

## Insights

### Indiana's Public Access Counselor Provides Open Door Law ("ODL") Guidance Following Governor Holcomb's Most Recent COVID-19 Executive Order

March 19, 2020

By: Christopher W. Bloomer and Robert S. Schein

On March 16, 2020, Indiana Governor Eric Holcomb issued Executive Order 20-04 (the "Order"), containing certain exceptions to the ODL's mandates during the public health emergency created by COVID-19. For further information concerning the Order, please refer to Krieg DeVault's recent Client Alert, *Indiana's Open Door Law ("ODL") Partially Suspended in Response to COVID-19*, dated March 18, 2020.<sup>[1]</sup> Following the Order, Indiana Public Access Counselor Luke Britt offered the following **general guidance ("Guidance")** for state and local agencies that are subject to Indiana's public access laws such as the ODL and the Access to Public Records Act ("APRA"):

- The Order directs non-essential meetings should be cancelled or postponed. **The Guidance confirms that cancellations of meetings do not require notice, but notification of cancellations via websites or social media is advisable.**<sup>[2]</sup>
- For meetings that *must* be held, the Center for Disease Control and Indiana State Department of Health's guidance regarding smaller gatherings – *i.e.* **limiting gatherings to fifty people or less – should be followed, when possible. As such, the public agency may exclude some members of the public from essential and necessary meetings. However:**
  - **A portion of those individuals present must include representatives from the media or the public.**
  - **The public agency should make all efforts to permit remote public attendance.**
  - **The public agency should consider using larger venues to reduce attendee density (*i.e.* encourage social distancing).** For example, would holding a board or commission meeting in council chambers or a large meeting hall provide more space for attendees as opposed to a small conference room or meeting room? If so, the larger venue should be used, if available.
  - **Instituting a 1/3 seating capacity policy, at a minimum, is suggested, and such reasonable reductions in capacity will not be considered a violation of the ODL.**

- **Governing bodies should prioritize attendance of the public and media over non-essential staff and government personnel.**
- **When possible, governing bodies should shorten the length of their meetings and exclude non-essential agenda items.**
- **Governing bodies should ensure public comment policies are consistent with public health guidance.** As a practical matter, the attorneys at Krieg DeVault suggest if applicable rules require public comment, then speakers should be allowed to speak from their seat or from a centralized location, away from others, instead of at a podium or location near others. If a fixed location such as a podium *is* utilized, the governing body should offer sanitizing wipes or other cleaning supplies so that each speaker may wipe down the area prior to their turn to speak. Additionally, many board, council and commission rules permit the governing body to limit public comment to a fixed period of time. In conformity with the Guidance (i.e. shortening the length of meetings), consider enforcing these rules, when appropriate.
- **If items or authority can be statutorily delegated to a presiding officer, a governing body should ratify those actions when normal meetings resume, including but not limited to operational or administrative functions and executive or ministerial duties.**
- **Members of the public should consider making APRA records requests remotely and not in person.** Public agency employees should communicate this option to interested records requestors, along with any desire that the requestor put the request in writing, on a form designated by the public agency. See Ind. Code § 5-14-3-3 (a). For additional information concerning the APRA and its intent, please refer to the following Krieg DeVault Client Alert: *Investigatory Records Exception to Indiana's Access to Public Records Act ("APRA") Analyzed by Court of Appeals*, Krieg DeVault LLP, May 1, 2019.[3]
- **Members of the public should note that a public agency's production of records in response to a valid APRA request may be longer during a time of emergency.** Note that when an emergency is not present, records must be produced or made available for copying within a "reasonable" period of time following a valid APRA request. Ind. Code § 5-14-3-3 (b). During an emergency, the same standard likely applies, but is understandably a longer period of time for production due to the emergency.

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

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

[2] Typically, notice shall be given where the date, time, or place of a regular meeting(s) is changed. Ind. Code § 5-14-1.5-5 (c).

[3] <https://www.kriegdevault.com/insights/investigatory-records-exception-indianas-access-public-records-act->