

Measuring Attitudes About the Indiana Public Access Counselor's Office: An Empirical Study

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The IU School of Journalism and the IU Center for Survey Research conducted this study for the Indiana Coalition for Open Government. It was funded through a grant from the National Freedom of Information Coalition. ICOG received funding from the NFOIC through a grant from the John S. and James L. Knight Foundation. Established in 1950, the John S. and James L. Knight Foundation makes national grants in journalism, education and arts and culture.

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Acknowledgments

The Indiana Coalition for Open Government (ICOG), a nonprofit citizens advocacy group, sought a grant from the National Freedom of Information Coalition (NFOIC) to fund a survey of people who have sought formal advisory opinions from the Indiana Public Access Counselor's Office. The purpose was to measure perceptions about the effectiveness of the Public Access Counselor (PAC) in improving public access to government-held records and government agency meetings in Indiana.

The NFOIC approved the grant application for \$11,600 in 2006. ICOG then contracted with the Indiana University School of Journalism in Bloomington to conduct the survey and write this report. The School worked with the IU Center for Survey Research, which conducted the survey by telephone in September 2007.

ICOG received funding from the NFOIC through a grant from the John S. and James L. Knight Foundation. Established in 1950, the John S. and James L. Knight Foundation makes national grants in journalism, education and arts and culture.

This report was written by Yunjuan Luo, a first-year doctoral student in the IU School of Journalism in Bloomington, and Anthony L. Fargo, an assistant professor in the School. Tim Street, a communications assistant in the journalism school, designed the report's layout.

At the IU Center for Survey Research, Julie Baker was the project manager for the study. John Kennedy is the director of the center.

The Indiana Coalition for Open Government began as FOIndiana when it was founded by the Indiana Pro Chapter of the Society of Professional Journalists in 1995. It became the Indiana Coalition for Open Government in 2002. The interim president is Keith Robinson, Indianapolis bureau chief for the Associated Press.

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All faculty or student research projects at IU involving the study of persons must be approved by the Human Subjects Committee. If you have questions about your rights as a respondent to this survey, contact the Human Subjects Committee, Indiana University, Carmichael Center L03, 530 E. Kirkwood Ave., Bloomington, IN 47408, call (812) 855-3067, or e-mail the committee at iub_hsc@indiana.edu. The project number is 07-12227.

For more information about ICOG, visit its Web site, www.indianacog.org. Interim President Keith Robinson can be reached at (317) 509-1197 or by e-mail at krobinson@ap.org.

Conflict of Interest Statement

Professor Fargo is a member of the ICOG board but took no part in board votes regarding the grant or the survey project. Neither ICOG nor the IU School of Journalism had any stake in the outcome of the survey. Professor Fargo did not profit from the grant, which paid for a graduate assistant stipend for Ms. Luo and for the Center for Survey Research's administration of the survey. No one involved with the survey had a personal or professional relationship with the public access counselor.

EXECUTIVE SUMMARY

More than 90 percent of the people who have used the Indiana Public Access Counselor's Office in the last two years believe that the PAC Office should have the power to enforce Indiana's public record and open meeting laws.

The Indiana University Center for Survey Research conducted a survey in September 2007 through a partnership with the IU School of Journalism, which analyzed the results and wrote this report. The Indiana Coalition for Open Government funded the survey through a grant from the National Freedom of Information Coalition. ICOG received funding from the NFOIC through a grant from the John S. and James L. Knight Foundation. Established in 1950, the John S. and James L. Knight Foundation makes national grants in journalism, education and arts and culture.

The purpose of the survey was to measure attitudes about the effectiveness of the PAC Office, which was created by Gov. Frank O'Bannon in 1998 to help Indiana residents and public officials settle disputes over the public record and open meeting laws without litigation.

The survey of 120 people who filed complaints with the PAC Office after being denied access to records or meetings in Indiana between July 1, 2005, and June 30, 2007 found that 68.3 percent of the people who took the survey rated their experiences with the PAC Office as "excellent" or "good," while 17.5 percent said the experience was "poor."

About 69 percent of the survey respondents said the PAC advised that they should have had access to records or meetings. About 19 percent of those respondents pursued further legal action to obtain

access after the favorable PAC decision.

Also, about 58 percent of respondents rated Indiana's Access to Public Records Act and Open Door Law as "excellent" or "good."

But 90.8 percent of the respondents said that the PAC Office should have some power to enforce Indiana's sunshine laws, and adding enforcement power to the office was the most common response to an open-ended question about what could be done to improve the PAC Office. Currently, the PAC Office's role is advisory only, and it has no power to force public agencies to provide access to public records or meetings.

A statistical analysis of the survey results found that respondents who reported excellent or good experiences with the PAC Office also rated sunshine laws highly. Likewise, persons who were advised they should receive access to records or meetings were more likely to rate their experiences with the PAC favorably.

In order to ensure that the survey population would be large enough to produce significant results for analysis, the Center for Survey Research attempted to call all 218 members of the public and media with valid telephone numbers who filed complaints with the PAC Office during the two-year study period. The response rate of 120 persons who completed the survey is 55 percent, which is high for a telephone survey, according to the Center for Survey Research. Many surveys of this type use a random sample of persons eligible to take the survey, in which case the results are reported with a margin of error. Because this survey did not involve a random sample, no margin of error was calculated.

THE PUBLIC ACCESS COUNSELOR'S OFFICE – WHAT IT DOES, AND WHY

Indiana's Public Access Laws

State and federal statutes require that public officials make many government agency records available to the public and allow the press and public to attend meetings of public boards and commissions. The laws, often referred to as sunshine laws, vary widely from state to state. In Indiana, the Indiana Open Door Law¹ and the Indiana Access to Public Records Act² govern access to state and local government records and meetings.

The purpose of the public records law is summed up in the statute's first section:

“A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.”³

The importance of access to public records has been demonstrated many times over the years by media stories, although the media are by no means the only people who use public records or attend government meetings. One recent example of an important news story that could not have been done without access to public records was *The Indianapolis Star's* coverage of the death of 3-year-old TaJanay Bailey, allegedly

at the hands of her mother and the mother's boyfriend while state agencies were monitoring the child's care.⁴ Earlier this year, WTHR-TV won several major national awards for a series of stories about problems with tornado warning systems in Indiana.⁵ That series also relied on public records.

Despite the pro-access language in the statute and examples of important information reaching the public through the release of public records, government agencies are not always forthcoming with access. The extent of government hostility and resistance to access laws, as well as officials' ignorance of the laws, was illustrated in Indiana when seven newspapers got together in 1997 to conduct a statewide audit of compliance with the public records law. Journalists from the seven newspapers visited all 92 Indiana counties and asked for daily crime logs, law enforcement incident reports, the salaries of men's and women's high school basketball coaches, and minutes of school board meetings. They found that public officials in Indiana routinely violated the records law and often seemed hostile to routine requests for records.⁶

Eight Indiana newspapers conducted a similar public records audit in 2004 and found that public officials did better than in 1997. However, officials in only 11 of the 92 Indiana counties supplied all four of the documents journalists requested in each county within the statutory time limit.⁷

In addition to the problems with getting records on time, reporters who conducted the 1997 and 2004 audits also found that government employees demanded to know why they wanted the records. However, the law states that no person can be denied access to a record because he or she does not tell the agency why the person wants the record.⁸

More recently, the Muncie *Star-Press* reported that two local officials had withheld records in violation of the law. One of the public officials mentioned in the story said he withheld the records, which identified public employees, because the requester would not state a reason for wanting the information. Heather Willis Neal, the current public access counselor, told the newspaper that one of the most common problems her office encountered involved government officials who withheld records

“[Using the PAC Office] allows these types of matters to be handled at a non-litigation setting. It provides an option. In many states, if you run into a problem with a particular government agency, your choice is to sue them in court. And that’s a big step.”

without statutory authority to do so. The single most common violation statewide, she said, was failure to respond to requests for records within the time required by statute.⁹

Of course, the sunshine laws in Indiana and elsewhere, like all statutes, are open to interpretation. Despite the stirring language in the introduction to the public records law, there are contradictions in the statutes, including numerous exemptions allowing government-held information to be withheld from public view.

Also, there are no penalties for public officials who violate the laws unless a member of the public sues. The public records law allows a person who sues an agency over failure to release a record to recover attorney’s fees and other court costs if he or she prevails.¹⁰ There are no other criminal or civil penalties for public officials who fail, intentionally or otherwise, to comply with the law. However, Indiana’s public records law does provide penalties for public officials who disclose material that should have remained confidential.¹¹ Theoretically, public agencies have more to fear from releasing a document that should have been kept confidential than from failing to release one that should have been public. Research for this report turned up no examples of a public employee being prosecuted for releasing confidential information.

For whatever reason, some government bodies would rather fight than provide access. In 2005, the weekly *Knightstown Banner* took the town of Knightstown all the way to the Indiana Court of Appeals, which ruled that the paper should have access to a settlement agreement between the town and a fired police dispatcher.¹²

The open meetings law also allows a person who sues an agency to collect attorney’s fees and other costs if the person prevails in a lawsuit, but the meetings law also allows a judge to declare any action taken at an illegal meeting to be void.¹³ That means, for example, that a city council that voted at an illegal meeting to issue bonds for a road

project might have to halt the sale of the bonds.

