INDIANA UNIVERSITY
OFFICE OF THE VICE PRESIDENT
AND GENERAL COUNSEL

November 3, 2021

VIA EMAIL: KHolmecki@opac.in.gov

Mr. Luke H. Britt, Esq.
Office of the Public Access Counselor
State of Indiana
Indiana Government Center South
402 W. Washington St., Room W470
Indianapolis, IN 46204

Re: Formal Complaint 21-FC-169

Dear Mr. Britt,

Please accept this as Indiana University's response to formal complaint 21-FC-169, filed by Professor Steve Sanders with your office on October 14, 2021.

In May 2021, Mike Mirro, the Chair of the Board of Trustees ("Chair Mirro"), sent a letter to President Emeritus Michael McRobbie ("McRobbie") promising to pay him for consulting services (the "consulting letter") to be provided to the new President of Indiana University, Pamela Whitten. Professor Sanders alleges in his complaint that Indiana University ("IU") violated Indiana's Open Door Law because its Board of Trustees did not vote in public to approve this consulting letter with McRobbie. As we explain below, Professor Sanders's complaint is time-barred. He was aware of the existence of the consulting letter, at the latest, by August 20, 2021, but he took well over the 30-day statutory limit to file his complaint. In fact, he did not file his complaint until October 14, 2021—25 days after the deadline.

Furthermore, contrary to Professor Sanders's contention, neither IU nor its Board of Trustees violated the Open Door Law. Professor Sanders alleges that a violation "became complete" when an internal memo was sent on May 6 and the consulting letter was sent to McRobbie on May 13, but Professor Sanders does not cite to any provision of the Open Door Law that IU supposedly violated. In fact, Chair Mirro signed the consulting letter pursuant to the authority delegated to him by the trustees.[1] The trustees enter into over 6,000 contracts a year on behalf of the university, and it would be ludicrous for IU's Board of Trustees to vote on each and every contract at a public meeting. As such, the trustees have delegated signature authority to certain

[1] This letter was also signed by the Vice-Chair of the Board of Trustees, Patrick Shoulders. Many university agreements are co-signed. This does not change the fact that Chair Mirro was authorized to sign the letter.

individuals, including the University's Treasurer, the President of the University, and the Chair of the Board. It was pursuant to this authority that Chair Mirro sent the consulting letter to McRobbie on May 13. As the Court of Appeals held in *Dillman v. Trustees of Indiana University*,[2] "the Open Door Law does not apply to the decisions of a properly-authorized individual university officer."[3] Because the Chair of the Board took action as a properly-authorized individual university officer, the Open Door Law does not apply.

Professor Sanders also takes issue with the way the Board included the consulting letter in an Administrative Action Report. After Professor Sanders argued in his various online articles that the trustees should have voted on the McRobbie consulting letter in a public session, IU decided that transparency would be best served by having the one-page letter included in the Administrative Action Report ("AAR") for the August 2021 board meeting. The AAR was attached to the minutes of that meeting and formally approved at the October board meeting. The minutes have since been posted to the trustees' website so that the public would have access to the letter.

Professor Sanders argues that IU violated the Open Door Law because the Board included the matter "without any discussion, as part of a catch-all package of 'administrative actions items.'" However, according to the *Handbook on Indiana's Public Access Laws*, "The ODL does not require a governing body to deliberate prior to a vote being taken."[4] Although Professor Sanders may have *wanted* the Board to deliberate on the matter at length, the Board was not required to do so. As a practical matter, the trustees cannot possibly discuss every item that needs to be approved during a Board meeting. In fact, the trustees rarely discuss and vote on specific contracts and certainly not when the dollar amount is as low as the consulting letter with McRobbie.[5] For transparency's sake, the trustees included the consulting letter as part of the AAR and approved the AAR. No vote was required by the Open Door Law for the consulting letter to be approved and signed by Chair Mirro; therefore, no violation occurred.

