

**Complaint of Steve Sanders  
to the Indiana Public Access Counselor  
concerning Open Door Law violation by Indiana University**

**Request for Priority Status**

Priority status is requested pursuant to 62 IAC 1-1-3. The Complainant has previously filed, and recently prevailed in, a denial of access to public records action directly related to the Open Door Law violation described here. See 21-FC-91 Advisory Opinion.

Moreover, this matter involves an urgent and important matter of public concern. The events described here have been the subject of news article published on October 8 by the *Indianapolis Business Journal* [attached as Exhibit 1] as well as *The Indiana Lawyer*. In those articles, Indiana University admitted facts that would create at least one violation of the Open Door Law, as will be discussed below.

**Statement of Facts**

In a series of discussions and decisions taken by email or informal conversations in spring 2021, the Indiana University Board of Trustees decided to pay IU's former president, Michael McRobbie, more than \$582,000 in new compensation to provide "consulting services" to IU's new president, Pamela Whitten, from July 1-December 31, 2021. The discussion and decision did not take place at any public meeting or even any properly noticed executive session.

As the Public Access Counselor already is aware from his Advisory Opinion in 21-FC-91, the trustees and McRobbie had signed a contract addendum in March 2021 to continue his service as president for an additional six months, because it appeared the search for his successor would fail. As compensation for this extended service, McRobbie would receive approximately \$582,000. However, the addendum was never publicly ratified by the Board. As the Board explained in a later letter to McRobbie [attached as Exhibit 2], "We did not ratify [the contract addendum] by public vote and placed it on hold thinking we might find a qualified candidate."

The events leading to this Complaint began when the Board decided to pay McRobbie the \$582,000 anyway. In a May 6 internal board memo [attached as Exhibit 3], trustee Jim Morris, chair of the board's compensation committee, told his colleagues that after signing the addendum, "Michael [McRobbie] therefore had a reasonable expectation that the signed contract was valid and he advises us that

he therefore delayed his sabbatical opportunities at two institutions by one semester.” Morris’s memo informs the other trustees that, *unilaterally*, “[a]s Chair of the Compensation Committee I intend to advise [human resources vice president] John Whelan and [general counsel] Jackie Simmons to make sure these payments are made.” All the trustees apparently acquiesced in this decision. This payment agreement was embodied in the letter to McRobbie on May 13, 2021 [Exhibit 2]. The payments were characterized as compensation for “consulting services” to McRobbie’s successor. The payments began July 1.

After public attention was brought to the matter by Complainant as well as the *Indianapolis Business Journal* and *The Indiana Lawyer*, IU claimed that the McRobbie payment agreement was approved at the August 13 Board of Trustees meeting.

No item concerning McRobbie appeared anywhere on the Agenda of that meeting or its appendix [attached as Exhibit 4]. Nor was there any discussion of any such matter at the Board’s meeting (which can be viewed at [https://iu.mediaspace.kaltura.com/media/t/1\\_y40o6h9u](https://iu.mediaspace.kaltura.com/media/t/1_y40o6h9u), or reviewed through a searchable auto-generated transcript of the meeting attached as Exhibit 5).

Specifically, IU claims that the trustees discussed and decided on the McRobbie payment agreement at an executive session before the August 13 public meeting. IU claims the matter was then voted on at the public meeting, without any discussion, as part of a catch-all package of “administrative action items.” IU’s version of the matter is laid out in detail in the October 8 report in the *Indianapolis Business Journal*:

[IU spokesman Chuck] Carney said in an email that the IU board approved the additional pay at its August meeting. He said that action is reflected in the board’s minutes from that meeting, but he said those minutes wouldn’t become official until today’s board meeting in Indianapolis and so they are unavailable for viewing.

The additional pay for McRobbie isn’t listed as a discussion item on the board’s Aug. 13 agenda but Carney said that’s common practice for “administrative actions” discussed in executive session.

“As is standard procedure, personnel decisions involving contracts are discussed in executive session, if they are discussed at all, and ... voted in the administrative action section of the [public] meeting,” Carney wrote in an email.

IBJ’s review of a video recording of the Aug. 13 board meeting found that the trustees did vote in one fell swoop for a list of “action items” but those items were not discussed or vocally detailed.

