



2006 OHIO SUNSHINE LAWS UPDATE
THE PUBLIC RECORDS ACT • OPEN MEETINGS ACT



JIM PETRO
ATTORNEY GENERAL

STATE OF OHIO
www.ag.state.oh.us



Dear Ohioan,

I believe that democracy flourishes when government operates in the sunshine, available to the citizens it serves and open to public scrutiny. To preserve and encourage openness, the Ohio General Assembly passed the Open Meetings and Public Records acts, collectively known as the "Sunshine Laws."

Because many of the records held by public bodies pertain to private matters of citizens interacting with their government, the balance between openness and privacy is a delicate one. The Sunshine Laws are constantly being evaluated to ensure that the information gathered by the government is not abused and that individual privacy rights are protected to the greatest extent possible.

I am pleased to present the 2006 edition of the Ohio Sunshine Laws Update. Frequently referred to as the "Yellow Book," this overview of statutes and case law is prepared by my office to guide public officials, as well as Ohio citizens, regarding the application of the Public Records and/or the Open Meetings law. Additionally, attorneys with my office are available to guide local governments who want to set their own policies for openness as provided by law.

An electronic version of this publication is available on my Web site. I am pleased to announce that the electronic version will provide "hotlinking" to the statutes and court decisions that are cited in the "Yellow Book," giving readers instant access to the language of the cited material. Additionally, my Web site will feature periodic updates to the "Yellow Book" in advance of the issuance of the next edition. Please visit my Web site at www.ag.state.oh.us to take advantage of these features.

Also, additional printed copies of the "Yellow Book" can be obtained by utilizing the order form that is found on the last page of this publication.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Petro". The signature is fluid and cursive, with a large loop at the end.

Jim Petro
Attorney General

Your comments and suggestions are
invited and encouraged.

Please address correspondence to:

The Ohio Attorney General's Office
Constitutional Offices Section
Public Records Unit

30 E. Broad St., 17th Fl.
Columbus, OH 43215-3428

(614) 466-2872

www.ag.state.oh.us

Special thanks to all members of the
Attorney General's Office, both past and present,
whose contributions made this book possible.

Edited by:

Lauren Lubow
Martin D. Susec
Assistant Attorneys General

Patricia E. Doyle
Paralegal

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**SECTION I.
INTRODUCTION**


INTRODUCTION

 Liberty cannot be preserved without a general knowledge among the people, who have a right and a desire to know; but besides this, they have a right, an indisputable, divine right to that most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers.

~ *A Dissertation on the Canon and Feudal Law*
John Adams (1765)

 A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives.

~ *9 Writings of James Madison 103*
(G. Hunt ed. 1910)

 The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.

~ *Patterson v. Ayers (1960)*,
171 Ohio St. 369, 371, 171 N.E.2d508, 509.

A citizen's ability to evaluate government's effectiveness is one of the hallmarks of a democratic society. But democratic ideals, like any freedom, come with a price.

The debate over open government attracts strong opinions. On one side are government records custodians who feel a certain protectiveness in the documents they create and use in carrying out their daily duties. On the other side are citizens of the state of Ohio who view records custodians as mere caretakers – guardians of records that rightfully belong to the citizens of this state. The Ohio General Assembly has attempted to strike a balance between these sometimes competing interests by enacting the Public Records Act and the Open Meetings Act – Ohio's so-called "Sunshine Laws."

Since 1989, the Attorney General's Office has provided this handbook to the citizens of Ohio in an attempt to help navigate through these difficult areas of law. The "Yellow Book," as it is called, provides an easy-to-understand explanation of these two areas of law, as well as a summary of many court cases that interpret them. It also contains some of the most frequently encountered issues in Public Records and Open Meetings Law. This book is not intended to provide the public with legal advice, but rather to provide a useful and instructive reference as to the "Sunshine Laws."

A. BASIC DEFINITIONS

This book contains several words that may be unfamiliar to the reader. Words such as redact, charter and mandamus are familiar to attorneys and others experienced in the law, but may seem foreign to others. This section is intended to provide definitions to some of these legal terms in plain English.

