

Indiana – Public Access Counselor (PAC)

Structure and Realm

This position is appointed by the Governor but independent of the Governor and all governmental agencies. By statute, decisions by the Counselor are to be weighted heavily by the courts if they are challenged.

Position started in the Archives as part of an Executive Order in 1998 and then put into statute in 1999. Eventually the Public Access Counselor was made an independent agency. Staffing consists of an attorney (Counselor) and a paralegal.

The Public Access Counselor provides advice and assistance concerning Indiana's public access laws to members of the public and government officials and their employees, both at the state and local levels. They can make recommendations to the legislature and they are also responsible for hearing cases, rendering formal and informal opinions on public records access and public meetings. This position is responsible for training both the public and public employees on the law and how to respond. They have created a number of tools which are posted on their website <http://www.in.gov/pac/> and also do many speaking engagements throughout the state.

The powers and duties of the public access counselor are the following:

1. To establish and administer a program to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws.
2. To conduct research.
3. To prepare interpretive and educational materials and programs in cooperation with the office of the attorney general.
4. To distribute to newly elected or appointed public officials the public access laws and educational materials concerning public access laws.
5. To respond to informal inquiries made by the public and public agencies concerning the public access laws.
6. To issue advisory opinions to interpret the public access laws upon the request of a person or public agency. However, the counselor may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed.
7. To make recommendations to the general assembly concerning ways to improve public access.

The majority of cases are at the local government level. From July 2014-June 2015 the Counselor received 4245 inquiries – 1528 from the public, 425 from the media and 2292 from government. Of those, 317 were considered formal complaints with 25 being withdrawn, 23 rejected and 2 in which a lawsuit has been filed. The breakdown of formal complaints is:

State agencies: 88
County agencies: 138
City agencies: 80
Town agencies: 32
Township agencies: 14
School corporations: 17
Other local agencies: 11
Universities: 7
Other: 5

I have attached the annual report and the statutes that relate to the Public Access Counselor.

Budget

\$165,000 annually and is paid out of the general fund.

Success

Both the public and agencies view the PAC as a success. Agencies now must respond to the requestor immediately for an in-person request and in 7 days if the request is made over the phone or by mail (e-mail and postal); and the requestor must make his request specific. The public sees it as making government more accountable and agency employees are required to attend training and especially state agencies have seen a decrease in the number of conflicts.

Connecticut - Freedom of Information Commission (FOI Commission)

Structure and Realm

The FOI Commission was formed about 40 years ago in response to Watergate and the call for more government transparency. Until the recent Governor took office, the Commission was completely independent but now is part of the Office of Governmental Accountability. Staff opinion thinks Commission needs to be independent to be effective.

The Commission consists of 9 members – 5 appointed by the governor and 4 appointed by the legislature. In addition, there is a staff of 15 members who help with the education component of the Commission and also make preliminary decisions on cases pending. Preliminary decisions are passed on to the Commission and the official opinion is levied by the Executive Director & General Counsel. In the 40 years, there have only been two Executive Director & General Counsels and they are **both available to contact if we want**. Any opinions (determinations) made by the Commission can be appealed all the way to the Supreme Court. Although the decision carries some weight, it doesn't appear to carry the same weight as the decisions of Indiana's Public Access Counselor. However, political officers cannot overturn the decisions of the Commission.

Like Indiana, the FOI Commission is the chief educator on public records, public meetings and access; serve both the public and all governmental entities; and find most cases are at the local government level. The Commission is also responsible for monitoring and advocating against public records exemptions.

They had a record number of cases in 2014-2015 with 941 complaints – 200 of which were made by one individual. 708 of those cases were resolved without a hearing, which is the Commissions' goal – 300 of the 708 were withdrawn because of the preliminary work done by staff acting as mediator/ombudsman.