The lack of enforcement provisions in the Indiana public records law was among the factors that earned the state an “F” in a recent report from the Better Government Association and the National Freedom of Information Coalition. The report rated state public record laws on the basis of whether the laws provided a meaningful way for people to appeal when denied access and provided punishment for public officials who violated the laws.¹⁴ The report noted, however, that Indiana was one of 38 states that failed the test, and overall Indiana ranked among the top 15 states for openness.¹⁵

State Methods of Avoiding Lawsuits

One reason that the Better Government Association and the NFOIC were concerned about alternatives to lawsuits over access disputes is because it is expensive to sue a government agency for failing to provide access to public records or meetings unless the plaintiff is guaranteed victory and can get attorney’s fees paid. Some states, including Indiana, provide avenues other than the judicial system to aid people seeking access to records or meetings.

For example, the Connecticut Freedom of Information Commission is an administrative agency with five members appointed by the governor. The Commission oversees a staff of 20, including an executive director and general counsel, and has the power to order that access be provided; fine agencies for violations; and declare actions taken at illegally conducted meetings void.¹⁶ New Jersey recently amended its public access laws to create a quasi-judicial proceeding similar to Connecticut’s,

“I had very good luck with [the PAC Office]. They were very informative and I was really satisfied that the answers I got were knowledgeable and they addressed exactly what I was asking.”

but without the power to fine.¹⁷

More common is the approach taken by Indiana and Arizona, Georgia, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New York, Virginia, and Washington, which have either one-person state offices or appointed committees that make recommendations about access to records and meetings, generally and in specific cases, but do not have enforcement power.¹⁸ In Massachusetts, a complaint about access to records is handled by the Supervisor of Records, while local district attorneys investigate and prosecute violations of the meetings law.¹⁹ Attorney generals' offices in six states have the power to issue opinions in regard to complaints from citizens about access to records or meetings, and in Kentucky and Texas the attorney generals' opinions are legally binding.²⁰

Creation of the Indiana Public Access Counselor's Office

In response to the 1997 access audit results, Gov. Frank O'Bannon created the Indiana Public Access Counselor's Office by executive order in June 1998. He appointed Anne Mullin O'Connor as Indiana's first public access counselor to help the public and government officials better understand the sunshine laws. In a memo to state employees shortly before he appointed Ms. O'Connor, Gov. O'Bannon wrote, "For our system of government to work as it should, the people must be able to find out what their government is doing."²¹

The Indiana General Assembly codified the creation of the Public Access Counselor's Office (PAC Office for short) in 1999.²² The PAC is appointed to a four-year term and can only be removed during the term for cause.²³ Gov. Mitch Daniels appointed Indiana's newest and fourth PAC, Heather Willis Neal, on June 30, 2007, effective

July 1. Preceding Ms. Neal were Ms. O'Connor (1998-2003), Michael Hurst (2003-04), who resigned early in his term to take another job in state government, and Karen Davis (2004-07).

The PAC's mission is to provide advice and assistance concerning

Indiana's public access laws to members of the public and government officials and their employees.²⁴ The PAC has the duty of issuing written advisory opinions in response to formal complaints within either seven days (for priority complaints) or 30 days of receipt by the office,²⁵ so long as there is no pending judicial proceeding under the Indiana record or meeting laws on the same matter.²⁶ The PAC may also respond informally to inquiries about public access to meetings and records of public agencies received by telephone, e-mail, FAX, or letter.²⁷ The PAC Office also answers inquiries about its duties and powers and general inquiries about access that are not tied to specific situations involving government agencies.

The PAC also may train public officials and educate the public on its rights of access and the responsibilities of public agencies under state access laws. The PAC makes educational presentations on the state's public access laws to various groups around the state. Through June 30, 2007, the PAC Office made 285 educational presentations, according to annual reports available on the PAC Web site.²⁸

Collaborating at first with the Indiana attorney general, the PAC Office printed the *Public Access Handbook*, which summarized the public record and open meeting laws and court cases interpreting those laws. Later, for budgetary reasons, the PAC authorized the Indiana Coalition for Open Government and the Hoosier State Press Association to publish additional copies of the handbook at ICOG's and HSPA's expense.²⁹ More than 10,000 printed copies of the handbooks have been distributed to public officials and members of the public.³⁰ The PAC Office also has published other educational materials, such as a handbook on public access for law enforcement agencies.

The PAC has the power to make legislative recommendations to the General Assembly

concerning ways to improve public access rules but apparently has never done so. Since July 1, 2001, the PAC has served as a member of the Oversight Committee on Public Records, the governing body for the Indiana Commission on Public Records.

The PAC Office has an annual budget of \$150,845, which has remained more or less constant since the office was created in 1999. Salaries and benefits for the PAC and an administrative assistant take up most of the budget, minus about \$6,000 for office supplies, travel for education programs, and other expenses.³¹ The PAC Office was staffed with a second attorney in addition to the PAC until 2006, when the position was converted to an administrative assistant for budgetary reasons.³²

The PAC has no power to enforce Indiana's sunshine laws, but the PAC Office plays an indirect role in lawsuits against public officials who violate the laws. Both the Access to Public Records Act and the Open Door Law state that a person who is successful in a lawsuit against a

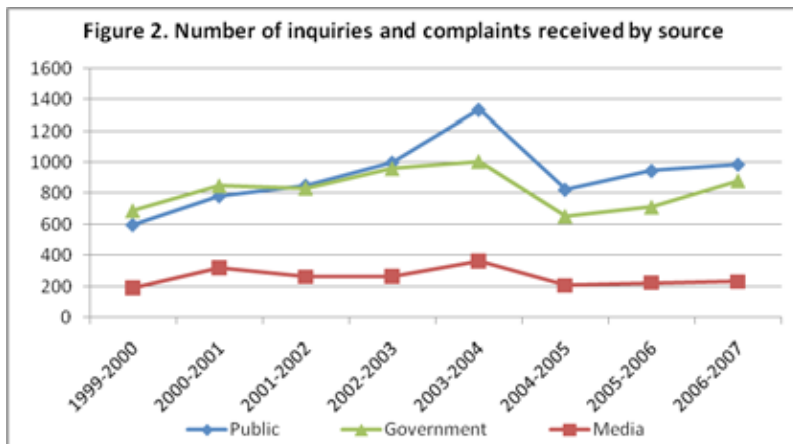
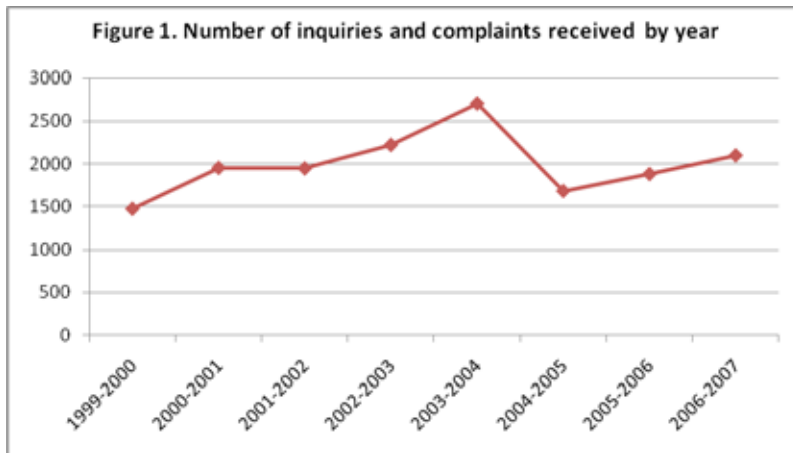
public agency can only collect attorney's fees and other court costs if he or she received a favorable opinion from the PAC Office before filing suit.³³

Inquiries and Complaints

Besides the duties and powers mentioned above, the PAC is required to submit a report to the Legislative Service Agency no later than June 30 of each year. The following information about the activities of the PAC Office was obtained from annual reports available on the PAC Office Web site.

Figure 1 shows the number of inquiries and complaints the PAC Office received from 1999 to 2007. Inquiries are general questions about the access laws and the PAC Office's powers and duties; complaints deal with specific controversies over access. The office had received 15,951 inquiries and complaints, of which 15,650 had been resolved (answered, withdrawn, or dismissed), accounting for 98.1 percent, by June 30, 2007. The number of inquiries and complaints received has steadily increased during these years, except for a drop from 2,704 in 2003-2004 to 1,681 in 2004-2005.³⁴ Figure 2 indicates the number of inquiries and complaints received from different sources in the past eight years. The total number of inquiries and complaints from the public, including inmates in state prisons and local jails,³⁵ is 7,324, half of all inquiries and complaints received by the PAC Office since 1999. The total number of inquiries and complaints from the government and media, respectively, account for 41.2 percent and 12.8 percent.

Focusing just on complaints about access, Figure 3 shows that the PAC Office had received three times as many complaints about public records (2,763) through June 30, 2007, as about open meetings



(865). The numbers of complaints about public records and open meetings have increased, respectively, by 150 percent and 158 percent from 1999 through 2007. As demonstrated in Figure 4, the PAC has issued a total of 1,141 written advisory opinions, a number that has increased by 512 percent from 41 in 1999-2000 to as many as 251 in 2006-2007. There were 43 opinions pending at the end of the 2006-2007 fiscal year.