- Charter** A charter is an instrument that permits a municipality to govern itself. To a municipality with a charter, the charter is roughly equivalent to a state’s constitution – it outlines certain rights, responsibilities, liberties or powers that exist in the municipality.
- Discovery** Discovery refers to a pre-trial practice that allows parties to a lawsuit to obtain facts and information about the opposing side’s case. This practice is intended to allow the parties to be well prepared for trial. Discovery is available for both civil and criminal trials.
- In Camera.** In camera means “in private.” The term is often used to describe the manner in which a judge will review records that are the center of a public records dispute. A judge will review the records in private to ensure that, if the records are indeed exempt from disclosure, they are not subject to public scrutiny.
- Injunction** One remedy available under the Open Meetings Act is an action for an injunction, which basically asks a judge for an order instructing the public body to stop further violating the Open Meetings Law and not to violate the Open Meetings Law in the future.
- Litigation** Litigation is a lawsuit – a legal action and its proceedings.
- Mandamus.** Mandamus is a particular legal cause of action. When an individual feels that a public office or a public body is not meeting its mandatory obligations under the public records law, they can file a document known as “a petition for a writ of mandamus,” which asks the judge or judges to order the public office to comply with their obligations under the law. Mandamus is the sole legal remedy for an alleged violation of the Public Records Act.
- Pro Se** Pro se means to represent yourself on your own behalf. In Ohio, a person may represent him or herself in court, even if that person is not a licensed attorney. If a person appears in court without an attorney, they are appearing pro se.
- Quo Warranto** Quo warranto is a particular cause of action. When an individual is uncertain as to what authority a person is exercising power, they may file an action in Quo Warranto asking the court to inquire and determine whether such person is exercising such power lawfully.
- Redact** Redaction means to blackout or remove the public information, such as a person’s Social Security number from an otherwise public record before public disclosure of the record. A felt-tip marker or correction fluid is often used to “redact” the information.

B. BASIC LEGAL ISSUES

How does a charter affect public records or open meetings requirements?

The Public Records Act and the Open Meetings Act are both state laws. This means in a charter municipality, when a charter provision conflicts with one of these two acts, the charter will control.¹ However, there must be a clear conflict. Otherwise the charter provision will be read to coincide with the acts.² So, be sure to consider this issue when confronted with a public records or an open meetings issue.

How does the federal Freedom of Information Act (FOIA) apply in Ohio?

In short, it does not. The federal FOIA does not apply to state agencies or officers.³ If you want records from a state agency or officer, your request will be governed by Ohio's Public Records Act. However, a request made to a federal office located in Ohio will be governed by the federal FOIA.

Are the Public Records and Open Meetings Acts the only laws dictating the public's right to access select records or meetings?

No. There will be times when other state or federal laws may also require public access to select records or meetings.⁴ For example, select state statutes may require disclosure of particular records.⁵ These statutes often serve as mini-public records acts coextensive from the Public Records Act itself.⁶ In addition, state and federal constitutional provisions may provide the public with additional rights to access records or meetings.⁷ However, these constitutional rights are limited to only record and/or proceedings that have historically been open to the public and in which public participation plays a significant positive role in the functioning of government and are not absolute.⁸ These rights may be affected by the presence of an overriding interest based on findings that closure of the records is essential to preserve higher values and closure is narrowly tailored to serve that interest.⁹ Nonetheless, because these constitutional rights are fairly narrow and because the Public Records and Open Meetings Acts are so broad, these constitutional rights are infrequently referenced by the courts.

Will the Attorney General's Office bring a mandamus or injunction action on behalf of an individual citizen?

No. The General Assembly has not given the Attorney General enforcement authority under either of the Sunshine Laws. This means that the Attorney General cannot investigate allegations of Sunshine Law violations, nor can the Attorney General file a lawsuit on your behalf.

¹ Ohio Constitution, Article XVIII, Sections 3 and 7. See, also, State ex rel. Fenley v. Kyger (1995), 72 Ohio St.3d 164, 648 N.E.2d 493; State ex rel. Lightfield v. Village of Indian Hill (1994), 69 Ohio St.3d 441, 633 N.E.2d 524; State ex rel. Craft v. Schisler (1988), 40 Ohio St.3d 149, 532 N.E.2d 719; Johnson v. Kindig (Aug. 15, 2001), Wayne App. No. 00CA0095, 2001 Ohio App. LEXIS 3569 (where the charter explicitly states all council meetings shall be public, must also explicitly state exception for private executive sessions).

² State ex rel. Cincinnati Post v. City of Cincinnati (1996), 76 Ohio St.3d 540, 1996 Ohio 372, 668 N.E.2d 903 (Charter was not inconsistent with the Open Meetings Act wherein the charter required all meetings be public without exception).