Their website is: <http://www.ct.gov/foi/site/default.asp>

Budget

Annual Budget - \$1,692,000

Success

They also see the Commission as being a success as the public can see transparency in the governmental process but the Commission staff is constantly fighting against exemptions being proposed to public records access.

Maine- Public Access Ombudsman

Structure and Realm

The Public Access Ombudsman was created in 2007 by the Maine Legislature but not funded until 2012. The position is an Assistant Attorney General and located in the Attorney General's Office; however this position does not have any client agencies. Their sole purpose is to be the Ombudsman.

The duties of the Ombudsman include educating the public and government officials about the State's public records access laws; provide dispute resolution services; answer questions about public records access; and make recommendations for improvements to the law. The Ombudsman can issue opinions but cannot conduct a hearing on records access. There is no process to appeal an opinion and the Ombudsman cannot go to court. These processes are seen as totally separate.

The majority of cases are at the local level.

Their website is: <http://www.maine.gov/foaa/ombudsman/index.htm>

In addition, the Ombudsman works with Maine's Right to Know Advisory Committee. This Committee was created in 2005 to serve as a resource and advisor about Maine's Freedom of Access laws. They can also make recommendations for changes in statutes to improve the laws

The specific duties of the committee include providing guidance in ensuring access to public records and public proceedings; act as the main source for information about Maine's Freedom of Access laws; and serve as a resource to support training and education about Maine's Freedom of Access laws. They report on their activities annually.

Budget

Annual Budget – 1 FTE that is contained in the Attorney General's Budget and is not separated out.

Success

They see the Ombudsman as having success especially with education but do acknowledge that the positioning of the Ombudsman within the Attorney General's Office can be seen as a challenge to its independence.

Annual Report

[https://www1.maine.gov/foaa/docs/Public%20Access%20Ombudsman%20Report%202014%20\(2\).pdf](https://www1.maine.gov/foaa/docs/Public%20Access%20Ombudsman%20Report%202014%20(2).pdf)

Statutes

<http://www.mainelegislature.org/legis/statutes/5/title5sec200-I.html>

Pennsylvania - Office of Open Records

Structure and Realm

The Office of Open Records (OOR) was created in 2008 with the passage of the Pennsylvania Right to Know Law (RTKL). The agency is independent and quasi-judicial, authorized to hear and decide appeals from requestors who have been denied access to public records by state and local government agencies. Anytime a request for access is denied, the first appeal goes to the Office of Open Records and in 90% of the cases, they go no further. The courts fully expect requestors to go to the OOR before they come to court. OOR is also responsible for providing training on the RTKL and Pennsylvania Sunshine Act. The 18 member staff has jurisdiction over all government entities except for the legislature, attorney general, treasurer and local criminal investigative records.

Their website is: <http://www.openrecords.pa.gov/Pages/default.aspx#.VxAdrvkrLGg>

Budget

Annual Budget - \$2.4 million

Success

They see their Office as being a success especially when 90% of the cases that come into the Office go no further. See Annual Report:

<http://www.openrecords.pa.gov/Additional-Resources/Documents/AnnualReport2015.pdf>

Arizona Ombudsman - Citizens' Aide

Structure and Realm

The Arizona Ombudsman-Citizens' Aide is an independent agency of the Arizona Legislature that was established to make government more responsive to Arizona citizens. Although it does respond to public access complaints, the agency has far more broad authority to work with citizens on a variety of issues such as benefits, eligibility for state services, child protective services, tax payments, etc. They operate under Arizona Revised Statute sections 41-1371 through 41-1383 and operates under Arizona Administrative Code title 2 chapter 16. They also provide training to the public as well as agencies in all of the areas that they are required to respond. From July 1, 2014 –June 30, 2015, the Ombudsman responded to 612 call relating to public access. The agency has 9 staff members.