Without previous empirical evidence about the rate of lawsuits filed against Indiana public agencies over access issues, it is not possible to determine whether the PAC Office has reduced the number of lawsuits or in a measurable way made records and meetings more accessible. However, by surveying people who have used the office, it is possible to measure the perception of the PAC Office's effectiveness.

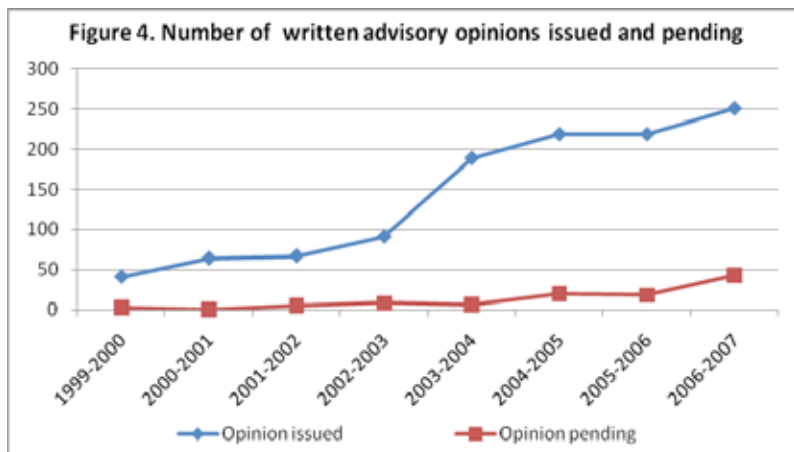
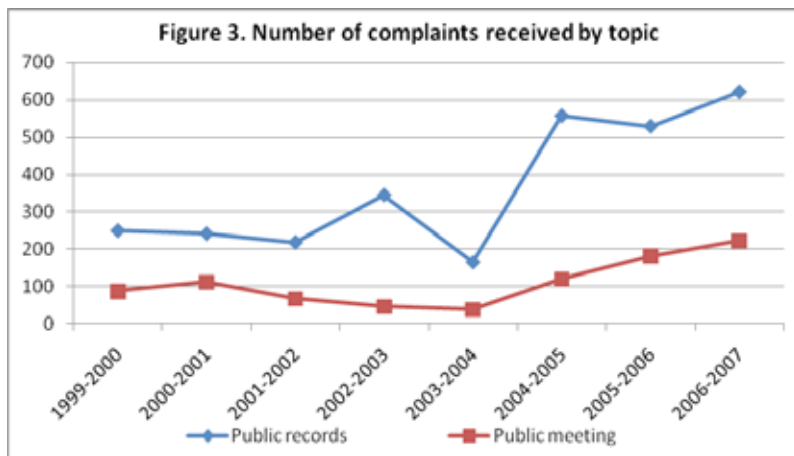
Curious about whether the PAC office was perceived as improving access to information and reducing the number of lawsuits filed against government agencies, the Indiana Coalition for Open Government (ICOG) board developed a draft of a survey of PAC Office users, which the Indiana University School of Journalism and the IU Center for Survey Research edited. The ICOG board asked that the School and CSR conduct a telephone survey of all persons who had made formal complaints to the PAC Office between July 1, 2005, and June 30, 2007.

SURVEY METHODOLOGY

Having a PAC Office in place provides an avenue for the public to report problems with access to records and meetings and for the public and government officials to get advice on what should or should not be available to the public. But how effective is the PAC Office in doing its job?

Anecdotal evidence from the PAC Web site indicated that the office handled between 200 and 300 formal complaints about access each year.³⁶ The office also handles more than a thousand informal inquiries and complaints each year, as shown in Figures 1-4 in the preceding section. When the PAC responds to a formal complaint, the PAC sends a letter to the person(s) making the request, and the letter is posted on the PAC Web site. The ICOG board decided to focus on persons who made formal complaints because the complaints and answers are easier to track and are more detailed than with informal complaints.

At the School of Journalism's request, the PAC provided a spreadsheet for the 2005-06 and 2006-07 fiscal years that contained information about the formal complaints the office received. The information included the status of



each complainant (member of the public, member of the media, government official, or prison inmate), his or her name, his or her phone number, the status of the PAC's response to the complaint, whether the complaint concerned the Access to Public Records Act or Open Door Law, and a file number that the PAC assigned to the complaint.

The complaint logs for 2005-06 and 2006-07 showed a total of 530 formal complaints. There were 303 complaints from the public, 149 from inmates, 40 from the media and 38 from government officials. Prison inmates were eliminated from the study group for the simple reason that they do not have ready access to telephones, and no money was budgeted for a separate mail survey for a subset of the survey population. Government officials were eliminated because the survey was designed to measure the perceived effectiveness of the PAC Office in advising people how to get government agencies to provide access. Writing separate questions for government officials would have made the survey unwieldy to administer.

Eliminating prisoners and government officials left a total of 343 complaints from the public and media to analyze. However, a review of the spreadsheets showed that many people made more than one complaint during the study period, meaning there were more complaints than people. Also, some complaints were withdrawn or consolidated with other complaints. In the end, the spreadsheets yielded 238 different names for the survey population. The Center for Survey Research eliminated 20 more names after discovering that some people had moved or for other reasons changed their phone numbers without leaving a forwarding number. That left a total survey population of 218. Of those 218 people, 120 agreed to take the survey, for a response rate of 55 percent, which the Center for Survey Research said is a high response rate for a telephone survey.

Under federal guidelines for institutions that receive government research money, all Indiana University research projects involving the study of persons must be approved by the IU Human Subjects Committee (HSC). The HSC approved the

survey project in August 2007 and later approved two minor amendments.

Survey interviewing began on Sept. 17, 2007 and was completed on Sept. 25, 2007. The average interview length was nine minutes. Each survey respondent was promised confidentiality.

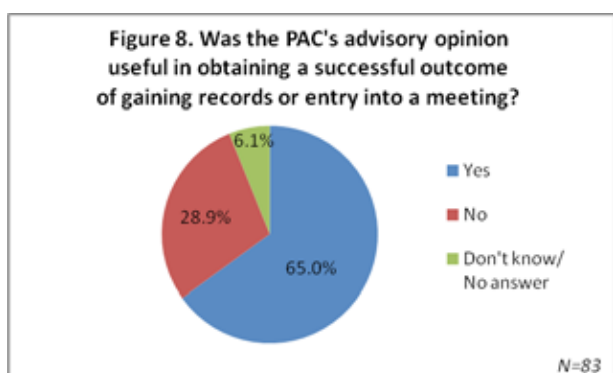
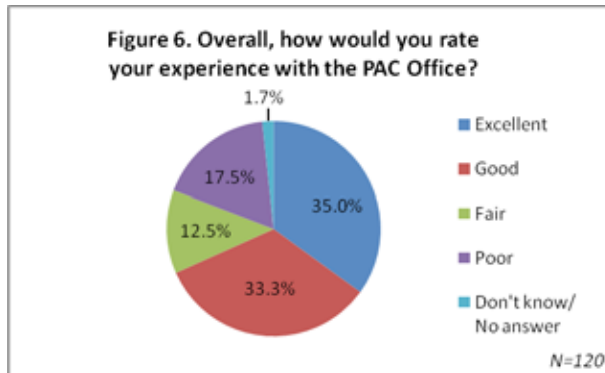
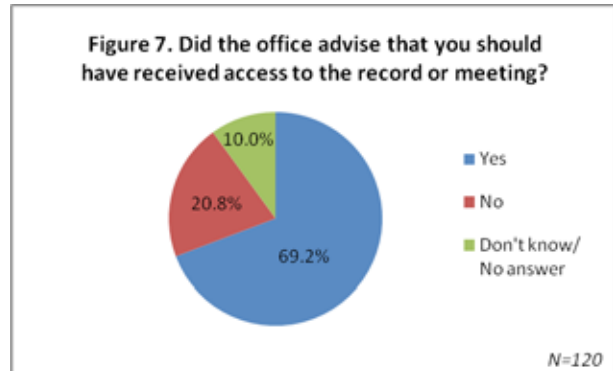
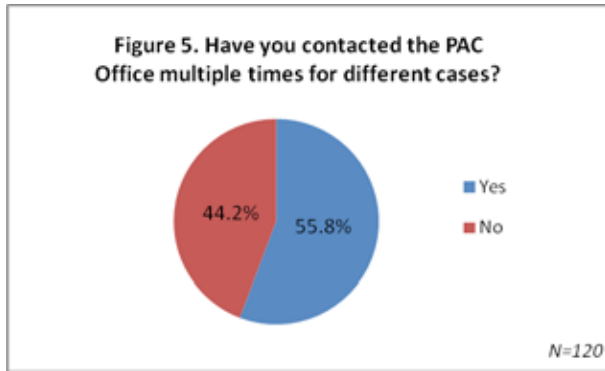
The Center for Survey Research collected data by telephone using the University of California Computer-Assisted Survey Methods software (CASES 5.3j). The center's employees conducted interviews from 9 a.m. to 9:30 p.m. on weekdays, 1 to 5 p.m. on Saturdays, and 1 to 9:30 p.m. on Sundays. The data collection staff included five supervisors and 12 interviewers. All interviewers received training in interviewing techniques before work on this survey began. Interviewers received one hour of training on the ICOG questionnaire. Interviewers were instructed to read questions and response categories at a pace slower than conversation. Interviewers also were instructed to use neutral probes and feedback phrases.

