicting requirements.

**13. Subsequent Statutory Amendments.** If revisions to the provisions of this Agreement are necessitated by subsequent statutory amendments, the Project Owner and, if a party hereto, the PHA, agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. At HUD's option, HUD may implement any such statutory amendment through rulemaking.

#### **14. Lender Provisions.**

- A. Nothing in this Agreement prohibits any holder of a mortgage or other lien against the Property or Project from foreclosing its lien or accepting a deed in lieu of foreclosure. Any lien holder shall give HUD, as a courtesy, written notice prior to declaring an event of default. Any lien holder shall provide HUD concurrent notice with any written filing of foreclosure filed in accordance with state law provided that the foreclosure sale shall not occur sooner than sixty days (60) days after such notice to HUD. The Notice to HUD may be personally delivered or sent by U.S. certified or registered mail, return receipt requested, first class postage prepaid, addressed as follows:

U.S. Department of Housing and Urban Development  
451 7th Street SW, Room 4100  
Washington, DC 20410  
Attention: Office of the Assistant Secretary for Public and Indian Housing -  
Rental Assistance Demonstration

B. Notwithstanding any lien holder's foreclosure rights, this Agreement survives foreclosure and any new owners of the Property or the Project take ownership subject to this Agreement.

C. Transfer of title to the Property or the Project may be grounds for termination of assistance under the RAD HAP contract. However, HUD may permit, through prior written consent by HUD, the new owner of the Property or the Project to assume the RAD HAP contract, subject to the terms included therein, or enter into a new HAP contract. Any HUD

consent to continued HAP assistance is subject to the RAD Statute and other RAD program requirements.

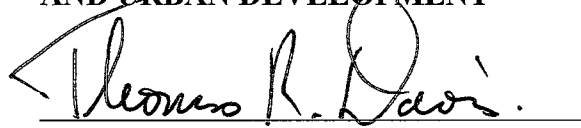
D. Each entity interested in purchasing the Property in a foreclosure sale administered under state foreclosure law may submit a written request to HUD to continue RAD HAP contract assistance in the event of such entity's successful acquisition at the foreclosure sale. Such request shall be submitted by the latter of ten business days after first publication of the foreclosure sale or 60 days prior to such foreclosure sale.

**15. Successors and Assigns.** This Agreement shall be binding upon the Project Owner and, if a party hereto, the PHA, and all future successors and assigns of either with respect to any portion of the Property or the Project.

In Witness Whereof, these declarations are made as of the first date written above.

HUD:

U. S. DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT



By: Thomas R. Davis  
Director, Office of Recapitalization

WASHINGTON )  
DISTRICT OF COLUMBIA )

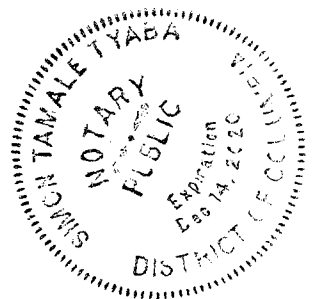
Before me, Simon T. Tyaba, a Notary Public in and for said District, on this 23<sup>rd</sup> day of April, 2020, personally appeared **Thomas R. Davis**, who is personally known to me to be the **Director, Office of Recapitalization** of HUD and is the person who executed the foregoing instrument by virtue of the authority vested in him/her and did acknowledge the signing thereof to be a free and voluntary act and done on behalf of the Secretary of Housing and Urban Development for the uses, purposes and considerations there set forth.

Witness my hand and official seal this 23<sup>rd</sup> day of April, 2020.

Simon T. Tyaba (Notary Public)

[SEAL]

DISTRICT OF COLUMBIA: SS  
SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 23<sup>rd</sup> DAY OF April, 2020  
Simon T. Tyaba  
NOTARY PUBLIC  
My Commission Expires 12/14/2020



**Project Owner:**

**BLOOMINGTON RAD I, LP,**  
an Indiana limited partnership

By: Bloomington RAD I Manager, LLC,  
an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C.,  
an Illinois limited liability company, a member

By: RJS Real Estate Services, Inc.,  
an Illinois corporation, its member

By:   
Richard Sciortino, President

Date: 4/24/20

By: Summit Hill RAD I, LLC,  
an Indiana limited liability company, a member

By: \_\_\_\_\_  
Amber Skoby, President

Date: \_\_\_\_\_

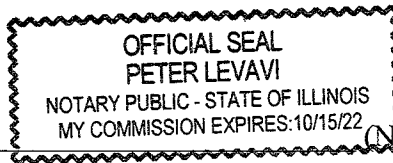
State of Illinois )  
 ) ss:  
County of Cook )

On this 24<sup>th</sup> day of April, 20 20, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Richard Sciortino, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Seal)

Peter Levavi



(Notary Public)

My commission expires Oct 15, 20 22.

State of Indiana )  
 ) ss:  
County of Monroe )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Amber Skoby, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Seal)

\_\_\_\_\_  
(Notary Public)

My commission expires \_\_\_\_\_, 20 \_\_\_\_\_.



**Project Owner:**

**BLOOMINGTON RAD I, LP,**  
an Indiana limited partnership

By: Bloomington RAD I Manager, LLC,  
an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C.,  
an Illinois limited liability company, a member

By: RJS Real Estate Services, Inc.,  
an Illinois corporation, its member

By: \_\_\_\_\_  
Richard Sciortino, President

Date: \_\_\_\_\_

By: Summit Hill RAD I, LLC,  
an Indiana limited liability company, a member

By: Amber L. Skoby  
Amber Skoby, President

Date: 04 / 27 / 2020

State of Illinois                    )  
  )  
County of Cook                    )        ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Richard Sciortino, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.  
(Seal)

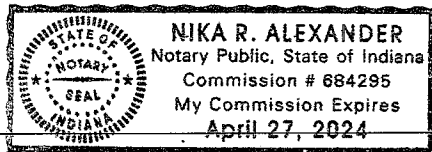
\_\_\_\_\_ (Notary Public)

My commission expires \_\_\_\_\_, 20 \_\_\_\_\_.

State of Indiana                    )  
  )  
County of Monroe                    )        ss:

On this 27<sup>th</sup> day of April, 20 20, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Amber Skoby, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.  
(Seal)



Nika R. Alexander (Notary Public)

My commission expires \_\_\_\_\_, 20 \_\_\_\_\_.

PHA:

HOUSING AUTHORITY OF THE CITY OF BLOOMINGTON

By: Amber A. Skoby  
Amber Skoby, Executive Director

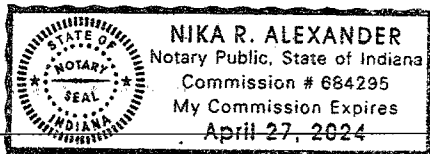
Date: 04 / 27 / 2020

State of Indiana )  
County of Monroe ) SS:

On this 27<sup>th</sup> day of April, 20 20, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Amber Skoby, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Lessee.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Seal)



Nika R. Alexander Notary Public)

My commission expires \_\_\_\_\_, 20 \_\_\_\_.

Prepared by and after recording return to:

Kathie Soroka  
Nixon Peabody LLP  
55 W 46<sup>th</sup> St  
New York, NY 10036

I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. *Kathie Soroka*

## SECTION 18 NON-RAD PBV RIDER TO RAD USE AGREEMENT

WHEREAS, the PHA owned and operated fifty-six (56) dwelling units (the “Units,” or singularly, a “Unit”), located at 1202 W. 11<sup>th</sup> Street, Bloomington, Indiana, as more particularly described in those certain Declarations of Trust recorded in the Official Records of Monroe County, Indiana (the “Declarations of Trust”), and as further described in Exhibit A, attached hereto and incorporated herein (the “Disposition Property”);

WHEREAS, the PHA owned and operated the Disposition Property as low-rent public housing with financial assistance provided by HUD under the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq. (the “Act”);

WHEREAS, construction and/or operation of the Disposition Property was financed in part by HUD under the Act;

WHEREAS, the PHA requested HUD approval of the conveyance of the Disposition Property in accordance with Rental Assistance Demonstration (“RAD”) and Section 18 of the Act, and specifically based on Section 3) A.3.c of PIH Notice 2018-04: “Comprehensive Rehabilitation or Replacement through Rental Assistance Demonstration (RAD).” The aggregate number of replacement units (RAD and PBVs) meets the RAD “substantial conversion of assistance” requirements; and

WHEREAS, as part of the RAD conversion, the PHA will ground lease the Disposition Property to the Project Owner, which will own a leasehold interest in and operate the Disposition Property as a combination of RAD Section 8 PBV and non-RAD Section 8 PBV replacement units, which project will commonly be known as Reverend Butler (the “Project”). The Project will contain fifty-six (56) dwelling units, of which forty-two (42) dwelling units (“RAD Units”) are subject to a RAD Section 8 PBV Housing Assistance Payment Contract (HAP contract), and fourteen (14) dwelling units are subject to a non-RAD Section 8 PBV HAP contract in accordance with HUD’s Section 18 disposition approval (“Non-RAD PBV Units”).

Now, therefore, in consideration of the foregoing, conversion of assistance pursuant to RAD, provision of rental assistance pursuant to the RAD Section 8 PBV HAP contract, SAC’s approval of a portion of the Disposition Property under Section 18 of the Act, and other valuable consideration, the parties hereby agree as follows:

**1. Applicability of RAD Use Agreement.** Except as noted or clarified in this Rider, all terms and conditions of the RAD Use Agreement apply to the Non-RAD PBV Units.

**2. Section 2 of the RAD Use Agreement on Term** which states that “unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term of the RAD HAP contract and for additional periods to coincide with any renewal term of the RAD HAP contract or any replacement HAP contract. It is the intention of the parties that the RAD HAP and this Agreement shall each renew upon the completion of its initial term. Therefore, this Agreement shall remain in effect until a release is recorded as contemplated by Section 8. Such release shall be the evidence of the non-renewal of the HAP Contract, of the determination not to execute a replacement HAP contract and of the termination of this Agreement. This Agreement will survive abatement of assistance or termination of the RAD HAP contract unless otherwise approved by HUD” does not apply to the Non-RAD PBV Units.

Instead, the terms and conditions of HUD’s approval of the disposition of 14 units under Section 18 of the Act apply to the non-RAD PBV units. That approval requires, as a condition of HUD approving the disposition of the non-RAD PBV units for below fair market value based on a finding of commensurate public benefit pursuant to 24 CFR 970.19, that this Rider reflect that the non-RAD PBV units must be used exclusively as housing for low-income families under the Section 8 PBV program for a period of not less than 40 years. The Use Agreement shall automatically renew for any periods that are coterminous with any extended HAP contract applicable to the non-RAD PBV units. The parties intend to exercise the rights to extend the HAP contract to the maximum extent as may be permitted by section 8(o)(13)(G) of the Act, as amended, 24 CFR part 983, as amended, and 82 Fed. Reg. 5458, 5468. For purposes of this approval, the term "low-income families" is defined at Section 3(b)(2) of the Act and means families with incomes at or below 80% of median income for the area.

**3. Section 7 of the RAD Use Agreement on Transfer of HAP** which states that “In the event of a default under the RAD HAP contract including, without limitation, upon any transfer of the Property or Project without HUD consent, upon expiration of any applicable notice and/or cure periods, HUD may transfer the RAD HAP contract and the rental assistance contemplated therein to another entity and/or Property and/or Project” does not apply to the Non-RAD PBV Units. Non-RAD PBV units are not subject to the foregoing transfer provisions in RAD. Nothing in this paragraph 3 is meant to impact any other provision contained in the RAD Use Agreement or this Rider, including, without limitation, Section 14 or the other provisions set forth in Section 7 of the RAD Use Agreement.

### **EXHIBIT A – Property Subject to this RAD Use Agreement**

PARCEL 6: LOTS NUMBERED 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 AND 99 IN DYER THIRD ADDITION TO THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, AS SHOWN BY THE PLAT THEREOF, RECORDED IN PLAT BOOK NO. 5 AT PAGE 67, IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA.

PARCEL 7: LOT 100C IN DYER FOURTH ADDITION, AN ADDITION TO MONROE COUNTY, INDIANA, AS MORE PARTICULARLY SHOWN BY THE PLAT THEREOF RECORDED IN PLAT CABINET C, ENVELOPE 108, IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA.

*GIT IN 005828 #5*

Rental Assistance Demonstration  
Use Agreement  
(Walnut Woods)

Made by Bloomington RAD I, LP  
And the Housing Authority of the City of Bloomington

For the benefit of  
The United States Department of Housing and Urban Development

Dated as of May 1, 2020

**Rental Assistance  
Demonstration  
Use Agreement**

**U.S. Department of Housing  
and Urban Development**  
Office of Housing  
Office of Public and Indian Housing

**OMB Approval No. 2502-0612  
(Exp. 04/30/2020)**

**Public reporting burden** for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0276), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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**This Rental Assistance Demonstration Use Agreement** (hereinafter called the “Agreement”) is made as of May 1<sup>st</sup>, 2020, for the benefit of and agreed to by the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (hereinafter called “HUD”) by Bloomington RAD I, LP, (“Project Owner”), and the Housing Authority of the City of Bloomington (“PHA”).

**Whereas**, Rental Assistance Demonstration (hereinafter called “RAD”) provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access to private debt and equity to address immediate and long-term capital needs.

**Whereas**, the PHA is the fee owner of the real property described on Exhibit A (the “Property”), upon which is or will be located improvements owned or to be owned by Project Owner receiving assistance converted pursuant to RAD, which project will commonly be known as Walnut Woods (the “Project”). The Project will contain 60 dwelling units, of which 45 (“Assisted Units”) are subject to a RAD Housing Assistance Payment contract, as the same may be renewed, amended or replaced from time to time (“RAD HAP contract”).

**Whereas**, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011, as amended from time to time, the “RAD Statute”); and the corresponding PIH Notice 2012-32, rev-2, as amended from time to time, and any successor document and/or regulations (hereinafter called the “RAD Notice”), which this Agreement incorporates by this reference, the PHA and/or the Project Owner, as applicable, has agreed to encumber the Property and the Project Owner has agreed to operate the Project in



accordance with this Agreement in exchange for HUD's agreement to execute or permit the execution of the RAD HAP contract and the assistance provided thereby;

**Whereas**, in accordance with the RAD Statute and RAD Notice, except as otherwise agreed in writing by HUD, this Agreement is to be recorded superior to other liens on the Property, run until the conclusion of the initial term of the RAD HAP contract, automatically renew upon each extension or renewal of the RAD HAP contract for a term that runs with each renewal term of the RAD HAP contract, and remain in effect even in the case of abatement or termination of the RAD HAP contract for the term the RAD HAP contract would have run, absent the abatement or termination.

**Now Therefore**, in consideration of the foregoing, conversion of assistance pursuant to RAD, provision of rental assistance pursuant to the RAD HAP contract and other valuable consideration, the parties hereby agree as follows:

**1. Definitions.** All terms used in this Agreement and not otherwise defined have the same meaning as set forth in the RAD Notice.

**2. Term.** The initial term of this Agreement commences upon the date this Agreement is entered into and shall run until the conclusion of the initial term of the RAD HAP contract. The RAD HAP contract is effective for 20 years. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term of the RAD HAP contract and for additional periods to coincide with any renewal term of the RAD HAP contract or any replacement HAP contract. It is the intention of the parties that the RAD HAP and this Agreement shall each renew upon the completion of its initial term. Therefore, this Agreement shall remain in effect until a release is recorded as contemplated by Section 8. Such release shall be the evidence of the non-renewal of the HAP Contract, of the determination not to execute a replacement HAP contract and of the termination of this Agreement. This Agreement will survive abatement of assistance or termination of the RAD HAP contract unless otherwise approved by HUD.

**3. Use Restriction and Tenant Incomes.** The Assisted Units shall be leased in accordance with the RAD HAP contract, including any applicable eligibility and/or income-targeting requirements. In the case that the RAD HAP contract is terminated prior to the completion of the term or renewal term, if applicable, of this Agreement (by way of illustration and not limitation, for breach or non-compliance), for the remainder of the term of this Agreement new tenants leasing the Assisted Units (except if any of the Assisted Units is a HUD-approved manager unit) must have incomes at or below 80 percent of the Area Median Income (AMI) at the time of admission ("Eligible Tenants"). Additionally, rents for such Assisted Units must not exceed 30% of 80% of the AMI for households of the size occupying an appropriately sized unit. Notwithstanding the foregoing, in the event the Project Owner so requests and is able to demonstrate to HUD's satisfaction that despite the Project Owner's good faith and diligent efforts to do so, the Project Owner is unable either (1) to rent a sufficient percentage of Assisted Units to Eligible Tenants in order to satisfy the restrictions in this paragraph, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Project Owner and HUD. Any such modification of the restrictions listed

in this paragraph shall be evidenced by a written amendment to this Agreement executed by each of the parties hereto.

**4. Survival.** This Agreement will survive foreclosure and bankruptcy.

**5. Fair Housing and Civil Rights Requirements.** The Project Owner and its agents, where applicable, shall ensure that the Project complies with applicable federal fair housing and civil rights laws, regulations, and other legal authorities, including those identified at 24 C.F.R. § 5.105.

**6. Accessibility Requirements.** The Project Owner and its agents, where applicable, shall ensure that the Project complies with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively.

**7. Restrictions on Transfer.** HUD has been granted and is possessed of an interest in the above described Project. Except as authorized below, the Project Owner and, if a party hereto, the PHA, shall not transfer, convey, encumber or permit or suffer any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project and/or Property or any part thereof without prior written consent of HUD. Notwithstanding the foregoing, HUD hereby authorizes (a) leases in the normal operation of the Project, (b) subordinate liens contemplated by a RAD Conversion Commitment executed in connection with the Project, whether such liens are recorded concurrent with the recordation of this Use Agreement or recorded subsequent hereto (such as permanent financing to replace construction-period financing), and (c) conveyance or dedication of land for use as streets, alleys, or other public rights-of-way and grants and easements for the establishment, operation and maintenance of public utilities. Except as otherwise approved in writing by HUD, any lien on the Project and/or Property shall be subject and subordinate to this Agreement. Unless this Agreement is released by HUD, any transferee of the Project and/or Property shall take title subject to this Agreement. In the event of a default under the RAD HAP contract including, without limitation, upon any transfer of the Property or Project without HUD consent, upon expiration of any applicable notice and/or cure periods, HUD may transfer the RAD HAP contract and the rental assistance contemplated therein to another entity and/or Property and/or Project. The Project Owner has constituted HUD as its attorney-in-fact to effect any such transfer.

**8. Amendment or Release.** This Agreement may not be amended without HUD consent. This Agreement shall remain as an encumbrance against the Property unless and until HUD executes a release for recording. This Agreement may only be released by HUD in its sole discretion. In the event that the RAD HAP is, in accordance with all applicable laws and RAD program requirements, not renewed or replaced, HUD shall not unreasonably fail to provide such a release upon the completion of the applicable term of this Agreement.

**9. Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy within the Project, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of

such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.

**10. Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.

**11. Conflicts.** Any conflicts between this Agreement and the RAD HAP contract or any other applicable HUD program requirements shall be conclusively resolved by the Secretary.

**12. Execution of Other Agreements.** The Project Owner and, if a party hereto, the PHA, agrees that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other conflicting requirements.

**13. Subsequent Statutory Amendments.** If revisions to the provisions of this Agreement are necessitated by subsequent statutory amendments, the Project Owner and, if a party hereto, the PHA, agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. At HUD's option, HUD may implement any such statutory amendment through rulemaking.

**14. Lender Provisions.**

- A. Nothing in this Agreement prohibits any holder of a mortgage or other lien against the Property or Project from foreclosing its lien or accepting a deed in lieu of foreclosure. Any lien holder shall give HUD, as a courtesy, written notice prior to declaring an event of default. Any lien holder shall provide HUD concurrent notice with any written filing of foreclosure filed in accordance with state law provided that the foreclosure sale shall not occur sooner than sixty days (60) days after such notice to HUD. The Notice to HUD may be personally delivered or sent by U.S. certified or registered mail, return receipt requested, first class postage prepaid, addressed as follows:

U.S. Department of Housing and Urban Development  
451 7th Street SW, Room 4100  
Washington, DC 20410  
Attention: Office of the Assistant Secretary for Public and Indian Housing -  
Rental Assistance Demonstration

B. Notwithstanding any lien holder's foreclosure rights, this Agreement survives foreclosure and any new owners of the Property or the Project take ownership subject to this Agreement.

C. Transfer of title to the Property or the Project may be grounds for termination of assistance under the RAD HAP contract. However, HUD may permit, through prior written consent by HUD, the new owner of the Property or the Project to assume the RAD HAP contract, subject to the terms included therein, or enter into a new HAP contract. Any HUD

consent to continued HAP assistance is subject to the RAD Statute and other RAD program requirements.

D. Each entity interested in purchasing the Property in a foreclosure sale administered under state foreclosure law may submit a written request to HUD to continue RAD HAP contract assistance in the event of such entity's successful acquisition at the foreclosure sale. Such request shall be submitted by the latter of ten business days after first publication of the foreclosure sale or 60 days prior to such foreclosure sale.

**15. Successors and Assigns.** This Agreement shall be binding upon the Project Owner and, if a party hereto, the PHA, and all future successors and assigns of either with respect to any portion of the Property or the Project.

In Witness Whereof, these declarations are made as of the first date written above.

HUD:

U. S. DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

Thomas R. Davis.

By: Thomas R. Davis  
Director, Office of Recapitalization

WASHINGTON )  
DISTRICT OF COLUMBIA )

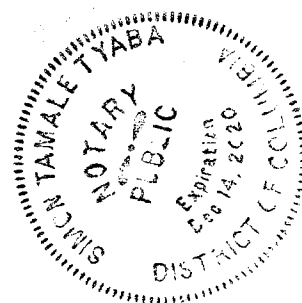
Before me, Simon T. Tyaba, a Notary Public in and for said District, on this 23<sup>rd</sup> day of April, 2020, personally appeared **Thomas R. Davis**, who is personally known to me to be the **Director, Office of Recapitalization** of HUD and is the person who executed the foregoing instrument by virtue of the authority vested in him/her and did acknowledge the signing thereof to be a free and voluntary act and done on behalf of the Secretary of Housing and Urban Development for the uses, purposes and considerations there set forth.

Witness my hand and official seal this 23<sup>rd</sup> day of April, 2020.

Simon Tamaletyaba (Notary Public)

[SEAL]

DISTRICT OF COLUMBIA: SS  
SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 23<sup>rd</sup> DAY OF APRIL, 2020  
Simon Tamaletyaba  
NOTARY PUBLIC  
My Commission Expires 12/14/2020



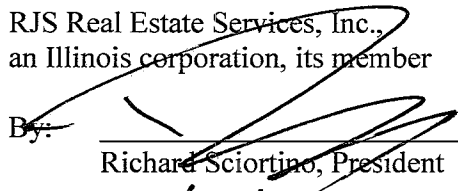
**Project Owner:**

**BLOOMINGTON RAD I, LP,**  
an Indiana limited partnership

By: Bloomington RAD I Manager, LLC,  
an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C.,  
an Illinois limited liability company, its manager  
and a member

By: RJS Real Estate Services, Inc.,  
an Illinois corporation, its member

By:   
Richard Sciortino, President

Date: 4/24/20

By: Summit Hill RAD I, LLC,  
an Indiana limited liability company, a member

By: \_\_\_\_\_  
Amber Skoby, President

Date: \_\_\_\_\_

State of Illinois )  
 )  
County of Cook ) ss:

On this 24<sup>th</sup> day of April, 20 20, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Richard Sciortino, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Seal)

Peter Levavi



(Notary Public)

My commission expires Oct 15, 20 22.

State of Indiana )  
 )  
County of Monroe ) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Amber Skoby, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Seal)

\_\_\_\_\_  
(Notary Public)

My commission expires \_\_\_\_\_, 20 \_\_\_\_\_.

**Project Owner:**

**BLOOMINGTON RAD I, LP,**  
an Indiana limited partnership

By: Bloomington RAD I Manager, LLC,  
an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C.,  
an Illinois limited liability company, its manager  
and a member

By: RJS Real Estate Services, Inc.,  
an Illinois corporation, its member

By: \_\_\_\_\_  
Richard Sciortino, President

Date: \_\_\_\_\_

By: Summit Hill RAD I, LLC,  
an Indiana limited liability company, a member

By: Amber S. Skoby  
Amber Skoby, President

Date: 04/27/2020



State of Illinois                    )  
  )       ss:  
County of Cook                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Richard Sciortino, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.  
(Seal)

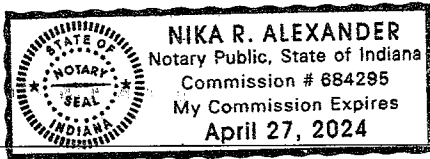
\_\_\_\_\_ (Notary Public)

My commission expires \_\_\_\_\_, 20 \_\_\_\_\_.