Their website is: <http://www.azoca.gov/>

Budget

Annual Budget – approximately \$800,000

Success

They see their Agency as being a success but that includes all of the cases that they handle. Specific statistics on public access successes were not available. See Annual Report: <http://www.azoca.gov/documents/2015-fiscal-report-july-2014-to-june-2015.pdf>

Iowa Public Information Board

Structure and Realm

Iowa's Ombudsman handled all public records and open meetings complaints until 3 years ago when the Iowa Public Information Board (IPIB or Board) was established by Iowa Code Chapter 23. The original ombudsman was not a mediator but rather an independent fact finder that would make a decision on whether an action by a state agency relating to either public records or open meetings was lawful or not. They would try to persuade an agency to act on their findings but could not force them to take action. However, once the IPIB was established, all complaints relating to public records and open meetings were handled by them.

The Board was created to provide a free, efficient way for Iowans to receive information and resolve complaints related to chapters 21 and 22, Iowa's open meetings and public records laws. IPIB is an independent agency with a nine-member board appointed by the Governor and confirmed by the Senate. No more than three members of the board can represent the media or counties, cities or other local governments. The remaining members are from the public. Members serve staggered four-year terms and are balanced by political party and gender. The board elects a chair and vice chair from among its members.

Complaints must be filed within 60 days of the alleged violation. Communications with the Board are treated as public records and are subject to disclosure, except when the board determines an exemption or other provision of law prohibits or limits release of some or all of a communication's contents. It is the goal of the Board to be the state's most transparent state agency.

Last year (2015), the Board processed 811 cases and included: Formal Complaints (97); Advisory Opinions (8); Declaratory Orders (3); Informal Complaints (151) usually about accessing public records; Informal Requests (531) seeking assistance in the interpretation of Chapters 21 and 22; and Miscellaneous Other (21) includes other requests for assistance such as training and legislative issues. The Board also traveled the state, conducting 19 training sessions for hundreds of state, county and city officials and identified continuing problems in the areas of meeting notice, governmental subcommittees and law enforcement records. Legislative changes were recommended to address these issues.

In 2015, 62% of the incoming matters were resolved in less than a day, 20% were resolved in one to five days and 18% were resolved in six or more days.

Their website is: <https://ipib.iowa.gov>
Annual Report: <https://www.ipib.iowa.gov/media/118>

Budget

Annual Budget – approximately \$1.8 million

Success

They see their Agency as being a success based on the vast majority of complaints were settled informally, with the Board attorneys negotiating a compromise that satisfied both parties, reducing community conflict and resulting in an increase of government transparency.

Tennessee Office of Open Records Counsel

Structure and Realm

The Office of Open Records Counsel is part of the State Comptroller's Office and serves as a resource, for issues related to Tennessee's public records and open meetings laws, the citizens, media and local governments. Although the Office assists requestors in determining and locating the correct governmental records custodian, the Office is not a clearinghouse for public records requests and does not make requests on behalf of agencies or individuals. They cannot advocate for one side or another or declare a violation but they can mediate disputes and issue opinions. Opinions rendered by the Counsel are considered if the matter goes to court. They are currently staffed by one FTE who is an attorney. They have requested 2 additional FTE for the Office.

Tennessee's General Assembly appropriated funding for the Office of Open Records Ombudsman in 2007 but it wasn't until 2008 that the General Assembly provided statutory authority for the Office of Open Records Counsel by enacting Public Chapter 1179, Acts of 2008.

In addition, the General Assembly also created a 15 member Advisory Board to the Counsel "...to guide and advise the Office on open records and open meetings." This is not seen as a particularly helpful body to the Office as its members tend to have their own agendas.

The Office works to help citizens and government officials understand Tennessee's laws on public records and open meetings by doing presentations and educational outreach. They also post resources on the web.

OFFICE RESPONSIBILITIES (from the 2016 Annual Report)

The Office of Open Records Counsel is charged with the following responsibilities:

- Serve as a point of contact for questions and concerns regarding access to public records and regarding open meetings;
- Assist citizens in obtaining open public records;
- Promote education and awareness of Tennessee public records and open meetings laws;
- Collect data on open meetings inquiries and problems;
- Issue informal advisory opinions on open records issues; and
- Develop forms, schedules, policies, and guidelines for open record requests.

