

## Insights

### Exceptions to Indiana's Open Door Law and Access to Public Records Act Extended Until June 13, 2020

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On March 23, 2020, Governor Holcomb issued Executive Order 20-09 ("Order 20-09"), further easing statutory requirements concerning Indiana's Open Door Law ("ODL") and Access to Public Records Act ("APRA") in response to the COVID-19 pandemic. For further information concerning Order 20-09, and the particular exceptions granted to political subdivisions and local units, please refer to earlier Krieg DeVault Client Alerts.<sup>1</sup>

On May 21, 2020, Governor Holcomb issued Executive Order 20-28, titled *Back on Track: Reopening Indiana in Stage Three* (the "Back on Track Order"). Pertinent to the ODL and the APRA, which were temporarily modified via Order 20-09, the Back on Track Order provides:

"... Executive Order ... 20-09 ... will remain in full force and effect until 11:59 p.m. on June 13, 2020, unless [the Governor] further rescind[s], modif[ies] or extend[s] [it]."

As such, the exceptions contained in Order 20-09 are extended until at least June 13, 2020. Notably, alternative extension dates have also been proposed based upon earlier Executive Orders and the COVID-19 pandemic. For example, Order 20-09 does provide that as it relates to the ODL, remote meeting attendance may continue for the duration of the public health emergency (Order 20-09, ¶ 4.A.), leaving open the possibility that Order 20-09 may likely be extended well into the future. Even without an express extension of the public health emergency, the provisions contained in Order 20-09 may be further modified or extended in the normal course.<sup>2</sup>

However, based upon a strict reading of the Back on Track Order issued this week, the controlling language provides that Order 20-09 "will remain in full force and effect" until June 13, 2020. As such, public agencies should prepare accordingly for a return to pre-COVID-19 public access should Order 20-09 not be further extended.

#### ODL:

Order 20-09 permitted governing bodies to hold meetings exclusively by videoconference or by telephone conferencing, so long as a quorum of members participate and any meeting is made available to members of the public and media. Many governing bodies have welcomed this opportunity, but **pursuant to the Back on Track Order, pre-COVID-19 statutory requirements will be in force after June 13, 2020, including the requirement that meetings be held in-person.**<sup>3</sup> Therefore, public agencies should plan accordingly for in-person meetings after June 13, 2020, but remain flexible in the event Order 20-09 is further extended.

As to reopening, generally, political subdivisions and local units gearing up to reopen governmental facilities, including (but certainly not limited to) opening facilities for public meetings which will host members of the public, committee members, commission members, council members, governmental executives, staff, applicants, the media, and others, must prepare and implement a COVID-19 safety plan pursuant to the Governor's Roadmap. Should you need assistance with drafting a reopening plan, Krieg DeVault is available to help.

#### APRA:

Order 20-09 required records requestors to request records via remote means only (U.S. Mail, fax, e-mail, etc.), and provided that public agencies could respond to records requests within a reasonable period of time. This is a relaxed standard; typically, requests are deemed denied by the public agency if, among other circumstances, twenty-four (24) hours elapses after any public agency employee refuses to permit inspection and copying for an in-person or telephonic request, or if seven (7) days elapses from the date a person requests a record by mail or facsimile.<sup>4</sup> **Pursuant to the Back on Track Order, pre-COVID-19 statutory requirements will be in force after June 13, 2020, including requirements that APRA requests be acknowledged within certain timeframes, and record production, if any, occur within a reasonable time thereafter.**

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://staging.kriegdevault.com/insights/indianas-public-access-laws-further-suspended-response-covid->

[2] For instance, an earlier Order, Executive Order 20-26, stated, in pertinent part, "Executive Order . . . 20-09 . . . will remain in full force and effect until 11:59 p.m. on May 23, 2020 . . ." Two days before this stated expiration, the Governor issued the Back on Track Order, permitting Order 20-09 to "remain in full force and effect" until June 13, 2020.

[3] Besides charter schools, state agencies, and airport authorities acting consistent with Ind. Code § 5-14-1.5-3.6, "[a] member of the governing body of a public agency who is not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, video conferencing, or any other electronic means of communication: (1) may not participate in final action taken at the meeting unless the member's participation is expressly authorized by statute; and (2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute." Ind. Code § 5-14-1.5-3.5.

[4] Ind. Code § 5-14-3-9.