State of Indiana                    )  
  )       ss:  
County of Monroe                    )

On this 27<sup>th</sup> day of April, 20 20, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Amber Skoby, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.  
(Seal)



Nika R. Alexander (Notary Public)

My commission expires \_\_\_\_\_, 20 \_\_\_\_\_.

PHA:

HOUSING AUTHORITY OF THE CITY OF BLOOMINGTON

By: Amber A. Skoby  
Amber Skoby, Executive Director

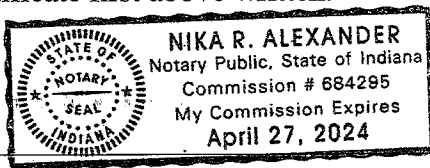
Date: 04/27/2020

State of Indiana )  
 )  
County of Monroe ) ss:

On this 27<sup>th</sup> day of April, 20 20, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Amber Skoby, proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of Lessee.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Seal)



Nika R. Alexander (Notary Public)

My commission expires \_\_\_\_\_, 20 \_\_\_\_\_.

Prepared by and after recording return to:

Kathie Soroka  
Nixon Peabody LLP  
55 W 46<sup>th</sup> St  
New York, NY 10036

I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. *Kathie Soroka*

## SECTION 18 NON-RAD PBV RIDER TO RAD USE AGREEMENT

WHEREAS, the PHA owned and operated sixty (60) dwelling units (the “Units,” or singularly, a “Unit”), located at 818 E. Miller Drive, Bloomington, Indiana, as more particularly described in those certain Declarations of Trust recorded in the Official Records of Monroe County, Indiana (the “Declarations of Trust”), and as further described in Exhibit A, attached hereto and incorporated herein (the “Disposition Property”);

WHEREAS, the PHA owned and operated the Disposition Property as low-rent public housing with financial assistance provided by HUD under the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq. (the “Act”);

WHEREAS, construction and/or operation of the Disposition Property was financed in part by HUD under the Act;

WHEREAS, the PHA requested HUD approval of the conveyance of the Disposition Property in accordance with Rental Assistance Demonstration (“RAD”) and Section 18 of the Act, and specifically based on Section 3) A.3.c of PIH Notice 2018-04: “Comprehensive Rehabilitation or Replacement through Rental Assistance Demonstration (RAD).” The aggregate number of replacement units (RAD and PBVs) meets the RAD “substantial conversion of assistance” requirements; and

WHEREAS, as part of the RAD conversion, the PHA will ground lease the Disposition Property to the Project Owner, which will own a leasehold interest in and operate the Disposition Property as a combination of RAD Section 8 PBV and non-RAD Section 8 PBV replacement units, which project will commonly be known as Walnut Woods (the “Project”). The Project will contain sixty (60) dwelling units, of which forty-five (45) dwelling units (“RAD Units”) are subject to a RAD Section 8 PBV Housing Assistance Payment Contract (HAP contract), and fifteen (15) dwelling units are subject to a non-RAD Section 8 PBV HAP contract in accordance with HUD’s Section 18 disposition approval (“Non-RAD PBV Units”).

Now, therefore, in consideration of the foregoing, conversion of assistance pursuant to RAD, provision of rental assistance pursuant to the RAD Section 8 PBV HAP contract, SAC’s approval of a portion of the Disposition Property under Section 18 of the Act, and other valuable consideration, the parties hereby agree as follows:

**1. Applicability of RAD Use Agreement.** Except as noted or clarified in this Rider, all terms and conditions of the RAD Use Agreement apply to the Non-RAD PBV Units.

**2. Section 2 of the RAD Use Agreement on Term** which states that “unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term of the RAD HAP contract and for additional periods to coincide with any renewal term of the RAD HAP contract or any replacement HAP contract. It is the intention of the parties that the RAD HAP and this Agreement shall each renew upon the completion of its initial term. Therefore, this Agreement shall remain in effect until a release is recorded as contemplated by Section 8. Such release shall be the evidence

of the non-renewal of the HAP Contract, of the determination not to execute a replacement HAP contract and of the termination of this Agreement. This Agreement will survive abatement of assistance or termination of the RAD HAP contract unless otherwise approved by HUD” does not apply to the Non-RAD PBV Units.

Instead, the terms and conditions of HUD’s approval of the disposition of 15 units under Section 18 of the Act apply to the non-RAD PBV units. That approval requires, as a condition of HUD approving the disposition of the non-RAD PBV units for below fair market value based on a finding of commensurate public benefit pursuant to 24 CFR 970.19, that this Rider reflect that the non-RAD PBV units must be used exclusively as housing for low-income families under the Section 8 PBV program for a period of not less than 40 years. The Use Agreement shall automatically renew for any periods that are coterminous with any extended HAP contract applicable to the non-RAD PBV units. The parties intend to exercise the rights to extend the HAP contract to the maximum extent as may be permitted by section 8(o)(13)(G) of the Act, as amended, 24 CFR part 983, as amended, and 82 Fed. Reg. 5458, 5468. For purposes of this approval, the term "low-income families" is defined at Section 3(b)(2) of the Act and means families with incomes at or below 80% of median income for the area.

**3. Section 7 of the RAD Use Agreement on Transfer of HAP** which states that “In the event of a default under the RAD HAP contract including, without limitation, upon any transfer of the Property or Project without HUD consent, upon expiration of any applicable notice and/or cure periods, HUD may transfer the RAD HAP contract and the rental assistance contemplated therein to another entity and/or Property and/or Project” does not apply to the Non-RAD PBV Units. Non-RAD PBV units are not subject to the foregoing transfer provisions in RAD. Nothing in this paragraph 3 is meant to impact any other provision contained in the RAD Use Agreement or this Rider, including, without limitation, Section 14 or the other provisions set forth in Section 7 of the RAD Use Agreement.

## **EXHIBIT A – Property Subject to this RAD Use Agreement**

**PARCEL 1:** LOTS NUMBERED FIFTY-SIX (56) AND FIFTY-SEVEN (57) IN BARCLAY GARDENS, AS SHOWN BY THE PLAT THEREOF, RECORDED IN PLAT BOOK NO. 3 AT PAGE 29, IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT: A PART OF LOTS 56 AND 57 IN BARCLAY GARDENS, A SUBDIVISION TO THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, AS RECORDED IN PLAT BOOK 3, PAGE 29 IN THE OFFICE OF THE RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 57; THENCE NORTH 1 DEGREE 07 MINUTES 30 SECONDS WEST (ASSUMED BEARING) 6.52 FEET ON AND ALONG THE WEST LINE OF SAID LOT; THENCE SOUTH 86 DEGREES 05 MINUTES 48 SECONDS EAST, 47.78 FEET; THENCE SOUTH 86 DEGREES 47 MINUTES 52 SECONDS EAST 55.60 FEET; THENCE NORTH 40 DEGREES 20 MINUTES 52 SECONDS EAST 12.70 FEET; THENCE NORTH 1 DEGREE 07 MINUTES 30 SECONDS WEST 113.23 FEET TO THE NORTH LINE OF SAID LOT 56; THENCE SOUTH 85 DEGREES 53 MINUTES 42 SECONDS EAST ON SAID NORTH LINE 8.03 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 1 DEGREE 07 MINUTES 30 SECONDS EAST 130.94 FEET ON AND ALONG THE EAST LINE TO THE SOUTH LINE OF SAID LOT 56; THENCE NORTH 85 DEGREES 57 MINUTES 13 SECONDS WEST, 119.96 FEET ON AND ALONG THE SOUTH LINE TO THE POINT OF BEGINNING.

**PARCEL 2:** A PART OF LOTS 56 AND 57 IN BARCLAY GARDENS, A SUBDIVISION TO THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, AS RECORDED IN PLAT BOOK 3, PAGE 29 IN THE OFFICE OF THE RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 57; THENCE NORTH 1 DEGREE 07 MINUTES 30 SECONDS WEST (ASSUMED BEARING) 6.52 FEET ON AND ALONG THE WEST LINE OF SAID LOT; THENCE SOUTH 86 DEGREES 05 MINUTES 48 SECONDS EAST, 47.78 FEET; THENCE SOUTH 86 DEGREES 47 MINUTES 52 SECONDS EAST 55.60 FEET; THENCE NORTH 40 DEGREES 20 MINUTES 52 SECONDS EAST 12.70 FEET; THENCE NORTH 1 DEGREE 07 MINUTES 30 SECONDS WEST 113.23 FEET TO THE NORTH LINE OF SAID LOT 56; THENCE SOUTH 85 DEGREES 53 MINUTES 42 SECONDS EAST ON SAID NORTH LINE 8.03 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 1 DEGREE 07 MINUTES 30 SECONDS EAST 130.94 FEET ON AND ALONG THE EAST LINE TO THE SOUTH LINE OF SAID LOT 56; THENCE NORTH 85 DEGREES 57 MINUTES 13 SECONDS WEST, 119.96 FEET ON AND ALONG THE SOUTH LINE TO THE POINT OF BEGINNING.

**PARCEL 3:** THAT PART OF LOTS EIGHTY-NINE (89) AND NINETY (90) IN BARCLAY GARDENS, A SUBDIVISION TO THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, AS RECORDED IN PLAT BOOK 3, PAGE 29 IN THE OFFICE OF THE RECORDER, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT ON THE SOUTH LINE OF SAID LOT 89, 60 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 89; RUNNING THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID LOT 283 FEET AND TO A POINT 60 FEET WEST AND 80 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; RUNNING THENCE WEST AND PARALLEL WITH THE NORTH LINE OF SAID LOTS 89 AND 90 A DISTANCE OF 180 FEET AND TO A POINT ON THE WEST LINE OF LOT 90 THAT IS 80 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ON THE WEST LINE OF SAID LOT 90, 283 FEET AND TO THE SOUTHWEST CORNER OF SAID LOT 90; THENCE EAST OVER AND ALONG THE SOUTH LINE OF SAID LOTS 89 AND 90, 180 FEET AND TO A POINT 60 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 89, THE SAME BEING THE POINT OF BEGINNING, TOGETHER WITH LOT NUMBERED NINETY-ONE (91) IN BARCLAY GARDENS, A SUBDIVISION TO THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, AS RECORDED IN PLAT BOOK 3, PAGE 29 IN THE OFFICE OF THE RECORDER, EXCEPTING THEREFROM EIGHTY (80) FEET OF EVEN WIDTH OFF THE ENTIRE NORTH END OF SAID LOT, AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT: A PART OF LOTS 91, 90, 89 IN BARCLAY GARDENS, A SUBDIVISION TO THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, AS RECORDED

IN PLAT BOOK 3, PAGE 29 IN THE OFFICE OF THE RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 91; THENCE NORTH 1 DEGREE 07 MINUTES 30 SECONDS WEST (ASSUMED BEARING) 283.56 FEET ON AND ALONG THE WEST LINE OF SAID LOT 91; THENCE SOUTH 89 DEGREES 59 MINUTES 29 SECONDS EAST, 8.00 FEET; THENCE SOUTH 1 DEGREE 07 MINUTES 30 SECONDS EAST 256.38 FEET; THENCE SOUTH 88 DEGREES 44 MINUTES 07 SECONDS EAST 10.73 FEET; THENCE SOUTH 15 DEGREES 32 MINUTES 29 SECONDS EAST 20.86 FEET; THENCE SOUTH 89 DEGREES 30 MINUTES 26 SECONDS EST, 30.48 FEET; THENCE SOUTH 89 DEGREES 53 MINUTES 26 SECONDS EAST, 245.23 FEET TO THE EAST LINE OF LAND DESCRIBED IN A DEED TO THE HOUSING AUTHORITY OF THE CITY OF BLOOMINGTON, INDIANA, RECORDED IN BOOK 288, PAGE 169 IN THE OFFICE OF THE RECORDER; THENCE SOUTH 1 DEGREE 07 MINUTES 30 SECONDS EAST 6.15 FEET ON AND ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID LOT 89; THENCE NORTH 89 DEGREES 59 MINUTES 38 SECONDS WEST 299.54 FEET ON AND ALONG THE SOUTH LINE OF LOTS 89, 90 AND 91 TO THE POINT OF BEGINNING.

**PARCEL 4:** A PART OF LOTS 91, 90, 89 IN BARCLAY GARDENS, A SUBDIVISION TO THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, AS RECORDED IN PLAT BOOK 3, PAGE 29 IN THE OFFICE OF THE RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 91; THENCE NORTH 1 DEGREE 07 MINUTES 30 SECONDS WEST (ASSUMED BEARING) 283.56 FEET ON AND ALONG THE WEST LINE OF SAID LOT 91; THENCE SOUTH 89 DEGREES 59 MINUTES 29 SECONDS EAST, 8.00 FEET; THENCE SOUTH 1 DEGREE 07 MINUTES 30 SECONDS EAST 256.38 FEET; THENCE SOUTH 88 DEGREES 44 MINUTES 07 SECONDS EAST 10.73 FEET; THENCE SOUTH 15 DEGREES 32 MINUTES 29 SECONDS EAST 20.86 FEET; THENCE SOUTH 89 DEGREES 30 MINUTES 26 SECONDS EST, 30.48 FEET; THENCE SOUTH 89 DEGREES 53 MINUTES 26 SECONDS EAST, 245.23 FEET TO THE EAST LINE OF LAND DESCRIBED IN A DEED TO THE HOUSING AUTHORITY OF THE CITY OF BLOOMINGTON, INDIANA, RECORDED IN BOOK 288, PAGE 169 IN THE OFFICE OF THE RECORDER; THENCE SOUTH 1 DEGREE 07 MINUTES 30 SECONDS EAST 6.15 FEET ON AND ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID LOT 89; THENCE NORTH 89 DEGREES 59 MINUTES 38 SECONDS WEST 299.54 FEET ON AND ALONG THE SOUTH LINE OF LOTS 89, 90 AND 91 TO THE POINT OF BEGINNING.

**PARCEL 5:** LOTS NUMBERED EIGHTY-FOUR (84), EIGHTY-FIVE (85), EIGHTY-SIX (86) AND ONE HUNDRED THREE (103) IN BARCLAY GARDENS, AS SHOWN BY THE PLAT THEREOF, RECORDED IN PLAT BOOK NO. 3 AT PAGE 29, IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA.

### **IC 36-7-18-1 Application of chapter; impairment of contract; fulfillment of obligations**

Sec. 1. (a) This chapter applies to all units except townships.

(b) Only the sections of this chapter that are listed in section 1.5 of this chapter apply to a consolidated city that by ordinance establishes or designates a department, division, or agency of the city to perform the public housing function.

(c) An ordinance establishing or designating a department, division, or agency of a consolidated city to perform the public housing function may not impair the obligations of the housing authority existing under any contract in effect at the time that ordinance is effective. The consolidated city shall fulfill any obligations of the housing authority that are transferred to the consolidated city.

[Pre-Local Government Recodification Citation: 18-7-11-4 part.]

*As added by Acts 1981, P.L.309, SEC.37. Amended by P.L.339-1985, SEC.1; P.L.59-1986, SEC.17; P.L.344-1987, SEC.2.*

### **IC 36-7-18-1.5 Powers of agency performing public housing function**

Sec. 1.5. If a consolidated city adopts an ordinance under section 1 of this chapter, the legislative body or the department, division, or agency performing the public housing function:

(1) has all powers granted to it by the consolidated city under this section and [IC 36-1](#);

(2) has all powers granted to a housing authority by and is subject to sections 2, 3, 10(b), 10(c), 10(d), 15, 16(a), 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, and 42 of this chapter and may exercise all those powers as commissioners of a housing authority exercise those powers under those sections; and

(3) designate officials or employees to exercise all its powers and execute all necessary documents, instruments, or obligations. However, notes or bonds issued by the consolidated city under this chapter shall be executed and attested as other notes or bonds of the consolidated city are executed and attested.

*As added by P.L.344-1987, SEC.3.*

### **IC 36-7-18-2 Declaration of public purpose**

Sec. 2. The clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property may be acquired.

[Pre-Local Government Recodification Citation: 18-7-11-2 part.]

*As added by Acts 1981, P.L.309, SEC.37.*

### **IC 36-7-18-3 "Persons of low income" defined**

Sec. 3. For purposes of this chapter, persons or families who, without financial assistance, lack the amount of income that a housing authority finds is necessary to enable them to live in decent, safe, and sanitary dwellings without overcrowding are considered persons of low income.

[Pre-Local Government Recodification Citation: 18-7-11-3(k).]

*As added by Acts 1981, P.L.309, SEC.37.*

#### **IC 36-7-18-4 Housing authorities; establishment; procedure**

Sec. 4. (a) A unit may establish a housing authority if the fiscal body of the unit, by resolution, declares that there is a need for an authority in the unit.

(b) The determination as to whether or not there is a need for an authority may be made by the fiscal body:

- (1) on its own motion;
- (2) on the filing of a petition signed by twenty-five (25) residents of the unit and stating that there is a need for an authority in the unit; or
- (3) on receipt of an order from the division of family resources.

(c) A resolution may be passed under this section only after a public hearing. Notice of the time, place, and purpose of the hearing must be given by the fiscal body by publication in accordance with [IC 5-3-1](#).

(d) The fiscal body of a unit may adopt a resolution declaring that there is need for a housing authority in the unit if it finds that:

- (1) unsanitary or unsafe dwelling accommodations are inhabited in the unit; or
- (2) there is a shortage of safe or sanitary dwelling accommodations available in the unit for persons of low income at rentals they can afford.

In determining whether dwelling accommodations are unsafe or unsanitary, the fiscal body may consider the degree of overcrowding, the percentage of land coverage, the light, air, space, and access available to inhabitants, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions in the buildings endanger life or property by fire or other causes.

(e) In any proceeding involving any contract of a housing authority, the authority shall be conclusively presumed to have become established and authorized to transact business and exercise its powers under this chapter on proof of the adoption of a resolution by the fiscal body declaring the need for the authority. The resolution is sufficient if it declares that there is a need for an authority and finds that either or both of the conditions listed in subsection (d) exist in the unit. A copy of the resolution certified by the clerk of the fiscal body is admissible in evidence in any proceeding.

[Pre-Local Government Recodification Citation: 18-7-11-4 part.]

*As added by Acts 1981, P.L.309, SEC.37. Amended by Acts 1981, P.L.45, SEC.32; P.L.41-1987, SEC.21; P.L.2-1992, SEC.891; P.L.4-1993, SEC.329; P.L.5-1993, SEC.337; P.L.24-1997, SEC.65; P.L.145-2006, SEC.375.*

<https://iga.in.gov/laws/2021/ic/titles/36#36-7-18-2>



# Handbook on Indiana's Public Access Laws

## OFFICE OF THE PUBLIC ACCESS COUNSELOR

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## LETTER FROM THE PUBLIC ACCESS COUNSELOR AND ATTORNEY GENERAL

The Office of Public Access Counselor and the Office of the Indiana Attorney General are pleased to provide you with a copy of this "Handbook on Indiana's Public Access Laws." This Handbook is the first step in understanding the government's responsibility to foster transparency, trust and accountability for its official actions. You may access a digital version of this handbook at [http://www.in.gov/pac/files/pac\\_handbook.pdf](http://www.in.gov/pac/files/pac_handbook.pdf).

The content of this publication primarily addresses the Indiana Open Door Law, which governs meetings of governing bodies; and the Access to Public Records Act, which sets forth the foundation for access to public records. These laws apply to both state and local public agencies. Additionally, you will find relevant case law, commentary, frequently asked questions and forms designed to easily and efficiently navigate access to government information. This handbook includes updates to the laws through the 2016 session of the Indiana General Assembly.

It is our sincere hope that this handbook is a helpful resource for the public, the media and public officials in identifying the roles and responsibilities that come with public meetings and government records. The goal of the Office of the Public Access Counselor is to be as approachable and accessible as possible. Therefore Please feel free to contact the PAC Office using the contact information provided on the back cover of this handbook if you have any questions or problems related to the public access statutes.

Sincerely,



Luke H. Britt  
Indiana Public Access Counselor



Curtis T. Hill, Jr.  
Indiana Attorney General

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## SECTION ONE: OVERVIEW OF THE INDIANA OPEN DOOR LAW

### INTRODUCTION

The Open Door Law (“ODL”)(Ind. Code 5-14-1.5), originally passed by the Indiana General Assembly in 1977 and most recently amended in 2016, was enacted to permit the public access to meetings held by public agencies. When the public has an opportunity to attend and observe meetings, the public may witness government in action and more fully participate in the governmental process. The ODL will serve these purposes if the public understands the provisions of this statute. This guide sets forth the basic elements of the ODL and provides answers to commonly asked questions. To obtain answers to more specific questions, please consult the provisions of the Indiana Code set forth in Section Two of this guide.

### COMMONLY ASKED QUESTIONS ABOUT THE OPEN DOOR LAW

The following are commonly asked questions about the ODL. It is important to note the answers are not the final authority on a particular issue, as the facts will vary from situation to situation. Indeed, laws and court interpretations of the law are ever changing. It is important to remember the answers to these questions are only guidelines, may only apply to specific situations, and are subject to change.

#### *Who has access to government meetings?*

The ODL allows all members of the public access to certain meetings. There is no requirement for a person to be a citizen of the jurisdiction or a constituent of the governing body to be permitted access to a meeting.

#### *What government meetings are open to the public?*

Generally, all meetings of the governing bodies of public agencies must be open at all times so members of the public may observe and record them. Although this general rule may appear to be straightforward and easy to apply, it contains

several words and phrases which are given a specific meaning by the ODL. Additionally, several types of meetings are not required to be open to the public. To detail the full range of meetings which must be accessible to the public, certain phrases must be defined.

#### *What is a public agency?*

The term “public agency” is defined very broadly by the ODL and encompasses many meanings, which are set forth at I.C. §5-14-1.5-2(a). According to this provision, a public agency means the following, among others:

- Any board, commission, department, agency, authority, or other entity which exercises 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 subject to a budget review by the department of local government finance or the governing body of a county, city, town, township, or school corporation.
- Any entity subject to an audit by the state board of accounts 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 for medical staffs or the committees of any such staff.
- The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.
- The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the

commission.

**Example 1:** A school building corporation organized solely to finance school corporations (I.C. 20-47-2 or I.C. 20-47-3) is a public agency subject to the ODL.

*Are there certain agencies that would normally qualify as “public agencies” pursuant to the ODL, but are exempt?*

Yes, for the purposes of the ODL, a “public agency” does not mean a provider of goods, services, or other benefits that meets all of the requirements under I.C. 5-14-1.5-2.1. These exempt agencies are commonly referred to as “fee for services” groups. It is important to note however, that in order to qualify for the exception the entity must not be required to be audited by the State Board of Account by statute, rule, or regulation.

*Is it possible for a non-for-profit corporation to be required to comply with the ODL?*

An entity organized as a non-for-profit corporation that derives at least 50% and more than \$200,000 in public funds shall be subject to audit by the State Board of Accounts. See I.C. 5-11-1-9(b). If an entity is subject to audit by the State Board of Accounts pursuant to statute, rule, or regulation, then the entity is considered to be a public agency pursuant to the ODL. See I.C. 5-14-1.5-2(a)(3)(B). If it is unclear whether an entity is subject to audit, agencies and individuals are encouraged to contact the State Board of Accounts for clarification.

*What is a governing body?*

The phrase “governing body” is defined at I.C. §5-14-1.5-2(b). A governing body is two or more individuals who are one of the following:

- A public agency that is a board, commission, authority, council, committee, body, or other entity which takes official action on public business.
- The board, commission, council, or other body of a public agency that takes official action upon public business.

- Any committee directly appointed by the governing body or its presiding officer to which authority to take official action upon public business has been delegated, except for agents appointed by a governing body to conduct collective bargaining on behalf of the governing body.

In each of these definitions, an entity must take official action on public business to be considered a governing body.

**Example 1:** Staff members of the state department of transportation meet to discuss new requirements under federal highway laws. A representative of a local engineering company wants to sit in on the meeting but is refused admittance. This meeting is not subject to the requirements of the ODL because staff members of a government agency do not constitute a “governing body” responsible for taking official action on public business.

**Example 2:** Employees of the state department of health conduct a meeting. The employees conducting the meeting are not members of the state board of health or any advisory committee directly appointed by that Board. The meeting is not subject to the requirements of the ODL.

**Example 3:** A curriculum committee, appointed by a school superintendent, who is to report its findings to the school board, is not subject to the ODL because the superintendent is not the presiding officer of the school board. The same committee appointed by the school board president, however, would be subject to the ODL. I.C. § 5-14-1.5-2(b).

**Example 4:** The mayor, public works director and council president meet to discuss financial matters. These individuals, although public officials, do not make up a governing body. The meeting would not be covered by the ODL.