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[2] *Dillman v. Trustees of Indiana University*, 848 N.E.2d 348 (Ind. Ct. App. 2006).
[3] *Id*. at 353.
[4] *Handbook on Indiana's Public Access Laws*, Office of the Public Access Counselor, page 11, last updated January 2017.
[5] Although Professor Sanders states IU agreed to "pay McRobbie $582,000 in new compensation in exchange for six months of new 'consulting services,'" that is not accurate. Under the terms of President McRobbie's employment agreement, which Professor Sanders has a copy of pursuant to his APRA request, McRobbie was entitled to his base salary during the period of July 1, 2021-December 31, 2021, the same period as the subsequent letter for consulting services. Therefore, the only "new compensation" IU is providing to McRobbie is the $100,000 deferred compensation and 25% bonus for consulting services. Thus, the "new compensation" for consulting services is $260,000, not $580,000 as Mr. Sanders suggests.

I. Background

The Board of Trustees named Pamela Whitten as the nineteenth president of IU on April 16, 2021. Steve Sanders, a professor at IU's Maurer School of Law, was very upset by that decision and criticized it, including in the *Indiana Daily Student*[6] and *Indianapolis Business Journal*.[7] Professor Sanders thought his good friend, then-Provost Lauren Robel, should have been selected as the next IU president.[8] She was a finalist for the position.[9]

Frustrated that Provost Robel was not selected, Professor Sanders began reaching out to IU's trustees and the presidential search committee members to try to obtain confidential information about the search process and determine why Provost Robel was not selected. Eventually, Professor Sanders induced one or more of these individuals to breach their confidentiality obligations to the university and to provide him detailed confidential information about the search process.

Professor Sanders then used that confidential information to make an open records request of IU. That request was the source of Professor Sanders's prior complaint to the PAC. IU's second and final response to this one of many open records requests by Professor Sanders was sent to him on August 20. At that point, he had in his possession the consulting letter to McRobbie from May 13 as well as other documents, including the internal board memo from May 6 that he references in his complaint.

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[6] The *Indiana Daily Student* published the following on Mr. Sanders's remarks:

> Steve Sanders, IU professor of law, said he wished more insight was given as to why the presidential search committee and the Board of Trustees chose Whitten as president.
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> "I think it's still unfortunate because I believe that there should be more openness in a process like this," Sanders said. "I would want to know from the faculty members who served on that committee, you know, how did this happen, how did this decision get made."
>
> Sanders also said he struggled to understand how Whitten was the best candidate when her previous presidential experience is from a university very different from IU.
>
> "It's a commuter school, not a residential campus," Sanders said. "It doesn't have the research profile. It doesn't have the national and international level of prestige that Indiana University does." *IU faculty reacts to selection of new IU president, asks for more transparency*, Indiana Daily Student (April 28, 2021). See also *Alumni give IU positive marks for presidential pick, applaud emphasis on diversity*, Indianapolis Business Journal (April 16, 2021).

[7] Despite Professor Sanders's criticism, the Board of Trustees remains fully supportive of President Whitten and stands firmly behind the decision to hire her as IU's next president. Prior to becoming president of IU, President Whitten was president of Kennesaw State University and held various leadership roles at Michigan State University, the University of Georgia, and the University of Kansas Medical Center.

[8] Mr. Sanders notes in the *Medium* article he posted in mid-October that he has "been a colleague and friend of Robel's for more than 20 years."

[9] We note that Mr. Sanders included in a *Medium* article he posted in mid-October the names of two of the original finalists, Lauren Robel and Barbara Wilson. This was confidential information that Mr. Sanders, as an IU employee, was not permitted to share publicly.

