



STATE OF INDIANA

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2012 Legislative Changes Affecting Indiana's Public Access Laws

The following is a summary of the changes made to the Open Door Law (I.C. § 5-14-1.5) or the Access to Public Records Act (I.C. § 5-14-3) as a result of the 2012 Legislative Session. Information that is in **bold** reflects newly added language; information that is ~~struck through~~ has been removed. As always, please contact the Public Access Counselor's Office should you have any questions.

Open Door Law – I.C. § 5-14-1.5

I.C. § 5-14-1.5-3 Amended Section 10 Effective January 1, 2013

IC 5-14-1.5-3, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]:

Sec. 3. (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 IC 5-1.5-2-2.5 **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.

~~(d) 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, videoconferencing, 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.~~

~~(e) The memoranda of a meeting prepared under section 4 of this chapter that a member participates in by using a means of communication described in subsection (d) 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 this section; and~~

~~(3) each member who was absent.~~

I.C. § 5-14-1.5-3.5 New Section 11 Effective January 1, 2013

SECTION 11. IC 5-14-1.5-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]:

Sec. 3.5. (a) This section applies only to a governing body of a public agency of a political subdivision.

(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.

I.C. § 5-14-1.5-3.6 New Section 12 Effective January 1, 2013

IC 5-14-1.5-3.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]:

Sec. 3.6. (a) This section applies only to a governing body of a public agency of the state, including a body corporate and politic established as an instrumentality of the state.

(b) A member of the governing body of a public agency 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. 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.

(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 or the public agency.

(i) Nothing in this section affects a public agency's right to exclude the public from an executive session in which a member participates by electronic communication.

I.C. § 5-14-1.5-4 Amended Section 13 Effective January 1, 2013

IC 5-14-1.5-4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]:

Sec. 4. (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 ~~IC 5-14-1.5-2-2.5~~ **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.

I.C. § 5-14-1.5-5 Amended Section 14 Effective July 1, 2012

IC 5-14-1.5-5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Sec. 5. (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 ~~by~~: **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. ~~and~~

(2) **The governing body of a public agency shall give public notice by** delivering notice to all news media which deliver ~~by January 1~~ an annual written request for such ~~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 ~~January 1,~~ **December 31,** it shall comply with this ~~subdivision~~ **subsection** upon receipt of a written request for notice. In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(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 the members of the governing body;

and

(2) the public must be notified by posting a copy of the notice according to this ~~section.~~ **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.

I.C. § 5-14-1.5-6.1 Amended Section 1 Effective July 1, 2012

IC 5-14-1.5-6.1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

- 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.
 - (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.**

I.C. § 5-14-1.5-7 Amended Section 15 Effective July 1, 2012

IC 5-14-1.5-7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

- Sec. 7. (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;
 - (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 the 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.

~~(g)~~ **(h) A court shall expedite the hearing of an action filed under this section.**

I.C. § 5-14-1.5-7.5 New Section 16 Effective July 1, 2012

IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Sec. 7.5. (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).

Access to Public Records Act - I.C. § 5-14-3

I.C. § 5-14-3-3 Amended Section 17 Effective July 1, 2012

IC 5-14-3-3, IS AMENDED TO READ AS FOLLOWS: [EFFECTIVE JULY 1, 2012]:

Sec. 3. (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.

(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.

I.C. § 5-14-3-4 Amended Section 18 Effective July 1, 2012

IC 5-14-3-4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Sec 4. (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 the public agency:

(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);

~~(ii)~~ (iv) the victim of a crime; or

~~(iii)~~ (v) a family member of a correction 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 of 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

I.C. § 5-14-3-5

Amended

Section 1

Effective January 30, 2012

IC 5-14-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Sec. 5. (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 (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

I.C. § 5-14-3-9 Amended Section 19 Effective July 1, 2012

IC 5-14-3-9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Sec. 9. (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.**

(j) **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)~~ (k) A court shall expedite the hearing of an action filed under this section.

I.C. § 5-14-3-9.5 New Section 20 Effective July 1, 2012

IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Sec. 9.5. (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).

I.C. § 5-14-3-10

Amended

Section 24

Effective July 1, 2012

IC 5-14-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Sec. 10. (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 ~~misdemeanor~~ 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.