

**WHAT EVERY COUNTY OFFICIAL SHOULD KNOW
ABOUT THE ACCESS TO PUBLIC RECORDS ACT
Ind. Code 5-14-3**

- All records maintained by a public agency are public records, but some may be confidential or disclosable at the discretion of the agency. All public records that do not fall into the statutory exceptions must be made available for inspection and copying. I.C. § 5-14-3-3.
- The burden is on the agency to provide statutory authority for denial of access to a record. I.C. § 5-14-3-9(f).
- Public records that are confidential include, among others, those classified as confidential by state or federal statute; trade secrets; medical records created by a provider, a social security number contained in the records of a public agency. I.C. § 5-14-3-4(a).
- An agency cannot declare records confidential absent statutory authority or rulemaking authority specifically allowing the agency to classify records confidential. I.C. § 5-14-3-4(a)(2).
- Public records that are disclosable at the agency's discretion include the following, among others: personnel files (with the exception of basic information that must be disclosed); attorney work product; diaries and journals; deliberative material. I.C. § 5-14-3-4(b).
- Basic information must be disclosed about a current or former employee: 1) name, compensation, dates of service, previous work history, educational background, job description, work address and phone number; 2) the status of any formal charges against the employee; 3) the factual basis for a disciplinary action in which final action has been taken and that resulted in suspension, demotion or discharge. I.C. § 5-14-3-4(b)(8).
- Persons wishing to inspect and copy records may do so during the regular business hours of the agency. The agency may require that the person submit the request in writing on or in a form provided by the agency. I.C. § 5-14-3-3(a).
- The agency may not deny because the person refuses to state the purpose of the request. The agency may ask the purpose of the request but may not demand to know unless the agency can deny access on the basis of a statutory limitation on to whom or for what purpose the record may be disclosed. I.C. § 5-14-3-3(a).
- If a public record is partially disclosable, the public agency must separate or redact the nondisclosable material and disclose the rest of the record. I.C. § 5-14-3-6(a).
- Public agencies must respond (acknowledge receipt of the request and state how and when it will comply) within 24 hours of receipt of an in-person request or telephoned request. For mailed, e-mailed or faxed requests, the time for response is seven days. I.C. § 5-14-3-9.

- There is no set time to produce records in statute, but production must be within a reasonable time under the circumstances. It is advisable to remain in contact with the requester regarding the status of the request or to provide groups of records intermittently when the response to the request is voluminous.
- If the request for records is in writing, the agency may deny the request only in writing. I.C. § 5-14-3-9.
- An agency's denial must include two things: the statutory authority for any denial, and the name and title of the person responsible for the denial. I.C. § 5-14-3-9(c).
- Counties may charge a reasonable copy fee for records. For counties, the county council must establish a fee schedule for the certification, copying or facsimile transmission of records. The fee may not exceed the actual cost of copying, which means the cost of paper and the per-page cost for use of the equipment. The fee must be uniform to all purchasers of copies. I.C. § 5-14-3-8(d). Some statutes may allow a higher fee for certain records.
- The agency may not charge an overhead, labor, or retrieval charge. The payment for copies may be demanded prior to making or delivering copies. I.C. § 5-14-3-8. The statute does not address postage costs, but the public access counselor has said an agency may charge the actual cost of shipping to the requester.
- The agency may provide a copy of the record, or allow the person to make a copy on the agency's equipment or the person's own equipment. "Copy" includes photocopying, duplicating electronically stored data onto a disk, or "reproducing by any other means." This means that the agency must permit copying via the use of a person's digital camera or a hand held scanner. I.C. § 5-14-3-3(b); I.C. § 5-14-3-2(b).

Legal Consequence for Failure to Comply with APRA

- The agency may be sued to compel disclosure of the record. Attorney fees, reasonable litigation expenses and court costs would be payable by the state agency if the plaintiff prevails and requested and received an informal response or advisory opinion from the Public Access Counselor prior to bringing the action. I.C. § 5-14-3-9.
- A complainant to the public access counselor must file complaint within thirty days of date of denial. I.C. § 5-14-5-7. The public access counselor must issue an advisory opinion within thirty days of filing. I.C. § 5-14-5-9. The public agency receives a copy of the complaint and is invited to submit a response. The complainant receives the opinion and a copy of the agency's response, and a copy of the opinion is sent to the public agency.
- A public agency shall cooperate with the counselor in any investigation or proceeding regarding public access laws. I.C. § 5-14-5-5.