*What is a meeting?*

“Meeting” means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon business. I.C. § 5-14-1.5-2(c).

**Example 1:** A majority of a city's police commissioners gather to discuss previously interviewed job candidates prior to a formal vote on the matter. This qualifies as a "meeting" under the ODL.

**Example 2:** Prior to a public meeting, a majority of members of a city zoning appeals board held a private session with the board's attorney. Board members questioned the attorney about legal matters related to a construction project that was the subject of a public session. The private session constituted a meeting and violated the ODL.

**Example 3:** A private foundation whose charge is the betterment of education holds a forum to release its most recent report regarding the quality of education within a particular school corporation. Four of seven school board members from the subject city want to attend to hear the presentation. This is a "meeting" of the school board if the members decide as a group to attend because the four members constitute a "governing body" that is taking "official action" (receiving information) on "public business" (the school corporation). If each of the school board members receives an invitation and independently makes a determination about whether to attend, it may not be a meeting.

#### *What is not a meeting?*

The ODL lists seven types of gatherings not considered "meetings." A meeting does not include the following:

- Any social or chance gathering not intended to avoid the requirements of the ODL;
- Any on-site inspection of a project or program;
- Traveling to and attending meetings of organizations devoted to the betterment of government;
- A caucus;
- 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.

**Example 1:** Before a tax measure is voted upon in the General Assembly, members of the majority party meet to discuss the party's position. The meeting is not subject to the ODL. A political caucus is not transformed into a meeting subject to public scrutiny under the ODL merely because persons attending such caucuses happen to constitute a majority of a governing body.

**Example 2:** A drainage committee decides to meet one evening in a troubled area to obtain a first-hand look at the problem. This is not a meeting and is not subject to the law as long as the committee does no more than *inspect* the problem.

**Example 3:** A park board decides to make an onsite inspection of its new lake, but it does not give public notice of its meeting. While at the lake, the board members decide to appropriate funds for a boat dock. The on-site inspection has become a meeting and is subject to the requirements of the ODL.

**Example 4:** A majority of the town board travels to a meeting together and reaches agreement on the outcome of various issues. The board members claim this was not a meeting because they were traveling to and from a national meeting of town boards. The actions of the board during their travel violated the ODL because the members took official action on public business and did not simply travel to and from the meeting.

**Example 5:** A local cafe is a popular spot for morning coffee, and several members of a town board are among the regulars. Frequently, the conversation turns to matters of local concern on the agenda for the next board meeting. The group discusses the issues and often decides "what should be done." This discussion violates the ODL if the board members constitute a majority of the governing body. By deciding issues before the meeting, the board members have deprived

the public of the opportunity to hear the debate leading to a decision.

**Example 6:** A county council and board of commissioners gather to discuss the potential of an international company relocating to the county. This is not a meeting so long as there is no conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.

**Example 7:** After the election of new school board members, the school corporation holds a gathering of the board members for an orientation of the board on their roles and responsibilities. During the orientation, the board members set and discuss the agenda for the next meeting. This is a meeting subject to the requirements of the ODL because the board took official action beyond just receiving an orientation on their roles and responsibilities.

In all instances, governing bodies are encouraged to be mindful of the mere appearance of impropriety.

*Can a member of a governing body attend a meeting electronically?*

A member of a governing body of a public agency of a political subdivision (other than a governing body of an airport authority or a department of aviation) who is not physically present at a meeting of the governing body, but who communicates electronically, may not participate in any final action or be considered present unless expressly authorized by state statute. See I.C. 5-14-1.5-3.5.

A member of a governing body of a charter school, a public agency of the state, or an airport authority or department of aviation may participate in a meeting electronically, participate in final action, and be considered present if the governing body complies with the requirements of I.C. 5-14-1.5-3.6.

*What is official action?*

“Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). In order to be considered a

meeting pursuant to the ODL, a governing body must take “official action.”

**Example 1:** A city council schedules a meeting to set hiring and firing guidelines for city employees. The meeting involves official action since policy is being established.

**Example 2:** A zoning board hears a presentation from an architectural firm regarding the designation of historic preservation areas. No proposals are made nor are votes taken. Yet, the board does take official action because the board is receiving information on public business.

*What is a serial meeting?*

A serial meeting is a series of small meetings held by a governing body in an attempt to avoid the requirements of the ODL. To address this, the General Assembly amended the ODL in 2007 to prohibit a serial meeting. By definition the serial meeting law can only be violated by governing bodies of six or more individuals. A serial meeting occurs when members of a governing body participate in a series of at least two meetings and all of the following conditions are met:

- One gathering is attended by at least three members but less than a quorum;
- The other gatherings include at least two members of the governing body;
- The sum of different members participating at least equals a quorum;
- The gatherings concern the same subject matter and are held within a period of seven days; and
- The gatherings are held to take official action on public business.

For purposes of the serial meeting section, a member of the governing body attends by being present in person or by telephonic or other electronic means, excluding email.

*What if the need for a public meeting is uncertain?*

All doubts under the ODL must be resolved in favor of requiring a public meeting, and all exceptions to the rule requiring open meetings must be interpreted narrowly.



*Are email exchanges considered meetings?*

Whether an email exchange is considered a meeting is largely dependent upon the nature and intent of the communication. If the governing body is trying to communicate simultaneously and expecting an immediate call-and-response type dialogue for the purpose of taking official action on business, the exchange constitutes a meeting.

*What is significant about executive sessions?*

Executive sessions are significant because the ODL permits governing bodies to meet privately under certain circumstances. "Executive session" is defined in I.C. § 5-14-1.5-2(f) and means a meeting from which the public is excluded, except that the governing body may admit those persons necessary to carry out its purpose. The ODL sets out the specific matters about which a public agency can hold an executive session. These include instances like government strategy discussions with respect to collective bargaining and litigation, interviews of prospective employees, job performance evaluations, and the purchase or lease of property by the public agency. For a complete listing, see Section Two of this guide.

A goal of a government unit is to schedule executive sessions sparingly. They should not be held regularly, nor should they be a standing meeting on a governing body's schedule. A governing body should hold only a handful of them a year, if at all. These sessions are heavily scrutinized by the Public Access Counselor.

**Example 1:** A local public works board meets in executive session before considering a tax proposal because there have been rumors the measure may be challenged on constitutional grounds. Unless litigation is actually pending or threatened in writing, this is a violation of the ODL.

**Example 2:** A local school board meets in executive session to discuss alleged sexual harassment of a fellow employee by a teacher in the district. The board calls the teacher in to the executive session to discuss the complaint. This is a permissible executive session, so long as the board limits its action to discussion of the

complaint and does not take any final disciplinary action against the teacher.

**Example 3:** A town board meets in executive session with its attorney and the attorney for a person who has filed a civil rights action against the town. The purpose of the meeting is to discuss settlement of the lawsuit. This violates the ODL because the meeting includes adversaries.

**Example 4:** A local public works board meets in executive session to open bids for a sewer project. Unless authorized by federal or state statute, or the bids are classified as confidential by statute, the executive session would violate the ODL.

**Example 5:** The governing body of a state agency meets in executive session to discuss records containing trade secrets. Under the Access to Public Records Act, which is addressed in Sections 3 and 4 of this guide, such records are exempt from public inspection. This discussion is appropriate for an executive session.

**Example 6:** The town council meets in executive session to discuss an employee who has already been terminated. The town council may not meet in executive session pursuant to I.C. 5-14-1.5-6.1(b)(6)(B) to discuss the employee as a determination has already been made on the individual's status as an employee.

*When must a public agency give notice of an executive session?*

Public notice of an executive session must be given 48 hours in advance of every session, excluding Saturdays, Sundays and legal holidays, and must state the time, date, location, and subject matter by reference to the specific statutory exception and language of the exception under which an executive session may be held.

**Example:** A commission posts notice indicating it will meet in executive session to discuss "personnel matters authorized under the Open Door Law." Unless the specific statutory exception is identified and the language of the exception is provided, this is a violation. There are executive session instances which allow executive sessions for specific types of personnel matters (e.g. a job performance evaluation), but

there is no instance allowing a meeting to discuss "personnel matters."

*When can a governing body take final action on an item which is the subject of an executive session?*

Final action (i.e. a vote) must be taken at a meeting open to the public.

**Example:** A board meets in executive session to review an individual's job performance. At the next regular board meeting, the presiding officer announces the board has voted to terminate the employee. This is a violation of I.C. § 5-14-1.5-6.1(c). The board's vote, or final action, was not taken at an open meeting. The board can make decisions in the executive session but cannot take final action in executive session.

#### A PUBLIC AGENCY'S RESPONSIBILITIES UNDER THE OPEN DOOR LAW

The ODL requires public agencies to schedule and conduct meetings in a fashion that enhances the public's access to and understanding of governmental meetings. The following questions explore these requirements.

*When can I see a copy of the meeting agenda so I will know the order of proceedings?*

A governing body of a public agency is not required to use an agenda, but if it chooses to utilize one, the governing body must post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. In addition, the public agency must describe each agenda item specifically during a meeting and may not refer solely to an agenda item by number. The ODL does not prohibit a public agency from changing or adding to its agenda during the meeting.

**Example:** The clerk posts the agenda outside the meeting room one hour prior to the meeting. This is not a violation of the ODL because the agenda was posted prior to the meeting. Unlike the meeting notice, the agenda is not required to be posted 48 hours prior to the meeting.

**Example:** The presiding officer of a meeting announces the next vote by saying, "Now we will vote on Item 2, the purchase of property at 200 Main Street." This was not a violation because the

reference was not to the item number *alone*.

*Must a governing body keep minutes of its meetings?*

There is no requirement in the ODL for a public agency to keep minutes of its meeting. Minutes of a meeting, if any, are to be open for public inspection and copying. A public agency may not deny access to minutes of a meeting simply because they are still in "draft" form or have not yet been approved. Such records are disclosable public records under the APRA. See Sections 3 and 4 of this handbook. See below for requirements on what must be documented and retained by a public agency.

*Suppose I am unable to attend an open meeting and want to find out what happened. What can I do?*

You can obtain a copy of the meeting memoranda. The ODL requires the following memoranda to be kept:

- 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.

The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings.

*What if errors occur in the minutes of an open meeting?*

The governing body may correct minutes of its meetings and make corrections to the record where errors have occurred in properly recording the minutes. Modifications and amendments may be made to entries of minutes.

*How will I know if an open meeting has been scheduled?*

The ODL requires public notice of date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours prior to the meeting, excluding

Saturdays, Sundays, and legal holidays. A public agency must post a notice of meetings at the principal office of the agency, and if no such office exists, at the place where the meeting is to be held. See Section 2 of this handbook, regarding I.C. § 5-14-1.5-5. State agencies are also required to provide electronic access to meeting notices on the Internet. There may also be other statutes governing notices of particular meetings. See Appendices D and E for sample meeting notices.

**Example:** A board posts a notice that indicates a public meeting will be held “after the executive session.” This is not proper notice because it does not provide the time the meeting is scheduled to begin.

*What if a meeting is necessary to deal with an emergency?*

If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of governmental activity under the public agency's jurisdiction, the 48-hour notice requirement does not apply. The definition of an emergency should be narrowly construed. Examples include tornados, snowstorms, and other unforeseeable natural disasters. Pursuant to the statute, for an emergency to exist, it must threaten to compromise the integrity of operations of the government for the present or foreseeable future. A hindrance or inconvenience does not rise to that level. The definition of an emergency would not include foreseeable events.

News media which requested notice of meetings in accordance with I.C. § 5-14-1.5-5(b)(2) must be given the same notice as members of the governing body. The public must be provided notice by the posting of the notice outside the principal office of the public agency.

*What special notice requirements apply for the media?*

For governing bodies holding regularly scheduled meetings, notice need only be given once each year to all news media which have made a timely request in accordance with I.C. § 5-14-1.5-5(b)(2). Notices for executive sessions and additional open meetings must be delivered

48 hours before a meeting to news media which properly requested such notices.

*May a governing body vote by secret ballot?*

During a meeting of the governing body of a public agency, the governing body cannot vote by secret ballot.

**Example:** A commission votes by written ballot, which may be signed, initialed or left unsigned at the individual's discretion. This is a secret ballot and thus a violation of the ODL.

*In what manner should a vote be taken?*

The ODL does not require votes to be taken in any particular manner, so long as a secret ballot is not utilized.

*Does the ODL require that a governing body deliberate in an open meeting before a vote is taken?*

The ODL does not require a governing body to deliberate prior to a vote being taken. Again, public agencies are reminded of the appearance of closed-door meetings and are strongly encouraged to avoid these misperceptions if possible.

**Example:** At a meeting of all three members of the board of county commissioners, one commissioner suggests John Doe would make a good county bridge superintendent. The other two commissioners agree, and the staff is directed to inform Mr. Doe he is the new bridge superintendent. No formal motion is made and seconded, and no roll call vote is taken. The appointment is valid because the ODL does not require the commissioners to take a formal vote.

*May I bring a video camera or tape recorder to an open proceeding to record a meeting?*

A person has the right under the ODL to be present at a public meeting, other than an executive session, and to record the meeting by videotape, shorthand, or any other method of recording, subject to reasonable restrictions as to equipment and use that may be imposed by the governing body. Rules and regulations prohibiting the use of cameras, tape recorders or other recognized means of recording a meeting

are void.

*Do I have the right to speak at an open meeting?*

The ODL does not guarantee the right to speak at public meetings. Although an individual has the right to attend and observe all public proceedings, no specific statutory authority allows an individual to appear before and address a governing body. A governing body may choose to provide an opportunity for comments or discussion at any time or may allow a limited number of comments or limited amount of time for comments on matters under consideration. During certain meetings, a provision for public comment may be required by statute or local ordinance.

*May a meeting be set at any time?*

The ODL does not define any particular time for a meeting as inappropriate. However, a public agency may not delay the start of a meeting to the extent the delay frustrates the public's right to attend and observe the agency's proceedings.

**Example 1:** A city council wants to transmit a proposed expenditure to the department of local government finance for its approval before the calendar year expires. Because of this, the council also wants to schedule a third reading of an appropriation as promptly as possible following the second reading. The city schedules a city council meeting for 11:00p.m. The city has not violated the Open Door Law.

**Example 2:** A town board gives notice of an executive session for 4:30 p.m., with a public meeting to follow at 5:00 p.m. The board does most of its work in executive session and convenes the public meeting four hours late, at 9:00 p.m. This is contrary to the ODL because the delay may have frustrated the public's right to attend, observe and record the public meeting.

*Where can meetings be held?*

Meetings can be held anywhere accessible to the public. The ODL does prohibit a public agency from holding a meeting at a location inaccessible to an individual with a disability. A public agency should also ensure no other

barriers to access exist, such as locked outside doors at a meeting site. A public agency should also endeavor to hold meetings in a location that can accommodate all members of the public who wish to attend, especially if an anticipated audience may exceed capacity.

**Example:** The state natural resources commission wants to hold its meetings at a state park. This would be permissible only if those attending the meeting are not required to pay the park entrance fee.

*Must a public agency adjourn its meetings?*

The ODL does not require a public agency to formally adjourn its meetings. This does not relieve the public agency its requirement to post notice of its meetings 48 hours in advance as prescribed by I.C. § 5-14-1.5-5(a).

## REMEDIES FOR VIOLATIONS OF THE ODL

*What can I do when I think a governing body violated the ODL?*

Any person may contact the Public Access Counselor to file a formal complaint or request an informal opinion. See Sections 5 and 6 of this handbook for more details. In addition, an action may be filed by any person in a court of competent jurisdiction against the governing body which allegedly violated the ODL. The plaintiff need not allege or prove special damage different from that suffered by the public at large.

*What remedies are available if the ODL has been violated?*

The counselor may provide informal or formal advice, but that advice is not binding on public agencies. Judicial remedies available include obtaining a declaratory judgment; enjoining continued, threatened, or future violations of the ODL; declaring a policy, decision, or final action void; or, the imposition of a civil penalty.

*Are there time limits on filing a legal action?*

There are time limits only on filing actions under the ODL to declare any policy, decision, or final action of a governing body void or to enter an injunction that would invalidate the public agency's policy, decision or final action, on the basis that these acts violated the law. The action must be commenced either prior to the time the

governing agency delivers any warrants, notes, bonds, or final actions that the legal action seeks to enjoin or declare void, or the action must be commenced within thirty days of either the date the act or failure to act complained of occurred or the date the plaintiff knew or should have known the act or failure to act complained of had occurred.

*Who pays my legal fees if my action is successful or if I lose?*

In any action filed under the ODL, a court must award reasonable attorney's fees, court costs, and other reasonable litigation expenses to the complainant if the person who filed the action prevails and that person sought the advice of the Counselor prior to filing the court action. If the public agency prevails and the court finds the legal action frivolous and vexatious, these fees, costs and expenses may be assessed against the person who filed the legal action.

*Can a public employee or official be fined for violating the ODL?*

A civil penalty may be imposed by the court against an individual who is an officer or manager of a public agency, who with the specific intent to violate the ODL fails to perform a duty as required by the law. *See* I.C. 5-14-1.5-7.5.

## CONCLUSION

This guide is published to help public officials and individuals understand and apply Indiana's Open Door Law. Examples and explanations used in this guide are meant to be illustrative of the law's provisions, and they can in no way address every conceivable factual situation. When confronted with a question of interpretation, the law should be liberally construed in favor of openness.

## SECTION TWO: THE OPEN DOOR LAW AND LEGAL COMMENTARY

This section contains the text of the Open Door Law, Ind. Code § 5-14-1.5-1 *et seq.*, which is current as of the close of the 2016 session of the Indiana General Assembly. After the sections which have been interpreted by Indiana courts, the Office of the Attorney General, or the Office of the Public Access Counselor, legal

commentary has been provided. The commentaries are included merely to provide the reader with practical guidance on how the law has been interpreted and are not intended to be a substitute for specific legal advice.

### I.C. § 5-14-1.5-1 PURPOSE

In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. 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. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy. (*As added by Acts 1977, P.L. 57, § 1; Amended by P.L. 67-1987, § 1.*)

### COMMENTARY

*It is the court's duty when construing the provisions of the Open Door Law to do so in a manner that is consistent with its declared policy and to give effect to the intention of the General Assembly. Common Council of the City of Peru v. Peru Daily Tribune, 440 N.E.2d 726 (Ind. Ct. App. 1982).*

*Public meetings should be held in a location that can accommodate all members of the public who wish to attend. When the public agency is aware in advance that the meeting location will likely be insufficient to hold all attendees, the agency should attempt a change of venue to satisfy the spirit of the Open Door Law. Opinion of the Public Access Counselor 13-FC-285.*

### I.C. § 5-14-1.5-2 DEFINITIONS

For the purposes of this chapter:

(a) "Public agency", except as provided in section 2.1 of this chapter, means the following:

(1) Any 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.

(2) 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.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) 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.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business.

(3) 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. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for the purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include any of the following:

(1) any social or chance gathering not intended

to avoid this chapter;

(2) any on-site inspection of any:

(A) project;

(B) program; or

(C) facilities of applicants for incentives or assistance from the governing body;

(3) traveling to and attending meetings of organizations devoted to betterment of government;

(4) a caucus;

(5) 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;

(6) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action.

(7) a gathering for the sole purpose of administering an oath of office to an individual.

(8) Collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries. This subdivision only applies to a governing body that has not appointed an agent or agents to conduct collective bargaining on behalf of the governing body as described in subsection (b)(3).

(d) "Official action" means to:

(1) receive information;

(2) deliberate;

(3) make recommendations;

(4) establish policy;

(5) make decisions; or

(6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may

reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under Indiana Code 5-3-1, all news services (as defined in Indiana Code 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity. *(As added by Acts 1977, P.L. 57, § 1; 1979, P.L. 39, § 1; P.L.33-1984, § 1; P.L.67-1987, § 2; P.L.8-1993, § 56; P.L.277-1993(ss), § 127; P.L.1-1994, § 20; P.L.50-1995, § 14; P.L.1-1998, § 71; P.L.90-2002, § 16; P.L.35-2003, § 1; P.L.179-2007, § 1; P.L.103-2013, § 1.)*

#### COMMENTARY

*In Robinson v. Indiana University, 638 N.E.2d 435 (Ind.Ct. App. 1994), the Court of Appeals held that the definition of a governing body included committees that are directly appointed by the governing body or its presiding officer.*

*A group of state employees who meets to conduct business under state or federal law is not a governing body under the Open Door Law. Indiana State Board of Health v. Journal-Gazette Co., 608 N.E.2d 989 (Ind. Ct. App. 1993), modified 603 N.E.2d 989 (Ind. Ct. App. 1993).*

*If a majority of the members of a governing body attend a political "caucus," this is not converted to a meeting under the Open Door Law unless official action is taken. Evansville Courier v. Willner, 563 N.E.2d 1269 (Ind. 1990).*

*When a university hospital and a private hospital consolidated to form a private, nonprofit corporation that (1) assumed all the liabilities of the university hospital; (2) would not receive any State funds; and (3) would engage non-public employees, the corporation formed is not a public "entity" subject to audit by the Indiana State Board of Accounts and is not subject to the Open Door Law. However, to the extent a portion of the newly formed private, nonprofit corporation is a "public office" subject to Indiana State Board of*

*Accounts' audits, that portion of the corporation will be subject to the Open Door Law. Indiana State Bd. of Accounts v. Consolidated Health Group, Inc., 700 N.E.2d 247, 251-53 (Ind. Ct. App. 1998).*

*Failure to give notice of an on-site inspection is not a violation of the ODL as an on-site inspection is not a meeting. Opinion of the Public Access Counselor 98-FC-03.*

*Whether an email exchange is considered a meeting is largely dependent upon the nature and intent of the communication. If the governing body is trying to communicate simultaneously and expecting an immediate call-and-response type dialogue for the purpose of taking official action on business, the exchange constitutes a meeting. Opinion of the Public Access Counselor 13-FC-324.*

*When a private university establishes a charter school, which is a public entity under I.C. 20-24-1-4, meetings relating to the charter school are subject to the ODL. Opinion of the Public Access Counselor 16-FC-32*

#### I.C. § 5-14-1.5-2.1 "PUBLIC AGENCY" DEFINED; CERTAIN PROVIDERS EXEMPTED

"Public agency," for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:

(1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:

(A) The agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits.

(B) 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.

(C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the

entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts. (*As added by Act P.L.179-2007, § 2.*)

#### I.C. § 5-14-1.5-3 OPEN MEETINGS; SECRET BALLOT VOTES; MEMBER PARTICIPATING BY ELECTRONIC MEANS OF COMMUNICATION

(a) Except as provided in section 6.1 of this chapter, 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.

(b) A secret ballot vote may not be taken at a meeting.

(c) A meeting conducted in compliance with section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication does not violate this section. (*As added by Acts 1977, P.L.57, § 1; P.L.38-1988, § 6; P.L.1-1991, § 35; P.L.179-2007, § 3.; P.L.134-2012, §10.*)

#### COMMENTARY

*Governing bodies may not ban the use of cameras and tape recorders at public meetings.* Berry v. Peoples Broadcasting Corp., 547 N.E.2d 231 (Ind. 1989).

*The Hammond Board of Works and Public Safety violated the Open Door Law when it conferred with its legal counsel off the record during the course of an administrative hearing.* Hinojosa v. Board of Public Works & Safety for the City of Hammond, Indiana, 789 N.E.2d 533, 549 (Ind. 2003).

#### I.C. § 5-14-1.5-3.1 SERIAL MEETINGS

(a) Except as provided in subsection (b), the governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2)

members of the governing body.

(2) 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.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(b) This subsection applies only to the city-county council of a consolidated city or county having a consolidated city. The city-county council violates this chapter if its members participate in a series of at least two (2) gatherings of members of the city-county council and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least five (5) members of the city-county council and the other gatherings include at least three (3) members of the city-county council.

(2) The sum of the number of different members of the city-county council attending any of the gatherings at least equals a quorum of the city-county council.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of the city-county council attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(c) A gathering under subsection (a) or (b) does not include:

(1) a social or chance gathering not intended by any member of the governing body to avoid the requirements of this chapter;

(2) an onsite inspection of any:

(A) project;

(B) program; or



(C) facilities of applicants for incentives or assistance from the governing body;

(3) traveling to and attending meetings of organizations devoted to the betterment of government;

(4) a caucus;

(5) 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;

(6) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action;

(7) a gathering for the sole purpose of administering an oath of office to an individual; or

(8) a gathering between less than a quorum of the members of the governing body intended solely for members to receive information and deliberate on whether a member or members may be inclined to support a member's proposal or a particular piece of legislation and at which no other official action will occur.

(d) A violation described in subsection (a) or (b) is subject to section 7 of this chapter. (As added by P.L.179-2007, §4.)

