



Committees, Meetings, and Indiana's Public Access Laws

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Professional Development Office
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Board Member Responsibilities

- Attend all meetings, be prepared, take part in all discussions
- Parliamentary law, applicable state laws, traditional meeting practices
- Cooperate, compromise, and work towards a consensus on issues
- Focus on the mission



Before the Meeting

- Read materials and call for clarification
- Talk to constituents
- Request items for agenda

Beginning the Meeting

- Begin promptly
- Call to order
- Call the roll and determine a quorum
 - No quorum = cannot conduct business
 - Any votes legally invalid
- Recognize visitors

Agenda and Minutes

- Approve the agenda
 - Stick to the agenda for clear direction
 - All board members may add issues to agenda
- Approve previous meeting minutes
 - Official legal record of board meeting
 - Important communication between board and community
 - Correct all errors
 - Keep brief



Reports to the Board

- Approve the financial report
- Approve the director's report
- Hear committee reports

Voting

- Motion discussed thoroughly
- Call for vote
- Voice vote, show of hands, or roll call
- Recorded in minutes
- Move to next agenda item



Meeting Process Cont.

- Clean up unfinished business
- Move on to new business
- Make announcements
- Adjourn the meeting

Committees

○ Types

- Named in by-laws and function year round
- Appointed as issues arise
- Board as a committee of the whole
- Executive committee

Committee Process

- Board designs the purpose and objectives
 - Set deadlines for the committees
- Board president appoints chairperson
 - Director should be a member of all committees
- Report back to the full board
- Recommendations ratified or decided at full board meeting
- Formally thank and disband when the job is done (if not a standing committee)



Committee Responsibilities

- Prepare as if in a full board meeting
- Committees have only the power given by the full board
- Report back to the full board

Indiana's Public Access Laws

- Open Door Law
- (ODL) I.C. 5-14-1.5-1 et seq.
- Access to Public Records Act
- (APRA) I.C. 5-14-3-1 et seq.

Why Open the Door?

- "...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...**"

IC 5-14-1.5-1

The Open Door Law (“ODL”) Ind. Code § 5-14-1.5-1 et seq.

- “[A]ll 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.” I.C. § 5-14-1.5-3(a).
- The ODL requires 48 hour advanced notice of meetings. I.C. § 5-14-1.5-5.

What about committees?

- A committee must comply with the Open Door Law if the committee has been appointed directly by a governing body or its presiding officer to take official action on public business. I.C. § 5-14-1.5-2(b)(3).

What is a Meeting?

- A gathering of a **majority** of the governing body for the purpose of taking **official action** upon public business. I.C. § 5-14-1.5-2(c).

Library Board

- A majority of the library board members constitutes a **quorum** for transaction of business
 - Shall meet at least monthly
 - Meet at any other time a meeting is necessary
 - Meetings may be called by the president or any two (2) board members
 - All are open to public except executive sessions

What is “Official Action?”

- Any one of these items constitutes official action:
 1. Discussions
 2. Giving/Receiving information
 3. Deliberating
 4. Making recommendations
 5. Establishing policy
 6. Taking final action (i.e. voting or decisions)
- I.C. § 5-14-1.5-2(d).

What is NOT a Meeting?

- Any social or chance gatherings not intended to avoid ODL;
- On-site inspections;
- Traveling to and attending meetings of organizations devoted to the betterment of government;
- Caucuses (TIP: avoid official action)
 - See I.C. § 5-14-1.5-2(c).

Serial Meetings (ODL § 3.1)

- Three members, but less than a quorum, meet
- Subsequent meetings involve at least 2 members
- Sum of all meeting attendees constitutes a quorum
- All meetings held within 7 days & concern same topic
- Held to take official action on public business

Executive Sessions IC 5-14-1.5-6.1

- The only time public is excluded, except for persons necessary to carry out business
- The governing body may not take final action (i.e., vote) in an executive session but may make decisions in the executive session. See *Baker v. Town of Middlebury*, 753 N.E.2d 67 (Ind. Ct. App. 2001).
- The instances are narrowly construed

Reasons for Executive Sessions

- Discussion of strategy with respect to initiation of litigation or litigation that is pending or has been threatened in writing (ODL § 6.1(b)(2)(B))
- To receive information about and interview prospective employees (ODL § 6.1(b)(5))
- To discuss a job performance evaluation (ODL § 6.1(b)(9))
- The purchase or lease of property by the public agency up to time of contract or option to purchase or lease (ODL § 6.1(b)(2)(D))

Giving Notice (ODL § 5)

- Notice requirements apply to all meetings, including executive sessions
- Requirements: date, time and location of meeting posted **48 hours** in advance of meeting
 - 48 hours does not include weekends or holidays
- TIP: Specific time is required

Executive Session Notices

- Must contain the same information as for an open meeting
- Must also state the subject matter by specific reference to the enumerated instance(s) for which executive sessions may be held.
- TIP: There is no executive session instance to “*discuss personnel matters*” or to “*meet with the Board’s attorney.*”

Where to post

- Post at agency's principal office or at meeting place
- Also must deliver notice to news media by January 1 including those who request such notice
 - Deliver of notice to news media is not "posting" even if the media publish or advertise the meeting
 - Regular meeting notices=1x per year unless rescheduled

Example Public Notice

Notice of Public Meeting:

Gas City Public Library
Board of Trustees

Wednesday, November 18, 2015

5:30 p.m.



Example Public Notice

Notice of Public Meeting:
Gas City Public Library
Board of Trustees
Wednesday, November 18, 2015
5:30 p.m.