³ State ex rel. Warren v. Warner (1996), 84 Ohio St.3d 432, 1999 Ohio 475, 704 N.E.2d 1228; State ex rel. Findlay Publ. Co. v. Schroeder (1996), 76 Ohio St.3d 580, 1996 Ohio 361, 669 N.E.2d 835.

⁴ E.g. Ashworth v. Bagley (2005), 351 F.Supp.2d 786, 2005 U.S. Dist. LEXIS 654 (federal common law right creates a presumption of openness with respect to select federal court documents).

⁵ E.g., Ohio Rev. Code Ann. §1707.12.

⁶ State ex rel. Cincinnati Enquirer v. Joyce (2002), 97 Ohio St.3d 192, 2002 Ohio 5807, 777 N.E.2d 253.

⁷ Free Speech and Free Press Clauses of the First Amendment to the United States Constitution, together with the analogous provision of Article I, Section 11 of the Ohio Constitution and the "open courts" provision of Article I, Section 16 of the Ohio Constitution.

⁸ State ex rel. Beacon Journal Pblg. Co. v. Bond (2002), 98 Ohio St.3d 146, 2002 Ohio 7117, 781 N.E.2d 180.

⁹ State ex rel. Cincinnati Enquirer v. Cissell ("Winkler II") (2002), 151 Ohio App.3d 10, 2002 Ohio 7334, 782 N.E.2d 1247 (Hamilton County); State ex rel. Cincinnati Enquirer v. Winkler ("Winkler I") (2002), 149 Ohio App.3d 350, 2002 Ohio 4803, 777 N.E.2d 320 (Hamilton County).

(In Winkler I, the appellate court found Ohio Rev. Code Ann. §2953.52, which allows court records to be sealed, must be narrowly construed in order to be constitutional. Specifically, under the statute, the judge must weigh the public's right to access the records, the government's needs, and privacy interests of the person seeking the order sealing the records and determine whether a compelling interest exists sufficient to overcome the constitutional presumption that the public has access to court proceedings and records).



SECTION II.
THE PUBLIC RECORDS ACT

THE PUBLIC RECORDS ACT

A. OVERVIEW

The Ohio Public Records Act imposes two primary obligations upon public offices:

1. Provide prompt inspection of public records
2. Provide copies of public records within a reasonable period of time

These obligations, in turn, provide the public with two primary rights:

1. The right to prompt inspection of public records
2. The right to copies within a reasonable period of time

However, these obligations and rights only apply to “public records.” Further, they only apply to “public offices.” Therefore, in order to fully understand the public’s rights under the Public Records Act, it is important to understand what a “public record” and a “public office” are for purposes of the Act.

B. LIBERAL RULES OF CONSTRUCTION

The Public Records Act evolved from the principle that Ohio’s citizens are entitled to access the records of their government. To advance that principle, the Public Records Act is to be interpreted¹⁰ liberally in favor of disclosure. That means where the decision whether to disclose a record is a close call, a public office should disclose it. If a statute expressly states that specific records of a public office are public, it does not mean that all other records of that office are protected from disclosure.¹¹ Additionally, the exemptions to the Public Records Act, which are discussed more fully later, should be narrowly construed.¹² If a record does not clearly fit within an exemption, the public office must disclose the record. In summation, whenever possible, the Public Records Act and its exemptions should be construed liberally in favor of giving the public utmost access to their records.

C. DEFINITION OF A “PUBLIC RECORD”

Unless otherwise exempt, a public record is a “record” kept by a public office including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for profit entity.¹³

A “record” is any item that:

1. Contains information stored on a fixed medium (such as paper, computer, film, etc.)
2. Is created, received, or sent under the jurisdiction of a public office
3. Documents the organization, functions, policies, decisions, procedures, operations or other activities of the office¹⁴

The determination of whether a specific item constitutes a “record” will depend on the facts and circumstances surrounding the particular item requested. The Ohio Supreme Court has imposed an actual use standard in defining a “record.”¹⁵ The court expressly rejected the notion that an item is a “record” simply because the public office could use a document it has received to carry out its duties and responsibilities.¹⁶ Similarly, allegedly racist e-mail circulated between public employees are not “records” when they were not used to conduct the business of the public office.¹⁷

¹⁰ State ex rel. Warren Newspapers v. Hutson (1994), 70 Ohio St.3d 619, 1994 Ohio 5, 640 N.E.2d 174.

