

## Insights

### Exceptions to Indiana's Open Door Law and Access to Public Records Act Set to Expire on May 23, 2020

May 14, 2020

By: Christopher W. Bloomer and Robert S. Schein

Beginning March 16, 2020, Indiana Governor Eric Holcomb issued a number of Executive Orders (“Orders”) easing statutory requirements concerning Indiana’s Open Door Law (“ODL”) and Access to Public Records Act (“APRA”) in light of the COVID-19 pandemic. For further information, please refer to earlier Krieg DeVault Client Alerts.<sup>1 2</sup>

On May 1, 2020, Governor Holcomb issued Executive Order 20-26, the *Roadmap to Reopen Indiana for Hoosiers, Businesses and State Government* (the “Roadmap”). Pertinent to the ODL and the APRA, the Roadmap provides that earlier exceptions to public access laws will expire on May 23, 2020. To be sure, the Roadmap may be further modified or extended; but for now, public agencies should prepare accordingly for a return to pre-COVID-19 public access.

#### ODL

The Orders permitted governing bodies to hold meetings exclusively by videoconference or by telephone conferencing, so long as a quorum of members participate and any meeting is made available to members of the public and media. Many governing bodies have welcomed this opportunity, but **pursuant to the Roadmap, pre-COVID-19 statutory requirements will be in force after May 23, 2020, including the requirement that meetings be held in-person.**<sup>3</sup> Therefore, public agencies should plan accordingly for in-person meetings after May 23, 2020, but remain flexible in the event the Roadmap is extended.

As to reopening, generally, political subdivisions and local units gearing up to reopen governmental facilities, including (but certainly not limited to) opening facilities for public meetings which will host members of the public, committee members, commission members, council members, governmental executives, staff, applicants, the media, and others, must prepare and implement a COVID-19 safety plan pursuant to the Governor’s Roadmap. Should you need assistance with drafting a reopening plan, Krieg DeVault is available to help.

#### APRA

The Orders required records requestors to request records via remote means only (U.S. Mail, fax, e-mail, etc.), and provided that public agencies could respond to records requests within a reasonable period of time. This is a relaxed standard; typically, requests are deemed denied by the public agency if, among other circumstances, twenty-four (24) hours elapses after any public agency employee refuses to permit inspection and copying for an in-person or telephonic request, or if seven (7) days elapses from the date a person requests a record by mail or facsimile.<sup>4</sup> **Pursuant to the Roadmap, pre-COVID-19 statutory requirements will be in force after**

**May 23, 2020, including requirements that APRA requests be acknowledged within certain timeframes, and record production, if any, occur within a reasonable time thereafter.**

If you have questions pertaining to information found in this alert please contact **Christopher W. Bloomer** or reach out to any member of Krieg DeVault's **Public Finance and Municipal Law team**.

[1] <https://www.kriegdevault.com/insights/indianas-open-door-law-odl-partially-suspended-response-covid>

[2] <https://www.kriegdevault.com/insights/indianas-public-access-laws-further-suspended-response-covid->

[3] *Besides charter schools, state agencies, and airport authorities acting consistent with Ind. Code § 5-14-1.5-3.6, “[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.” Ind. Code § 5-14-1.5-3.5.*

[4] *Ind. Code § 5-14-3-9.*