Meeting Room A
135 E. Main St, Gas City, IN 46933



Example Public Notice

Notice of Executive Session:
Gas City Public Library
Board of Trustees
Wednesday, November 18, 2015
5:30 p.m.
Meeting Room A
135 E. Main St, Gas City, IN 46933



Personnel and Litigation to be discussed

Example Public Notice

Notice of Executive Session:

Gas City Public Library

Board of Trustees

Wednesday, November 18, 2015

5:30 p.m.

Meeting Room A

135 E. Main St, Gas City, IN 46933

The Board will meet to discuss a job performance of an individual employee as authorized under IC 5-14-1.5-6.1(b)(9)



Agenda and Memoranda (ODL)

- The ODL does not require an agency to utilize an agenda.
- If the governing body utilizes an agenda, the agenda must be posted outside the meeting before the meeting begins.
 - The ODL does not provide a specific deadline for posting the agenda.

Agenda and Memoranda (cont.)

- An agency may deviate from its posted agenda unless a specific statute provides otherwise
- TIP: A final action adopted by reference to agenda number or item alone is void
 - You can't say, "All in favor of Item IV?"

Agenda and Memoranda (cont.)

- ODL does not require minutes
- Memoranda must be kept as meeting progresses and must contain
 - Date, time, and location of meeting
 - Members present and absent
 - The general substance of all matters, proposed, discussed or decided
 - A record of all votes taken, by individual members if there is a roll call

Agenda and Memoranda (cont.)

- Memoranda are available within a reasonable period of time after the meeting
- Minutes, if any, are to be open for inspection and copying
- TIP: Draft minutes of a public meeting are subject to disclosure despite not being in final form or adopted by governing body. (Formal Opinion 98-FC-8)

Agenda and Memoranda (cont.)

- Remote Attendees – memoranda must include additional items:
 - Name of each member who was physically present at the meeting; and
 - Name of each member who participated in the meeting using a telephone, computer, video conferencing, or any other electronic means of communications.



Memoranda for Executive Sessions

- Same as for meetings
- Must identify the subject matter considered by specific reference (same as when public notice given)
- Certify that no other matter was discussed

Electronic Meetings

- Generally, a member of a governing body who is not physically present but communicates by electronic or telephonic means may not vote and may not be counted present
- Some specific statutes may provide exceptions

Public Recording of Meetings

- A right of the public to record meetings, found at I.C. § 5-14-1.5-3(a) includes the right to record the meeting (audio or video). *Berry v. Peoples Broadcasting Corp.*, 547 N.E.2d 231 (Ind. 1989).
 - TIP: A governing body may place reasonable restrictions on the use of such equipment, but may not ban the use of audio or video recorders.



The Public's Role

- Public may observe but does not have the right to speak unless some other statute requires it (i.e. public hearings)



APRA

Access to Public Records Act (APRA) IC 5-14-3

- Person is entitled to inspect and copy the public records of a public agency unless an exception to disclosure applies
 - Examples: board minutes and annual reports to Indiana State Library and State Board of Accounts



Common Misconceptions of Citizens

- A public agency has to answer my questions under APRA.
- A public agency has to keep public records forever so it is not appropriate to respond that the record no longer exists.
- A public agency must handle public records requests before handling other matters of the public agency.
- A public agency must keep public records in a format that is most convenient for me.



Common Misconceptions of Agencies

- Offering to allow inspection is always sufficient.
- All disclosable records requested must be produced within 7 days of receiving the request. *See 11-FC-74*
- Denial do not have to be explained with specificity.
- Any document containing confidential information may be omitted from public records response. *See 10-FC-7*



Public Records

- IC 5-14-3-2(n)
 - Anything created, received, retained, maintained, or files by or with a public agency

Record Request

- Agency may require a person to submit a request for a public record in writing, on or in a form supplied by the agency. IC § 5-14-3-3(a)

Your Responsibility to an APRA Request IC 5-14-3-9

- Respond in person or by telephone within 24 hours
- Respond to mailed, emailed, or faxed requests within seven (7) days
- Best to respond in writing to all requests
- Response is not necessarily producing the record

Copy Fees

- May charge only the fee schedule adopted by fiscal body and authorized by IC 5-14-3-8
- May not exceed the actual cost for providing a copy of the public record.
 - Actual cost=cost of paper and per page cost for use of the equipment, NOT labor or overhead

What is Reasonable?

- Factors:
 - Breadth
 - Location
 - Time
 - Particularity – subjective
 - Can it be found? Any objective elements?
- Evidence
 - Communication, not blanket denial
 - Piecemeal disclosures

Exemptions to Disclosure

IC § 5-14-3-4

- Confidential
 - Records made confidential by state statute or federal law
 - Confidential financial information
- Discretionary
 - Personnel file information
 - Attorney-client communications and attorney-work product
 - Records developed or prepared during discussion in an executive session
 - Deliberative materials

Disclosure of Library or Archival Records

- Records be disclosed only:
 - To qualified researchers
 - After the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or
 - After the death of persons specified at the time of the acquisition or deposit.

Deny Record

- State reason for denial with citation to authority
- Give name and title or position of person responsible for denial IC § 5-14-3-9

Electronic Mail

- E-mail is still public record!
- Must be available unless an exception to disclosure applies
- IC 5-15 Must be maintained in accordance with records retention schedules

Retention and Disposal of Public Records

- The APRA requires an agency to protect records from loss, alteration, mutilation, or destruction.
- Indiana Archives and Records Administration
 - Retention Records
- Local County Commission on Public Records

Visit PAC Website for Handbook on Indiana's Public Access Laws



<http://www.in.gov/pac>

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