Eventually, Professor Sanders published almost everything he discovered about the search process and the arrangements made with President McRobbie in two articles on *Medium*, an online platform for publishing blogs and other writings.[10]

In publishing this confidential information on *Medium*, Professor Sanders violated multiple IU policies. Under IU's data management policy (DM-01), search process information is classified as "restricted" information.[11] The particular search information that Professor Sanders obtained was even more sensitive, though, as it pertained to the presidential search. Under IU policy, restricted information is not permitted to be accessed without specific authorization and is not permitted to be disclosed to a third party unless certain steps are taken. Professor Sanders, an IU employee subject to these policy requirements, violated them by improperly obtaining access to the presidential search information and by publishing that information on *Medium* without following the appropriate university procedures for sharing restricted information.[12]

Professor Sanders's policy violations are especially disturbing because the candidates expected that their interest in the position would be kept confidential. The IU presidential search was kept confidential, in part, to make sure interested candidates could apply without fear their interest in the position would be made public and cause them harm in their current positions. Fewer candidates would have applied if the process had not been set up to be confidential. Further, Professor Sanders's publication of this confidential information will continue to harm IU as it undertakes a number of key searches over the next academic year.

Professor Sanders's Open Door Law complaint stems from actions that occurred as early as March 2021. At that time, a potential extension to President McRobbie's employment agreement, which would have extended his term as IU president up to December 31, 2021, was negotiated, but not ratified. The trustees placed the agreement with McRobbie on hold as it became clearer that they had found a qualified candidate. The Board identified an excellent candidate, Pamela Whitten, who was able to start July 1, 2021. The trustees canceled the public

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[10] The two articles are posted here: https://medium.com/@stevesan.

[11] Institutional information at IU falls into one of four categories: (1) public, (2) university-internal, (3) restricted, or (4) critical. Restricted information is classified as such because of legal, ethical, or other constraints, and may not be accessed without specific authorization. *See* DM-01 (https://policies.iu.edu/policies/dm-01-management-institutional-data/index.html).

[12] Professor Sanders violated multiple IU policies, including a number of requirements in *Management of Institutional Data* (DM-01) and *Disclosing Information to Third Parties* (DM-02) (https://policies.iu.edu/policies/dm-02-disclosing-institutional-information/index.html). *See also* IU's *Code of Academic Ethics*, which requires that each faculty member "observes the regulations of the University," and IU's *Code of Student Rights, Responsibilities, & Conduct*, which applies to faculty, and states, "Obey all applicable university policies and procedures."

meeting they had scheduled in late March to vote on the extension, and the extension was never ratified.[13]

Nonetheless, Chair Mirro thought it was prudent to assure a smooth transition from President McRobbie to President Whitten and to provide some financial recompense for the fact that McRobbie had relied on the extension of his presidential term in rescheduling his sabbatical. On May 13, 2021, Chair Mirro sent the consulting letter to former President McRobbie promising to pay him for six months of consulting services to President Whitten.

II. Analysis

A. The complaint is time-barred.

Indiana Code section 5-14-5-7 requires that an Open Door Law complaint with the PAC be filed "not later than thirty (30) days after: (1) the denial; or (2) the person filing the complaint receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice."[14]

Professor Sanders alleges that an Open Door Law violation occurred when the chair of the Board of Trustee's compensation committee, trustee Jim Morris, sent an internal board memo to his fellow trustees on May 6 and/or when Chair Mirro sent the consulting letter to President McRobbie on May 13, promising to pay him for six months of consulting services.

As you opined in a very similar opinion, Professor Sanders's complaint is untimely because he did not file the complaint within 30 days of receiving the above referenced documents pursuant to his APRA request. In *Opinion of the Public Counselor 14-FC-44*, you opined that a complainant was put on notice when she received documents pursuant to an APRA request that led her to believe a violation of the Open Door Law occurred. Because she did not file her complaint within 30 days of receiving the documents, her complaint was untimely. You stated the following:

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[13] See an archived webpage which shows Notice of a March 19, 2021, Virtual Meeting: https://web.archive.org/web/20210317143958/https://trustees.iu.edu/.