Audio and visual monitoring was regularly conducted by the telephone survey supervisors using the CSR facilities, which do not allow the interviewers to know they are being monitored. Monitoring was conducted randomly, with each interviewer being monitored at least once during each three-hour shift.

All persons in the survey population with confirmed valid telephone numbers were called up to 15 times, unless the respondent refused to participate or the CSR had insufficient time before the end of the study. Cases with unknown validity (persistent no answers or answering devices) were called a minimum of eight times, with calls made during the morning, afternoon, evening, and weekend.

Only 11 persons refused to participate; the other persons who did not take the survey could not be reached or were not eligible for the survey, either because their complaints were duplicates with others or because they were employees of the person who actually made the request.

The Center for Survey Research provided data collected during the survey to the School of Journalism, which analyzed it using SPSS (Statistical



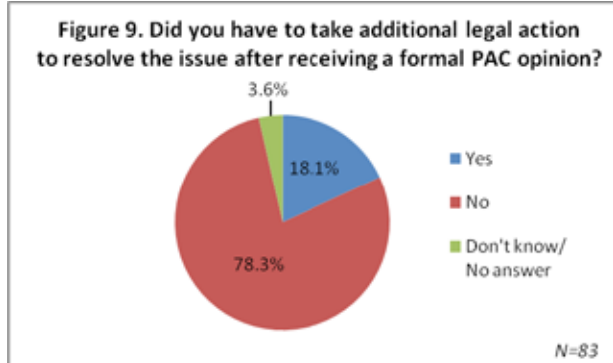
Package for the Social Sciences) software. The survey center provided frequency information (how many people answered each question in a particular way) as raw numbers and percentages of the total number of people surveyed.

SURVEY FINDINGS

Frequencies

As shown in Figure 5, a slight majority (55.8%) of the 120 respondents had contacted the Indiana Public Access Counselor's Office more than once for different cases. Figure 6 shows that a majority (68.3%) of the respondents said they believed that the PAC Office had done an excellent or good job in handling their complaints, while 17.5 percent of the respondents said that they had poor experiences with the PAC Office.

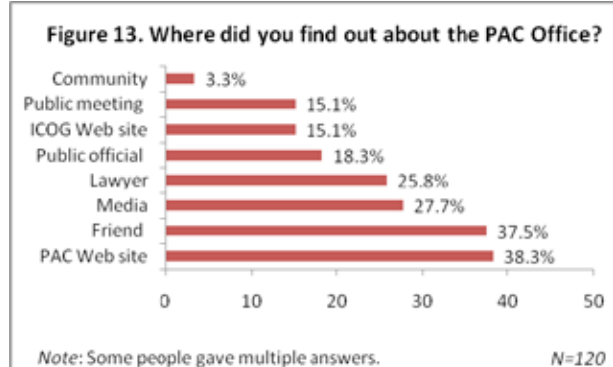
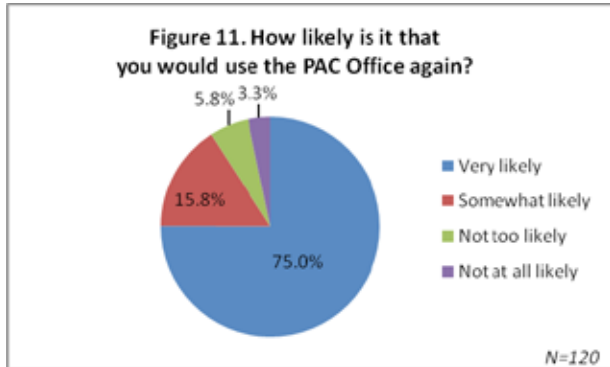
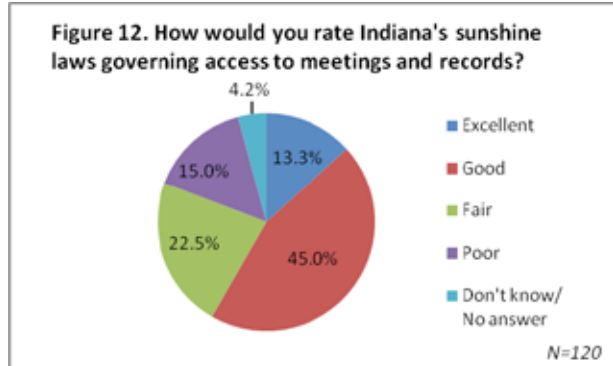
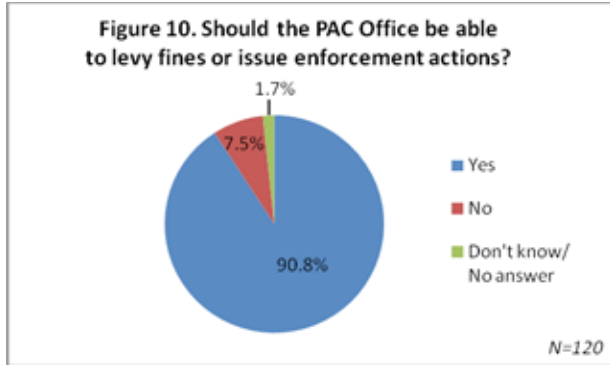
As illustrated in Figure 7 and Figure 8, 69.2 percent of the respondents reported that the PAC advised them that they should have received access to public records or open meetings. Of that number, 65 percent believed that the PAC's advisory opinion



was useful in eventually gaining access to a record or meeting.

Figure 9 shows that a large majority (78.3%) of the respondents did not have to take additional legal action to gain access after receiving a formal PAC opinion in their favor. As one respondent said about using the PAC, "The reason why I think it's a useful procedure is that it allows these types of matters to be handled at a non-litigation setting. It provides an option."

Of the 15 people who did take additional legal action to resolve access problems even after the PAC advised that they should have access, seven said that the action was successful, and one recovered attorney's fees from the agency that denied access. Several of the respondents provided case numbers

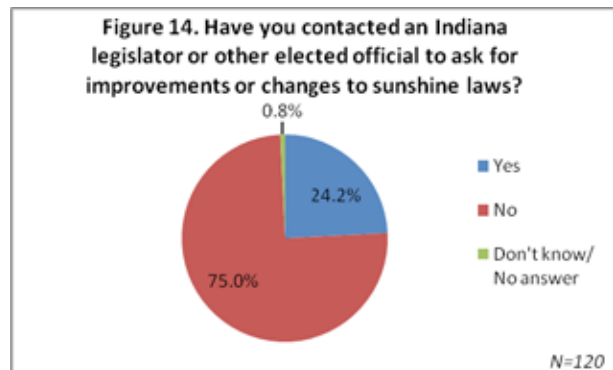


and/or the names of courts or judges that handled the cases, which will be used for additional research. That information is not published here because it would identify individual respondents, who were promised confidentiality to encourage candid responses.

As demonstrated in Figure 10, an overwhelming majority (90.8%) of the respondents believed that the PAC Office should be able to levy fines or issue enforcement actions of some sort against those who do not comply with open meeting or public record laws. For example, a respondent said, “Absolutely – because 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.”

Figure 11 shows that 90.8 percent of the respondents are very likely or somewhat likely to use the PAC Office again, while 3.3 percent said they were “not at all likely” to reuse the PAC Office.

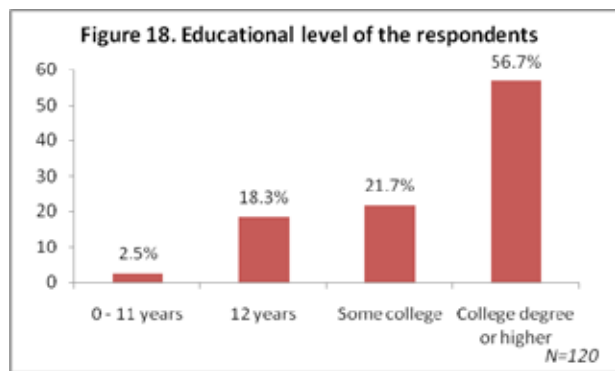
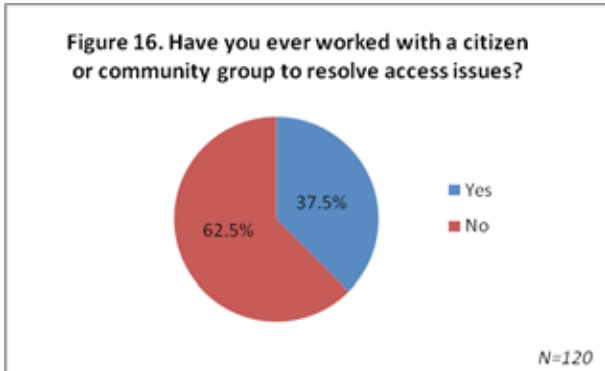
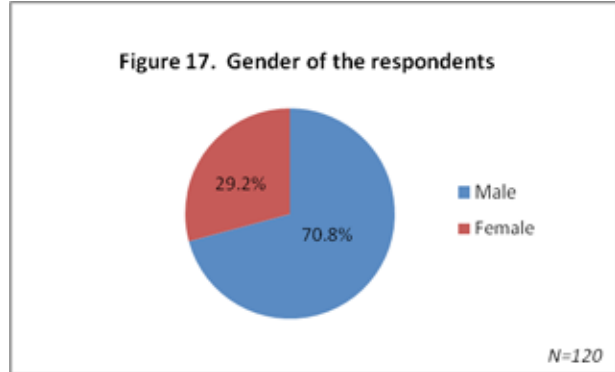
Figure 12 indicates that 13.3 percent of respondents rated Indiana’s sunshine laws as excellent and 45 percent rated them as good. Fifteen percent rated Indiana’s sunshine laws



as poor. Although a majority of the respondents (58.3%) thought highly of Indiana’s sunshine laws, some respondents expressed dissatisfaction with the enforcement of the laws. For instance, one respondent said, “They are well written, but in practice they are often disregarded.” Another said, “I would say they are very good as long as there is follow-up enforcement action.”