*While email discussion and deliberation are excluded from serial meetings as not being violative, final decisions are meant to be open and transparent.* Opinion of the Public Access Counselor 13-FC-324.

#### I.C. § 5-14-1.5-3.5 ELECTRONIC MEETINGS OF POLITICAL SUBDIVISIONS; AUTHORIZATION REQUIRED

(a) This section applies only to a governing body of a public agency of a political subdivision, other than a governing body of an airport authority or a department of aviation as set forth in section 3.6 of this chapter.

(b) A member of the governing body of a public agency who is not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, video conferencing, or any other electronic means of communication:

(1) may not participate in final action taken at the meeting unless the member's participation

is expressly authorized by statute; and

(2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute.

(c) The memoranda prepared under section 4 of this chapter for a meeting in which a member participates by using a means of communication described in subsection (b) must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent. (As added by P.L. 134-2012, § 11; P.L. 154-2016, §1.)

#### I.C. § 5-14-1.5-3.6 ELECTRONIC MEETINGS OF STATE AGENCIES

(a) This section applies only to a governing body of the following:

(1) A charter school (as defined in IC 20-24-1-4).

(2) A public agency of the state, including a body corporate and politic established as an instrumentality of the state.

(3) An airport authority or a department of aviation under IC 8-22.

(b) A member of the governing body who is not physically present at a meeting of the governing body may participate in a meeting of the governing body by electronic communication only if the member uses a means of communication that permits:

(1) the member;

(2) all other members participating in the meeting;

(3) all members of the public physically present at the place where the meeting is conducted; and

(4) if the meeting is conducted under a policy adopted under subsection (g)(7), all members of the public physically present at a public location at which a member participates by means of electronic communication; to simultaneously communicate with each other during the meeting.

(c) The governing body must fulfill both of

the following requirements for a member of the governing body to participate in a meeting by electronic communication:

(1) This subdivision does not apply to committees appointed by a board of trustees of a state educational institution, by the commission for higher education, or the board of directors of the Indiana secondary market for education loans, as established, incorporated, and designated under IC 21-16-5-1. The minimum number of members who must be physically present at the place where the meeting is conducted must be the greater of:

- (A) two (2) of the members; or
- (B) one-third (1/3) of the members.

(2) All votes of the governing body during the electronic meeting must be taken by roll call vote.

Nothing in this section affects the public's right under this chapter to attend a meeting of the governing body at the place where the meeting is conducted and the minimum number of members is physically present as provided for in subdivision (1).

(d) Each member of the governing body is required to physically attend at least one (1) meeting of the governing body annually.

(e) Unless a policy adopted by a governing body under subsection (g) provides otherwise, a member who participates in a meeting by electronic communication:

(1) is considered to be present at the meeting;

(2) shall be counted for purposes of establishing a quorum; and

(3) may vote at the meeting.

(f) A governing body may not conduct meetings using a means of electronic communication until the governing body:

(1) meets all requirements of this chapter; and

(2) by a favorable vote of a majority of the members of the governing body, adopts a policy under subsection (g) governing participation in meetings of the governing body by electronic communication.

(g) A policy adopted by a governing body to govern participation in the governing body's meetings by electronic communication may do any of the following:

(1) Require a member to request

authorization to participate in a meeting of the governing body by electronic communication within a certain number of days before the meeting to allow for arrangements to be made for the member's participation by electronic communication.

(2) Subject to subsection (e), limit the number of members who may participate in any one (1) meeting by electronic communication.

(3) Limit the total number of meetings that the governing body may conduct in a calendar year by electronic communication.

(4) Limit the number of meetings in a calendar year in which any one (1) member of the governing body may participate by electronic communication.

(5) Provide that a member who participates in a meeting by electronic communication may not cast the deciding vote on any official action. For purposes of this subdivision, a member casts the deciding vote on an official action if, regardless of the order in which the votes are cast:

(A) the member votes with the majority; and

(B) the official action is adopted or defeated by one (1) vote.

(6) Require a member participating in a meeting by electronic communication to confirm in writing the votes cast by the member during the meeting within a certain number of days after the date of the meeting.

(7) Provide that in addition to the location where a meeting is conducted, the public may also attend some or all meetings of the governing body, excluding executive sessions, at a public place or public places at which a member is physically present and participates by electronic communication. If the governing body's policy includes this provision, a meeting notice must provide the following information:

(A) The identity of each member who will be physically present at a public place and participate in the meeting by electronic communication.

(B) The address and telephone number of each public place where a member will be physically present and participate by electronic communication.

(C) Unless the meeting is an executive session, a statement that a location described in

clause (B) will be open and accessible to the public.

(8) Require at least a quorum of members to be physically present at the location where the meeting is conducted.

(9) Provide that a member participating by electronic communication may vote on official action only if, subject to subsection (e), a specified number of members:

(A) are physically present at the location where the meeting is conducted; and

(B) concur in the official action.

(10) Establish any other procedures, limitations, or conditions that govern participation in meetings of the governing body by electronic communication and are not in conflict with this chapter.

(h) The policy adopted by the governing body must be posted on the Internet web site of the governing body, the charter school, the airport, or the public agency.

(i) Nothing in this section affects a public agency's or charter school's right to exclude the public from an executive session in which a member participates by electronic communication.

*(As added by P.L. 134-2012, §12; P.L. 62-2013, §1; P.L. 132-2013 §1; P.L. 280-2013, §4; P.L. 30-2015, §1; P.L. 154-2016, §2.)*

#### I.C. § 5-14-1.5-4 POSTING AGENDA; MEMORANDA OF MEETINGS; PUBLIC INSPECTION OF MINUTES

(a) A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.

(b) As the meeting progresses, the following memoranda shall be kept:

(1) The date, time, and place of the meeting.

(2) The members of the governing body recorded as either present or absent.

(3) The general substance of all matters proposed, discussed, or decided.

(4) A record of all votes taken, by individual members if there is a roll call.

(5) Any additional information required under section 3.5 or 3.6 of this chapter or any other

statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying. *(As added by Acts 1977, P.L.57, § 1; P.L.38-1988, § 7; P.L.76-1995, § 1; P.L.2-2007, § 99.;P.L. 134-2012,§13.)*

#### COMMENTARY

*Draft copies of minutes taken during a public meeting are considered to be disclosable public records despite not yet being approved by a governing body or in their official final form. Opinion of the Public Access Counselor 98-FC-08; 10-FC-56; 05-FC-23; 12-FC-80.*

#### I.C. § 5-14-1.5-5 PUBLIC NOTICE OF MEETINGS

(a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency as follows:

(1) The governing body of a public agency shall give public notice by posting 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.

(2) The governing body of a public agency shall give public notice by delivering notice to all news media which deliver an annual written request for the notices not later than December 31 for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail, if the public agency has the capacity to transmit electronic mail.

(C) Transmitting the notice by facsimile (fax).

(3) This subdivision applies only to the governing body of a public agency of a political subdivision described in section 2(a)(2), 2(a)(4), or 2(a)(5) of this chapter that adopts a policy to provide notice under this subdivision. Notice under this subsection is in addition to providing notice under subdivisions (1) and (2). If the governing body adopts a policy under this subdivision, the governing body of a public agency shall give public notice by delivering notice to any person (other than news media) who delivers to the governing body of the public agency an annual written request for the notices not later than December 31 for the next succeeding calendar year. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Transmitting the notice by electronic mail, if the public agency has the capacity to send electronic mail.

(B) Publishing the notice on the public agency's Internet web site at least forty-eight (48) hours in advance of the meeting, if the public agency has an Internet web site. A court may not declare void any policy, decision, or final action under section 7 of this chapter based on a failure to give a person notice under subdivision (3) if the public agency made a good faith effort to comply with subdivision (3). If a governing body comes into existence after December 31, it shall comply with this subsection upon receipt of a written request for notice. In addition, a state agency (as defined in Ind. Code §4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the Indiana Office of Technology under Indiana Code 5-21-2.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings under subsection (b)(2) must be given the same notice as is given to members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to subsection (b)(1).

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to:

(1) the department of local government finance, the Indiana board of tax review, or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation; or

(2) the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit.

"Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.

(g) This section does not apply to the General Assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. (*As added by Acts 1977, P.L. 57, § 1; 1979, P.L. 39, § 2; P.L.67-1987, § 3; P.L.3-1989, § 29; P.L.8-1989, § 22; P.L.46-1990, § 1; P.L.251-1999, § 4; P.L.90-2002, § 17; P.L.200-2003, § 1; P.L.177-2005, § 14; P.L. 134-2012, §14.*)

## COMMENTARY

*Action taken at a city council meeting was not void simply because the meeting was held at 11:00p.m. Blinn v. City of Marion, 390 N.E.2d 1066 (Ind. Ct. App. 1979).*

*Notice of a county council meeting was adequate despite the failure to post the notice on the door of the meeting room when the council posted the notice outside the courthouse where notices are usually posted and notified the daily newspaper, which published news articles on three separate days. Pepinsky v. Monroe County Council, 461 N.E.2d 128 (Ind. Ct. App. 1984).*

*A court's inquiry does not end with the determination that meetings subject to the Open Door Law were not in "technical compliance" with the law. Turner v. Town of Speedway, 528 N.E. 2d 858 (Ind. Ct. App. 1988). Instead, a court may look for "substantial compliance" which includes (1) the extent to which the violation denied or impaired access to a meeting; and (2) the extent to which public knowledge or understanding of the public business conducted was impeded. Town of Merrillville v. Blanco, 687N.E.2d 191 (Ind. Ct. App. 1998) (Town violated the technical requirements of the Open Door Law by failing to post notice at least 48 hours in advance of its meetings at the city hall but was not in substantial compliance since a police officer's termination was a matter of primary interest to the general public; the town's failure to give adequate notice about this public matter restricted interested spectators' access to the hearing). See also, Riffin v. Board of Trustees of Ball State University, 489 N.E.2d 616 (Ind. Ct. App. 1988)(substantial compliance standard met).*

*County commissioners do not meet in continuous session and must post notice of meetings 48 hours prior to meetings. Opinion of the Public Access Counselor 16-FC-11 and 98-INF-05.*

### IC 5-14-1.5-6.1 EXECUTIVE SESSIONS

Sec. 6.1. (a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or

(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

(1) Where authorized by federal or state statute.

(2) For discussion of strategy with respect to any of the following:

(A) Collective bargaining.

(B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing. As used in this clause, "litigation" includes any judicial action or administrative law proceeding under federal or state law.

(C) The implementation of security systems.

(D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

(E) School consolidation

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by:

(A) the Indiana economic development corporation;

(B) the office of tourism development;

(C) the Indiana finance authority;

(D) the ports of Indiana;

(E) an economic development commission;

(F) the Indiana state department of agriculture;

(G) a local economic development organization that is a nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana; or

(H) a governing body of a political subdivision.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:

(i) a physician; or

(ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 25.

(13) To discuss information and intelligence intended to prevent, mitigate, or respond to the threat of terrorism.

(14) To train members of a board of aviation commissioners appointed under IC 8-22-2 or members of an airport authority board appointed under IC 8-22-3 with an outside consultant about the performance of the role of the members as public officials. A board may hold not more than one (1) executive session per calendar year under this subdivision.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection. *(As added by P.L.1-1991, § 37 and P.L.10-1991, § 8. Amended by P.L.48-1991, § 1; P.L.37-2000, § 1; P.L.200-2003, § 2; P.L.4-2005, § 28; P.L.229-2005, § 2; P.L.235-2005, § 84; P.L.101-2006, § 3; P.L.179-2007, § 5; P.L.2-2008, § 20; P.L.98-2008, § 3; P.L.120-2008, § 1; P.L.139-2011, § 1; P.L.24-2012, § 1; P.L.103-2013 § 2; P.L.145-2016 § 2.)*

#### COMMENTARY

*A goal of a government unit is to schedule executive sessions sparingly. They should not be held regularly, nor should they be a standing meeting on a governing body's schedule. A governing body should hold only a handful of them a year, if at all. These sessions are heavily scrutinized by the Public Access Counselor. Opinions of the Public Access Counselor 99-FC-23; 16-FC-146.*

*Public agencies may not seek legal advice from their attorneys in private about matters which are not related to litigation. Simon v. City of Auburn, Ind., Bd. of Zoning Appeals, 519 N.E.2d 205 (Ind. App. 3d Dist. 1988).*

*The term "employee," as used in the Open Door Law, does not include an independent contractor with the agency and, therefore, a public agency may not hold an executive session to receive information about that independent contractor. Opinion of the Indiana Attorney General, 1997, No. 2 (OAG 97-02).*

*Municipal board applicants are not prospective "employees" but are prospective officers and executive sessions to interview these applicants are not permitted under the Open Door Law. Common Council of the City of Peru v. Peru Daily Tribune, Inc., 440 N.E.2d 726 (Ind. App. 2d Dist. 1982).*

*Police commissioners board could conduct a hearing on police disciplinary charges in executive session because the police disciplinary statute authorizes a hearing, rather than a public hearing, and the Open Door Law authorizes executive sessions for the purpose of receiving information about alleged misconduct and to discuss, before determination, a person's employment status. Town of Merrillville, Lake County v. Peters, 655 N.E.2d 341, 343 (Ind. 1995).*

*The only official action that cannot take place in executive session is a final action, which must take place at a meeting open to the public. Baker v. Town of Middlebury, 753 N.E. 2d 67, 71 (Ind. Ct. App. 2001). The act of compiling a rehire list in an executive session, and excluding the town marshal from that list, was appropriate according to both the language and goals of the statute and did not constitute impermissible final action. Id. at 73.*

*Notice of an executive session which refers to "legal matters" and "FOI requests" does not comply with the Open Door Law. Gary/Chicago Airport Board of Authority v. Maclin, 772 N.E.2d 463, 468 (Ind. Ct. App. 2002). The Court of*

*Appeals found that the Board's argument that it substantially complied with the Open Door Law lacked merit because I.C. §5-14-1.5-6.1 requires the Board to identify the subject matter by specific reference to subsection (b). Id. The airport board further violated the ODL by failing to keep memoranda containing specific information from its executive sessions. Id.*

*A county council may not post the notice of executive sessions on an annual basis; instead, council must specify each executive session and list a permissible statutory exception. Opinion of the Public Access Counselor 99-FC-23.*

*Final actions of a public agency, including selection of a Town Council President and deliberation of an employee's termination, taken during executive sessions were taken in violation of the ODL. Opinions of the Public Access Counselor 99-FC-04; 00-FC-06.*

*Commission's order substantially complied with the Open Door Law when final order had not actually been signed and released in public meeting but all prior proceedings and findings had occurred in public meetings. Ind. Dep't of Env'tl. Mgmt. v. West, 812 N.E.2d 1099 (Ind. App. 2004), transfer granted, opinion vacated sub nom. IDEM v. West, 831 N.E.2d 734 (Ind. 2005), and vacated, 838 N.E.2d 408 (Ind. 2005).*

*Former city employee was terminated in an open meeting by the council's vote on a motion to appoint another person to the employee's position under I.C. §§5-14-1.5-2 and 5-14-1.5-6.1(c); accordingly, no violation of the ODL occurred. Furthermore, a letter sent to the employee by the council president was not a final action by the council because it was a mere formality to inform the employee of the council's action. City of Gary v. McCrady, 851 N.E.2d 359 (Ind. App. 2006).*

*Notice of an executive session shall include the language of the statute and the citation to the specific instance. "To discuss a performance evaluation of an individual employee, pursuant to IC 5-14-1.5-6.1(b)(9)" for example, would satisfy the notice requirements. Opinions of the Public Access Counselor, 05-FC-223; 07-FC-64 and 11-FC-39.*

#### IC 5-14-1.5-6.5 COLLECTIVE BARGAINING MEETINGS; APPLICABLE REQUIREMENTS

Sec. 6.5. (a) Whenever a governing body, or any person authorized to act for a governing body, meets with an employee organization, or any person authorized to act for an employee organization, for the purpose of collective bargaining or discussion, the following apply:

(1) Any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of opinion based upon factual information.

(2) If a mediator is appointed, any report the mediator may file at the conclusion of mediation is a public record open to public inspection.

(3) If a fact finder is appointed, any hearings the fact finder holds must be open at all times for the purpose of permitting members of the public to observe and record them. Any findings and recommendations the fact finder makes are public records open to public inspection as provided by any applicable statute relating to fact finding in connection with public collective bargaining.

(b) This section supplements and does not limit any other provision of this chapter. *(As added by Acts 1979, P.L.39, § 4. Amended by P.L.67-1987, § 5; P.L.1-2005, § 8; P.L. 48-2011, § 1.)*

#### I.C. § 5-14-1.5-7 VIOLATIONS; REMEDIES; LIMITATIONS; COSTS AND FEES

(a) An action may be filed by any person in any court of competent jurisdiction to:

(1) obtain a declaratory judgment;  
(2) enjoin continuing, threatened, or future violations of this chapter; or  
(3) declare void any policy, decision, or final action:

(A) taken at an executive session in violation of section 3(a) of this chapter;

(B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;

(C) that is based in whole or in part upon official action taken at any:

(i) executive session in violation of section 3(a) of this chapter;

(ii) meeting of which notice is not given in accordance with section 5 of this chapter; or

(iii) series of gatherings in violation of section 3.1 of this chapter; or

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the Public Access Counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) 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

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred; whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, 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.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe



and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the Public Access Counselor concerning a violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff prevails; or

(2) the defendant prevails and the court finds that the action is frivolous and vexatious. The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court may assess a civil penalty under section 7.5 of this chapter only if the plaintiff obtained an advisory opinion from the public access counselor before filing an action under this section as set forth in section 7.5 of this chapter. (h) A court shall expedite the hearing of

an action filed under this section. *(As added by Acts 1977, P.L. 57, §1; 1979, P.L. 39, §5; P.L.67-1987, §6; P.L.38-1992, §1; P.L.70-1999, §1; P.L.191-1999, §1; P.L.179-2007, §6; P.L.134-2012, §15)*

#### COMMENTARY

*A party challenging the action of a public agency need not prove special damage that is different from the public at large in order to obtain an injunction under this section of the ODL. Common Council v. Peru Daily Tribune, Inc., 440 N.E.2d 726 (Ind. App. 2d Dist. 1982).*

*A city resident was entitled to file a taxpayer's action and initiate proceedings to force the city council's compliance with the Open Door Law. Reichhart v. City of New Haven, 674 N.E.2d 27, 32 (Ind. Ct. App. 1996).*

*Whether to invalidate any policy, decision, or final action taken by a public agency in violation of the Open Door Law is left to the court's discretion. Town of Merrillville v. Blanco, 687 N.E.2d 191 (Ind. Ct. App. 1997).*

*Because appellant's suit against government board was necessary to prevent current and further violations of the Open Door Law, award of attorney fees to appellant under I.C. §5-14-1.5-7(f) was proper. Hinojosa v. Bd. of Pub. Works & Safety for City of Hammond, Ind., 789 N.E.2d 533 (Ind. App. 2003), transfer denied, 812 N.E.2d 796, (Ind. 2004).*

*Former city employee was not entitled under I.C. §5-14-1.5-7(f) to an award of attorney's fees before the trial court or on appeal because the appellate court found for the city council and reversed the trial court's entry of summary judgment for the employee. City of Gary v. McCrady, 851 N.E.2d 359, 2006 (Ind. Ct. App. 2006).*

#### I.C. § 5-14-1.5-7.5 CIVIL PENALTIES IMPOSED ON PUBLIC AGENCY, OFFICER, OR MANAGEMENT LEVEL EMPLOYEE

(a) This section applies only to an individual who is:

- (1) an officer of a public agency; or
- (2) employed in a management level

position with a public agency.

(b) If an individual with the specific intent to violate the law fails to perform a duty imposed on the individual under this chapter by:

(1) failing to give proper notice of a regular meeting, special meeting, or executive session;

(2) taking final action outside a regular meeting or special meeting;

(3) participating in a secret ballot during a meeting;

(4) discussing in an executive session subjects not eligible for discussion in an executive session;

(5) failing to prepare a memorandum of a meeting as required by section 4 of this chapter; or

(6) participating in at least one (1) gathering of a series of gatherings under section 3.1 of this chapter; the individual and the public agency are subject to a civil penalty under subsection (f).

(c) A civil penalty may only be imposed as part of an action filed under section 7 of this chapter. A court may not impose a civil penalty under this section unless the public access counselor has issued an advisory opinion:

(1) to the complainant and the public agency;

(2) that finds that the individual or public agency violated this chapter; and (3) before the action under section 7 of this chapter is filed.

Nothing in this section prevents both the complainant and the public agency from requesting an advisory opinion from the public access counselor.

(d) It is a defense to the imposition of a civil penalty under this section that the individual failed to perform a duty under subsection (b) in reliance on either of the following:

(1) An opinion of the public agency's legal counsel.

(2) An opinion of the attorney general.

(e) Except as provided in subsection (i), in an action filed under section 7 of this chapter, a court may impose a civil penalty against one (1) or more of the following:

(1) The individual named as a defendant in the action.

(2) The public agency named as a defendant in the action.

(f) The court may impose against each defendant listed in subsection (c) the following civil penalties:

(1) Not more than one hundred dollars (\$100) for the first violation.

(2) Not more than five hundred dollars (\$500) for each additional violation.

A civil penalty imposed under this section is in addition to any other civil or criminal penalty imposed. However, in any one (1) action brought under section 7 of this chapter, a court may impose only one (1) civil penalty against an individual, even if the court finds that the individual committed multiple violations. This subsection does not preclude a court from imposing another civil penalty against an individual in a separate action, but an individual may not be assessed more than one (1) civil penalty in any one (1) action brought under this section.

(g) A court shall distribute monthly to the auditor of state any penalties collected under this section for deposit in the education fund established by IC 5-14-4-14.

(h) An individual is personally liable for a civil penalty imposed on the individual under this section. A civil penalty imposed against a public agency under this section shall be paid from the public agency's budget.

(i) If an officer of a public agency directs an individual who is employed in a management level position to fail to give proper notice as described in subsection (b)(1), the management level employee is not subject to civil penalties under subsection (f). (*As added by P.L. 134-2012, § 16.*)

## I.C. § 5-14-1.5-8 ACCESSIBILITY TO INDIVIDUALS WITH DISABILITIES

(a) This section applies only to the following public agencies:

(1) A public agency described in section 2(a)(1) of this chapter.

(2) A public agency:

(A) described in section 2(a)(5) of this chapter; and

(B) created to advise the governing body of a public agency described in section 2(a)(1) of this chapter.

(b) As used in this section, "accessible" means the design, construction, or alteration of

facilities in conformance with the Uniform Federal Accessibility Standards (41 C.F.R. 101-19.6, App. A (1991)) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (56 Fed. Reg. 35605 (1991)).

(c) As used in this section, "individual with a disability" means an individual who has a temporary or permanent physical disability.

(d) A public agency may not hold a meeting at a location that is not accessible to an individual with a disability. (*As added by Acts P.L. 38-1992, § 2.*)

#### COMMENTARY

*Ind. Code §5-14-1.5-8 mandates that public agency hearings must be held in facilities that permit barrier-free physical access to the physically handicapped; the statute does not make allowances for agencies who plan to accommodate disabled individuals only when those individuals express interest in attending the meetings. Town of Merrillville v. Blanco, 687 N.E.2d 191, 198 (Ind. App. 1997).*

### SECTION THREE: OVERVIEW OF THE ACCESS TO PUBLIC RECORDS ACT

#### INTRODUCTION

The Access to Public Records Act ("APRA") (Ind. Code § 5-14-1.5), originally passed by the Indiana General Assembly in 1983 and most recently amended in 2016, was enacted to permit the citizens of Indiana broad and easy access to public records. By providing the public with the opportunity to review and copy public records, the APRA gives individuals the opportunity to obtain information relating to their government and to more fully participate in the governmental process. For the APRA to be useful to the public, it is important that the public understands the APRA. This guide sets forth the basic elements of the APRA and provides answers to common questions. This guide does not, however, contain specific answers to specific questions. For more detailed guidance, please consult the provisions of the Indiana Code set forth at Section 4 of this handbook.

#### COMMONLY ASKED QUESTIONS ABOUT THE ACCESS TO PUBLIC RECORDS ACT

The following are commonly asked questions about the APRA. It is important to note that the answers are not the final authority on a particular issue, as the facts will vary from situation to situation. Indeed, laws and court interpretations of the law are ever changing. Therefore, it is important to remember that the answers to these questions are only guides for the public, may only apply to specific situations, and are subject to change.

##### *Who may access public records?*

The explicit policy statement and statutory language of the APRA permit all persons access to public records. A "person" includes individuals as well as corporations, limited liability companies, partnerships, associations and governmental entities.

