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Affiliations appear only for purposes of identification.

July 29, 2026

Office of the Public Access Counselor
Jennifer Ruby, Public Access Counselor
402 W. Washington St., Ste. W470
Indianapolis, IN 46204

Re: Statutory Compliance and Request for Meeting

VIA EMAIL

Dear Counselor Ruby,

I write to you today on behalf of Tegna Inc. d/b/a **WTHR-TV**, States Newsroom Inc. d/b/a **Indiana Capital Chronicle, IndyStar, Evansville Courier & Press**, the **Hoosier State Press Association, Indiana Broadcasters Association**, and the **Indiana Professional Chapter of the Society of Professional Journalists** (the “Coalition”) to raise serious and urgent concerns regarding the Office of the Public Access Counselor’s execution of its statutory duties. Over the past 16 months, Coalition members and others have endured a pattern of inaction by the office (the “OPAC”) that has had significant effect on their ability to inform Hoosiers about their government. Such inaction violates clear requirements set forth in the Indiana Code. We now look to the OPAC for a commitment to realign itself with its duties under the law.

We believe it would be productive to relay these concerns to you before resorting to litigation. To that end, we request a meeting between members of this coalition and their counsel and the OPAC within the next 30 days to discuss these concerns and how best they may be addressed. Please respond to this letter within seven days to confirm that you are willing to meet as requested.

Background

In 1998, Indiana Governor Frank O’Bannon signed an executive order creating the OPAC in response to a series of articles published by a coalition of newspapers and journalists chronicling the obstacles they encountered in obtaining public records from Indiana government agencies. In response to this exposé, titled “The State of Secrecy: Indiana Flunks the Test on Access,” the General Assembly enacted the statutes establishing the OPAC.¹ The statutes enumerated vital powers and duties of the OPAC, which include training and education of public officials and the public at large about the rights guaranteed by APRA. The statutes also set forth the role and obligations of the Public Access Counselor (“PAC”) in connection

¹ Courtney Abshire, *Public Business Is the Public’s Business: Koch’s Implications for Indiana’s Access to Public Records Act*, 52 Ind. L. Rev. 455 (2019).

with the Formal Complaint Procedure for challenging record request denials under APRA. *See* Ind. Code §§ 5-14-4-1–14; 5-14-5-1–12.

One of the PAC’s most crucial statutory duties in that regard—one on which the press and public rely to enforce Indiana’s public records laws—is “[t]o issue advisory opinions to interpret the public access laws upon the request of a person or a public agency” in response to the statutory formal complaint procedure. Ind. Code § 5-14-4-10(6). The statute is crystal clear in setting forth the timing for the PAC’s execution of this duty; when a formal complaint is filed, the PAC “*shall*” do two things:

- “*immediately* forward a copy of the complaint to the public agency that is the subject of the complaint”; and
- “issue an advisory opinion on the complaint *not later than thirty (30) days after the complaint is filed.*”

Ind. Code §§ 5-14-5-8–9 (emphasis added).

Coalition Concerns

The OPAC is not complying with this clear statutory mandate. Journalists and news organizations around the state—including but not limited to the members of the Coalition—are consistently forced to wait many months just to receive confirmation that their complaint was forwarded to the agency (an action which the PAC is required to do “immediately”). For example, Coalition member WTHR recently waited *287 days*—the better part of a year—to receive a formal opinion in response to its complaint.² Many have waited just as long—and indeed, are still waiting—to receive an advisory opinion, which the PAC is required to issue within thirty days of receiving a complaint.³

Compounding these deficiencies, during the past year, Coalition members have been unable to connect reliably with OPAC staff by phone, email, or in person. This also is at odds with the plain language of the PAC’s duties set forth in the position’s enabling statutes, which requires the PAC “[t]o respond to informal inquiries made by the public and public agencies by telephone, in writing, in person, by facsimile, or by electronic mail concerning the public access laws.” Ind. Code § 5-14-4-10(5).⁴

² *See* Case No. 25-FC-266.

³ The IndyStar, a Coalition member, recently published an investigative piece expounding upon these experiences. *See* Cate Charron and Grace Randolph, *Under Braun's watchdog, government secrecy grows harder to challenge*, IndyStar, <https://www.indystar.com/story/news/investigations/2026/07/24/mike-braun-public-access-watchdog-lets-complaints-languish-secrecy-grow/90564681007/> (July 24, 2026). The article reports that across the current PAC’s 16-month tenure, requesters have waited an average of nearly 250 days to receive formal opinions.