Figure 13 lists the PAC Web site as the most common way that respondents learned about the PAC Office in Indiana (38.3%). The next three main sources were friends (37.5%), media (27.5%), and lawyers (25.8%). Respondents could provide more than one answer to that question.

As reported in Figure 14 and Figure 15, 24.2

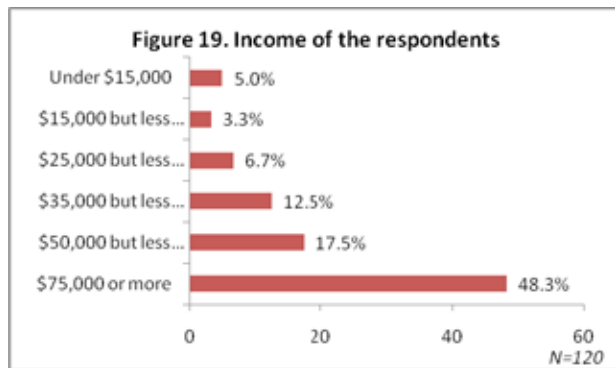


percent of the respondents said that they had contacted an Indiana legislator or other elected official in the last two years to ask for changes to sunshine laws governing access to meetings and records. Among those 29 people, a majority (65.5%) of the respondents were not at all satisfied with the outcome of the contact. Only 3.4 percent said they were very satisfied with the contact and 13.8 percent were somewhat satisfied.

Figure 16 shows that 37.5 percent of the respondents had worked with a citizen or community group to resolve access issues.

Statistical Analysis of Findings

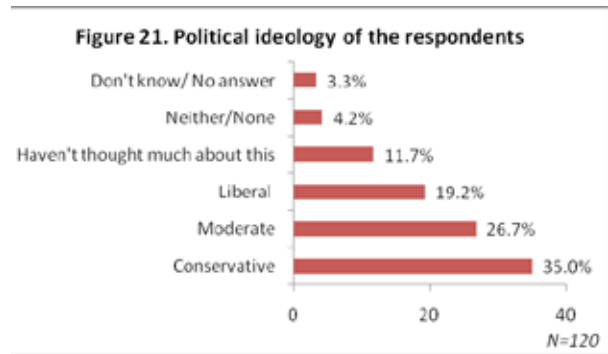
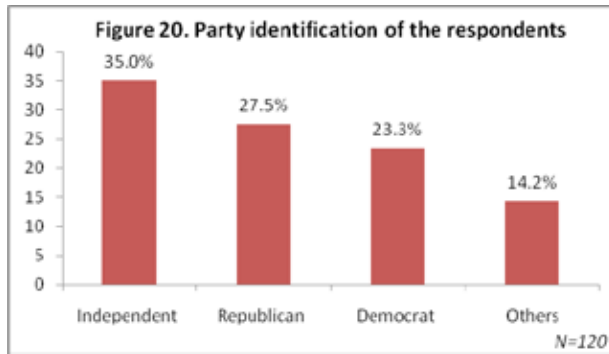
In addition to substantive questions about the PAC Office and Indiana access laws, survey respondents also were asked several demographic questions. Researchers analyzed the demographic material and the substantive questions to determine whether any statistically significant connections existed between attitudes about the PAC, the laws, and demographic material. The researchers also analyzed the possible connections between substantive questions to determine whether an attitude about one issue was closely related to attitudes about another – for



example, attitudes about the PAC Office versus attitudes about access laws.

As shown in Figure 17, 70.8 percent of the respondents were male. A majority (56.7%) of the respondents have undergraduate or graduate degrees, as shown in Figure 18. In addition, Figure 19 shows that a large majority (65.8%) of the respondents had total annual income of \$50,000 or more in 2006, and the highest percent (48.3%) of the respondents earned annual incomes of \$75,000 or more. The survey did not ask respondents to list their occupations.

As far as party identification is concerned, Figure 20 shows that 35 percent of the respondents think of themselves as Independents, 27.5 percent



as Republicans and 23.3 percent as Democrats. When it comes to political ideology, 35 percent of the respondents said they were conservative, 26.7 percent moderate, and 19.2 percent liberal, as shown in Figure 21.

Cross-tabulation analyses found some statistically significant relationships between different variables. Table 1 reveals that the overall rating of the experience with the PAC Office was significantly correlated with whether the PAC advised that the respondent should have access to a record or meeting (Cramer's $V=.478$, $p<.001$). As Table 1 indicates, 42 percent of those who got favorable advice rated their experiences with the PAC Office as excellent, compared with only 20 percent of those who did not get favorable advice.

Table 2 represents a statistically significant association between the overall rating of the experience with the PAC Office and the usefulness of the PAC's advice (Cramer's $V=.473$, $p=.001$). Whereas 50.9 percent of those who believed that the PAC's advice was useful in obtaining a successful outcome rated their experience as excellent, 17.4 percent of those who thought that the PAC's advice was not useful reported excellent experiences with the PAC Office.

As shown in Table 3, researchers also found a significant correlation between the overall rating of the experience and the possibility of reusing the PAC Office (Kendall's $\tau_b=.313$, $p<.001$). Those who had excellent experiences were more likely to reuse the PAC Office (88.1%) than those who had poor experiences (57.1%). Only 19 percent of those who had poor experiences were not at all likely to reuse the PAC Office. This finding implies that the higher the rating of experience, the more likely the

respondents are to use the PAC Office again.

Table 4 demonstrates that the overall rating of the experience with the PAC Office is significantly correlated with the rating of Indiana's sunshine laws (Kendall's $\tau_b=.222$, $p=.007$). However, the linear pattern of association holds only for those who rated Indiana's sunshine laws as good or poor. As illustrated in Table 4, those who had excellent experiences with the PAC Office reported a good rating of Indiana's sunshine laws (63.2%) more than those who had poor experiences (10%). None of those who had excellent experiences with the PAC Office rated Indiana's sunshine laws as poor, but 40 percent of those who had poor experiences with the PAC Office rated Indiana's sunshine laws as poor.

Table 5 indicates a significant correlation between the overall rating of the experience with the PAC Office and the contact with an Indiana legislator or other elected official to ask for changes in sunshine laws (Cramer's $V=.256$, $p=.05$). As shown in Table 5, 26.8 percent of those who had excellent experiences with the office had contacted a legislator or other official about changing the law, while 42.9 percent of those who had poor experiences with the PAC had such contact.

Cross-tabulation analyses suggest that gender is the only demographic variable that was significantly correlated with other variables, although the statistical significance was weak. As shown in Table 6, whereas 89.2 percent of male respondents believed that the PAC Office should be able to levy fines or issue enforcement actions, all the female respondents believed the PAC Office should have enforcement power.

Table 7 indicates that 31 percent of male

Table 1. The overall rating of the experience and the PAC's favorable advice

	The overall rating of experience				<i>Total</i>
	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	
The PAC's favorable advice					
<i>Yes</i>	34(42.0%)	27(33.3%)	13(16.0%)	7(8.6%)	81(100.0%)
<i>No</i>	5(20.0%)	6(24.0%)	1(4.0%)	13(52.0%)	25(100.0%)
Total	39(36.8%)	33(31.1%)	14(13.2%)	20(18.9%)	106(100.0%)
Chi square (X ²)= 24.176, df=3, p<.001					
Cramer's V=.478, p<.001					
<i>Note:</i> The significant level is set at P≤.05.					