[14] Similarly, Indiana Code section 5-14-1.5-7 indicates that an action in a court related to the Open Door Law must be commenced within 30 days of either "(A) the date of the act or failure to act complained of; or (B) the date the plaintiff knew or should have known the act or failure to act complained of had occurred." In *Pettit v. Indiana Alcoholic Beverage Com'n*, the Indiana Court of Appeals explained that "the violation and remedies section of the Open Door Law, I.C. 5–14–1.5–7, makes it clear that, under the facts of this case, any action to declare the acts of a governing body null and void must be taken within 30 days of the act or failure complained of." *Pettit v. Indiana Alcoholic Beverage Com'n*, 511 N.E. 2d 312, 316 (Ind. Ct. App. 1987). The Court then held that, "more than 30 days passed making Pettit's contentions about Open Door law violations untimely." *Id*.

> Your original public records request was emailed to the Indiana Board of Pharmacy on July 29, 2013…By December 16, 2013 you received the majority of the documents which have been produced to date. Based on your complaint, the documents produced between July and December 2013 led you to believe a violation of the Open Door Law may have occurred. Because you had notice in fact of the alleged violation more than thirty days before the filing of your complaint on March 12, 2014, I will only address the Open Door Law violation allegations as an academic exercise and this Advisory Opinion should not be used as persuasive authority or a conclusive statement on the facts by a court of law."[15]

Professor Sanders has been aware of these documents and actions since, at the very latest, August 20, when he received the documents pursuant to his open records request. However, Professor Sanders waited until October 14, 2021, 55 days after receiving the documents, to file his Open Door Law Complaint.[16] That is 25 days after the statutory deadline. Accordingly, Professor Sanders's complaint is time-barred.

B. The Open Door Law does not apply to Chair Mirro's actions

In addition to Professor Sanders's complaint being time-barred, his complaint does not state an actual violation of the Open Door Law. Professor Sanders never once cites in his articles, or in his ODL complaint, to a specific provision of the Open Door Law that IU supposedly violated. This is particularly notable because he is a law professor, not a layperson. Professor Sanders alleges in his complaint that "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

[15] *Opinion of the Public Counselor 14-FC-44.*
[16] Professor Sanders's complaint also includes discussion of the Board of Trustees meeting that occurred on August 12-13; however, that meeting occurred even earlier than he received the documents pursuant to his open records request and so any claim related to that meeting would also be time-barred.

exchange for six months of new 'consulting' services;" however, Professor Sanders provides no support in statute or case law for his conclusion that a violation occurred.[17]

The most relevant section of the Open Door Law, Indiana Code Section 5-14-1.5-3(a) states, "Except as provided in section 6.1 of this chapter, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them." That is to say, if a governing body holds a "meeting," as that term is defined in the Open Door Law, the governing body must make that meeting open to the public unless that meeting is an executive session held for specific purposes set forth in Indiana Code Section 5-14-1.5-6.1(b).[18]

The Indiana Court of Appeals has made clear that actions by a properly-authorized public official, who is representing a governing body, need not be taken at a meeting, and are, in fact, completely outside the scope of the Open Door Law. In *Dillman v. Trustees of Indiana University*, the Indiana Court of Appeals held "the Open Door Law does not apply to the decisions of a properly-authorized individual university officer."[19] The Court stated that because the Board of Trustees delegated to the president the authority to act on its behalf, the Open Door Act did not apply to the president's decision to terminate the basketball coach's contract.

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[17] Likewise, Professor Sanders states in the article he posted to *Medium* in mid-October, "The new payments to McRobbie were never discussed or approved in a public meeting, as state law requires." Professor Sanders does not cite to the Open Door Law or any case law, though, to support his statement about what state law requires.

[18] In fact, in one such fairly recent PAC Opinion (*Opinion of the Public Access Counselor* 09-INF-10), the Town of Clarksville Redevelopment Commission terminated a contract with an outside contractor by means of a letter. An individual inquired with the PAC about whether the Commission's decision to send a letter was an "official action" that required a public meeting. The PAC stated the following:

> It is important to understand that nothing in the ODL requires a governing body to meet in order to take "official action." Instead, the ODL requires that when a majority of the members of a governing body do gather for the purpose of taking official action on public business, that gathering is a meeting and must be open so the public may observe and record, unless another provision allows the meeting to be closed to the public. I.C. § 5-14-1.5-3. So your inquiry as to whether the Commission took official action is moot. Even if the Commission did take official action by sending the January 22 letter, nothing in the ODL would require that action to have been taken at a meeting.