In 2015 the Office handled 1215 inquiries, a significant drop from the 1869 high handled in 2014. About three-quarters of the request were about public records and just under 50% were made by a citizen.

Their website is: <https://www.comptroller.tn.gov/openrecords/>

Annual Report: <https://www.comptroller.tn.gov/openrecords/pdf/20160302ORCAAnnualReport.pdf>

Budget

Annual Budget – approximately \$100,000

Success

They see their Agency as being a success, however they question the need for an Advisory Board. With only 1 FTE on staff, they would like additional resources in an effort to reach more people.

Hawaii Office of Information Practices (OIP)

Structure and Realm

The Office of Information Practices (OIP) was established in 1988 by the Uniform Information Practices Act to promote open and transparent government in Hawaii. OIP is responsible for administering both the public records laws (known as the Uniform Information Practices Act (UIPA) - HRS Chapter 92F) and the open meetings laws (sunshine Law - part I of HRS Chapter 92).

In addition, OIP provides training, legal guidance and assistance on public records and access to the public and all state and local government agencies as well as provide guidance and make recommendations on legislation that affects access to government records or board meetings.

The public does not need to hire attorneys or observe judicial formalities to obtain OIP's assistance. The OIP's free and informal proceedings are not subject to the contested case procedures of HRS Chapter 91. OIP provides an "attorney of the day service" where members of the public or government agencies can call to receive (usually within 24 hours) general advice regarding public records and access laws. If the OIP determines that further action may be necessary to resolve an issue, they can conduct investigations. The OIP can also issue formal or informal opinions, which are enforceable by the courts.

The OIP also administers the Records Report System (RRS) – a database without the actual records - describing the various types of government records maintained by state and county agencies available for access.

In 2015, OIP responded to 1,307 UIPA and Sunshine Law requests for assistance. Of those, 1,074 were informal requests and 233 were formal requests. 82% of requests were handled through OIP's "Attorney of the Day" service. This service allows the public, agencies and boards to receive general legal advice from an OIP staff attorney and since 2011, these inquiries have increased 59%.

Hawaii does have an Ombudsman's Office, however, they only become involved in public records or access issues if the OIP rules that records can be released and an agency refuses to comply with OIP's decision.

The OIP has 8.5 full-time equivalent (FTE) positions, including 4.5 FTE attorneys.

Their website is: <http://oip.hawaii.gov/>

Annual Report: <http://oip.hawaii.gov/wp-content/uploads/2015/03/ANNUAL-REPORT-2015.pdf>

Budget

Annual Budget – \$552,990

Success

They see their Agency as being a success and see increasing value in the Attorney of the Day service. Both the public and agencies are aware of the service and use it to validate a response (public) or to determine how to respond to a request (agency).

Utah Government Records Ombudsman

Structure and Realm

Utah's ombudsman is appointed by the State Archivist and is located within the office of the State Archivist. This office was created in 2012 and the ombudsperson is an archivist who is familiar with the Government Access and Management Act but is **not** an attorney. They serve as a resource for the public making a request and to government records officers trying to respond to a request. They do not render any opinions or decisions but can mediate a dispute. Any denials by an agency to public records access can be appealed to the State Records Committee (Utah Code § 63G-2-101) where decisions are made or orders issued.

The ombudsman also provides training to agencies, professional organizations and the general public.

Their website is: www.archives.utah.gov/opengovernment/ombudsman.html

Annual Report: <http://www.archives.utah.gov/documents/records-ombudsman-report-2015.pdf>

Budget

N/A

Success

Limited, because they are not attorneys and cannot make decisions or interpret the law. They do feel that the training and awareness of the law has been a success.