Table 2. The overall rating of the experience with the PAC Office and the usefulness of the PAC's advice

	The overall rating of experience				<i>Total</i>
	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	
The usefulness of PAC's advice					
<i>Yes</i>	27(50.9%)	19(35.8%)	6(11.3%)	1(1.9%)	53(100%)
<i>No</i>	4(17.4%)	7(30.4%)	6(26.1%)	6(26.1%)	23(100%)
Total	31(40.8%)	26(34.2%)	12(15.8%)	7(9.2%)	76(100%)
Chi square (X ²)= 16.978, df=3, p=.001					
Cramer's V=.473, p=.001					

Table 3. The overall rating of the experience and the possibility of reusing the PAC Office

	The possibility of reusing the PAC office				<i>Total</i>
	<i>Very likely</i>	<i>Somewhat likely</i>	<i>Not too likely</i>	<i>Not at all likely</i>	
The overall rating of experience					
<i>Excellent</i>	37(88.1%)	5(11.9%)	0(.0%)	0(.0%)	42(100%)
<i>Good</i>	32(80.0%)	7(17.5%)	1(2.5%)	0(.0%)	40(100%)
<i>Fair</i>	7(46.7%)	4(26.7%)	4(26.7%)	0(.0%)	15(100%)
<i>Poor</i>	12(57.1%)	3(14.3%)	2(9.5%)	4(19.0%)	21(100%)
Total	88(74.6%)	19(16.1%)	7(5.9%)	4(3.4%)	18(100%)
Chi square (X ²)= 38.290, df=9, p<.001					
Kendall's tau _b =.313, p<.001					

Table 4. The overall rating of the experience and the rating of Indiana's sunshine laws

	The overall rating of Indiana's sunshine laws				<i>Total</i>
	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	
The overall rating of experience					
<i>Excellent</i>	5(13.2%)	24(63.2%)	9(23.7%)	0(.0%)	38(100%)
<i>Good</i>	4(10.0%)	21(52.5%)	7(17.5%)	8(20.0%)	40(100%)
<i>Fair</i>	3(20.0%)	5(33.3%)	5(33.3%)	2(13.3%)	15(100%)
<i>Poor</i>	4(20.0%)	2(10.0%)	6(30.0%)	8(40.0%)	20(100%)
Total	16(14.2%)	52(46.0%)	27(23.9%)	18(15.9%)	113(100%)

Chi square (X^2)= 25.677, df=9, p<.01
 Kendall's tau_b=.222, p<.01

Table 5. The overall rating of the PAC experience and the contact with an Indiana legislator or other elected official

The overall rating of experience	The contact with an Indiana legislator or other elected official		
	<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Excellent</i>	11(26.8%)	30(73.2%)	41(100%)
<i>Good</i>	7(17.5%)	33(82.5%)	40(100%)
<i>Fair</i>	1(6.7%)	14(93.3%)	15(100%)
<i>Poor</i>	9(42.9%)	12(57.1%)	21(100%)
Total	28(23.9)	89(76.1%)	117(100%)

Chi square (X^2)= 7.686, df=3, p=.05
 Crammer's V=.256, p=.05

Table 6. Gender and support for the PAC Office's ability to levy fines or issue enforcement actions

Gender	Support for the PAC Office's ability to levy fines or issue enforcement actions		
	<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Male</i>	74(89.2%)	9(10.8%)	83(100%)
<i>Female</i>	35(100%)	0(0%)	35(100%)
Total	109(92.4%)	9(7.6%)	118(100%)

Chi square (X^2)= 4.109, df=1, p<.05
 Cramer's V=.187, p<.05

Table 7. Gender and contact with an Indiana legislator or other elected official

Gender	The contact with an Indiana legislator or other elected official		
	<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Male</i>	26(31.0%)	58(69.0%)	84(100%)
<i>Female</i>	3(8.6%)	32(91.4%)	35(100%)
Total	29(24.4%)	90(75.6%)	119(100%)

Chi square (X²)= 6.714, df=1, p=.01
 Cramer's V=.238, p=.01

respondents had contacted an Indiana legislator or other official, compared to 8.6 percent of female respondents. In short, female respondents are more likely than male respondents to believe that the PAC should have enforcement ability, while male respondents are more likely than female respondents to contact an official to seek improvements or changes in sunshine laws. Without further data, it would not be possible to say why gender would make any difference in attitudes toward enforcement and seeking changes in Indiana sunshine laws.

Responses to open-ended questions

In addition to the questions analyzed above, respondents were asked several open-ended questions about their interactions with the PAC and their experiences with state public record and open meeting laws, as well as about groups they had worked with to gain access to government-held information. The two most interesting questions for the purpose of evaluating perceptions about the PAC's performance involved why some respondents did not find the PAC's advice useful and suggestions from respondents on how to improve the PAC Office.

Respondents to the survey who answered "no" when asked whether the formal advisory opinion issued by the PAC was useful in obtaining records or entry into a meeting were asked "Can you tell me why the opinion was not useful?" Twenty-four persons responded. There was no particular consensus about why the PAC's advice did not help them. Several persons said that their complaints

were about possible violations of the Open Door Law, but because the meeting was over by the time the PAC ruled, the PAC's opinion did not solve the problem.

More common was the reply that the public agency involved ignored the PAC's ruling or complied partially, if at all. One respondent said "the PAC had her hands tied" because the agency in question did not deny the respondent records outright, it just said it was "too busy" to comply – for three and a half years. Another said, "The opinion was useful, but that was as far as I got. I never got any records." Still another said that the agency in question "pretty much ignored" the PAC's opinion; "they said they were right, we were wrong, that kind of thing."

Other respondents said that the agencies in question lied to the PAC when she investigated the complaint or continued to give the person requesting access the runaround.

Respondents also were asked for suggestions on how to improve the PAC Office. All of the 120 respondents answered the question "What, if anything, do you think could be done to improve the PAC Office?" A few answered "I don't know" or the equivalent, and some said the office was fine the way it was. But most of the respondents had at least one suggestion each about how either the office or state law could be improved.

The most popular response, given by about 35 percent of the respondents, was some variation on the idea that the PAC should have enforcement power. "When public agencies don't respond to the

“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.”

information request and they give you information other than what you request, the PAC should have some power to produce that requested information,” one respondent said. “Give them some legal bite,” another added.

Others who felt the sunshine laws needed more teeth did not specifically say that the PAC Office should have enforcement power. “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,” one said. “The law now permits too much opportunity for savvy public officials to delay compliance. This is discouraging and unfair to public citizens, and if there are sanctions in place, that’s the most important thing to have done now.”

About one-fifth of the respondents had problems with a specific PAC or with some aspect of the PAC Office. Although the survey population was taken from persons who filed formal complaints during the last two years of Karen Davis’s term as the PAC, some had contacted the PAC Office since Heather Willis Neal took over on July 1, 2007. There were specific comments about Anne Mullin O’Connor, the first PAC; Davis; and Neal. Putting aside the personal comments about specific public access counselors, there were several comments that focused more on general problems with the office.

For example, one person provided five suggestions for improving the PAC Office: “[First], remove all political influence. [Second], have the office realize that public officials can violate the law. [Third], when asked for an opinion, follow the law as it’s written. Don’t bring in extraneous material which is not in the statutes, such as intent. [Fourth], never disregard evidence presented by a citizen and

never mislead a citizen [in] regard [to] what will happen to evidence sent by the citizen. [Last], don’t be swayed by suave words from a government official.”

Several respondents said that their complaints weren’t investigated thoroughly enough. One respondent, for example, was disappointed that the PAC

took information from the respondent, then sought information from the agency in question, and never asked the respondent for more information or to counter the agency’s claims. Another said that the PAC needed to hear “all sides before a determination is given.” Another respondent was more blunt: “My experience with the PAC was biased, ineffective, dishonest and contrary to law. The PAC should spend more time researching the controlling case law before issuing an opinion.”

About 12 percent of the respondents suggested that the PAC needed more staff – “it seems like they’re overwhelmed” – and another 11 percent said that it was difficult to find out that the PAC Office existed. “I think more people should know about it. A lot of people don’t realize that they do have recourse,” one respondent said.

Additional responses to open-ended questions and the full text of some of those summarized here are in Appendix B.

Areas for Future Research

Because the survey population for this study included people who have filed complaints with the PAC Office, the results cannot be generalized for the population at large. The survey population was chosen because people who have used the PAC Office are in the best position to comment on the office’s effectiveness. However, because this survey was the first of its kind in Indiana, and possibly the nation, there are no data for comparison, meaning that this study can only measure perceptions of effectiveness.

This survey could serve as a model for similar studies in other states that have informal mechanisms for solving disputes over access to public records

and meetings. The survey also provides a basis for comparison with future studies of the Indiana PAC Office.

The survey results indicated that respondents had a high level of education and income, but the researchers did not ask respondents about their occupations. Such information would be useful in future studies of this type.

One component of the complaint logs that might bear closer scrutiny was the high number of prison and jail inmates who have filed formal complaints with the PAC Office – 149 out of 530 complaints in 2005-07 came from inmates. It was not practical to include inmates in this study because they could not be reached by telephone, but future studies could include them, or separate studies could focus on inmates. There may be access issues with regard to inmates that are different than issues relevant to the public at large and that are worth exploring.

Examining court decisions in Indiana about access to records and meetings was beyond the scope of this study, but an analysis of some data gathered by this survey, using traditional legal research methodology, could be useful in exploring how access laws have been interpreted by the Indiana courts.

APPENDIX A SURVEY QUESTIONNAIRE

Below is the text of the survey questionnaire, including the number of persons who were asked each question (N=120, for example); how many people gave each possible answer, and the percentage of the total represented by each answer. For example, if 120 people were asked a question and 60 answered “Yes,” the line below would read “Yes 60 50%.”

Questions that established the eligibility of the respondents to participate in the survey and text read by the interviewers to explain the purpose of the survey are not included below.

