



# INDIANA COALITION FOR OPEN GOVERNMENT

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## **CITIZENS, MEDIA WANT INDIANA PUBLIC ACCESS COUNSELOR TO ENFORCE SUNSHINE LAWS FIRST STATEWIDE SURVEY OF USERS REVEALS ENFORCEMENT PREFERRED OVER ADVICE**

**INDIANAPOLIS**—A statewide survey of people who tapped the Indiana Public Access Counselor's office for legal advice reveals that nearly 91 percent of the respondents believe the PAC should have enforcement authority to punish government officials who violate state sunshine laws.

The telephone survey was conducted in September by Indiana University's Center for Survey Research on behalf of the Indiana Coalition for Open Government (ICOG). The survey was funded with a grant from the National Freedom of Information Coalition (NFOIC) based in Columbia, Missouri.

"This survey sheds light on the usefulness of the PAC office," said Keith Robinson, president of the Indiana Coalition for Open Government who is The Associated Press bureau chief in Indianapolis. "The public—and the government that serves it—has a stake in the outcome. Clearly, users believe that the PAC's lack of enforcement power is a weakness that needs to be addressed."

The survey's major findings include:

- An overwhelming majority, nearly 91 percent, believe the PAC should have the authority to levy fines or issue enforcement actions—a power not currently given to the PAC by the Indiana legislature.
- A slight majority of respondents, or 55.8 percent, had contacted the PAC more than once for different cases.
- A majority, or 65 percent, of those whom the PAC advised should have access to records or meetings believed that a formal advisory opinion from the PAC contributed to a successful outcome—gaining access to a record or entry into a meeting.
- Another 90.8 percent of respondents are likely to use the office again for advice.
- The numbers drop, however, when respondents were asked to rate sunshine laws in Indiana; with 13.3 percent rating Indiana's laws as excellent and 45 percent as good.
- While only 24.2 percent had contacted legislators to recommend improvements to Indiana sunshine laws, 65.5 percent of those individuals were not at all satisfied with the outcome or results.

The Indiana PAC survey is the first of its kind in the nation, according to NFOIC Director Charles Davis—an attempt to determine if citizens who contact the PAC for legal advice about public records and meetings are satisfied with the advice given as well as the eventual outcome in securing access to public records or public meetings. Davis will share the survey results and questionnaire with 48 other state access coalitions. ICOG is Indiana's only state access coalition with a governing board represented by lawyers, media, citizens, academics and researchers.

"This important study highlights the potential for public access counselors to transform outcomes in freedom of information disputes," Davis said. "These offices across the country promise to change the way citizens interact with their governments. This survey is an important advancement and will be read by access advocates nationally."

Tony Fargo, assistant professor at the IU School of Journalism and lead researcher on the project, said there was an unusually high response rate to the survey—nearly 55 percent—with few declining to participate.

Individuals who participated in the survey had contacted the Indiana PAC for a formal advisory opinion during the state's fiscal years 2005-2006 and 2006-2007. The majority of 120 of 218 people called were members of the public or the media.

"The survey focused on the public's perception of the public access counselor's effectiveness because the public is the main beneficiary of open government," Fargo said. "The response rate indicates a high level of interest in improving access to government records and meetings."



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Gov. Frank O'Bannon created the PAC office by executive order in 1998 after seven newspapers in Indiana conducted an audit of commonplace public records in 92 counties and found widespread violations (or non-disclosure) by public officials. The legislature made the PAC position a permanent one in state government, but did not give the PAC any enforcement or final resolution authority.

Today, the Indiana PAC's authority in resolving record and meeting disputes remains advisory only. Both budget and personnel in the state office have also remained nearly static.

According to the NFOIC's "Mediation Without Litigation" white paper published this year, 16 states have some kind of mediation office, commission or appointee reviewing complaints about access to public meetings and records. But only one—Connecticut—has broad enforcement powers, including the authority to issue subpoenas.

Indiana's lack of enforcement provisions in its public records law is also among the reasons this state earned a failing grade in a recent report issued by the Better Government Association and the NFOIC, though it ranked among the top 15 states of 38 checked for openness.

ICOG presented its findings and full report to Indiana's 150 legislators and Indiana Gov. Mitch Daniels. The complete report, including statistical and demographic analysis, is available online at [www.indianacog.org](http://www.indianacog.org).

A sample of survey responses to open-ended questions:

- "When public agencies don't respond to the information request and they give you information other than what you request, the PAC should have some power to produce that requested information."
- "Give them some legal bite. They were able to issue an opinion but the opinion did nothing."
- "I don't think the problem is with the PAC counselor, I think the problem comes before the PAC. You have public bodies in the state of Indiana who feel that they don't have to release any information to anybody. They feel that they can do things any way they feel and don't take regard of the law. If you send in for a freedom of information request, it should never have to go to the PAC Office. It should get results prior to going there."
- "The law in Indiana has to be changed so that there is punishment for public officials who either actively or passively disobey or ignore the public access law. The law now permits too much opportunity for savvy public officials to delay compliance. This is discouraging and unfair to public citizens."
- "... an Indiana code provision that has no enforcement capability is like a toothless dog that barks loud but cannot bite. Therefore, the intruder soon learns that the bark is backed by nothing."

## **About the Indiana Coalition for Open Government**

The [Indiana Coalition for Open Government](http://www.indianacog.org) is a nonprofit organization whose mission is to promote legislative reform and protect the Constitutional rights of access to public records and meetings. Founded in 1995 as FOIndiana, ICOG is the only statewide access coalition in Indiana—representing both citizen and media groups and organizations. ICOG is also a member of the National Freedom of Information Coalition.

## **About the Indiana University School of Journalism**

The [IU School of Journalism](http://www.iu.edu/schools/journalism) has been a leader in journalism education and research for nearly 100 years. More than 750 undergraduate students and 50 graduate students take a rigorous curriculum of journalism skills courses and liberal arts classes to give them a well-rounded view of the world. Outside the classroom, students interact with professional journalists who are part of the national speaker series, study abroad in the London program, work at award-winning student media outlets and network with alumni who work across the country and internationally.

## **About the National Freedom of Information Coalition**

[The National Freedom of Information Coalition](http://www.nfoic.org) at the University of Missouri's School of Journalism, serves as the headquarters of the state freedom of information movement. The NFOIC provides support, financial as well as programmatic, to a national network of 48 state Freedom of Information (FOI) groups, with a goal of completing a national network in 2008. The NFOIC annually offers grants to help foster the creation and growth of state FOI coalitions to protect the public's right to an open government.