See also *Opinion of the Public Access Counselor* 09-INF-11 *(opining "The ODL does not provide guidelines for taking actions when there is no meeting.").*

[19] *Dillman*, 848 N.E.2d at 353.

The PAC has also opined that actions by a properly-authorized individual do not trigger the Open Door Law. In *Opinion of the Public Access Counselor 12-FC-114*, the PAC concluded that the Open Door Law did not apply when a properly-authorized individual signed a contract on the board's behalf pursuant to authority delegated to him by the Board.[20] The PAC reasoned that the "ODL is generally triggered when a governing body decides to conduct a meeting, but it

is not instructive as to what actions of a governing body require a meeting or vote."[21] Because the Board properly delegated authority to the individual to act on its behalf and the Open Door Law does not dictate what actions require a meeting or vote, the Open Door Law was not triggered.

The trustees enter into over 6,000 contracts a year on behalf of the university and its various units. It would be ridiculous, if not impossible, for the trustees to discuss and vote on each and every contract at a public meeting. In fact, the trustees used to review each and every contract during public meetings but stopped doing so decades ago due to impracticability and time constraints. Public meetings used to span several days because of the long list of matters the trustees had to discuss and approve.[22] Gradually, the trustees modified how they voted on and approved certain matters in order to reduce the discussion time required during public meetings.[23] The Board eventually delegated full authority to certain university officers to act on its behalf.[24] The trustees have delegated signature authority to certain individuals, including, among others, the President of the University, the University's Treasurer, and the Chair of the Board. Pursuant to the bylaws of the IU Board of Trustees, the Chair of the Board is "empowered and authorized to executive such instruments and documents, which would devolve upon the principal corporate officer."[25]

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[20] *Opinion of the Public Access Counselor 12-FC-114.*
[21] *Id*. (quoting *Opinion of the Public Access Counselor 12-FC-136).*
[22] *See e.g*., *Minutes of the Board of Trustees of Indiana University, May 31, 1940-June 3, 1940,* https://webapp1.dlib.indiana.edu/iubot/view?docId=1940-05-31&chunk.id=0&toc.id=d1e127&brand=iubot.
[23] *See e.g., Minutes of the Board of Trustees of Indiana University, Nov. 18, 1965, https://webapp1.dlib.indiana.edu/iubot/view?docId=1965-11-18&chunk.id=d1e153&toc.depth=1&toc.id=d1e153&brand=iubot.*
[24] *See e.g*., *Minutes of the Board of Trustees of Indiana University, Nov. 20, 1964, https://webapp1.dlib.indiana.edu/iubot/view?docId=1964-11-20.xml&chunk.id=d1e979&toc.depth=1&toc.id=d1e979&brand=iubot&text1=treasurer&op1=and&op2=and&field1=text&field2=text&field3=text&fromMonth=01&fromYear=1964&toMonth=12&toYear=1964&startDoc=1#4; Minutes of the Board of Trustees of Indiana University, Sept. 6, 1980,* https://webapp1.dlib.indiana.edu/iubot/view?docId=1980-09-06&chunk.id=d1e483&toc.depth=1&toc.id=d1e483&brand=iubot&text1=treasurer&field1=text#; https://treasurer.iu.edu/signature-authority/.
[25] *See* https://trustees.iu.edu/about-the-board/policies-resolutions/bylaws.html. Furthermore, the Board of Trustees' delegation of signature authority to the Treasurer indicates that "the President [Chair] of the Board of Trustees" has signature authority. *See* https://treasurer.iu.edu/signature-authority/.