1. In the past two years have you contacted the Indiana Office of the Public Access Counselor? (N=120)

Yes	120	100%
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2. Have you contacted the PAC Office multiple times for different cases? (N=120)

Yes	67	55.8%
No	53	44.2%

3. Overall, would you rate your experience with that office as excellent, good, fair, or poor? (N=120)

Excellent	42	35.0%
Good	40	33.3%
Fair	15	12.5%
Poor	21	17.5%
Don't Know	1	0.8%
No Answer	1	0.8%

4. Did the office advise that you should have received access to the record or meeting? (N=120)

Yes	83	69.2%
No	25	20.8%
Don't Know	11	9.2%
No Answer	1	0.8%

4A. (If yes to No. 4) Was the formal advisory opinion received from the PAC useful in obtaining a successful outcome of gaining records or entry into a meeting? (N=83)

Yes	54	65.0%
No	24	28.9%
Don't Know	4	4.8%
No Answer	1	1.2%

4B. (If no to No. 4A) Can you tell me why the opinion was not useful? (N=24)

(See Appendix B)

4C. (If yes to No. 4) Did you have to take additional legal action to resolve your issue after receiving a formal PAC opinion? (N=83)

Yes	15	18.1%
No	65	78.3%
Don't Know	3	3.6%

4D. (If yes to No. 4C) Was your legal action successful? That is, did you get the record or access to a meeting that you were seeking? (N=15)

Yes	7	46.7%
No	5	33.3%
Don't Know	3	20.0%

4E. (If yes to No. 4D) Were you also successful in receiving court-awarded attorney fees as required by statute? (N=7)

Yes	1	14.3%
No	6	85.7%

4F. (If yes to No. 4E) Did that amount cover the costs of your legal action? (N=1)

Yes	1	100%
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4G. (If yes to No. 4C) Can you tell us the name of the court in which the legal action was filed or the name of the judge? (N=15)

Yes	8	53.3%
No	5	33.3%
Don't Know	2	13.3%

4H. (If yes to No. 4C) Can you tell me the case number of the lawsuit? (N=15)

Yes	4	26.7%
No	9	60.0%
Don't Know	2	13.3%

5. What, if anything, do you think could be done to improve the PAC Office? (N=120)
(See Appendix B)

6. In your opinion, should the PAC Office be able to levy fines or issue enforcement actions against those who do not comply with open meetings or open records laws? (N=120)

Yes	109	90.8%
No	9	7.5%
Don't Know	1	0.8%
No Answer	1	0.8%

7. How likely is it that you would use the PAC Office again in a query about open records or open meetings?

Very Likely	90	75.0%
Somewhat Likely	19	15.8%
Not Too Likely	7	5.8%
Not At All Likely	4	3.3%

8. How would you rate Indiana's sunshine laws governing access to meetings and records? Would you say they are excellent, good, fair, or poor? (N=120)

Excellent	16	13.3%
Good	54	45.0%
Fair	27	22.5%
Poor	18	15.0%
Don't Know	5	4.2%

9. How did you find out about the PAC Office in Indiana? (Respondents could choose more than one from the list below and "other.") (N=120)

The media	33	27.5%
Community announcement	4	3.3%
PAC Web site	46	38.3%
ICOG Web site	18	15.0%
At public meeting	18	15.0%
From friend	45	37.5%
From a lawyer	31	25.8%
From public official	22	18.3%
Other source	70	58.3%

10. Have you contacted an Indiana legislator or other elected official in the last two years to ask for improvements or changes to sunshine laws governing access to meetings and records? (N=120)

Yes	29	24.2%
No	90	75.0%
Don't Know	1	0.8%

10A. (If yes to No. 10) How satisfied were you with the outcome of the contact? (N=29)

Very satisfied	1	3.4%
Somewhat satisfied	4	13.8%
Not too satisfied	5	17.2%
Not at all satisfied	19	65.5%

11. Have you ever worked with a citizen or community group to resolve access issues? (N=120)

Yes	45	37.5%
No	75	62.5%

11A. (If yes to No. 11) What was the name of the group you worked with? (N=45)

(See Appendix B)

DEMOGRAPHIC DATA

12. Sex of respondent. (N=120)

Male	85	70.8%
Female	35	29.2%

13. What is the highest grade of school or level of education you have completed? (N=120)

0-11 years	3	2.5%
12 years	22	18.3%
Some college	26	21.7%
College degree or higher	68	56.7%
No Answer	1	0.8%

14. Generally speaking, do you usually think of yourself as a Republican, a Democrat, an Independent, or what?

Republican	33	27.5%
Democrat	28	23.3%
Independent	42	35.0%
Something Else	11	9.2%
No Answer	3	2.5%

15. When it comes to politics, do you usually think of yourself as a liberal, a conservative, a moderate, or haven't you thought much about this? (N=120)

Liberal	23	19.2%
Conservative	42	35.0%
Moderate	32	26.7%

Haven't thought much about this	14	11.7%
Neither/none	5	4.2%
Don't Know	1	0.8%
No Answer	3	2.5%

16. Considering all sources of income and all salaries, what was your household's total annual income in 2006 before taxes and other deductions? (N=120)

Under \$15,000	6	5.0%
\$15,000-\$25,000	4	3.3%
\$25,000-\$35,000	8	6.7%
\$35,000-\$50,000	15	12.5%
\$50,000-\$75,000	21	17.5%
\$75,000 or more	58	48.3%
Don't Know	1	0.8%
No Answer	7	5.8%

Appendix B
**SELECTED ANSWERS TO
 OPEN-ENDED QUESTIONS AND
 UNSOLICITED COMMENTS ON
 CLOSE-ENDED QUESTIONS**

Some questions on the PAC survey were open-ended, allowing respondents to say whatever they wanted. The Center for Survey Research interviewers typed the text of their comments, and representative examples are provided below. The answers have been edited to remove any identifying information because the respondents were promised confidentiality. Also, they have been edited to correct obvious errors in transcription and for clarity.

Also, some respondents volunteered additional comments to close-ended questions, and examples of those also are recorded here. Again, material that would tend to identify the respondent has been removed.

Overall, would you rate your experience with that (PAC) Office as excellent, good, fair, or poor? (Volunteered responses)

“It makes all the difference in the world as to who is the PAC. Anne Mullin O’Connor was a great person to work with. Karen Davis would bend over backward to not rule against a government agency. The person who has the job now is the most unskilled of the three.”

“In the last few months they’ve changed PACs. I handle all of the complaints for our paper. Karen Davis used to be the PAC. With Karen, excellent. With the new PAC, poor. We are a believer in the PAC; however, the PAC Office is only as good as the PAC.”

(If the PAC’s advice was not useful) Can you tell me why the opinion was not useful?

“The town ... has consistently dragged their feet on producing records, not because they deny me records but because they say they are too busy. I’m waiting for records requested three and a half years ago. The PAC had her hands tied because they do not deny me records, there is just no law that they have to produce them in a reasonable time.”

“Because the agency in ... County ignored the ruling. There was no meat behind their finding there was a violation, [and] since there was no consequence, they ignored it.”

“On [an] Open Door Law violation, the opinion is issued after the fact. A violation cannot be corrected after the fact. An opinion is strictly opinion – it does not carry the weight of law; [but it] could help prevent similar violations in the future.”

“They pretty much just ignored it – said they were right, we were wrong, that kind of thing.”

“Because I did not get the information that I asked for. She stated that the office was wrong – they should have removed the documents that were exempt and sent me the rest of them. ... I didn’t get the documents I asked for. My option was to file a lawsuit against the office and make the judge get them to give them to [me] but that doesn’t help

me. ... If something is the law I shouldn’t have to make them do it, they should do it anyway. This PAC system is creating more headaches – they have no power to make them give me the documents.”

“Because the opposing party still refuses to give us the access. I would like to say that if the PAC Office finds for the person asking for help and it is found in their favor, that the PAC Office has the ability or is given the right to pass judgment on that ruling. The PAC Office should have a little bit more bite to the law. Because the PAC Office rules in favor of the one that makes the complaint, that ruling doesn’t force the other party to follow through – because they haven’t.”

“Because the burden of proof lies with the public agency – the public agency used falsehood in their reply to the PAC Office. They stated that I didn’t request the minutes of the meeting and I did. They stated that I couldn’t have the minutes until after they were approved, but we can under the Indiana Open Door Law.”

Did you have to take additional legal action to resolve your issue after receiving a formal PAC opinion? (Volunteered responses)

“The reason why I think it’s a useful procedure [using the PAC Office] is that it allows these types of matters to be handled at a non-litigation setting. It provides an option. In many states, if you run into a problem with a particular government agency, your choice is to sue them in court. And that’s a big step. What I think is nice about the Indiana PAC procedure is that it offers an alternative to that and it’s less combative, so I think it’s a very good procedure.”

What, if anything, do you think could be done to improve the PAC Office?

Note: Because there were so many answers to this question, a representative sample of the answers is given, broken into categories: enforcement, changes in PAC or PAC Office, staffing, changing access laws, providing more information about the PAC Office, and other.

Enforcement:

“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.”

“There need to be some teeth in the regulations. If the PAC Office issues an opinion – that these are public records – there needs to be some form of punishment, if you will, for people who don’t comply. Right now the only recourse if the people who are supposed to respond ... don’t comply is to file a civil suit, which can get quite expensive. And they would defend it with public funds, so in essence you’re almost suing yourself for your own records. ... We’ve had situations in the past where people have not responded in regard to the PAC Office.”

“Some kind of definite enforcement power so they can enforce their rulings. In my case the law was clear. They told them they were wrong but it had no teeth to it. I thought it was useful but it would have been nicer if instead of saying they were required to do it by law, if they had told them that they had to do it and had some legal authority to enforce their decision. I thought that they were very quick, thorough and they really handled the matter very well within their authority.”