**Example:** A company may access minutes of a public board meeting just as an individual may.

**Example:** A non-resident of the State of Indiana may make a request for records under the APRA.

##### *What kinds of documents may be accessed?*

To be required to be accessible, a document must be a public record from a public agency. The APRA defines a public record as

. . . 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. I.C. § 5-14-3-2.

I.C. § 5-14-3-2 defines public agency very broadly to include boards, commissions, departments, divisions, bureaus, committees, agencies and offices exercising administrative, judicial or legislative power; counties, townships, cities, towns, law enforcement agencies; school corporations; advisory commissions, committees and bodies; license branches; the lottery commission; the gaming commission; the horse racing commission; and a private university police department. Additionally, any entity that is subject to audit by the State Board of Accounts

by statute, rule, or regulation is a public agency for purposes of the APRA. An entity that is maintained or supported, in whole or in part, by public funds may fall within the APRA, and, therefore, its records are accessible.

**Example:** The following public records are generally accessible from public agencies: applications for permits and licenses, contracts to which the state or local unit of government is a party, survey plats, commission, board and committee reports and recommendations, and transcripts of public hearings in which testimony was taken.

**Example:** A person may obtain a copy of a property record card maintained by a county or township assessor.

#### *What records may not be accessed?*

The stated policy of the APRA and its broad definition of public records make most documents accessible to the public. But the APRA specifically excludes certain types of documents from disclosure. These exceptions can be found in I.C. § 5-14-3-4. In determining whether a particular record is excepted from disclosure under the APRA, Indiana courts are to interpret these exceptions narrowly. Under I.C. § 5-14-3-4(a), certain records cannot be disclosed by a public agency unless the disclosure is specifically required by state or federal statute, or is ordered by a court under the rules of discovery. I.C. 5-14-3-4(a) is not an exhaustive list of records that are considered to be confidential pursuant to state law. Various provisions throughout the Indiana Code declare certain records to be confidential. The most commonly cited exceptions found in I.C. § 5-14-3-4(a) include:

- Records made confidential by state statute;
  - Juvenile Law Enforcement Records (IC 31-39-3, 4);
  - Juvenile Court Records (IC 31-39-2);
  - Protective Orders (IC 5-2-9-6); Address Confidentiality Program (IC 5-26.5-2);
  - Confidential Motor Vehicle Records (IC 9-14-3-9);
  - Victim Addresses (IC 11-13-3-

4);

- TANF Records (IC 12-14-1-7);
- Patient Treatment Records (IC 12-23-18-5.6);
- School Records (IC 31-39-6-1);
- Hotline Calls (IC 31-33-18-5)
- Records made confidential by rule adopted by a public agency under specific authority;
- Records made confidential by federal law;
  - FERPA (20 U.S.C. §1232g *et seq.*)
- Records containing trade secrets;
- Records containing confidential financial information received upon request from a person;
- Grade transcripts and license examination scores;
- Records made confidential by rules adopted by the Indiana Supreme Court;
- Patient medical records and charts created by a health care provider unless the patient provides written consent for the record's disclosure;
- A photograph, a video recording, or an audio recording of an autopsy; and
- A social security number contained in the records of a public agency.

In certain circumstances, the APRA grants public agencies discretion in determining which public records should be disclosed. I.C. §5-14-3-4(b) provides public agencies the discretion to withhold the following records from public access: The following are the most commonly cited discretionary exceptions found under 4(b):

- Investigatory records of law enforcement agencies. Records compiled during the course of an investigation of a crime are considered to be investigatory records. However, pursuant to *I.C. § 5-14-3-5, certain factual information relating to the identity of a person arrested or jailed and the agency's response to a complaint, accident or incident must be made available to the public.*)

**Example:** Statements made to police by witnesses of a crime may be withheld at the discretion of the agency pursuant to I.C. 5-14-3-

4(b)(1).

- 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;

**Example:** A letter written by a school board attorney to the board, advising the board of his strategy regarding pending litigation, may be withheld at the agency's discretion pursuant to I.C. 5-14-3-4(b)(2).

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

**Example:** A memo from a staff member to the mayor expressing the staff member's opinion on a proposed change in office policy may be withheld under I.C. § 5-14-3-4(b)(6).

- Diaries, journals or other personal notes;

**Example:** The written contents of a county employee's calendar, used at her office for the purpose of maintaining a journal of personal notes, may be withheld at the discretion of the agency pursuant to I.C. § 5-14-3-4(b)(7).

- Certain information contained in the files of public employees and applicants for public employment (*Certain information in an employee's personnel file is required to be disclosed under this exception*);

**Example:** An employee's job performance evaluation kept in his personnel file may be withheld at the agency's discretion pursuant to I.C. § 5-14-3-4(b)(8). The factual basis for an employee's termination however must be disclosed under subsection (C).

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

**Example:** A diagram of the security system for the State Museum's artifacts may be withheld by the agency under I.C. § 5-14-3-4(b)(10).

- Certain software owned by the public agency, I.C. § 5-14-3-4(b)(11); Records specifically prepared for discussion in executive sessions, I.C. § 5-14-3-4(b)(12);
- Work product of the legislative services agency, I.C. § 5-14-3-4(b)(13);
- Work product of the general assembly and its staff, I.C. § 5-14-3-4(b)(14);
- Information disclosure of which would threaten public safety by exposing a vulnerability to a terrorist attack, I.C. § 5-14-3-4(b)(19);
- Personal information concerning a customer of a municipally owned utility, including the customer's telephone number, address, and social security number, I.C. § 5-14-3-4(b)(20); and
- Records requested by an "offender" that contain personal information relating to law enforcement and correctional officers, judges, victims, and their family members, I.C. § 5-14-3-4(b)(23).

With the exception of adoption records, public records classified as confidential are available for public inspection and copying 75 years after they were created. If a public agency argues that a document is not disclosable, the agency bears the burden of proving that the document does not fall within the scope of the APRA.

*May I request information in the form of a list?*

The Act provides that a public agency is not required to create and release a list of names and addresses upon request. If a list of names has been compiled, or if a public agency maintains a list of information under some statutory requirement, the list is accessible to the public. In general, however, a public agency is not required to create a "list" to satisfy a public records request. But an agency that maintains its records on an "electronic data storage system" must make a reasonable effort to satisfy a request for information from that system.

When a commercial entity requests a list that

contains the names and addresses of (1) the employees of a public agency, (2) the names of the people attending conferences or meetings at a state institution of higher education, or (3) students enrolled in a public school corporation which adopts a policy that such information need not be released, the public agency may not permit a commercial entity access to the list when the list is sought for a commercial purpose.

**Example:** A request is received by the county highway department for "the dates that County Road 500 North has been paved between the years 1995 and 1997." This request seeks information in list form. If the county does not maintain such a list, it need not create one. The requestor would, however, be entitled to access any of the county's documents that may provide pertinent information to satisfy his request.

#### *When can public records be accessed?*

The APRA permits the public access to public records during the regular business hours of the particular public agency from which the records are sought. On occasion, part-time public officials may have limited business hours. The APRA does not require a public agency to be open for any particular hours of the day, but it is the responsibility of the public official to ensure there is adequate time for persons who wish to inspect and copy records. Once a public agency indicates there are disclosable public records which will be provided in response to a request, the compilation and copying of the records may not unreasonably interfere with the regular business of that agency.

**Example 1:** A citizen requests access to and copies of numerous records of a state agency. The agency responds to the request by stating the estimated time for preparation of the copies and the estimated copying fee. So long as the copies will be provided within a reasonable period of time after the request is made, the agency is in compliance with the APRA.

#### *How can public records be accessed?*

A request for the inspection or copying of public records must identify with reasonable particularity the record being requested. The

public agency, in its discretion, may require the request to be in writing on or in a form provided by the agency. It is advisable to first contact the public agency to determine whether a request form is required and/or if specific information is required to quickly locate particular documents.

#### *What is enhanced access to public records?*

In 1993, the Indiana General Assembly added a new dimension to accessing public records-enhanced access. Enhanced access permits individuals who enter into a contract with a public agency to obtain access to public records by means of electronic devices. Essentially, the enhanced access provision allows individuals who frequently use information from a public agency to examine public records using their own computer equipment.

State agencies may provide enhanced access only through a computer gateway established by the Indiana Office of Technology, unless an exception has been made by the state data processing oversight commission. All other public agencies covered by the APRA may provide enhanced access to their records either directly through an individual's computer gateway, by contracting with a third party to serve as the agency's gateway or through the gateway established and approved by the Indiana Office of Technology. Any provision of enhanced access, whether by contract or otherwise, must provide that the public agency, the user or a third party gateway provider will not engage in unauthorized enhanced access or alteration of public records and will not lead to the disclosure of confidential information.

#### *What are the public agency's responsibilities when I submit a request?*

If a requestor is physically present in the office of the public agency or makes a request by telephone or requests enhanced access to a document, the public agency must respond to the request within 24 hours after any employee of the agency receives the request. If a request is mailed or sent by facsimile or email, a public agency must respond within seven calendar days of the receipt of that request. The APRA requires only a response and not the actual production of records within this specified time period. The APRA requires that all records must be produced in a

reasonable period of time, considering the facts and circumstances. See Appendix B for a checklist for agencies responding to requests under the APRA.

**Example:** A person appears at the county auditor's office and asks to inspect the minutes of the council's last ten meetings. The auditor need not produce the records on demand but must at a minimum orally acknowledge the request within 24 hours.

*May a public agency deny a request?*

In general, if a requested record (1) is a public record from a public agency; (2) is not exempt from disclosure; and (3) is identified with reasonable particularity pursuant to I.C. § 5-14-3-3(a), the public agency cannot deny access to the record.

If access to a public record would reveal disclosable and nondisclosable information, the information that is disclosable must be made available for inspection. The public agency must separate, or redact, the nondisclosable information.

Oral requests made by telephone or in person may be denied orally. If a request is made in writing, by facsimile or by email, or if an oral request that was denied is renewed in writing, the public agency may only deny the request in writing. A denial **must** include a statement of the specific statutory reason for nondisclosure of the information and the name and title of the person responsible for the denial.

*What if a public agency denies my request?*

If a person feels he or she has been wrongly denied, that person should contact the Public Access Counselor for an informal response or to file a formal complaint. See Sections 5 and 6 of this handbook for more information.

The APRA authorizes an individual who has been denied access to a public record to file a civil lawsuit in the circuit or superior court of the county in which the denial occurred. The purpose of the lawsuit is to compel disclosure of the records sought. When such a lawsuit is filed, the public agency must notify each person who supplied a part of the public record in dispute that a request for its release has been denied.

The burden of proof then falls upon the public

agency to establish that it properly denied access to the public record because the record falls outside the scope of the Act. If certain conditions are met, the prevailing party is entitled to reasonable attorney fees, court costs and other litigation expenses. Further, a civil penalty may be assessed by the court if a request for records is denied with the specific intent to unlawfully withhold a record that is subject to disclosure under the APRA. See I.C. 5-14-3-9.5.

*May a public agency charge a fee for inspecting and copying public records?*

The APRA provides that a public agency cannot charge for inspection or a search for records unless it is authorized to do so by statute. For copies of records from a state agency, the state Department of Administration has established a copying fee for agencies under the executive branch of \$.10 per page for black and white copies or \$.25 per page for color copies. A public agency may require that the payment for copying costs be made in advance. The state judicial and legislative branches set their own fees.

For non-state agencies covered by the APRA, the fiscal body of the agency is required to establish a fee schedule for the certification or copying of documents that does not exceed the actual cost of certification or copying. The fee for copying documents may not exceed the greater of \$.10 for black and white copies, \$.25 for color copies, or the actual cost to the agency in copying the document. "Actual cost" is defined as the cost of the paper plus the per-page cost of use of the copying and may not include labor and overhead. The fee for certification of documents may not exceed \$5.00 per document. All fees must be uniform to all purchasers.

Copies of public records may also be provided in other forms. For a duplicate of a computer tape, disc, microfilm, law enforcement recording, or similar record system containing public records, an agency may charge a fee as prescribed by statute. I.C. § 5-14-3-8(g). The fee for a copy of a law enforcement recording may not exceed \$150. I.C. § 5-14-3-8(g)(1). An agency may also provide enhanced access to a public record and charge a reasonable fee under the provisions governing enhanced access, I.C. § 5-14-3-3.5 and I.C. § 5-14-3-3.6.

*What happens if confidential records are disclosed or if there is a failure to protect the public records from destruction?*

It is a Class A infraction for a public official or employee(s) of contractors with public agencies to knowingly or intentionally disclose records that are confidential by state statute. In addition, a public employee can be disciplined in accordance with agency personnel guidelines for reckless disclosure or failure to protect information classified as confidential by state statute. Additionally, the APRA requires a public agency to protect public records from loss, alteration, mutilation, or destruction. The APRA does not identify a penalty if the agency fails to do so.

*May I inspect a law enforcement recording?*

The APRA requires a public agency to permit any person to inspect or copy a law enforcement recording, however, the agency may deny the request if the public agency finds the distribution of the recording:

- Creates a significant risk of substantial harm to any person or the general public.
- Will likely interfere with the ability of an individual to receive a fair trial.
- May affect an ongoing investigation, if the recording is an investigatory record.
- Would not serve the public interest.

I.C. § 5-14-3-5.2(a).

All requests to inspect or copy a law enforcement recording must be in writing. The request must identify a law enforcement recording with reasonable particularity. To meet this standard, the individual must identify:

- (1) The date and approximate time of the law enforcement activity.
- (2) The specific location where the law enforcement activity occurred.
- (3) The name of at least one (1) individual, other than a law enforcement officer, who was directly involved in the law enforcement activity.

I.C. 5-14-3-3(i).

Additionally, the agency is required to obscure certain depictions and information that may be included in the recording, including crime victims and witnesses, when necessary for safety.

I.C. § 5-14-3-5.2(e).

*How long does a public agency keep a law enforcement recording?*

A public agency must retain a law enforcement recording for 190 days from the date of the recording if the public agency is not the state or a state agency, or 280 days if the public agency is the state or a state agency. If a complaint has been filed with the public agency regarding a specific recording, it must be retained for at least two years after the date of the recording. I.C. § 5-14-3-5.3.

*Should I contact the Public Access Counselor if my request to view a law enforcement recording is denied?*

Any appeal relating to the denial of access to a law enforcement recording should be submitted to the appropriate court, not the Public Access Counselor.

## CONCLUSION

The APRA provides the people of Indiana with broad access to the public documents maintained by public agencies. Access to public records is the rule and not the exception. This handbook is published with the hope that it will help public officials and individual citizens understand and apply the APRA. The examples and explanations used in the guide are meant to be illustrative of the law's provisions; they can in no way address every conceivable factual situation. When confronted with a question of interpretation, the law should be liberally construed in favor of openness.

## SECTION FOUR: THE ACCESS TO PUBLIC RECORDS ACT AND LEGAL COMMENTARY

### INTRODUCTION

This section contains the text of the Access to Public Records Act, I.C. § 5-14-3-1 *et seq.*, which is current as of the close of the 2016 session of the Indiana General Assembly. After those sections which have been interpreted by Indiana courts, the Office of the Attorney General, or the Public Access Counselor, we have provided legal commentary. These commentaries are included merely to provide the reader with practical



guidance on how the law has been interpreted and are not intended to be a substitute for specific legal advice.

#### I.C. § 5-14-3-1 PUBLIC POLICY; CONSTRUCTION; BURDEN OF PROOF FOR NON-DISCLOSURE

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. (As added by P.L. 19-1983, § 6; Amended by P.L. 77-1995, § 1.)

#### COMMENTARY

*The APRA clearly provides that the public is to have access to the affairs of government and actions of officials who represent them. A liberal construction of the Act does not mean that expressed exceptions specified by the legislature are to be contravened. Heltzel v. Thomas, 516 N.E.2d 103 (Ind. App. 3d Dist. 1987).*

*A public agency has the burden to establish that a requested record is included in categories not disclosable under the APRA. Indianapolis Convention and Visitors Association, Inc. v. Indianapolis Newspapers, Inc., 577 N.E.2d 208 (Ind. 1991).*

*Because an affidavit signed by the judge of a small claims court was not public record, the court was not required to respond to a citizen's request for the affidavit; furthermore, the court did not maintain a copy of the affidavit and, therefore, could not produce it. Woolley v. Wash.*

*Twp. of Marion County Small Claims Court, 804 N.E.2d 761, (Ind. Ct. App. 2004).*

*Regardless of whether it kept paper copies or electronic records, a local health department was required to collect and maintain death certificates. Evansville Courier & Press v. Vanderburgh County Health Dept., 17 N.E.3d 922 (Ind. 2014).*

*When an inmate sought a police department's public records, the police chief was not a proper party because the Indiana Access to Public Records Act did not provide for suits against individuals. Lane-El v. Spears, 13 N.E.3d 859 (Ind. Ct. App. 2014), transfer denied, 20 N.E.3d 851 (Ind. 2014), and cert. denied, 135 S. Ct. 1903 (2015).*

*When a civil servant is acting in his or her official capacity as a public figure, any documented record received or generated by the public official, including business conducted over private email, is a potentially disclosable public record. Opinion of the Public Access Counselor 14-FC-199.*

*There is a danger that the public will be denied access to important public documents when a private agency is exercising a public function if the courts construe the Indiana APRA to categorically exclude such agencies; accordingly, the APRA phrase "any agency or a department of any level of government," and therefore the definition of "law enforcement agency," includes private educational institutions that choose to appoint police officers. ESPN, Inc. v. Univ. of Notre Dame Sec. Police Dept., 50 N.E.3d 385 (Ind. Ct. App. 2016), transfer granted, opinion vacated sub nom. ESPN, Inc. v. Univ. of Notre Dame Police Dept., 54 N.E.3d 371 (Ind. 2016).*

#### I.C. § 5-14-3-2 DEFINITIONS

(a) The definitions set forth in this section apply throughout this chapter.

(b) "Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any

other means.

(c) "Criminal intelligence information" means data that has been evaluated to determine that the data is relevant to:

- (1) the identification of; and
- (2) the criminal activity engaged in by;

an individual who or organization that is reasonably suspected of involvement in criminal activity.

(d) "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and

(3) any medium used for electronic output; for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

(e) "Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

(f) "Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

- (1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or
- (2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

(g) "Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

(h) "Inspect" includes the right to do the following:

- (1) Manually transcribe and make notes, abstracts, or memoranda.

(2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.

- (3) In the case of public records available:

(A) by enhanced access under section 3.5 of this chapter; or

(B) to a governmental entity under section 3(c)(2) of this chapter; to examine and copy the public records by use of an electronic device.

- (4) In the case of electronically stored data, to

manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

(i) "Investigatory record" means information compiled in the course of the investigation of a crime.

(j) "Law enforcement activity" means:

- (1) a traffic stop;
- (2) a pedestrian stop;
- (3) an arrest;
- (4) a search;
- (5) an investigation;
- (6) a pursuit;
- (7) crowd control;
- (8) traffic control; or
- (9) any other instance in which a law enforcement officer is enforcing the law.

The term does not include an administrative activity, including the completion of paperwork related to a law enforcement activity, or a custodial interrogation conducted in a place of detention as described in Indiana Evidence Rule 617, regardless of the ultimate admissibility of a statement made during the custodial interrogation.

(k) "Law enforcement recording" means an audio, visual, or audiovisual recording of a law enforcement activity captured by a camera or other device that is:

- (1) provided to or used by a law enforcement officer in the scope of the officer's duties; and
- (2) designed to be worn by a law enforcement officer or attached to the vehicle or transportation of a law enforcement officer.

(l) "Offender" means a person confined in a penal institution as the result of the conviction for a crime.

(m) "Patient" has the meaning set out in IC 16-18-2-272(d).

(n) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

(o) "Private university police department" means the police officers appointed by the governing board of a private university under IC 21-17-5.

(p) "Provider" has the meaning set out in IC 16-18-2-295(b) and includes employees of the state department of health or local boards of health who create patient records at the request of

another provider or who are social workers and create records concerning the family background of children who may need assistance.

(q) "Public agency," except as provided in section 2.1 of this chapter, means the following:

(1) 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.

(2) Any:

(A) 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;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) 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.

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) 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.

(6) 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.

(7) Any license branch operated under IC 9-14.1.

(8) The state lottery commission established by IC 4-30-3-1, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(11) A private university police department. The term does not include the governing board of a private university or any other department, division, board, entity, or office of a private university.

(r) "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.

(s) "Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 ½) inches by eleven (11) inches or eight and one-half (8 ½) inches by fourteen (14) inches.

(t) "Trade secret" has the meaning set forth in IC 24-2-3-2.

(u) "Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation. The term includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter.

(As added by P.L.19-1983, § 6; P.L.34-1984, § 1; P.L.54-1985, § 1; P.L.42-1986, § 2; P.L.50-1986, § 1; P.L.341-1989(ss), § 6; P.L.2-1991, § 29; P.L.2-1992, § 53; P.L.2-1993, § 49; P.L.8-1993, § 57; P.L.58-1993, § 1; P.L.277-1993(ss), § 128; P.L.1-1994, § 21; P.L.77-1995, § 2; P.L.50-1995, § 15; P.L.1-1999, § 6; P.L.256-1999, § 1; P.L.204-2001, § 12; P.L.90-2002, § 18; P.L.261-2003, § 5; P.L.2-2005, § 16; P.L.170-2005, § 17; P.L.1-2006, § 101; P.L.1-2007, § 28; P.L.179-2007, § 7; P.L.227-2007, § 57; P.L. 3-2008, § 28; P.L. 51-2008, § 1; P.L. 248-2013, § 2; P.L. 58-2016, § 1; P.L. 198-2016, § 12.)

#### COMMENTARY

*Coroner's office is a "law enforcement agency" due to various statutes under which he or she performs investigations into deaths often involving crimes.* Heltzel v. Thomas, 516 N.E.2d 103 (Ind. Ct. App. 1987).

*The APRA applies to municipally owned utilities as public agencies.* Opinion of the Attorney General, 1984, No. 7, page 106.

*Township's small claims court was a "public agency" for purposes of the Access to Public Records Act.* Woolley v. Wash. Twp. of Marion County Small Claims Court, 804 N.E.2d 761 (Ind. Ct. App. 2004).

*Trial court qualifies as "public agency" within meaning of Indiana Access to Public Records Act, Ind. Code 5-14-3.* Bobrow v. Bobrow, 810 N.E.2d 726 (Ind. App. 2004).

#### I.C. § 5-14-3-2.1 "PUBLIC AGENCY"; CERTAIN PROVIDERS EXEMPTED

"Public agency," for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:

(1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:

(A) The agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits.

(B) 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.

(C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts. (As added by P.L.179-2007, § 8.)

#### I.C. § 5-14-3-3 RIGHT TO INSPECT AND COPY PUBLIC AGENCY RECORDS OR RECORDINGS; ELECTRONIC DATA STORAGE; USE OF INFORMATION FOR COMMERCIAL PURPOSES; CONTRACTS

(a) 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 of this chapter. A request for inspection or copying must:

(1) identify with reasonable particularity the record being requested; and

(2) be, at the discretion of the agency, in writing on or in a form provided by the agency. No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. If a request is for inspection or copying of a law enforcement recording, the request must provide the information required under subsection (i).

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). Within a reasonable time after the request is received by the agency, the public agency shall either:

(1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

(1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information

owned by or entrusted to the public agency.

(2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to

any individual or entity for political purposes and may not be used by any individual or entity for political purposes. In addition, the lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. The prohibition in this subsection against the disclosure of lists for political or commercial purposes applies to the following lists of names and addresses (including electronic mail account addresses):

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational institution.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) with respect to disclosure related to a commercial purpose, prohibiting the disclosure of the list to commercial entities for commercial purposes;

(B) with respect to disclosure related to a commercial purpose, specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes; or

(C) with respect to disclosure related to a political purpose, prohibiting the disclosure of the list to individuals and entities for political purposes.

A policy adopted under subdivision (3)(A) or (3)(B) must be uniform and may not discriminate among similarly situated commercial entities. For purposes of this subsection, "political purposes" means influencing the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question.

(g) A public agency may not enter into or renew a contract or an obligation:

(1) for the storage or copying of public records;

or

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(h) If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

(i) A request to inspect or copy a law enforcement recording must be in writing. A request identifies a law enforcement recording with reasonable particularity as required by this section only if the request provides the following information regarding the law enforcement activity depicted in the recording:

(1) The date and approximate time of the law enforcement activity.

(2) The specific location where the law enforcement activity occurred.

(3) The name of at least one (1) individual, other than a law enforcement officer, who was directly involved in the law enforcement activity.

(As added by P.L.19-1983, § 6; P.L.54-1985, § 2; P.L.51-1986, § 1; P.L.58-1993, § 2; P.L.77-1995, § 3; P.L.173-2003, § 4; P.L.261-2003, § 6; P.L.22-2006, § 1; P.L.1-2007, § 29; P.L.2-2007, § 100; P.L. 134-2012, §17; P.L. 58-2016 § 2.)