It was pursuant to this authority that Chair Mirro signed the consulting letter. Although Professor Sanders believes Chair Mirro's action somehow violated the Open Door Law, the Open Door Law does not apply to his action. Similar to the trustees' delegation of authority in *Dillman* and the board's delegation of authority in *Opinion of the Public Access Counselor 12-FC-114*, the trustees' delegation of authority to the Chair of the Board took Chair Mirro's action out of the purview of the Open Door Law. Because Chair Mirro signed the letter as a properly-authorized individual university officer, the Open Door Law does not apply.

C. The Board was not required by the Open Door Law to discuss and vote on the consulting letter at a public meeting and included the letter in the Administration Action Report to be transparent

After Professor Sanders began raising concerns about the consulting letter, the trustees decided to make the letter available to the public by including it in the AAR for the August meeting.[26] Although the trustees were not required to include the letter in the AAR, they thought transparency would be best served by doing so.[27] As is standard practice, the AAR was attached to the Minutes of the August 2021 board meeting, providing the public access to the letter because the minutes are posted on the trustee website.

In his complaint, Professor Sanders takes issue with the way the Board included the consulting letter in the August meeting's Administrative Action Report. He claims IU violated the Open Door Law because the matter was included "without any discussion, as part of a catch-all package of 'administrative actions items." However, the *Handbook on Indiana's Public Access Laws* states "The ODL does not require a governing body to deliberate prior to a vote being taken."[28] Furthermore, the PAC has opined that not every single item voted on during a meeting can possibly be discussed at length. *See Opinion of the Public Access Counselor 18-FC-55*. Although "substantive items" merit more reflection, "routine matters" do not require deliberation by the governing body and a list of items can be approved as a whole, rather than one-by-one. The PAC has advised that "substantive items" include, among other things, "large contracts."

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[26] The AAR for the August meeting, which includes the letter, can be found here: https://webapp1.dlib.indiana.edu/iubot/view?docId=2021-08-13&chunk.id=d1e653&toc.depth=1&toc.id=d1e653&brand=iubot.

[27] In *Opinion of the Public Access Counselor 12-FC-114,* the Board voted on a contract, which had already been signed by a properly authorized individual, in order "to ensure that the matter was handled in a fully transparent manner." The PAC stated the following:

> to clear up any impropriety, or perceived impropriety; the Board conducted a vote on May 25, 2012 in an open, properly noticed public meeting where the Board unanimously ratified the initiation of the legal action. Based on the foregoing, it is my opinion that the Board did not violate the ODL.

[28] *Handbook on Indiana's Public Access Laws*, Office of the Public Access Counselor, page 11, last updated January 2017.

Although Professor Sanders contends that the consulting letter warranted discussion by the trustees, there was nothing for the trustees to discuss. The consulting letter had already been properly signed by Chair Mirro, and the trustees' sole reason for including the letter in the AAR was to provide transparency.

Furthermore, even in terms of significance, the consulting letter was not a "large contract" that warranted discussion by the Board. Although Professor Sanders states IU agreed to "pay McRobbie $582,000 in new compensation in exchange for six months of new "consulting services," that is not accurate. Under the terms of President McRobbie's employment agreement, which Professor Sanders received pursuant to his APRA request, McRobbie was entitled to his base salary during the period of July 1, 2021-December 31, 2021, the same period as the subsequent letter for consulting services.[29] Therefore, the only "new compensation" IU was providing to McRobbie was $100,000 deferred compensation and a 25% bonus. Thus, the "new compensation" for consulting services was $260,000, not $580,000 as Mr. Sanders suggests.

Moreover, in Fiscal Year 2020-21 alone, the trustees entered into over 140 agreements where the university paid over $1,000,000 to another party. Only a few of those agreements were discussed by the trustees or voted on in a public meeting. In fact, the consulting agreement with McRobbie was for significantly less money than *hundreds* of agreements entered into by the trustees this past year that were *not* discussed by the trustees at any board meeting. The trustees have only a limited amount of time to discuss items at board meetings, and it would be ludicrous for them to have to discuss and vote on each and every contract.