¹¹ Franklin County Sheriff’s Dept. v. State Employment Relations Board (1992), 63 Ohio St.3d 498, 589 N.E.2d 24.

¹² State ex rel. Warren Newspaper v. Hutson (1994), 70 Ohio St.3d 619, 1994 Ohio 5, 640 N.E.2d 174.

¹³ Ohio Rev. Code Ann. §149.43(A)(1).

¹⁴ Ohio Rev. Code Ann. §149.011(G); State ex rel. Carr v. Caltrider (May 16, 2001), 2001 Ohio Misc. LEXIS 41 (rejected applications for Special License Plates, received by BMV, are records pursuant to Ohio Rev. Code Ann. §149.011(G)).

¹⁵ See State ex rel. Beacon Journal Publishing Co. v. Whitmore (1998), 83 Ohio St.3d 61, 697 N.E.2d 640 (judge read but did not rely on unsolicited letters from public in sentencing criminal defendant, therefore, letters were not “records” because they did not serve to document any activity of the public office); State ex rel. Sensel v. Leone (1999), 85 Ohio St.3d 152, 1999 Ohio 446, 707 N.E.2d 496 (letters alleging inappropriate behavior of coach not “records” and can be discarded) (citing to Whitmore, supra); State ex rel. Carr v. Caltrider (May 16, 2001), 2001 Ohio Misc. LEXIS 41; But see, State ex rel. Plain Dealer Publishing Co. v. City of Cleveland (2005), 106 Ohio St.3d 70, 2005 Ohio 3807, 831 N.E.2d. 987 (photos of police officers satisfied definition of ‘record’).

¹⁶ State ex rel. Beacon Journal Publ. Co. v. Whitmore (1998), 83 Ohio St.3d 61, 63, 697 N.E.2d 640, 641.

¹⁷ State ex rel. Wilson-Simmons v. Lake County Sheriff’s Dept. (1998), 82 Ohio St.3d 37, 693 N.E.2d 789.

May items such as photographs, videos, maps, e-mails and computer files constitute “records?”

Yes, depending on whether the definition of a “record” discussed earlier has been satisfied. The media upon which the item is kept is insignificant. A public office has discretion to determine the form in which it will keep its records.¹⁸ But a record does not have to be paper – any item, regardless of its physical form, is a record if it has the characteristics described previously.¹⁹ Any material that a public office does rely upon in carrying out its duties may be a “record.”²⁰ However, proprietary computer software used for examining records is not a public record.²¹

May a draft of a public record itself be a public record?

Yes, depending on whether the definition of a “record” discussed earlier has been satisfied. If the draft documents the organization, policies, functions, decisions, procedures or other activities of a public office, it is a “record.”²² The Ohio Supreme Court held that a written draft of an oral collective bargaining agreement between a city and its union was a “record.”²³ According to the Court, the draft documented the city’s version of the oral agreement and the city submitted the draft to city council for its approval.²⁴

May notes of a public employee be a public record?

Yes, depending on whether the definition of a “record” discussed earlier has been satisfied. Clearly, not every piece of paper on which a public employee writes is a public record.²⁵ If the notes are simply personal papers kept for the public employee’s own convenience, rather than as official records, it is likely that they are not public records.²⁶ But, if other members of the office had access to the notes and if information would be lost by deeming them not to be public records, then they may ultimately be deemed by the courts to be public records.²⁷

Are pleadings of a court public records?

Yes. Pleadings in a court action, although filed by private parties, invoke and shape the jurisdiction of the court to hear the action and grant the requested relief.²⁸

Can the addresses of government employees constitute public records?

Yes. However, the item requested must satisfy the definition of a “public record” as discussed above. Courts in some instances may deem that the residential information of public employees does not constitute a “record” where that information does not document the functions, activities, policies or other procedures of a public office.²⁹

¹⁸ State ex rel. Recodat Co. v. Buchanan (1989), 46 Ohio St.3d 163, 546 N.E.2d 203.

¹⁹ Ohio Rev. Code Ann. §149.011(G).

²⁰ State ex rel. Mazzaro v. Ferguson (1990), 49 Ohio St.3d 37, 550 N.E.2d 464; State ex rel. Beacon Journal Publ. Co. v. Whitmore (1998), 83 Ohio St.3d 61, 1998 Ohio 180, 697 N.E.2d 640.