⁴ As set forth in the recent IndyStar article, this lack of responsiveness led the Indiana Coalition for Open Government to establish a hotline to answer questions about public records and government transparency that were not being addressed by the OPAC.

We are aware this has been the first fiscal year that you have occupied this office, and we acknowledge that some delay during a transition period is inevitable. But the consistent failure to comply with statutory obligations has gone well beyond what can be excused by what OPAC staff have referred to as a “backlog” of cases from prior years. In correspondence raising concerns about the Office’s delay in processing complaints, Coalition members have been told how the Office received 500 complaints in 2025 and was on track to receive 700 complaints this year. But while 700 complaints would represent an uptick from previous years, it is not dramatically higher than the numbers reflected in OPAC’s annual reports from the past decade. See <https://www.in.gov/pac/annual-reports/>. In addition, as those reports make clear, receiving 500 complaints does not entail issuing 500 advisory opinions. To the contrary, the vast majority of complaints received each year ended with a simple rejection or withdrawal.

OPAC’s 2026 annual report confirms this. In its report to the legislature, the Office reported ultimately receiving 679 formal complaints, which resulted in 134 advisory opinions. OPAC’s self-reported numbers indicate the Office issued an advisory opinion in response to 20 percent of the complaints it received. Furthermore, the report shows that most formal complaints were summarily dismissed or rejected. Specifically, OPAC rejected 289 formal complaints in fiscal year 2026, which is approximately half of the total received and more than double the number of advisory opinions issued by the office. The agency’s rate of rejection alone makes OPAC’s average timeframe of nearly 250 days for issuing advisory opinions even more puzzling and concerning. And regardless, any now nearly two-year-old backlog of advisory opinions would not excuse the failure to execute the ministerial task of forwarding complaints to the agency, which, again, the statute requires be done “immediately.”⁵

In sum, the OPAC’s current course of action is untenable, contrary to law, and significantly undermines the ability of the public and the media to avail themselves of the services the law mandates that OPAC provide. Indeed, the end result is that instead of helping facilitate agencies’ compliance with public records laws, the OPAC has become a black hole into which complaints disappear indefinitely.

Because the OPAC has failed to perform its specific statutory duties, the Coalition puts this Office and the State on notice in the hope that OPAC will take immediate corrective action and comply with its statutory duties without necessitating further intervention by the Coalition.

The OPAC exists to serve the public, but its current approach to its statutory duties only serves to weaken the important role of the PAC and erode public trust. Now is the time for the OPAC to demonstrate a clear commitment to its critical and statutorily-imposed duties.

To be clear, the Coalition does not wish to have an adversarial relationship with OPAC; quite the opposite. The Coalition is eager to start a dialogue with OPAC to discuss these issues,

⁵ In lieu of sitting for an interview for the IndyStar article referenced above, the OPAC provided a statement from a “hired public relations consultant,” which makes various claims about how the office operates under the current PAC versus the previous PAC. See <https://www.documentcloud.org/documents/28511111-mcfarland-pac-comment/>. Suffice it to say, nothing in the statement comes close to explaining or justifying the basic failure to meet the PAC’s clear statutory obligations.

clarify the challenges the agency is facing, and consider possible solutions. To reiterate, we request a meeting between members of this Coalition and their counsel and OPAC within the next 30 days to discuss a path forward. **Please respond to this letter within seven days to confirm that you are willing to meet as requested; please also provide some available times so we can schedule a meeting, and indicate whether you prefer to meet in person or virtually.**

If OPAC is not amenable to a dialogue, members of this Coalition intend to pursue legal action that will compel the PAC, as a public officer, to begin performing the statutory duties the law requires immediately. Most critically, that litigation will demand the PAC begin issuing advisory opinions within 30 days, immediately forward copies of complaints to public agencies, and respond to informal inquiries made by the public—including members of the media—by telephone, in writing, in person, or by email concerning the public access laws.

How OPAC responds in this moment will shape the reputation of the Public Access Counselor's office as a resource in Indiana. Hoosiers seeking transparency from their government encounter many obstacles, but the Office of the Public Access Counselor should not be one of them. We look forward to engaging with you to find a path forward and improve transparency for all Hoosiers.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristopher Cundiff". The signature is fluid and cursive, with the first name "Kristopher" written in a larger, more prominent script than the last name "Cundiff".

Kristopher L. Cundiff
Indiana Local Legal Initiative Attorney
Reporters Committee for Freedom of the Press

Cc:
Patrick Price, General Counsel for Governor Mike Braun.