## COMMENTARY

*"Regular business hours" is not defined by the APRA. Although it is understandable that part-time public officials may have limited hours of operation, it is nevertheless the responsibility of a public official to ensure there is adequate opportunity and time for persons who wish to inspect and copy records. Opinion of the Public Access Counselor, 98-4.*

*"Reasonable particularity" is not defined in the APRA, but the public access counselor has repeatedly opined that "when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity." However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed*

*on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. See generally IC 5-14-3-1; Opinions of the Public Access Counselor 02-FC-13; 08-FC-176; 10-FC-7.*

*Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records. Jent v. Fort Wayne Police Dept., 973 N.E. 2d 30 (Ind. Ct. App. 2012).*

In regard to a request for email communication, this Office typically relies on the following case:

*A request that seeks "all email correspondence sent and received by Jane Doe for a specific date range" is not reasonably particular. A request for "all email correspondence from Jane Doe to Jim Smith for a specific date range" would be reasonably particular. Anderson v. Huntington Co. Bd. of Comm'rs, 983 N.E.2d 613 (Ind. Ct. App. 2013).*

## I.C. § 5-14-3-3.5 STATE AGENCIES; ENHANCED ACCESS TO PUBLIC RECORDS; OFFICE OF TECHNOLOGY

(a) As used in this section, "state agency" has the meaning set forth in IC 4-13-1-1. The term does not include the office of the following elected state officials:

- (1) Secretary of state.
- (2) Auditor.
- (3) Treasurer.
- (4) Attorney general.
- (5) Superintendent of public instruction.

However, each state office described in subdivisions (1) through (5) and the judicial department of state government may use the computer gateway administered by the office of technology established by I.C. §4-13.1-2-1, subject to the requirements of this section. (b) As an additional means of inspecting and copying public records, a state agency may provide enhanced access to public records maintained by the state agency.

(c) If the state agency has entered into a contract with a third party under which the state agency provides enhanced access to the person through the third party's computer gateway or otherwise, all of the following apply to the contract:

(1) The contract between the state agency and the third party must provide for the protection of public records in accordance with subsection (d).

(2) The contract between the state agency and the third party may provide for the payment of a reasonable fee to the state agency by either:

- (A) the third party; or
- (B) the person.

(d) A contract required by this section must provide that the person and the third party will not engage in the following:

(1) Unauthorized enhanced access to public records.

(2) Unauthorized alteration of public records.

(3) Disclosure of confidential public records.

(e) A state agency shall provide enhanced access to public records only through the computer gateway administered by the office of technology.

*(As added by P.L.58-1993, § 3; P.L.77-1995, § 4; P.L.19-1997, § 2; P.L.14-2004, § 183; P.L.177-2005, § 15.)*

#### COMMENTARY

*While there are no reported decisions on enhanced access, in 1997 the Indiana General Assembly amended this section to apply only to state agencies and enacted I.C. §5-14-3-3.6 to govern enhanced access to records of other public agencies covered by the APRA.*

#### I.C. § 5-14-3-3.6 PUBLIC AGENCIES; ENHANCED ACCESS TO PUBLIC RECORDS; OFFICE OF TECHNOLOGY

(a) As used in this section "public agency" does not include a state agency (as defined in section 3.5(a) of this chapter).

(b) As an additional means of inspecting and copying public records, a public agency may provide enhanced access to public records maintained by the public agency.

(c) A public agency may provide a person with enhanced access to public records if any of the following apply:

(1) The public agency provides enhanced access to the person through its own computer gateway and provides for the protection of public records under subsection (d).

(2) The public agency has entered into a contract with a third party under which the public agency provides enhanced access to the person through the third party's computer gateway or otherwise, and the contract between the public agency and the third party provides for the protection of public records in accordance with subsection (d).

(d) A contract entered into under this section and any other provision of enhanced access must provide that the third party and the person will not engage in the following:

(1) Unauthorized enhanced access to public records.

(2) Unauthorized alteration of public records.

(3) Disclosure of confidential public records.

(e) A contract entered into under this section or any provision of enhanced access may require the payment of a reasonable fee to either the third party to a contract or to the public agency, or both, from the person.

(f) A public agency may provide enhanced access to public records through the computer gateway administered by the office of technology established by IC 4-13.1-2-1. *(As added by P.L.19-1997, § 3; P.L.177-2005, § 16.)*

#### IC 5-14-3-4 RECORDS EXCEPTED FROM DISCLOSURE; TIME LIMITATIONS; DESTRUCTION OF RECORDS

(a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential

by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of a state educational institution, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.

(10) Application information declared confidential by the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(13) The following information that is part of a foreclosure action subject to IC 32-30-10.5:

(A) Contact information for a debtor, as described in IC 32-30-10.5-8(d)(1)(B).

(B) Any document submitted to the court as part of the debtor's loss mitigation package under IC 32-30-10.5-10(a)(3).

(14) The following information obtained from a call made to a fraud hotline established under IC 36-1-8-8.5:

(A) The identity of any individual who makes a call to the fraud hotline.

(B) A report, transcript, audio recording, or other information concerning a call to the fraud hotline.

However, records described in this subdivision may be disclosed to a law enforcement agency, a private university police department, the attorney general, the inspector

general, the state examiner, or a prosecuting attorney.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies or private university police departments. For purposes of this chapter, a law enforcement recording is not an investigatory record. Law enforcement agencies or private university police departments may share investigatory records with a person who advocates on behalf of a crime victim, including a victim advocate (as defined in IC 35-37-6-3.5) or a victim service provider (as defined in IC 35-37-6-5), for the purposes of providing services to a victim or describing services that may be available to a victim, without the law enforcement agency or private university police department losing its discretion to keep those records confidential from other records requesters. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between:

(i) the Indiana economic development corporation;

(ii) the ports of Indiana;

(iii) the Indiana state department of agriculture;

(iv) the Indiana finance authority;



(v) an economic development commission;

(vi) a local economic development organization that is a nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana;; or

(vii) a governing body of a political subdivision with industrial, research, or commercial prospects;

if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(D) Notwithstanding clause (A), an incentive agreement with an incentive recipient shall be available for inspection and copying under section 3 of this chapter after the date the incentive recipient and the Indiana economic development corporation execute the incentive agreement regardless of whether negotiations are in progress with the recipient after that date regarding a modification or extension of the incentive agreement.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) 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.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision 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.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a

member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely.

However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes the following:

(A) A record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2.

(B) Vulnerability assessments.

(C) Risk planning documents.

(D) Needs assessments.

(E) Threat assessments.

(F) Intelligence assessments.

(G) Domestic preparedness strategies.

(H) The location of community drinking

water wells and surface water intakes.

(I) The emergency contact information of emergency responders and volunteers.

(J) Infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems.

(K) Detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency, or any part of a law enforcement recording that captures information about airport security procedures, areas, or systems. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. Both of the following apply to the public agency that owns, occupies, leases, or maintains the airport:

(i) The public agency is responsible for determining whether the public disclosure of a record or a part of a record, including a law enforcement recording, has a reasonable likelihood of threatening public safety by exposing a security procedure, area, system, or vulnerability to terrorist attack.

(ii) The public agency must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)". However, in the case of a law enforcement recording, the public agency must clearly make the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(K) without approval of (insert name of the public agency that owns, occupies, leases, or maintains the airport)".

(L) The home address, home telephone number, and emergency contact information for any:

(i) emergency management worker (as defined in IC 10-14-3-3);

(ii) public safety officer (as defined in IC 35-47-4.5-3);

(iii) emergency medical responder (as defined in IC 16-18-2-109.8); or

(iv) advanced emergency medical technician (as defined in IC 16-18-2-6.5).

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

- (A) Telephone number.
- (B) Address.
- (C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

- (A) Telephone number.
- (B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(22) Notwithstanding subdivision (8)(A), the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
- (ii) a law enforcement officer (as defined in IC 35-31.5-2-185);
- (iii) a judge (as defined in IC 33-38-12-3);
- (iv) the victim of a crime; or
- (v) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), judge (as defined in IC 33-38-12-3), or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

(24) Information concerning an individual less than eighteen (18) years of age who participates in a conference, meeting, program, or activity conducted or supervised by a state educational institution, including the following information regarding the individual or the individual's parent or guardian:

- (A) Name.
- (B) Address.
- (C) Telephone number.
- (D) Electronic mail account address.

(25) Criminal intelligence information.

(26) The following information contained in a report of unclaimed property under IC 32-34-1-26 or in a claim for unclaimed property under IC 32-34-1-36:

- (A) Date of birth.
- (B) Driver's license number.
- (C) Taxpayer identification number.
- (D) Employer identification number.
- (E) Account number.

(27) Except as provided in subdivision (19) and sections 5.1 and 5.2 of this chapter, a law enforcement recording. However, before disclosing the recording, the public agency must comply with the obscuring requirements of sections 5.1 and 5.2 of this chapter, if applicable.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption or patient medical records, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Only the content of a public record may form the basis for the adoption by any public agency of a rule or procedure creating an exception from disclosure under this section.

(f) Except as provided by law, a public agency may not adopt a rule or procedure that creates an exception from disclosure under this section based upon whether a public record is stored or accessed using paper, electronic media, magnetic media, optical media, or other information storage technology.

(g) Except as provided by law, a public agency may not adopt a rule or procedure nor

impose any costs or liabilities that impede or restrict the reproduction or dissemination of any public record.

(h) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business. *(As added by P.L.19-1983, § 6. Amended by P.L.57-1983, § 1; P.L.34-1984, § 2; P.L.54-1985, § 3; P.L.50-1986, § 2; P.L.20-1988, § 12; P.L.11-1990, § 111; P.L.1-1991, § 38; P.L.10-1991, § 9; P.L.50-1991, § 1; P.L.49-1991, § 1; P.L.1-1992, § 11; P.L.2-1993, § 50; P.L.58-1993, § 4; P.L.190-1999, § 2; P.L.37-2000, § 2; P.L.271-2001, § 1; P.L.201-2001, § 1; P.L.1-2002, § 17; P.L.173-2003, § 5; P.L.261-2003, § 7; P.L.208-2003, § 1; P.L.200-2003, § 3; P.L.210-2005, § 1; P.L.1-2006, § 102; P.L.101-2006, § 4; P.L.2-2007, § 101; P.L.172-2007, § 1; P.L.179-2007, § 9; P.L.3-2008, § 29; P.L.51-2008, § 2; P.L.98-2008, § 4; P.L.120-2008, § 2; P.L.94-2010, § 1; P.L. 170-2011, §1; P.L. 134-2012, §18; P.L. 184-2013, § 1; P.L. 248-2013, § 3; P.L. 175-2013, § 1; P.L. 56-2014, § 1; P.L. 168-2014, § 9; P.L. 9-2015, § 1; P.L. 181-2015, § 20; P.L. 58-2016, § 3; P.L. 145-2016, § 3.)*

#### COMMENTARY

*The rules of discovery do not allow discovery of privileged matters such as those protected by the attorney-client privilege and, therefore, I.C. §5-14-3-4(a) does not permit a court to order disclosure of such privileged information. Board of Trustees of Public Employees' Retirement Fund of Indiana v. Morley, 580 N.E.2d 371 (Ind. App. 4th Dist. 1991).*

*Animal research applications and references in a university committee's meeting minutes are exempt from disclosure under I.C. §5-14-3-4(a)(6). Robinson v. Indiana University, 659 N.E.2d 153 (Ind. Ct. App. 1995).*

*A board of voter registration is not required to publish a list of registered voters by statute and, therefore, is not required to create or provide a copy of its computer tapes. The general public is entitled to inspect the board's records and make*

*memoranda abstracts from those computer records. Laudig v. Marion County Board of Voters Registration, 585 N.E.2d 700 (Ind. App. 5th Dist. 1992).*

*Subpoenas do not automatically fall within the investigatory records of a law enforcement agency exception under I.C. §5-14-3-4(b)(1). The State must prove that nondisclosure is essential by submitting appropriate evidence. Evansville Courier v. Prosecutor, Vanderburgh County, 499 N.E.2d 286 (Ind. App. 1st Dist. 1986).*

*In Robinson v. Indiana Univ., 659 N.E.2d 153, 157 (Ind. Ct. App. 1995) the court held that information from research applications was information concerning research conducted under a university's auspices and therefore not subject to disclosure under the APRA.*

*Death certificates filed with county health departments pursuant to IC 16-37-3 are public records that a county health department must provide public access to death certificates under the APRA. Evansville Courier & Press v. Vanderburgh County Health Dept, 17 N.E.3d 922 (Ind. 2014).*

*City has the burden of proving that its denial of access to 1993 phone records was supported by statutory authority. The court in City of Elkhart v. Agenda: Open Gov't, Inc., 683 N.E.2d 622, 627 (Ind. Ct. App. 1997) found that the public records access statute exception prohibiting disclosure of administrative or technical information which would jeopardize record keeping or security systems did not include telephone numbers contained on public officials' cellular phone bills.*

*The APRA provides law enforcement agencies with the discretion to disclose certain categories of documents, called "investigatory records." A law enforcement agency must be conscious of the fact that, upon review of the denial of access based upon the investigatory record exception, the person denied access can bring forward proof that the denial was "arbitrary and capricious" under I.C. §5-14-3-9(f). For this reason, it is important that a law enforcement agency exercise consistency in any policies concerning the*

*disclosure of public records. Opinion of the Public Access Counselor 99-FC-7.*

*The Court in South Bend Tribune v. South Bend Community School Corporation, 740 N.E.2d 937, 938 (Ind. Ct. App. 2000) found that I.C. §5-14-3-4(b)(8)(A) requires public agencies to disclose designated information only with regard to present or former officers or employees of the agency. According to the Court, applicants for public employment are specifically excepted from the disclosure requirements.*

*The Marion County Prosecutor's written manual of plea negotiations policies for criminal cases are exempt from disclosure as deliberative materials. Newman v. Bernstein, 766 N.E.2d 8, 12 (Ind. Ct. App. 2002).*

*Investigatory records of law enforcement agencies are exempt from disclosure even though there was designated evidence of little or no chance of prosecution because the plain language of I.C. §5-14-3-4(b)(1) makes no mention of the likelihood of prosecution. An Unincorporated Operating Division of Indiana Newspapers, Inc. v. The Trustees of Indiana University, 787 N.E.2d 893, 902 (Ind. Ct. App. 2003).*

*The Court of Appeals found that the Family Educational Rights and Privacy Act of 1974 ("FERPA") requires education records be kept confidential. An Unincorporated Operating Division of Indiana Newspapers, Inc. v. The Trustees of Indiana University, 787 N.E.2d 893, 904 (Ind. Ct. App. 2003). Further, the Court of Appeals found that both the APRA and FERPA require redaction of nondisclosable information. Id. at 908. Specifically, information identifying or which could lead to the identity of a former or present student must be redacted. Id. at 909.*

*The Court of Appeals determined that when a document contains both factual and deliberative materials the public agency must separate the factual information from the non-disclosable and make the factual information available for public access. See generally, An Unincorporated Operating Division of Indiana Newspapers, Inc. v. The Trustees of Indiana University, 787 N.E.2d 893, 913-914 (Ind. Ct. App. 2003).*

*Substantial evidence supported determination by Indiana Utility Regulatory Commission that local telephone service provider's responses to survey undertaken by commission to gather competitive information for Indiana legislature did not constitute protected confidential information or trade secrets but were simply public record. Ind. Bell Tel. Co. v. Ind. Util. Regulatory Comm'n, 810 N.E.2d 1179, 2004 (Ind. App. 2004), transfer denied, Ind. Bell Tel. Co. v. Ind. Util. Regulatory Comm'n, 831 N.E.2d 734, (Ind. 2005).*

#### I.C. § 5-14-3-4.3 JOB TITLE OR JOB DESCRIPTIONS OF LAW ENFORCEMENT OFFICERS

Nothing contained in section 4(b)(8) of this chapter requires a law enforcement agency to release to the public the job title or job description of law enforcement officers. (As added by P.L. 35-1984, § 1.)

#### I.C. § 5-14-3-4.4 INVESTIGATORY RECORDS; RECORDS RELATING TO CRIMINAL INTELLIGENCE INFORMATION; RECORDS RELATING TO PUBLIC SAFETY; AGENCY ACTIONS; COURT ACTIONS

(a) This section applies to a request for a record that the public agency considers to be excepted from disclosure under section 4(b)(1) or 4(b)(25) of this chapter. The public agency may do either of the following:

- (1) Deny disclosure of the record or part of the record. The person requesting the information may appeal the denial under section 9 of this chapter.
- (2) Refuse to confirm or deny the existence of the record, regardless of whether the record exists or does not exist, if the fact of the record's existence or nonexistence would reveal the information that would:
  - (A) impede or compromise an ongoing law enforcement investigation or result in danger to an individual's safety, including the safety of a law enforcement officer or a confidential source; or
  - (B) reveal information that would have a reasonable likelihood of threatening public safety.

(b) This subsection applies to a request for a record that the public agency considers to be excepted from disclosure under section 4(b)(19) of this chapter. The agency may consult with the counterterrorism and security council established by IC 10-19-8-1 in formulating a response. The public agency may do either of the following:

(1) Deny disclosure of the record or part of the record. The agency or the counterterrorism and security council shall provide a general description of the record being withheld and of how disclosure of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. The person requesting the information may appeal the denial under section 9 of the chapter.

(2) Refuse to confirm or deny the existence of the record regardless of whether the record exists or does not exist, if the fact of the record's existence or nonexistence would reveal information that would have a reasonable likelihood of threatening public safety.

(c) If a public agency does not respond to a request for a record under this section:

(1) within twenty-four (24) hours of receiving the request for a record from a person who:

- (A) is physically present in the agency office;
- (B) makes the request by telephone; or
- (C) requests enhanced access to a document; or

(2) within seven (7) days of receiving the request for a record made by mail or facsimile; the request for the record is deemed denied. The person requesting the information may appeal the denial under section 9 of this chapter.

(d) If a public agency refuses to confirm or deny the existence of a record under this section, the name and title or position of the person responsible for the refusal shall be given to the person making the records request.

(e) A person who has received a refusal from an agency to confirm or deny the existence of a record may file an action in the circuit or superior court of the county in which the response was received:

(1) to compel the public agency to confirm whether the record exists or does not exist; and

(2) if the public agency confirms that the record exists, to compel the agency to permit the person to inspect and copy the record.

(f) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its refusal to confirm or deny the existence of the record. The public agency meets its burden of proof by filing a public affidavit with the court that provides with reasonable specificity of detail, and not simply conclusory statements, the basis of the agency's claim that it cannot be required to confirm or deny the existence of the requested record. If the public agency meets its burden of proof, the burden of proof shifts to the person requesting access to the record. The person requesting access to the record meets the person's burden of proof by proving any of the following:

(1) The agency's justifications for not confirming the existence of the record contradict other evidence in the trial record.

(2) The agency is withholding the record in bad faith.

(3) An official with authority to speak for the agency has acknowledged to the public in a documented disclosure that the record exists. The person requesting the record must prove that the information requested:

(A) is as specific as the information previously disclosed; and

(B) matches the previously disclosed information.

(g) Either party may make an interlocutory appeal of the trial court's determination on whether the agency's refusal to confirm or deny the existence of the record was proper.

(h) If the court, after the disposition of any interlocutory appeals, finds that the agency's refusal to confirm or deny was improper, the court shall order the agency to disclose whether the record exists or does not exist. If the record exists and the agency claims that the record is exempt from disclosure under this chapter, the court may review the public record in camera to determine whether any part of the record may be withheld.

(i) In an action filed under this section, the court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff substantially prevails; or

(2) the defendant substantially prevails and the courts finds the action was frivolous or vexatious.

A plaintiff is eligible for the awarding of attorney's fees, court costs, and other reasonable expenses regardless of whether the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor;

(j) A court that hears an action under this section may not assess a civil penalty under section 9.5 of this chapter in connection with the action. *(As added by P.L. 248-2013, § 4.)*

#### IC 5-14-3-4.7 NEGOTIATION RECORDS; FINAL OFFERS; CERTIFICATION OF FINAL OFFER DISCLOSURE

(a) Records relating to negotiations between the Indiana finance authority and industrial, research, or commercial prospects are excepted from section 3 of this chapter at the discretion of the authority if the records are created while negotiations are in progress.

(b) Notwithstanding subsection (a), the terms of the final offer of public financial resources communicated by the authority to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(c) When disclosing a final offer under subsection (b), the authority shall certify that the information being disclosed accurately and completely represents the terms of the final offer. *( As added by P.L.235-2005, § 85).*

#### IC 5-14-3-4.8 RECORDS EXEMPT FROM DISCLOSURE REQUIREMENTS; OFFICE OF TOURISM DEVELOPMENT NEGOTIATIONS; FINAL OFFERS PUBLIC

(a) Records relating to negotiations between the office of tourism development and industrial, research, or commercial prospects are excepted from section 3 of this chapter at the discretion of the office of tourism development if the records are created while negotiations are in progress.

(b) Notwithstanding subsection (a), the terms of the final offer of public financial resources communicated by the office of tourism development to an industrial, a research, or a

commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(c) When disclosing a final offer under subsection (b), the office of tourism development shall certify that the information being disclosed accurately and completely represents the terms of the final offer. *(As added by P.L.229-2005, § 3).*

#### I.C. § 5-14-3-4.9 PORTS OF INDIANA NEGOTIATION RECORDS EXEMPTED FROM DISCLOSURE; DISCLOSURE OF FINAL OFFERS

(a) Records relating to negotiations between the ports of Indiana and industrial, research, or commercial prospects are excepted from section 3 of this chapter at the discretion of the ports of Indiana if the records are created while negotiations are in progress.

(b) Notwithstanding subsection (a), the terms of the final offer of public financial resources communicated by the ports of Indiana to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(c) When disclosing a final offer under subsection (b), the ports of Indiana shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

*(As added by P.L. 98-2008, § 5.)*

#### I.C. § 5-14-3-5 INFORMATION RELATING TO ARREST OR SUMMONS; JAILED PERSONS; AGENCY RECORDS

(a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

(1) Information that identifies the person including the person's name, age, and address.

(2) Information concerning any charges on which the arrest or summons is based.

(3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:

(A) time and location of the arrest or the issuance of the summons;

(B) investigating or arresting officer (other

than an undercover officer or agent); and

(C) investigating or arresting law enforcement agency.

(b) If a person is received in a jail or lock-up, the following information shall be made available for inspection and copying:

(1) Information that identifies the person including the person's name, age, and address.

(2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held.

(3) The time and date that the person was received and the time and date of the person's discharge or transfer.

(4) The amount of the person's bail or bond, if it has been fixed.

(c) An agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

(1) The time, substance, and location of all complaints or requests for assistance received by the agency.

(2) The time and nature of the agency's response to all complaints or requests for assistance.

(3) If the incident involves an alleged crime or infraction:

(A) the time, date, and location of occurrence;

(B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;

(C) the factual circumstances surrounding the incident; and

(D) a general description of any injuries, property, or weapons involved.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four hours after the suspected crime, accident, or complaint has been reported to the agency.

(d) This chapter does not affect IC 5-2-4, IC 10-13-3, or IC 5-11-1-9. (*As added by P.L. 19-1983, § 6. Amended by P.L. 39-1992, § 1; P.L. 2-2003, § 24; P.L. 1-2012, § 1.*)

## COMMENTARY

*A police department's duty to disclose the location of rape in daily record did not require the exact street address. The department's obligation was satisfied by giving the most specific location which also reasonably protected the privacy of the victim.* Post-Tribune v. Police Department of City of Gary, 643 N.E.2d 307 (Ind. 1994).

## I.C. § 5-14-3-5.1 INSPECTION OF LAW ENFORCEMENT RECORDINGS; OBSCURING OF UNDERCOVER LAW ENFORCEMENT OFFICER; OBSCURING OF CONFIDENTIAL INFORMANTS

(a) As used in this section, "requestor" means the following:

(1) An individual who is depicted in a law enforcement recording.

(2) If the individual described in subdivision (1) is deceased:

(A) the surviving spouse, father, mother, brother, sister, son, or daughter of the individual; or

(B) the personal representative (as defined in IC 6-4.1-1-9) of or an attorney representing the deceased individual's estate.

(3) If the individual described in subdivision (1) is an incapacitated person (as defined in IC 29-3-1-7.5), the legal guardian, attorney, or attorney in fact of the incapacitated person.

(4) A person that is an owner, tenant, lessee, or occupant of real property, if the interior of the real property is depicted in the recording.

(5) A person who:

(A) is the victim of a crime; or

(B) suffers a loss due to personal injury or property damage;

if the events depicted in the law enforcement recording are relevant to the person's loss or to the crime committed against the person.