²¹ State ex rel. Recodat Co. v. Buchanan (1989), 46 Ohio St.3d 163, 546 N.E.2d 203.

²² State ex rel. Mothers Against Drunk Drivers v. Gosser (1985), 20 Ohio St.3d 30, 485 N.E.2d 706; State ex rel. Martinelli v. Corrigan (1991), 71 Ohio App.3d 243, 593 N.E.2d 364 (Cuyahoga County); Landrum v. Dombey (Dec. 28, 1976), 1976 Ohio App. LEXIS 8249 (Franklin County); State v. Kokal (1990), 562 So.2d 324 (Fla.). See, also, State ex rel. Steffen v. Kraft (1993), 67 Ohio St.3d 439, 1993 Ohio 32, 619 N.E.2d 688 (personal, uncirculated notes made for judge’s own convenience are not public records).

²³ State ex rel. Calvary v. City of Upper Arlington (2000), 89 Ohio St.3d 229, 2000 Ohio 142, 729 N.E.2d 1182.

²⁴ State ex rel. Calvary v. City of Upper Arlington (2000), 89 Ohio St.3d 229, 2000 Ohio 142, 729 N.E.2d 1182.

²⁵ State ex rel. Steffen v. Kraft (1993), 67 Ohio St.3d 439, 1993 Ohio 32, 619 N.E.2d 688 (judge’s trial notes are not public record).

²⁶ State ex rel. Steffen v. Kraft (1993), 67 Ohio St.3d 439, 1993 Ohio 32, 619 N.E.2d 688; Vindicator Printing Co. v. Julian (July 26, 1994), 1994 Ohio App. LEXIS 3362 (Mahoning County) (school board members’ notes in preparation for meeting are not records); Int’l. Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Voinovich (1995), 100 Ohio App.3d 372, 654 N.E.2d 139 (10th Dist.) (governor’s personal calendars and appointment books were not public records); State ex rel. Cranford v. Cleveland (2004), 102 Ohio St.3d 196, 2004 Ohio 4884, 814 N.E.2d 1218 (personal notes of director conducting a disciplinary conference were not public records absent any evidence that they were officially kept, used or made available to the public office).

²⁷ State ex rel. Steffen v. Kraft (1993), 67 Ohio St.3d 439, 1993 Ohio 32, 619 N.E.2d 688; Int’l Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Voinovich (1995), 100 Ohio App.3d 372, 654 N.E.2d 139 (Franklin County) (Governor’s personal calendar is not public record); Vindicator Printing Co. v. Julian (1994), 1994 Ohio App. LEXIS 3362 (board members’ individual evaluation forms not public record).

²⁸ State ex rel. Miami Valley Broadcasting Corp. v. Davis (July 21, 2004), 158 Ohio App.3d 98, 2004 Ohio 3860, 814 N.E.2d 88 (Montgomery County).

²⁹ State ex rel. Dispatch Printing Co. v. Johnson (2005), 106 Ohio St.3d 160, 2005 Ohio 4384, 833 N.E.2d 274; State ex rel. Jones v. Summit County Children Services Board (Jan. 24, 2001), 9th Dist. App. No. 19915, 2001 WL 96048; Miami Valley Child Dev. Centers, Inc. v. Dist. 925 (2002), 2nd Dist. No. 18928, 2002 Ohio 933.

If a public office transfers its public duties to a private entity, are the resulting records public or private?

They are public records so long as three conditions are satisfied. In other words, a public office cannot avoid its responsibility for public records by transferring custody or even the record-making function to a private entity.³⁰ The resulting records are public records, even if held by a private entity, if the following three conditions are met: (1) the private entity prepared the records to perform responsibilities normally belonging to the public office; (2) the public office is able to monitor the private entity's performance; and (3) the public office may access the records itself.³¹ However, even where the public office does not have control over or access to such records, the records may still be deemed to be public.³²

What is meant by the requirement that the item be "kept" by a public office for purposes of the Public Records Act?

In order for an item to be a public record, it must be "kept" by the public office. However, that does not mean that the item must be "required" to be maintained by the public office before it will be deemed a public record. Rather, the item must simply be the type of item typically and actually retained by the office in the ordinary course of its business in order to carry out its duties and functions. If not, then the item is not "kept" and the public office does not have an obligation to provide access to the item.³³ Furthermore, if the item does not exist, the public office will not have an obligation to provide access to that item or create the item to respond to a request.³⁴

What records must a public office keep?