“I think that they do not have a liberal or wide-enough view of the statute. I think the statute is pretty clear and that the Indiana PAC Office needs to take a stronger stance to force local governments to give the information they are required to by law. ... [M]y other experience has been ... there have been times when they have found in my favor but they have said my only choice is to take the local government to court. And since that’s the case, I’m not sure what function the PAC is fulfilling because I don’t want to hire a lawyer and constantly sue people even though the PAC is telling me I’m going to win the case. If they had some teeth they could enforce their authority (and that could be a legal thing).”

Staffing:

“Seems like they’re overwhelmed; seems like they need more people.”

“I think they need at least another individual working with them. More manpower. I realized as I worked with the office that they were understaffed.”

“Add staff. Currently, [the] PAC is [the] only legal counsel in [the] office; need at least one more attorney.”

PAC Office:

“The ability to get records or not get records has more to do with the background of the PAC director and in the past we’ve had a strong director, Anne O’Connor, and currently we have a weak PAC. She seems to be more interested in preventing the public from seeing records as opposed to helping the public gain access to the government.”

“[First], remove all political influence. [Second], have the office realize that public officials can violate the law. [Third], when asked for an opinion follow the law as it’s written. Don’t bring in extraneous material which is not in the statutes, such as intent. [Fourth], never disregard evidence presented by a citizen and never mislead a citizen regarding what will happen to evidence sent by the citizen. [Last], don’t be swayed by suave words from a government official.”

“My experience with the PAC was biased, ineffective, dishonest and contrary to law. The PAC should spend more time researching the controlling case law before issuing an opinion.”

“I had very good luck with them. They were very informative and I was really satisfied that the answers I got were knowledgeable and they addressed exactly what I was asking.”

“They were very fast in the response. I think that the office put the appropriate fear into the agency.”

Change Laws

“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."

"Office is fine, but the law is flawed. All that a public entity has to do is respond; if they respond, that's the end of [its] obligation. The law doesn't have any teeth in it."

"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, and if there are sanctions in place, that's the most important thing to have done now."

"I don't think it's what could be done to improve the PAC Office, it's what could be done to improve the state's access laws. The lack of statutory penalty for deliberately withholding information from the public needs to be addressed."

Information About PAC Office

"I think more people should know about it. A lot of people don't realize that they do have recourse."

"Not too many people know about it. What would help: when you go into a government office and you have to fill out a form asking for exactly what you want, and you don't know what they are calling it, it would help if the access number was on that form (if there's any difficulty filling out this form, call this number). If there's a problem accessing the information (not just filling out the form) then they don't offer to give you a copy of that form (some places make you pay for copies)."

Other

"Provide legal advice to the people who are making requests."

In your opinion, should the PAC Office be able to levy fines or issue enforcement actions against those who do not comply with open meetings or open record laws? (Volunteered responses)

"Absolutely – because 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."

"Enforcement actions, yes. I don't know about fines."

How would you rate Indiana's sunshine laws governing access to meetings and records? (Volunteered responses)

"The agencies evade your request and give you information other than what you request. And they try and charge for it."

"They started out excellent but have degenerated to poor because the lawyers have figured out how to circumvent them."

"They are well written but in practice they are often disregarded."

"The law itself is as good as you're going to get; I think the compliance is another issue."

(If the respondent worked with a community group to resolve access issues) What was the name of the group you worked with?

Responses to this question varied widely, and some groups were so small that naming them might risk identifying the respondent.

The most common response was that the group was not a regularly organized group but an informal group of citizens.

"It would just be independent neighbors, people affected by local government," one respondent said. "We were just a bunch of guys who would meet at a certain time every week or on a bi-weekly basis," said another.

Among the named groups, responses included the National Association for the Advancement of Colored People, the Indiana Civil Liberties Union, the Indiana Coalition for Open Government, the National Freedom of Information Coalition, and Common Cause.

The smaller groups ran the gamut from a press organization to a police union to public education-related organizations and various local taxpayer groups.

ENDNOTES

- 1 IND. CODE § 5-14-1.5 (LEXIS 2007).
- 2 IND. CODE § 5-14-3 (LEXIS 2007).
- 3 IND. CODE § 5-14-3-1 (LEXIS 2007).
- 4 For the entire series of stories about the TaJanay Bailey case, go to <http://www.indystar.com/apps/pbcs.dll/section?Category=SPECIAL19> (last visited Dec. 12, 2007). Indiana law generally requires that records about juveniles be confidential, but the law allows such records to be released when it would serve the public interest. See IND. CODE § 31-39-2-10 (LEXIS 2007).
- 5 *WTHR Wins Prestigious Peabody Award*, available at <http://www.wthr.com/Global/story.asp?S=6325183> (last visited Dec. 12, 2007).
- 6 Donald G. Asher, *The State of Secrecy: Access Effort Finds Records Tough to Obtain*, QUILL, April 1998, at 17. The seven newspapers were *The Evansville Courier*, the *Fort Wayne Journal-Gazette*, *The Indianapolis Star*, the *Muncie Star-Press*, *The South Bend Tribune*, the *Terre-Haute Tribune-Star*, and *The Times* of Northwest Indiana.
- 7 Associated Press, *Not-So-Public Access: Indiana's Open Records Law Skirted, Broken, Review Finds*, Oct. 24, 2004. The eighth newspaper, in addition to the original seven from the 1997 audit, was the *Bloomington Herald-Times*. Under Indiana law, a public agency must, in most cases, provide a record within 24 hours after it has been requested in person and within seven days after it has been requested by mail or facsimile. See IND. CODE § 5-14-3-9 (LEXIS 2007).
- 8 IND. CODE § 5-14-3-3 (a) (LEXIS 2007).
- 9 Seth Slabaugh, *Some Public Records Denied With No Legal Authority*, MUNCIE STAR-PRESS, Dec. 4, 2007, available at <http://www.thestarpres.com> (last visited Dec. 5, 2007).
- 10 IND. CODE § 5-14-3-9 (i) (LEXIS 2007).
- 11 IND. CODE § 5-14-3-10 (LEXIS 2007).
- 12 Bill McCleery, *Appeals Ruling May Open More Records to Public*, INDIANAPOLIS STAR, Dec. 14, 2005, at B1.
- 13 IND. CODE § 5-14-1.5-7 (LEXIS 2007).
- 14 Better Government Association & National Freedom of Information Coalition, *States Failing FOI Responsiveness*, available at <http://www.nfoic.org/resources/bga> (last visited Dec. 5, 2007).
- 15 *Id.*
- 16 Harry Hammitt, *Mediation Without Limitation*, 2 FOI REPORTS 2-3 (2007), available at <http://www.nfoic.org/resources/reports> (last visited Nov. 29, 2007).
- 17 *Id.* at 4.
- 18 *Id.* at 4-11.
- 19 *Id.* at 11.
- 20 *Id.* at 13-17.
- 21 Memorandum from Office of the Governor (April 27, 1998), available at <http://Indianacog.org/documents/OBannonFOIletter.pdf>. (last visited Nov. 21, 2007).
- 22 IND. CODE § 5-14-4 (LEXIS 2007).
- 23 IND. CODE § 5-14-4-7 (LEXIS 2007).
- 24 See Public Access Counselor, Mission, available at <http://www.in.gov/pac> (last visited Nov. 21, 2007).
- 25 IND. CODE §§ 5-14-5-9 & 5-14-5-10 (LEXIS 2007).
- 26 IND. CODE § 5-14-4-10 (6) (LEXIS 2007).
- 27 IND. CODE § 5-14-4-10 (5) (LEXIS 2007).
- 28 <http://www.in.gov/pac> (last visited Dec. 5, 2007).
- 29 Indiana Public Access Counselor, Annual Report 2003-04, available at <http://www.in.gov/pac/reports> (last visited Nov. 21, 2007).
- 30 Because all or nearly all of the printed copies have been given out, the *Public Access Handbook* now can be downloaded from the PAC Office Web site: <http://www.in.gov/pac/handbook> (last visited Nov. 21, 2007).
- 31 See Keith Robinson, *AP Newsmaker: New Access Counselor Advocates Openness*, Associated Press State Wire, July 20, 2007.
- 32 Indiana Public Access Counselor, Annual Report 2005-06, available at <http://www.in.gov/pac/reports> (last visited Nov. 21, 2007).
- 33 IND. CODE § 5-14-3-9 (i) (LEXIS 2007); IND. CODE § 5-14-1.5-7 (f) (LEXIS 2007).
- 34 In an e-mail message, former PAC Karen Davis said the drop in reported inquiries and complaints from 2003-04 to 2004-05 might have resulted from a change in the way the office counted inquiries. E-mail from Karen Davis to Anthony L. Fargo, Dec. 5, 2007.
- 35 The PAC's complaint logs, which list each complaint received, classify the persons making complaints as "P" (for public), "M" (for media), "P-O" (for public offender), and "G" (for government). However, in the annual reports, the public and public offender categories are combined.
- 36 Although the PAC office logs all requests for advice about specific access issues as "complaints," some are actually inquiries about the law or requests for advice from public officials. To avoid confusion, this report uses the PAC's terminology.