(b) A public agency shall allow a requestor to inspect a law enforcement recording at least twice, if:

(1) the requestor submits a written request under section 3 of this chapter for inspection of the recording; and

(2) if section 4(b)(19) of this chapter applies, the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

The public agency shall allow the requestor to



inspect the recording in the company of the requestor's attorney. A law enforcement recording may not be copied or recorded by the requestor or the requestor's attorney during an inspection.

(c) Before an inspection under subsection (b), the public agency:

(1) shall obscure in the recording information described in section 4(a) of this chapter; and

(2) may obscure any information identifying:

(A) a law enforcement officer operating in an undercover capacity; or

(B) a confidential informant.

(d) Before an inspection under subsection (b), only the information in the recording described in subsection (c) may be obscured by the public agency.

(e) If a person is denied access to inspect a recording under this section, the person may appeal the denial under section 9 of this chapter. *(As added by P.L. 58-2016, § 4.)*

#### I.C. § 5-14-3-5.2 EXEMPTIONS TO RIGHT OF INSPECTION; COURT ORDERS PERMITTING INSPECTION

(a) A public agency shall permit any person to inspect or copy a law enforcement recording unless one (1) or more of the following circumstances apply:

(1) Section 4(b)(19) of this chapter applies and the person has not demonstrated that the public agency owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

(2) The public agency finds, after due consideration of the facts of the particular case, that access to or dissemination of the recording:

(A) creates a significant risk of substantial harm to any person or to the general public;

(B) is likely to interfere with the ability of a person to receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person;

(C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency as defined in section 2 of this chapter and notwithstanding its exclusion under section 4(b)(1) of this chapter; or

(D) would not serve the public interest.

However, before permitting a person to inspect or copy the recording, the public agency must comply with the obscuring provisions of

subsection (f), if applicable.

(b) If a public agency denies a person the opportunity to inspect or copy a law enforcement recording under subsection (a), the person may petition the circuit or superior court of the county in which the law enforcement recording was made for an order permitting inspection or copying of a law enforcement recording. The court shall review the decision of the public agency de novo and grant the order unless one (1) or more of the following apply:

(1) If section 4(b)(19) of this chapter applies, the petitioner fails to establish by a preponderance of the evidence that the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

(2) The public agency establishes by a preponderance of the evidence in light of the facts of the particular case, that access to or dissemination of the recording:

(A) creates a significant risk of substantial harm to any person or to the general public;

(B) is likely to interfere with the ability of a person to receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person;

(C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency, as defined in section 2 of this chapter, notwithstanding its exclusion under section 4; or

(D) would not serve the public interest.

(c) Notwithstanding section 9(i) of this chapter, a person that obtains an order for inspection of or to copy a law enforcement recording under this section may not be awarded attorney's fees, court costs, and other reasonable expenses of litigation. The penalty provisions of section 9.5 of this chapter do not apply to a petition filed under this section.

(d) If the court grants a petition for inspection of or to copy the law enforcement recording, the public agency shall disclose the recording. However, before disclosing the recording, the public agency must comply with the obscuring provisions of subsection (e), if applicable.

(e) A public agency that discloses a law enforcement recording under this section:

(1) shall obscure:

(A) any information that is required to be

obscured under section 4(a) of this chapter; and

(B) depictions of:

- (i) an individual's death or a dead body;
- (ii) acts of severe violence that are against any individual who is clearly visible and that result in serious bodily injury (as defined in IC 35-31.5-2-292);
- (iii) serious bodily injury (as defined in IC 35-31.5-2-292);
- (iv) nudity (as defined in IC 35-49-1-5)
- (v) an individual whom the public agency reasonably believes is less than eighteen (18) years of age;
- (vi) personal medical information;
- (vii) a victim of a crime, or any information identifying the victim of a crime, if the public agency finds that obscuring this information is necessary for the victim's safety; and
- (viii) a witness to a crime or an individual who reports a crime, or any information identifying a witness to a crime or an individual who reports a crime, if the public agency finds that obscuring this information is necessary for safety of the witness or individual who reports a crime; and

(2) may obscure:

(A) any information identifying:

- (i) a law enforcement officer operating in an undercover capacity; or
- (ii) a confidential informant; and

(B) any information that the public agency may withhold from disclosure under section 4(b)(2) through 4(b)(26) of this chapter.

(f) A court shall expedite a proceeding filed under this section.

Unless prevented by extraordinary circumstances, the court shall conduct a hearing (if required) and rule on a petition filed under this section not later than thirty (30) days after the date the petition is filed. (*As added by P.L. 58-2016, § 5.*)

#### I.C. § 5-14-3-5.3 RETENTION OF LAW ENFORCEMENT RECORDINGS

(a) Except as provided in subsection (c), a public agency that is not the state or a state agency shall retain an unaltered, unobscured law enforcement recording for at least one hundred ninety (190) days after the date of the recording.

(b) Except as provided in subsection (c), a public agency that is the state or a state agency shall

retain an unaltered, unobscured law enforcement recording for at least two hundred eighty (280) days after the date of the recording.

(c) The public agency shall retain an unaltered, unobscured law enforcement recording for a period longer than the period described in subsections (a) and (b) if the following conditions are met:

(1) Except as provided in subdivision (3), if a person defined as a requestor as set forth in section 5.1(a) of this chapter notifies the public agency in writing not more than:

(A) one hundred eighty (180) days (if the public agency is not the state or a state agency); or

(B) two hundred seventy (270) days (if the public agency is the state or a state agency); after the date of the recording that the recording is to be retained, the recording shall be retained for at least two (2) years after the date of the recording. The public agency may not request or require the person to provide a reason for the retention.

(2) Except as provided in subdivision (3), if a formal or informal complaint is filed with the public agency regarding a law enforcement activity depicted in the recording less than:

(A) one hundred eighty (180) days (if the public agency is not the state or a state agency); or

(B) two hundred seventy (270) days (if the public agency is the state or a state agency); after the date of the recording, the public agency shall automatically retain the recording for at least two (2) years after the date of the recording.

(3) If a recording is used in a criminal, civil, or administrative proceeding, the public agency shall retain the recording until final disposition of all appeals and order from the court.

(d) The public agency may retain a recording for training purposes for any length of time. (*As added by P.L. 58-2016, § 6.*)

#### I.C. § 5-14-3-5.5 SEALING CERTAIN RECORDS BY COURT; HEARING; NOTICE

(a) This section applies to a judicial public record.

(b) As used in this section, "judicial public record" does not include a record submitted to a court for the sole purpose of determining

whether the record should be sealed.

(c) Before a court may seal a public record not declared confidential under section 4(a) of this chapter, it must hold a hearing at a date and time established by the court. Notice of the hearing shall be posted at a place designated for posting notices in the courthouse.

(d) At the hearing, parties or members of the general public must be permitted to testify and submit written briefs.

A decision to seal all or part of a public record must be based on findings of fact and conclusions of law, showing that the remedial benefits to be gained by effectuating the public policy of the state declared in section 1 of this chapter are outweighed by proof by a preponderance of the evidence by the person seeking the sealing of the record that:

(1) a public interest will be secured by sealing the record;

(2) dissemination of the information contained in the record will create a serious and imminent danger to that public interest;

(3) any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;

(4) there is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and

(5) it is reasonably necessary for the record to remain sealed for a period of time.

Sealed records shall be unsealed at the earliest possible time after the circumstances necessitating the sealing of the records no longer exist. *(As added by P.L. 54-1985, § 4. Amended by P.L. 68-1987, § 1.)*

#### COMMENTARY

*Trial court is permitted to seal public records which fall within a mandatory exception to the APRA without conducting a hearing required by I.C. § 5-14-3-5.5 either before or after records are admitted into evidence; interested third persons may request records to be sealed after they are admitted into evidence, but this right can be waived. Bobrow v. Bobrow, 810 N.E.2d 726 (Ind. App. 2004).*

*In a tax dispute, a taxpayer's contracts with hotels were shielded from public access because*

*they contained trade secrets. The contracts dealt with negotiated hotel rates, the taxpayer derived economic value from such, the pricing information was not readily ascertainable, and the taxpayer had taken reasonable efforts to maintain the secrecy of the information in the contracts. Orbitz, LLC v. Ind. Dept. of State Revenue, 997 N.E.2d 98 (Ind. Tax Ct. 2013).*

#### I.C. § 5-14-3-6 PARTIALLY DISCLOSABLE RECORDS; COMPUTER OR MICROFILM RECORD SYSTEMS; FEES

(a) If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying.

(b) If a public record stored on computer tape, computer disks, microfilm, or a similar or analogous record system is made available to:

(1) a person by enhanced access under section 3.5 of this chapter; or

(2) a governmental entity by an electronic device;

the public agency may not make the record available for inspection without first separating the material in the manner required by subsection (a).

(c) A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if:

(1) the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and

(2) the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information.

(d) A public agency is not required to reprogram a computer system to provide:

(1) enhanced access; or

(2) access to a governmental entity by an electronic device.

*(As added by P.L. 19-1983, § 6. Amended by P.L. 54-1985, § 5; P.L. 58-1993, § 5; P.L. 77-1995, § 5.)*

#### COMMENTARY

*Any factual information which can be separated from the non-disclosable matters in a record must*

*be made available for public access.* Unincorporated Operating Division of Indiana Newspapers, Inc. v. Trustees of Indiana University, 787 N.E.2d 893, 914 (Ind. Ct. App. 2003).

#### I.C. § 5-14-3-6.5 CONFIDENTIALITY OF PUBLIC RECORDS

A public agency that receives a confidential public record from another public agency shall maintain the confidentiality of the public record. *(As added by P.L. 34-1984, § 3.)*

#### I.C. § 5-14-3-7 PROTECTION AGAINST LOSS, ALTERATION, DESTRUCTION AND UNAUTHORIZED ENHANCED ACCESS

(a) A public agency shall protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.

(b) A public agency shall take precautions that protect the contents of public records from unauthorized enhanced access, unauthorized access by an electronic device, or alteration.

(c) This section does not operate to deny to any person the rights secured by section 3 of this chapter. *(As added by P.L. 19-1983, § 6. Amended by P.L. 58-1993, § 6.)*

#### I.C. §5-14-3-8: FEES; COPIES

(a) For the purposes of this section, "state agency" has the meaning set forth in I.C. 4-13-1-1.

(b) Except as provided in this section, a public agency may not charge any fee under this chapter:

(1) to inspect a public record; or

(2) to search for, examine, or review a record to determine whether the record may be disclosed.

(c) The Indiana department of administration shall establish a uniform copying fee for the copying of one (1) page of a standard-sized document by state agencies. The fee may not exceed the average cost of copying records by state agencies or ten cents (\$0.10) per page, whichever is greater. A state agency may not collect more than the uniform copying fee for providing a copy of a public record. However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized

documents.

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. The fee for certification of documents may not exceed five dollars (\$5) per document. The fee for copying documents may not exceed the greater of:

(1) ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) per page for color copies; or

(2) the actual cost to the agency of copying the document.

As used in this subsection, "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. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

(e) If:

(1) a person is entitled to a copy of a public record under this chapter; and

(2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record; the public agency must provide at least one (1) copy of the public record to the person.

However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance.

(f) Notwithstanding subsection (b), (c), (d), (g), (h), or (i), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.

(g) Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm, law enforcement recording, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following:

(1) The agency's direct cost of supplying the information in that form. However, the fee for a copy of a law enforcement recording may not exceed one hundred fifty dollars (\$150).

(2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

(3) In the case of the legislative services agency, a reasonable percentage of the agency's direct cost of maintaining the system in which the information is stored. However, the amount charged by the legislative services agency under this subdivision may not exceed the sum of the amounts it may charge under subdivisions (1) and (2).

(h) This subsection applies to the fee charged by a public agency for providing enhanced access to a public record. A public agency may charge any reasonable fee agreed on in the contract under section 3.5 of this chapter for providing enhanced access to public records.

(i) This subsection applies to the fee charged by a public agency for permitting a governmental entity to inspect public records by means of an electronic device. A public agency may charge any reasonable fee for the inspection of public records under this subsection, or the public agency may waive any fee for the inspection.

(j) Except as provided in subsection (k), a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision.

(k) The fee charged by a public agency under subsection (j) to cover costs for maintaining, upgrading, and enhancing an electronic map may be waived by the public agency if the electronic map for which the fee is charged will be used for a noncommercial purpose, including the following:

- (1) Public agency program support.
- (2) Nonprofit activities.
- (3) Journalism.

(4) Academic research.

(l) This subsection does not apply to a state agency. A fee collected under subsection (g) for the copying of law enforcement recording may be:

- (1) retained by the public agency; and
- (2) used without appropriation for one (1) or more of the following purposes:

(A) To purchase cameras and other equipment for use in connection with the agency's law enforcement recording program.

(B) For training concerning law enforcement recording.

(C) To defray the expenses of storing, producing, and copying law enforcement recordings.

Money from a fee described in this subsection does not revert to the local general fund at the end of a fiscal year.

*(As added by P.L.19-1983, § 6; P.L.54-1985, § 6; P.L.51-1986, § 2; P.L.58-1993, § 7; P.L.78-1995, § 1; P.L.151-1999, § 1; P.L.89-2001, § 1; P.L.215-2007, § 1; P.L. 16-2008, § 1; P.L. 58-2016, §7.)*

#### I.C. § 5-14-3-8.3 ENHANCED ACCESS FUND; ESTABLISHMENT BY ORDINANCE; PURPOSE

(a) The fiscal body of a political subdivision having a public agency that charges a fee under section 8(h) or 8(i) of this chapter shall adopt an ordinance establishing an enhanced access fund. The ordinance must specify that the fund consists of fees collected under section 8(h) or 8(i) of this chapter. The fund shall be administered by the public agency or officer designated in the ordinance or resolution. Money in the fund must be appropriated and expended in the manner authorized in the ordinance.

(b) The fund is a dedicated fund with the following purposes:

- (1) The replacement, improvement, and expansion of capital expenditures.
- (2) The reimbursement of operating expenses incurred in providing enhanced access to public information.

*(As added by P.L. 58-1993, § 8.)*

#### I.C. § 5-14-3-8.5 ELECTRONIC MAP GENERATION FUND; ESTABLISHMENT BY

## ORDINANCE; PURPOSE

(a) The fiscal body of a political subdivision having a public agency that charges a fee under section 8(j) of this chapter shall adopt an ordinance establishing an electronic map generation fund. The ordinance must specify that the fund consists of fees collected under section 8(j) of this chapter. The fund shall be administered by the public agency that collects the fees.

(b) The electronic map generation fund is a dedicated fund with the following purposes:

(1) The maintenance, upgrading, and enhancement of the electronic map.

(2) The reimbursement of expenses incurred by a public agency in supplying an electronic map in the form requested by a purchaser. (*As added by P.L. 58-1993, § 9.*)

## I.C. § 5-14-3-9 DENIAL OF DISCLOSURE; ACTION TO COMPEL DISCLOSURE; INTERVENORS; BURDEN OF PROOF; ATTORNEY'S FEES AND COSTS

(a) This section does not apply to a request for information under section 4.4 of this chapter.

(b) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made; whichever occurs first.

(c) If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request.

(d) If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by

facsimile, a public agency may deny the request if:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:

(A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and

(B) the name and the title or position of the person responsible for the denial.

(e) A person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue:

(1) that a request for release of the public record has been denied; and

(2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the public access counselor.

Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied the right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.

(f) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

(g) This subsection does not apply to an action under section 5.2 of this chapter. If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

(A) proving that:

(i) the record falls within any one (1) of

the categories of exempted records under section 4(b) of this chapter; and

(ii) if the action is for denial of access to a recording under section 5.1 of this chapter, the plaintiff is not a "requestor" as that term is defined in section 5.1 of this chapter; and

(B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

(h) The court may review the public record in camera to determine whether any part of it may be withheld under this chapter. However, if the complaint alleges that a public agency denied disclosure of a public record by redacting information in the public record, the court shall conduct an in camera inspection of the public record with the redacted information included.

(i) Except as provided in subsection (k), in any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff substantially prevails; or

(2) the defendant substantially prevails and the court finds the action was frivolous or vexatious. Except as provided in subsection (k), the plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary because the denial of access to a public record under this chapter would prevent the plaintiff from presenting that public record to a public agency preparing to act on a matter of relevance to the public record whose disclosure was denied.

(j) Except as provided in subsection (k), a court may assess a civil penalty under section 9.5 of this chapter only if the plaintiff obtained an advisory opinion from the public access counselor before filing an action under this section as set forth in section 9.5 of this chapter.

(k) This subsection applies only to an action to appeal the denial of access to a law enforcement recording under section 5.1 of this chapter. A

requestor (as defined in section 5.1 of this chapter) may bring an action to appeal from the denial of access to a law enforcement recording without first seeking or receiving an informal inquiry response or advisory opinion from the public access counselor. If the requestor prevails in an action under this subsection:

(1) the requestor is eligible for an award of reasonable attorney's fees, court costs, and other reasonable expenses; and

(2) a court may assess a civil penalty under section 9.5 of this chapter.

(l) A court shall expedite the hearing of an action filed under this section. (*As added by P.L.19-1983, § 6; Amended by P.L.54-1985, § 7; P.L.50-1986, § 3; P.L.68-1987, § 2; P.L.58-1993, § 10; P.L.19-1997, § 4; P.L.70-1999, § 2; P.L.191-1999, § 2; P.L.173-2003, § 6; P.L.261-2003, § 8; P.L.22-2005, § 2; PL.134-2012, §19; P.L. 248-2013, § 5; P.L. 58-2016, § 8.*)

#### COMMENTARY

*If a coroner could not satisfy one of the conditions listed in the autopsy statute, nor demonstrate that the requested records are otherwise related to a criminal investigation, the records are not "investigatory records," and the requesting party may have access to the records on the grounds that the coroner's denial of access was arbitrary and capricious. Althaus v. Evansville Courier Co., 615 N.E.2d 441 (Ind. App. 1st Dist. 1993).*

*The attorney's fees provisions of APRA are directed toward public agencies. There is no corollary provision for assessment of attorney's fees against a private party in the event of improper nondisclosure. Absent a fee shifting statute or contractual provision for the payment of attorney's fees, the American Rule - that each party ordinarily must pay his or her own attorney's fees - is applicable. Indianapolis Newspapers, a Div. of Indiana Newspapers, Inc. v. Indiana State Lottery Commission, 739 N.E.2d 144, 156 (Ind. Ct. App. 2000).*

*Attorney who litigated a claim pro se under the Indiana APRA was not entitled to recover attorney fees because attorney fees were not recoverable by pro se attorney litigants under the Act. Marion Cnty. Election Bd. v. Bowes, 53 N.E.3d 1203, 1207 (Ind. Ct. App. 2016), transfer*

denied, 57 N.E.3d 817 (Ind. 2016).

**I.C. § 5-14-3-9.5 CIVIL PENALTIES IMPOSED  
ON PUBLIC AGENCY, OFFICER, OR  
MANAGEMENT LEVEL EMPLOYEE**

(a) This section does not apply to any matter regarding:

(1) the work product of the legislative services agency under personnel rules approved by the legislative council; or

(2) the work product of individual members and the partisan staffs of the general assembly.

(b) As used in subsections (c) through (k), "individual" means:

(1) an officer of a public agency; or

(2) an individual employed in a management level position with a public agency.

(c) If an individual:

(1) continues to deny a request that complies with section 3(b) of this chapter for inspection or copying of a public record after the public access counselor has issued an advisory opinion:

(A) regarding the request for inspection or copying of the public record; and

(B) that instructs the public agency to allow access to the public record; and

(2) denies the request with the specific intent to unlawfully withhold a public record that is subject to disclosure under this chapter; the individual and the public agency employing the individual are subject to a civil penalty under subsection (h).

(d) If an individual intentionally charges a copying fee that the individual knows exceeds the amount set by statute, fee schedule, ordinance, or court order, the individual is subject to a civil penalty under subsection (h).

(e) A civil penalty may only be imposed as part of an action filed under section 9 of this chapter. A court may not impose a civil penalty under this section unless the public access counselor has issued an advisory opinion:

(1) to the complainant and the public agency;

(2) that instructs the public agency to allow access to the public record; and

(3) before the action under section 9 of this chapter is filed.

Nothing in this section prevents both the person requesting the public record and the public

agency from requesting an advisory opinion from the public access counselor.

(f) It is a defense to the imposition of a civil penalty under this section that the individual denied access to a public record in reliance on either of the following:

(1) An opinion of the public agency's legal counsel.

(2) An opinion of the attorney general.

(g) A court may impose a civil penalty for a violation under subsection (c) against one (1) or more of the following:

(1) The individual named as a defendant in the action.

(2) The public agency named as a defendant in the action.

(h) In an action under this section, a court may impose the following civil penalties:

(1) Not more than one hundred dollars (\$100) for the first violation.

(2) Not more than five hundred dollars (\$500) for each additional violation.

A civil penalty imposed under this section is in addition to any other civil or criminal penalty imposed. However, in any one (1) action brought under this section, a court may impose only one (1) civil penalty against an individual, even if the court finds that the individual committed multiple violations. This subsection does not preclude a court from imposing another civil penalty against an individual in a separate action, but an individual may not be assessed more than one (1) civil penalty in any one (1) action brought under this section.

(i) A court shall distribute monthly to the auditor of state any penalties collected under this section for deposit in the education fund established by IC 5-14-4-14.

(j) An individual is personally liable for a civil penalty imposed on the individual under this section. A civil penalty imposed against a public agency under this section shall be paid from the public agency's budget.

(k) If an officer of a public agency directs an individual who is employed in a management level position to deny a request as described in subsection (c)(1), the management level employee is not subject to civil penalties under subsection (h).

*(As added by P.L. 134-2012, § 20.)*



I.C. § 5-14-3-10 CLASSIFIED  
CONFIDENTIAL INFORMATION;  
UNAUTHORIZED DISCLOSURE OR  
FAILURE TO PROTECT; OFFENSE;  
DISCIPLINE

(a) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency, except as provided by IC 4-15-10, who knowingly or intentionally discloses information classified as confidential by state statute including information declared confidential under:

(1) section 4(a) of this chapter; or

(2) section 4(b) of this chapter if the public agency having control of the information declares it to be confidential; commits a Class A infraction.

(b) A public employee may be disciplined in accordance with the personnel policies of the agency by which the employee is employed if the employee intentionally, knowingly, or recklessly discloses or fails to protect information classified as confidential by state statute.

(c) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency who unintentionally and unknowingly discloses confidential or erroneous information in response to a request under IC 5-14-3-3(d) or who discloses confidential information in reliance on an advisory opinion by the Public Access Counselor is immune from liability for such a disclosure.

(d) This section does not apply to any provision incorporated into state law from a federal statute. (*As added by P.L. 17-1984, § 2. Amended by P.L. 54-1985, § 8; P.L. 68-1987, § 3; P.L. 77-1995, § 6; P.L. 191-1999, § 3; P.L. 126-2012, §24*)

## SECTION FIVE: OVERVIEW OF THE OFFICE OF THE PUBLIC ACCESS COUNSELOR; FORMAL COMPLAINTS

### INTRODUCTION

Effective July 1, 1999, the Indiana General Assembly created the Office of Public Access Counselor. This office serves as a resource for members of the public and public officials and their employees regarding Indiana's laws

governing access to meetings of public bodies and to the records of public agencies. The office provides advice, assistance, training and education regarding the Open Door Law and Access to Public Records Act, as well as other state statutes or rules governing access to public meetings and public records. The office does not have binding authority but is intended to serve as a resource for members of the public as well as public agencies throughout the state.

This section provides an overview of the office and its functions. For more detailed information, consult I.C. § 5-14-4-1, *et seq.*, and I.C. § 5-14-5-1, *et seq.*, set forth at Section 6 of this handbook.

### FREQUENTLY ASKED QUESTIONS

#### *What is the role of the Public Access Counselor?*

The Public Access Counselor has several powers and duties under I.C. § 5-14-4-10:

1. To establish and administer a program to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under public access laws.
2. To conduct research.
3. To prepare and distribute interpretative and education materials, such as this guide, and conduct programs in cooperation with the Office of the Attorney General.
4. To respond to informal inquiries made by the public and public agencies concerning the public access laws.
5. To interpret the public access laws and to issue advisory opinions upon the request of a person or a public agency. The counselor may not issue an advisory opinion concerning a matter if a lawsuit has been filed under the Open Door Law or the Access to Public Records Act.
6. To make recommendations to the General Assembly concerning ways to improve public access.

In addition to these powers and duties, the Public Access Counselor is required to prepare an annual report by June 30th concerning the activities of the office over the past year. This report is filed with the Legislative Services Agency.

#### *Who may utilize the services of the office?*

Members of the public, including the media, as well as representatives of public agencies may

contact the office for the purpose of making an informal inquiry or filing a formal complaint.