Under Ohio law, a public office may only create records that are "necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities."³⁵ This standard appears to grant a public office a considerable degree of discretion in determining the records it will maintain.³⁶ Further, as mentioned earlier, a public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.³⁷ For example, if a person asks a public office for a list of cases pending against it, but the office does not keep such a list, the public office is under no duty to create a list to respond to the request.³⁸ However, when it comes to electronic records, an item is deemed to already exist if a public office's computer is already programmed to produce the record described by the requester.³⁹ Therefore, so long as the item otherwise meets the definition of a public record as described above and is not otherwise exempt, the public office will have an obligation to provide public access to the item. On the other hand, if the computer is not already programmed to produce the item, but the public office completes the programming and produces the item anyway, then the office will be creating a public record and the public office will only be able to charge the maximum amount allowable for all public records, its actual cost.⁴⁰

³⁰ State ex rel. Cincinnati Enquirer v. Krings (2001), 93 Ohio St.3d 654, 2001 Ohio 1895, 758 N.E.2d 1135; State ex rel. Gannett Satellite Info. Network v. Shirey (1997), 76 Ohio St.3d 1224, 669 N.E.2d 1148; State ex rel. Plain Dealer Publ. Co. v. City of Cleveland (1996), 75 Ohio St.3d 31 1996 Ohio 379, 661 N.E.2d 187; State ex rel. Medina County Gazette v. City of Brunswick (1996), 109 Ohio App.3d 661, 672 N.E.2d 1070 (Medina County); State ex rel. Fostoria Daily Review Co. v. Fostoria Hosp. Assn. (1988), 40 Ohio St.3d 10, 531 N.E.2d 313.

³¹ State ex rel. Cincinnati Enquirer v. Krings (2001), 93 Ohio St.3d 654, 2001 Ohio 1895, 758 N.E.2d 1135; State ex rel. Mazzaro v. Ferguson (1990), 49 Ohio St.3d 37, 550 N.E.2d 464 (overruled in part by statute, R.C. 4701.19(B) audit work papers of private accounting firm are not public records); see, also, State ex rel. Toledo Blade Co. v. Bureau of Workers Compensation (2005), 106 Ohio St.3d 113, 2005 Ohio 3549, 832 N.E.2d 711.

³² See, e.g., State ex rel. Gannett Satellite Info. Network v. Shirey (1997), 78 Ohio St.3d 400, 1997 Ohio 206, 678 N.E.2d 557 (public office did not have the ability to monitor performance or access to records, but records were held to be public records nonetheless).

³³ State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Cincinnati Board of Education (2003), 99 Ohio St.3d 6, 2003 Ohio 2260, 788 N.E.2d 629 (The Cincinnati Board of Education did not have an obligation to provide copies of materials submitted by applicants for the position of Superintendent of a school district where the materials had been submitted to the Board during an interview process and returned to the applicants consistent with a based previously established procedures).

³⁴ State ex rel. Fant v. Mengel (July 26, 1991), 62 Ohio St.3d 197, 198, 580 N.E.2d 1085, 1086, 1990 Ohio App. LEXIS 3091; State ex rel. Chaney v. Court of Common Pleas, 2002 Ohio 573.

³⁵ Ohio Rev. Code Ann. §149.40.

³⁶ See State ex rel. Beacon Journal Publ. Co. v. Whitmore (1998), 83 Ohio St.3d 61, 697 N.E.2d 640; State ex rel. Sensel v. Leone (1999), 85 Ohio St.3d 152, 1999 Ohio 446, 707 N.E.2d 496.

³⁷ State ex rel. Kerner v. State Teachers Retirement Board (1998), 82 Ohio St.3d 273, 1998 Ohio 242, 695 N.E.2d 256; State ex rel. White v. Goldsberry (1999), 85 Ohio St.3d 153, 1999 Ohio 447, 707 N.E.2d 496; State ex rel. Warren v. Warner (1999), 84 Ohio St.3d 432, 433, 1999 Ohio 475, 704 N.E.2d 1228; State ex rel. Wilson-Simmons v. Lake County Sheriff's Dept. (1998), 82 Ohio St.3d, 42, 693 N.E.2d 789, 793; State ex rel. Fant v. Mengel (July 26, 1991), 62 Ohio St.3d 197, 198, 580 N.E.2d 1085, 1086, 1990 Ohio App. LEXIS 3091.