Carney said in an email that information about the item dealing with McRobbie's additional pay was in a packet of materials provided to the board in advance of the meeting but that he didn't have immediate access to the material.

## **Argument**

These facts demonstrate that, in the course of dealing with one employment contract, Indiana University managed to violate the Open Door Law in several different ways. Moreover, its spokesman admitted the trustees routinely discuss matters in executive session that the law does not allow. The Public Access Counselor should find IU in violation of the Open Door Law, and further should reprimand the University for its admitted routine flouting of the law.

**First**, a violation by the trustees of the Open Door Law became complete when, in the internal memo of May 6 [Exhibit 3] and letter to McRobbie on May 13 [Exhibit 2], they decided and promised to pay McRobbie \$582,000 in new compensation in exchange for six months of new "consulting" services.

**Second**, even if that had not happened, IU says it believes that its trustees were allowed to discuss and decide, in a later executive session, a new agreement to pay over half a million dollars in new funds for new services to an outgoing administrative employee.

Without more, this also is plainly in violation of the Open Door Law. As the Public Access Counselor advised Complainant in an email on October 1:

[A] new contract with a former employee containing new terms and an extension of funds would need to be discussed and ratified by the full board. *There is no executive session provision for these matters either.* Contracts by governing bodies are always to be discussed and vetted in public, regardless of subject matter or contractor. (Emphasis added.)

Indeed, violating the Open Door Law in this manner is IU's admitted routine practice. IU's spokesman told the *IBJ*, "As is *standard procedure*, personnel decisions involving contracts *are discussed in executive session, if they are discussed at all...*" (emphasis added).

**Third**, according to the *IBJ* news account, IU contends that its trustees, after having supposedly discussed and decided on the McRobbie payment agreement behind closed doors, could then come to their public meeting and "approve" the matter, with no announcement or discussion, as part of a catch-all collection of unknown and non-publicly noticed "action items." IU contends this

despite the fact that nothing on the public Agenda of the meeting would have given an interested person any idea that a half-million-dollar personnel contract was under consideration.

According to the Agenda (pp. 13-14), the listed action items at the August 13 public meeting were approvals for:

- minutes of previous meetings;
- a meeting calendar;
- “all action items recommended by the standing committees”;
- conflict of interest statements; and
- award of degrees.

IU’s spokesman told the *IBJ* that the agreement with McRobbie was “voted [on] in the administrative action section of the [public] meeting.” But there was no such “administrative action section” on the Agenda. Nor was there even any *reference* during the meeting by the chair or any trustee to anything called “administrative action,” as can be seen from the video of the meeting (available at [https://iu.mediaspace.kaltura.com/media/t/1\\_y40o6h9u](https://iu.mediaspace.kaltura.com/media/t/1_y40o6h9u)) or the searchable transcript attached as Exhibit 5.

Various “action items” which got no discussion are buried within the standing committee reports. (These apparently are what the *IBJ* story refers to.) But at least those standing committee reports were made available as part of the Agenda. There is nothing in those reports concerning McRobbie. Nor was any “old business” or “new business” addressed at the meeting.

***Fourth***, even if there *had* been any “administrative action section” of the Agenda and public meeting, the Open Door Law could not be satisfied where an action item is contained “in a packet of materials provided to the board in advance of the meeting,” but not made available at any point to the public and not discussed or referenced in any way during the meeting. *The Open Door Law is rendered meaningless if the public has no idea what business is being transacted by the officials sitting in front of them.* This is especially so when the matter involves an agreement to pay public money to a public employee. Again, as the Public Access Counselor has advised, “Contracts by governing bodies are always to be discussed and vetted in public, regardless of subject matter or contractor.”

Whatever winks and nods were rehearsed in the executive session, or whatever the trustees understood *in their private thoughts* was being acted on at

the public meeting, the University's position is absurd and demonstrably in violation of the Open Door Law.

Finally, minutes from the August meeting are not yet publicly available, but even if IU provides them in response to this Complaint, they are irrelevant to resolving the Complaint.

The whole point of the Open Door Law is to assure that public matters are properly noticed *in advance*, then discussed and acted upon in a way where the public and the media can observe them and actually understand what public business is being transacted. That plainly did not occur with the McRobbie payment agreement. Any self-serving "minutes" the trustees might construct *post hoc* have no role in adjudicating this matter.