It should also be noted that the trustees regularly include faculty tenure decisions in AARs and do not discuss those decisions before they are approved. A tenure decision is often a multi-million-dollar decision given the compensation provided to a tenured faculty member over the remaining time the faculty member is a scholar with Indiana University. Such a decision is far more impactful to the budget of the university than the consulting letter provided to McRobbie, and yet it is also only included in the AAR.[30] The Open Door Law does not require votes to be

[29] McRobbie's Second Restatement of Employment Agreement states:

> At the end of the Term, the University agrees that the President shall also be entitled to a sabbatical of one (1) year beginning on July 1, 2021 and continuing through June 30, 2022 in accordance with University policies governing sabbaticals. During his sabbatical year, the President shall receive his last existing Annual Base Salary and standard tenured faculty benefits.

[30] In fact, Professor Sanders himself was awarded tenure and promoted from Associate Professor to Professor in 2019. The approval for his tenure and promotion was only included in an appendix to the minutes of the April 5, 2019, Board of Trustee meeting. That tenure and promotion decision had far greater financial implications for the university than the $260,000 consulting arrangement provided to McRobbie. Professor Sanders argues in his complaint that the Open Door Law "could not be satisfied where an action item" is added in such a manner. He

taken in any particular manner, so long as a secret ballot is not utilized.[31] A secret ballot was not utilized; therefore, no Open Door Law violation occurred.

At its October meeting, the Board took a voice vote to approve the minutes of the August board meeting and the AAR, which included the letter to McRobbie. The approved minutes along with the AAR have been posted online, and thus the public has been made fully aware of the exact terms of the consulting letter and the trustee's approval of the same. Although Professor Sanders may have wanted the trustees to deliberate on the matter at length, they were not obligated to do so. For transparency's sake, the trustees included the consulting letter as part of the AAR and approved the AAR.

III. Conclusion

In conclusion, Professor Sanders's complaint is time-barred, and no Open Door Law violation occurred. Professor Sanders was aware of all the relevant information *at the latest* by August 20, but did not file his complaint until 55 days later—25 days past the statutory deadline. In addition, Professor Sanders's primary claim is that a public meeting *should* have been held to approve the letter to McRobbie sent in May; however, Chair Mirro took action pursuant to the authority delegated to him by the trustees. Both the Court of Appeals and the PAC have made clear the Open Door Law does not apply to such action by an individual authorized to act on behalf of the Board.

Professor Sanders also takes issue with the way the Board included the consulting letter in the August meeting's Administrative Action Report. Although Professor Sanders may have *wanted* the Board to deliberate on the matter at length, the Board was not required to do so. The trustees cannot possibly discuss during each Board meeting every item that needs to be approved, and the trustees' sole reason for including the letter in the AAR was to provide transparency. The AAR was attached to the minutes of the August board meeting and approved at the October board meeting. The minutes have since been posted to the trustees' website so that the public would have access to the letter.

Importantly, Professor Sanders is not the crusader for public transparency that he hails himself to be. He claims his actions are being taken in the public interest and that the inordinate amount of time he has devoted to this matter is somehow tied into his scholarly pursuits at the law school. That is far from the truth. Professor Sanders is not acting out of public interest but out of his own interest. Moreover, he is trying to use the confidential search process

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emphasizes that in such a case the Open Door Law is "rendered meaningless" and that is "especially so when the matter involves an agreement to pay public money to a public employee." Professor Sanders, of course, did not object to the approval of his own tenure and promotion in this fashion two years ago.

[31] *See* Ind. Code § 5-14-1.5-3(b).

information that he inappropriately obtained and published in violation of IU policy, to promote himself and paint himself as some sort of muckraking journalist.

It's unclear what Professor Sanders hopes to accomplish by making this Open Door Law complaint to the PAC. He was not excluded from any meeting, and he is not seeking to have any of the actions taken by IU's Board of Trustees declared void. In fact, by the time this complaint is settled, former President McRobbie will have been paid almost all of the additional compensation. We ask that the PAC dismiss his complaint as it is time-barred and states no violation of the Open Door Law.

Thank you for your attention in this matter.

Sincerely,

Jacqueline A. Simmons
Vice President and General Counsel