*What is the process for filing a formal complaint?*

A formal complaint may be filed against any public agency for denial of access to a public record or denial of the right to attend a public meeting of a public agency in violation of the Access to Public Records Act, the Open Door Law or another statute or rule that governs access to public records or public meetings. A person denied the right to inspect documents under I.C. 5-14-3 or denied the right to attend an otherwise public meeting as defined in I.C. 5-14-1.5 may file a formal complaint with the counselor.

A formal complaint must be filed within 30 days after:

1. the denial; or
2. the person filing the complaint receives notice that a meeting was held by a public agency and that the meeting was held secretly or without notice.

A complaint is considered filed on the date it is received by the Public Access Counselor or the date of the postmark, if the date of receipt is later than thirty days after the date of the denial.

Once received, a copy of the complaint is forwarded to the public agency which is the subject of the complaint, and the counselor requests a response from the agency. The counselor has thirty days to issue an advisory opinion on the complaint.

If the complaint has priority, as determined under the administrative rules adopted by the counselor, an advisory opinion will be issued within seven days following receipt of the complaint. See Section 6 of this guide for the text of the administrative rule. See Appendix G for the Formal Complaint Form.

**NOTE:** The filing of a formal complaint **does not** delay the running of any statute of limitations that applies to lawsuits filed under the ODL or the APRA concerning the subject matter of the complaint.

*Must I file a formal complaint to obtain assistance?*

Members of the public and representatives of public agencies need not file a formal complaint against a public agency to seek assistance from

the office. Informal inquiries and questions about rights to access or the responsibilities of public officials are submitted when there is no need for a formal written opinion. The informal inquiry may concern a general question about the state's public access laws or a question or complaint about a public agency. If necessary, the counselor will contact the public agency in question in an effort to resolve the matter without issuing a written formal opinion.

*Is the public access counselor a finder of fact?*

The public access counselor is not a finder of fact. Advisory and informal opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. A judge would have the authority to make factual determinations regarding complaints filed before the court.

*What is the significance of filing a formal complaint or seeking an informal opinion from the counselor?*

Under the 1999 statutory amendments to the Open Door Law and the Access to Public Records Act, contacting the Public Access Counselor through an informal inquiry or by filing a formal complaint is significant for both members of the public and representatives of public agencies. A person or a public agency seeking access to a public meeting or public record may contact the counselor, but since the counselor's opinions are not binding on public agencies, the person may wish to file a civil action under I.C. § 5-14-1.5-7 (Open Door Law) or I.C. § 5-14-3-9 (Access to Public Records Act). If the person seeking access prevails in the court action, the judge must award reasonable attorney's fees, court costs and cost of litigation. If the person has not contacted the counselor prior to filing a civil action, these fees and costs will not be awarded unless the person can show that the filing of an action was necessary:

1. to prevent a violation of the Open Door Law; or
2. because the denial of access to a public record would prevent the person from presenting that record to another public agency preparing to act on a related matter. See I.C. § 5-14-1.5-7(f) and I.C. § 5-14-3-9(i).

In an action to appeal the denial of access to a

law enforcement recording, a requestor (as defined by I.C. § 5-14-3-5.1(a)) is not required to seek the opinion of the Public Access Counselor in order to be awarded attorney's fees, court costs, and other reasonable expenses. See I.C. § 5-14-3-9(k).

Further, a court may assess a civil penalty under I.C. § 5-14-3-9.5 if the plaintiff first obtained an advisory opinion from the public access counselor. See I.C. § 5-14-3-9(j).

For public agencies it may also be significant to contact the counselor. Under the Open Door Law, a court will consider whether the public agency acted in accordance with an informal inquiry response or an advisory opinion in its determination as to whether to declare any action or policy void. I.C. § 5-14-1.5-7(d)(4).

In cases concerning denial of access to public records, the public agency is required to notify any person who has supplied any part of the public record at issue and inform that person whether the denial was in compliance with an informal or formal response from the counselor. See I.C. § 5-14-3-9(e)(2).

#### *How do I contact the counselor?*

You may contact the Public Access Counselor by telephone, email, facsimile or mail with informal inquiries. Contact information appears at the back of this handbook. If you wish to file a formal complaint, you must use the form prescribe by the counselor pursuant to I.C. § 5-14-5-11. A copy of the complaint form is included in this handbook and is available via the counselor's website: [www.IN.gov/pac](http://www.IN.gov/pac).

### **SECTION SIX: OFFICE OF THE PUBLIC ACCESS COUNSELOR AND FORMAL COMPLAINT ACT AND LEGAL COMMENTARY**

#### **I.C. § 5-14-4-1 "COUNSELOR" DEFINED**

As used in this chapter, "counselor" refers to the public access counselor appointed under section 6 of this chapter. (*As added by P.L. 70-1999 § 4 and P.L. 191-1999, § 4.*)

#### **I.C. § 5-14-4-2 "OFFICE" DEFINED**

As used in this chapter, "office" refers to the office of the public access counselor established under section 5 of this chapter. (*As added by*

*P.L. 70-1999, § 4 and P.L. 191-1999, § 4.*)

#### **I.C. § 5-14-4-3 "PUBLIC ACCESS LAWS" DEFINED**

As used in this chapter, "public access laws" refers to:

- (1) Indiana Code 5-14-1.5;
- (2) Indiana Code 5-14-3; or
- (3) any other state statute or rule governing access to public meetings or public records. (*As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.*)

#### **I.C. § 5-14-4-4 "PUBLIC AGENCY"**

##### **DEFINED**

As used in this chapter, "public agency" has the meaning set forth in :

- (1) I.C. §5-14-1.5-2 for purposes of matters concerning public meetings; and
- (2) I.C. §5-14-3-2 for purposes of matters concerning public records. (*As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.*)

#### **I.C. § 5-14-4-5 ESTABLISHMENT OF OFFICE**

The office of the public access counselor is established. The office shall be administered by the public access counselor appointed under section 6 of this chapter. (*As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.*)

#### **I.C. § 5-14-4-6 APPOINTMENT; TERM**

The governor shall appoint the public access counselor for a term of four years at a salary to be fixed by the governor. (*As added by P.L. 70-1999, § 4, and P.L. 191-1999, § 4.*)

#### **I.C. § 5-14-4-7 REMOVAL FOR CAUSE**

The governor may remove the counselor for cause. (*As added by P.L. 70-1999, § 4, and P.L. 191-1999, § 4.*)

#### **I.C. § 5-14-4-8 VACANCIES IN OFFICE**

If a vacancy occurs in the office, the governor shall appoint an individual to serve for the remainder of the counselor's unexpired term. (*As added by P.L. 70-1999, § 4, and P.L. 191-1999, § 4.*)

#### **I.C. § 5-14-4-9 REQUIREMENTS FOR POSITION**

- (a) The counselor must be a practicing attorney.
- (b) The counselor shall apply the counselor's full efforts to the duties of the office and may not be actively engaged in any other occupation, practice, profession, or business. (As added by P.L. 70-1999, § 4, and P.L. 191-1999, § 4.)

#### I.C. § 5-14-4-10 POWERS AND DUTIES

The counselor has the following powers and duties:

(1) To establish and administer a program to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. The counselor may contract with a person or a public or private entity to fulfill the counselor's responsibility under this subdivision.

(2) To conduct research.

(3) To prepare interpretive and educational materials and programs in cooperation with the office of attorney general.

(4) To distribute to newly elected or appointed public officials the public access laws and educational materials concerning the public access laws.

(5) To respond to informal inquiries made by the public and public agencies by telephone, in writing, in person, by facsimile, or by electronic mail concerning the public access laws.

(6) To issue advisory opinions to interpret the public access laws upon the request of a person or a public agency. However, the counselor may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under IC 5-14-1.5 or IC 5-14-3.

(7) To make recommendations to the general assembly concerning ways to improve public access. (As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.)

#### COMMENTARY

*In Azhar v. Town of Fishers, the Court stated that I.C. §5-14-4-10(6) prohibits the issuance of an advisory opinion concerning a matter with respect to which a lawsuit has been filed under I.C. 5-14-1.5 or I.C. 5-14-3. 744 N.E.2d 947, 951 (Ind. Ct. App. 2001). The Court, however, stated that I.C. §5-14-4-10(6) does not prohibit the filing of an affidavit by the counselor outlining the dictates of an advisory opinion issued prior to the filing of such lawsuit. Id.*

*A response as defined in I.C. § 5-14-1.5-7(f) does not mean that the public access counselor must state affirmatively whether the public access laws have been violated. Gary/Chicago Airport Board of Authority v. Maclin, 772 N.E.2d 463, 471 (Ind. Ct. App. 2002).*

#### I.C. § 5-14-4-11 ADDITIONAL PERSONNEL

The counselor may employ additional personnel necessary to carry out the functions of the office subject to the approval of the budget agency. (As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.)

#### I.C. § 5-14-4-12 ANNUAL REPORT BY COUNSELOR

The counselor shall submit a report in an electronic format under IC 5-14-6 not later than June 30 of each year to the legislative services agency concerning the activities of the counselor for the previous year. The report must include the following information:

(1) The total number of inquiries and complaints received.

(2) The number of inquiries and complaints received each from the public, the media, and government agencies.

(3) The number of inquiries and complaints that were resolved.

(4) The number of complaints received about each of the following:

(A) State agencies.

(B) County agencies.

(C) City agencies.

(D) Town agencies.

(E) Township agencies.

(F) School corporations.

(G) Other local agencies.

(5) The number of complaints received concerning each of the following:

(A) Public records.

(B) Public meetings.

(6) The total number of written advisory opinions issued and pending. (As added by P.L. 70-1999, § 4; P.L. 191-1999, § 4; P.L. 28-2004, § 58.)

#### I.C. § 5-14-4-13 STATUTE OF LIMITATIONS

An informal inquiry or other request for assistance under this chapter does not delay the

running of a statute of limitation that applies to a lawsuit under IC 5-14-1.5 or IC 5-14-3 concerning the subject matter of the inquiry or other request. *(As added by P.L. 70-1999, § 4 and P.L. 191-1999, § 4.)*

#### I.C. § 5-14-4-14 EDUCATION FUND

(a) An education fund is established to provide funds for the program established under section 10(1) of this chapter.

(b) The fund consists of the following:

(1) Civil penalties collected under IC 5-14-1.5-7.5 and IC 5-14-3-9.5.

(2) Money appropriated by the general assembly.

(3) Grants, gifts, contributions, and money received from any other source.

(c) The treasurer of state shall administer the fund. The following may be paid from money in the fund:

(1) Expenses of administering the fund.

(2) Nonrecurring administrative expenses incurred to carry out the purposes of this section.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. *(As added by P.L. 134-2012, §21.)*

#### FORMAL COMPLAINTS TO THE PUBLIC ACCESS COUNSELOR

##### I.C. § 5-14-5-1 "COUNSELOR" DEFINED

As used in this chapter, "counselor" refers to the public access counselor appointed under I.C. §5-14-4-6. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

##### I.C. § 5-14-5-2 "PERSON" DEFINED

As used in this chapter, "person" means an individual, a business, a corporation, an association, or an organization. The term does not include a public agency. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

##### I.C. § 5-14-5-3 "PUBLIC AGENCY"

#### DEFINED

As used in this chapter, "public agency" has the meaning set forth in:

(1) IC 5-14-1.5-2, for purposes of matters concerning public meetings; and

(2) IC 5-14-3-2, for purposes of matters concerning public records. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

#### I.C. § 5-14-5-4 COMPLAINT NOT REQUIRED TO FILE ACTION

A person or a public agency is not required to file a complaint under this chapter before filing an action under IC 5-14-1.5 or IC 5-14-3. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

#### I.C. § 5-14-5-5 COOPERATION FROM PUBLIC AGENCIES

A public agency shall cooperate with the counselor in any investigation or proceeding under this chapter. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

#### I.C. § 5-14-5-6 GROUNDS FOR COMPLAINT

A person or a public agency denied:

(1) the right to inspect or copy records under IC 5-14-3;

(2) the right to attend any public meeting of a public agency in violation of IC 5-14-1.5; or

(3) any other right conferred by IC 5-14-3 or IC 5-14-1.5 or any other state statute or rule governing access to public meetings or public records;

may file a formal complaint with the counselor under the procedure prescribed by this chapter or may make an informal inquiry under I.C. §5-14-4-10(5). *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

#### COMMENTARY

*See Opinion of the Public Access Counselor 00-FC-11 for a discussion of standing to file a formal complaint.*

#### I.C. § 5-14-5-7 TIME FOR FILING

(a) A person or a public agency that chooses to file a formal complaint with the counselor must file the complaint not later than thirty days after:

(1) the denial; or

(2) the person filing the complaint receives notice in fact that a meeting was held by a public

agency, if the meeting was conducted secretly or without notice.

(b) A complaint is considered filed on the date it is:

- (1) received by the counselor; or
- (2) postmarked, if received more than thirty days after the denial that is the subject of the complaint. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

#### I.C. § 5-14-5-8 COMPLAINT FORWARDED TO PUBLIC AGENCY

When the counselor receives a complaint under section 7 of this chapter, the counselor shall immediately forward a copy of the complaint to the public agency that is the subject of the complaint. *(As added by P.L. 70-1995, § 5 and P.L. 191-1999, § 5.)*

#### I.C. § 5-14-5-9 ADVISORY OPINION

Except as provided in section 10 of this chapter, the counselor shall issue an advisory opinion on the complaint not later than thirty days after the complaint is filed. *(As added by P.L. 70-1995, § 5 and P.L. 191-1999, § 5.)*

#### I.C. § 5-14-5-10 PRIORITY OF COMPLAINTS

(a) If the counselor determines that a complaint has priority, the counselor shall issue an advisory opinion on the complaint not later than seven days after the complaint is filed.

(b) The counselor shall adopt rules under I.C. 4-22-2 establishing criteria for complaints that have priority.

*(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

#### I.C. § 5-14-5-11 FORM OF COMPLAINT

The public access counselor shall determine the form of a formal complaint filed under this chapter. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

#### I.C. § 5-14-5-12 STATUTE OF LIMITATIONS

The filing of a formal complaint under this chapter does not delay the running of a statute of limitation that applies to a lawsuit under I.C. 5-14-1.5 or I.C. 5-14-3 concerning the subject matter of the complaint. *(As added by P.L. 70-1999, § 5 and P.L. 191-1999, § 5.)*

## **APPENDICES**

### *APPENDIX A*

#### **OFFICE OF THE PUBLIC ACCESS COUNSELOR ADMINISTRATIVE RULE**

##### **62 IAC 1-1-1: DEFINITIONS**

Authority: IC 5-14-5-10

Affected: IC 5-14-1.5; IC 5-14-3; IC 5-14-5

The following definitions apply throughout this rule:

- (1) "Complainant" means a person who files a complaint under 5-14-5.
- (2) "Formal complaint" means a complaint filed under IC 5-14-5.

##### **62 IAC 1-1-2: FORMAL COMPLAINTS THAT HAVE PRIORITY; PROCEDURE**

Authority: IC 5-14-5-10

Affected: IC 5-14-1.5; IC 5-14-3; IC 5-14-5

- (a) Formal complaints may be filed with the public access counselor by hand delivery, United States Mail, facsimile, or electronic mail.
- (b) A complainant shall file a formal complaint on the form prescribed by the public access counselor. If any of the criteria for priority enumerated in section 3 of this rule are met, the complainant shall include the information in the complaint.
- (c) A formal complaint is considered received when date stamped by the office of the public access counselor.
- (d) If a formal complaint meets any of the criteria for priority listed under section 3 of this rule, the public access counselor shall issue a written advisory opinion within seven (7) days of receipt of that complaint.

##### **62 IAC 1-1-3 PRIORITY COMPLAINTS; CRITERIA**

Authority: IC 5-14-5-10

Affected: IC 5-14-1.5-7; IC 5-14-3; IC 5-14-5

A formal complaint has priority if one (1) of the following criteria are met:

- (1) The complainant intends to file an action in circuit or superior court under IC 5-14-1.5-7 to declare void any policy, decision, or final action of a governing body or seek an injunction that would invalidate any policy, decision, or final action based upon a violation of IC 5-14-1.5. A formal complaint must be filed under this subsection:
  - (A) before the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect of invalidating those warrants, notes, bonds, or obligations; or
  - (B) within thirty (30) days of either:
    - (i) the date of the act or failure to act complained of; or
    - (ii) the date the complainant knew or should have known that the act or failure to act complained of had occurred.
- (2) The complainant has filed a complaint concerning the conduct of a meeting or an executive session of a public agency for which notice has been posted, but the meeting or executive session has not yet taken place.
- (3) The complainant has filed a complaint concerning denial of access to public records and at least one (1) of the public records requested was sought for the purpose of presenting the public record in a proceeding to be conducted by another public agency.





## APPENDIX B

### CHECKLIST FOR PUBLIC AGENCIES RESPONDING TO REQUESTS FOR ACCESS TO OR COPIES OF PUBLIC RECORDS

#### *Time Period for Response*

If the request was made orally or a written request was hand-delivered, the public agency must respond within **24 business hours** after the request was received.

If a written request was received by the public agency by facsimile, mail, or electronic mail, the public agency must respond **within 7 calendar days** after the request was received.

#### *Substance of Response*

Any or all of the following statements that apply to the request should be included in the response. If a statement does not apply, you need not include it in your response.

(A) A statement identifying the public records maintained by the agency that will be provided in response to the request and the estimated date the records will be produced.

(B) A statement indicating the record request is denied and the record will be withheld because the record is confidential or nondisclosable. Be sure to include the statutory authority for the claim that the record is confidential or otherwise nondisclosable.

(C) A statement that the public agency does not have a record responsive to the records request.

(D) A statement that the public agency may have records responsive to the request and is in the process of

(i) reviewing the agency's files;

(ii) retrieving stored files; or

(iii) both items (i) and (ii);

in response to the request and an additional response will be provided on or before a specific date to advise the requestor of the agency's progress on the request.

#### *Copy Fees*

Notify the requestor of the estimated copy fee, if any and whether the fee must be provided before the copies of public records will be produced, or if the fee can be paid upon delivery of the public records.

#### *Denial of Access to Any or All of the Public Records Requested*

If the public agency is denying access to any or all of the requested public records, the response should include the name and title of the person responsible for the nondisclosure of the records and how that person may be contacted. If the request was made in writing, or if an oral request was renewed in writing, any denial, even of only a portion of a record, must be made in writing by the public agency.

## APPENDIX C

### SAMPLE LETTER

#### Requesting Access or Copy of Public Record

Date

Public Official or Agency

Title

Address

City, Indiana Zip Code

Dear Public Official:

Pursuant to the Access to Public Records Act (Ind. Code 5-14-3), I would like to *(inspect or obtain a copy of)* the following public records:

*(Be sure to describe the records sought with enough detail for the public agency to be able to respond.)*

I understand that if I seek a copy of this record, there may be a copying fee. Could you please inform me of that cost prior to making the copy? I can be reached at *(phone number and/or email address)*.

According to the statute, you have \_\_\_\_ days to respond to this request. *(If this letter was delivered personally to the public official's office, the agency has 24 hours to respond to the request. If the letter is delivered by U.S. Mail, email or facsimile, the agency has seven days to respond to the request.)* If you choose to deny the request, you are required to respond in writing and state the statutory exception authorizing the withholding of all or part of the public record and the name and title or position of the person responsible for the denial.

Thank you for your assistance on this matter.

Respectfully,

## *APPENDIX D*

### SAMPLE NOTICES

#### **Regular or Special Meetings Open to the Public**

Meeting (or Special Meeting) of the  
Any Town City Council  
Wednesday, April 9, 2016  
5:30 p.m.  
City Hall Meeting Room; Two North Main Street; Any Town, Indiana

#### **Executive session**

Notice of Executive Session of the  
Anytown City Council  
Wednesday, April 9, 2016  
4:30 p.m.  
City Hall Meeting Room; Two North Main Street, Anytown, Indiana

The Council will meet to discuss a job performance evaluation of an individual employee as authorized under I.C. §5-14-1.5-6.1(b)(9).

## *APPENDIX E*

### Nonexclusive List of Helpful Indiana Code Statutes

#### **Records Access Restricted**

4-6-9-4 Complaints and correspondence with Consumer Protection Division of the Attorney General's Office are confidential with certain exceptions.

5-2-4-6 Criminal intelligence information is confidential.

5-2-9-6 County clerks' and sheriffs' information about a protected order is confidential.

6-1.1-35-9 All information concerning earnings, profits, losses or expenditures and which is either given by a person to an assessing official is confidential.

6-4.1-12-12 The Department of Revenue shall not divulge any information disclosed concerning inheritance taxes, with exceptions.

6-8.1-7-1 Department of Revenue may not divulge amount of tax paid, terms of settlement agreement, investigation records/reports, or other information disclosed by reports filed under the law relating to any of the listed taxes when it is agreed that the information is to be confidential.

9-14-13-2 Personal information or social security number in connection with a motor vehicle record may not be disclosed by the BMV.

9-26-3-4 Accident reports filed with the ISP by a driver involved in an accident are confidential.

10-13-3-27 Restrictions on the release of limited criminal histories.

31-39-1-2 Except under certain circumstances (see IC 31-39-2) juvenile court records are confidential.

31-39-3-4 Except under certain circumstances (see IC 31-39-3-2, 31-39-3-3, and 31-39-4) juvenile law enforcement records are confidential.

35-38-1-13 Pre-sentence reports or memoranda; report of physical/mental exam are confidential, except as provided by 35-38-1-13(b).

#### **Records Specifically Required to be Disclosed**

3-7-28-7 Voter registration lists are available for public access.

9-26-2-3 Accident reports filed with the Indiana State Police by a law enforcement agency are disclosable public records.

16-31-2-11 Ambulance report or record regarding an emergency patient that must be disclosed if services provided by or under a contract with a public agency.

20-28-6-2 Contracts entered into by a teacher are open to inspection by the people of each school corporation.

36-2-14-18 Information required to be disclosed by a coroner regarding the investigation of a death.

#### **Meetings**

36-2-2-9 Limitations on the location of county commissioner meetings.

#### **Fees**

36-2-7-10 Sets fee for county recorders.

33-37-5-1 Sets fees for county circuit court clerks and court records.

## APPENDIX F

### HOW TO FILE A FORMAL COMPLAINT

All formal complaints must be submitted on a formal complaint form, which is available on our website ([www.in.gov/pac](http://www.in.gov/pac)). All spaces on the form must be completed in order to ensure that your complaint is processed. Additional pages may be attached to the form for the narrative portion. Also include any relevant correspondence and communication relating to the denial for the consideration of the Public Access Counselor. Complaints may be rejected for lack of sufficient information.

The complaint must concern an issue that is related to the Access to Public Records Act or the Open Door Law or other state law pertaining to public access. The Public Access Counselor will not accept complaints dealing with issues outside the public access laws. 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 or corporations.

A formal complaint ***must be filed 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.

A complaint may request priority status under certain circumstances. This process allows the complainant to receive an opinion from the Counselor within seven days. The criteria required for this expedited process can be found in Appendix A (See 62 IAC 1-1-3). A request for priority status must be included in the narrative of the complaint. You must demonstrate circumstances warranting priority status. If possible, please include the date and cause number of any upcoming hearing or court date.

A complaint to the Public Access Counselor may be submitted via mail, email, fax, or hand delivery. Our contact information may be found in Appendix H.

The Public Access Counselor reserves the right to mediate all controversies for the benefit of public access. Pursuant to IC § 5-14-5-11, formal complaints may be rejected for being misleading, confusing, illegible, or for containing superfluous information.

## *Appendix G*

### RESPONDING TO A FORMAL COMPLAINT

When responding to a formal complaint, it is imperative that the agency respond in a timely fashion to allow the Public Access Counselor to consider whether a violation of public access law has occurred.

The agency should include a narrative explaining the reasoning for a denial, including the appropriate statutory authority permitting such denial. This narrative may acknowledge an error on the part of the agency in its denial or failure to respond to a request, reasons for delay, or other circumstances impacting the agency's ability to process the initial request. The agency should also include any correspondence or communication germane to the complaint.

The agency is encouraged to contact the Public Access Counselor with any questions or concerns encountered while formulating a response.

## *APPENDIX H*

### CONTACT INFORMATION FOR THE PUBLIC ACCESS COUNSELOR'S OFFICE

If you have a question or concern about obtaining access to public meetings or to public records, you may contact the state's Public Access Counselor for advice or assistance.

Public Access Counselor  
Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204

Toll Free: 800-228-6013  
Telephone: 317-234-0906  
Facsimile: 317-233-3091

Email: [pac@icpr.IN.gov](mailto:pac@icpr.IN.gov)  
Website: [www.IN.gov/pac](http://www.IN.gov/pac)

*Handbook last updated January 2016*