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Insights

Indiana's Public Access Laws Further Suspended in Response to COVID-19

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On March 16, 2020, Indiana Governor Eric Holcomb issued Executive Order 20-04, which contained certain exceptions to Indiana's Open Door Law ("ODL") and Access to Public Records Act ("APRA"). For further information concerning Executive Order 20-04, please refer to Krieg DeVault's recent Client Alert, *Indiana's Open Door Law ("ODL") Partially Suspended in Response to COVID-19*, dated March 18, 2020.[1]

Following his Stay at Home Order issued on March 23, 2020, Governor Holcomb issued Executive Order 20-09, titled "Relating to the Continuity of Operations of Government" (the "Continuity Order"). As it relates to the ODL and APRA, the Continuity Order authorizes the following:

> **1. During the COVID-19 public health emergency, all governing bodies may meet 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.** The Governor's Order 20-04 permitted all political subdivisions to participate by electronic communication (previously, only charter schools, public agencies of the state, and airport authorities were so authorized) even without having previously adopted a policy concerning same. However, Order 20-04 still required at least one member of a governing body to be present at a meeting. That requirement is now superseded pursuant to the Continuity Order allowing political subdivisions to hold meetings and take action by electronic means without the need of having one member of a governing body present at the meeting.

Political subdivisions will need to determine the best course of action for holding the public meetings, while still permitting the public and media to view the meeting, and if required, allow for questions from the public. As a result, some political subdivisions may find it prudent to still have one member physically present at the governmental building, where infrastructure already exists, and where members of the public and media may more-easily attend. Others may have the ability to host an online meeting with video capability in which the public may log on and ask questions at the appropriate time with this format. Further considerations may include conducting a meeting by teleconference with only members of the governing body able to speak and be heard in order to avoid the inevitable interruption caused by a person failing to mute their device, or requiring members of the public to submit questions in writing prior to the meeting to a designated person and have those questions read into the record at the meeting.

During the COVID-19 public health emergency, remote meeting capabilities are welcomed, but governing bodies will need to balance the challenges and considerations to determine how best to comply with the Continuity Order (and other directives), and still adhere to Indiana Law providing for open meetings.

> **2. Until 8 a.m. on April 7, 2020, all members of the public shall submit APRA records requests remotely via U.S. Mail, fax, or electronic mail.**

3. **After 8 a.m. on April 7, 2020, public agencies will acknowledge receipt of remotely-submitted APRA records requests made between March 23 and April 7, 2020 within a reasonable period of time. The ordinary requirement that APRA records requests be acknowledged within seven days of submission during this approximate two week period is suspended.**

Political subdivisions will need to accurately track all remote submissions made during the time period articulated in the Continuity Order, and be sure to acknowledge the same. All other requirements under the APRA, including that the records be produced for inspection or copying, remain intact, so political subdivisions will further want to ensure APRA requests that are submitted during the subject time period are reviewed and analyzed, and any records not subject to mandatory or discretionary non-disclosure rules are provided to the records requestor within a reasonable period of time.

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.