³⁸ State ex rel. Fant v. Mengel (July 26, 1991), 62 Ohio St.3d 197, 580 N.E.2d 1085, 1990 Ohio App. LEXIS 3091; Pierce v. Dowler (Nov. 1, 1993), 1993 Ohio App. LEXIS 5224 (Madison County); State ex rel. Fant v. Flaherty (1992), 62 Ohio St.3d 426, 583 N.E.2d 1313.

³⁹ State ex rel. Scanlon v. Deters (1989), 45 Ohio St.3d 376, 544 N.E.2d 680 (overruled on different grounds).

⁴⁰ 1999 Ohio Atty. Gen. Ops. No. 99-012.

How long must a public office keep its records?

A public office must maintain its public records indefinitely unless the retention period set forth in its appropriately enacted records retention schedule has lapsed.⁴¹ The records retention schedule must be approved either by the state records administration or a local records commission.⁴² For more information about records retention policy and practice, please turn to Appendix A.

D. DEFINITION OF A “PUBLIC OFFICE”

A “public office” is a “state agency, public institution, political subdivision or any other organized body, office, agency, institution or entity established by the laws of this state for the exercise of any function of government.”⁴³

Basically, any entity that:

1. Performs a public service, and
2. Is supported by public funds is a “public office” for purposes of the Public Records Act.⁴⁴ It is clear that an entity need not be operated by the state or a political subdivision to constitute a “public office.”⁴⁵ The following is a list of the various types of offices that courts have determined to be “public offices” for purposes of the Public Records Act:

- Community corrections and chemical dependency treatment facilities⁴⁶
- Public hospitals⁴⁷
- Community action agencies⁴⁸
- Private non-profit water corporation supported by public money⁴⁹
- Private not-for-profit PASSPORT administrative agencies⁵⁰
- Private equity fund public hospitals⁵¹
- Non-profit corporations that receive and solicit gifts for a public university and receive support from taxation⁵²
- Courts⁵³
- State universities⁵⁴ promotion and tenure records at a state college or university are public records,⁵⁵ but intellectual property records and donor profile records are not public records⁵⁶
- Private non-profit county ombudsman offices⁵⁷
- County emergency medical services organizations⁵⁸

⁴¹ Ohio Rev. Code Ann. §149.333. See, e.g., 1989 Ohio Atty. Gen. Ops. No. 89-042, 1989 Ohio AG LEXIS 49 (providing the properly approved retention schedule permits Department of Highway Safety to dispose of paper or other original documents after recording on optical disk, originals may be destroyed).

⁴² Ohio Rev. Code Ann. §121.211, Ohio Rev. Code Ann. §149.331, and Ohio Rev. Code Ann. §149.38-.42.

⁴³ Ohio Rev. Code Ann. §149.011(A).

⁴⁴ State ex rel. Strothers v. Wertheim (1997), 80 Ohio St.3d 155, 1997 Ohio 349, 684 N.E.2d 1239 (Cook, J., dissenting); but, see, State ex rel. Stys v. Parma Community General Hosp. (2001), 93 Ohio St.3d 438, 2001 Ohio 1582, 755 N.E.2d 874 (hospital did not meet definition of “public office”).

⁴⁵ State ex rel. Freedom Communs. Inc. v. Elida Community Fire Co. (1998), 82 Ohio St.3d 578, 1998 Ohio 411, 697 N.E.2d 210 (private non-profit corporation providing fire protection and emergency medical assistance to townships).

⁴⁶ State ex rel Oriana House, Inc. v. Montgomery (2005), Franklin Cty App. Nos. 04AP-492, 04AP-504, 2005 Ohio 3377, 2005 Ohio App. LEXIS 3115.

⁴⁷ State ex rel. Dist. 1199 v. Lawrence County Gen. Hosp. (1998), 83 Ohio St.3d 351, 1998 Ohio 49, 699 N.E.2d 1281; State ex rel. Fox v. Cuyahoga County Hosp. System (1988), 39 Ohio St.3d 108, 529 N.E.2d 443. But, see, State ex rel. Farley v. McIntosh (1998), 134 Ohio App.3d 531, Montgomery County App. No. 16682, 731 N.E.2d 726 (court-appointed psychologist is not “public office”); but, cf., State ex rel. Stys v. Parma Community General Hosp. (2001), 93 Ohio St.3d 438, 2001 Ohio 1582, 755 N.E.2d 874 (hospital deemed not a “public office”).

⁴⁸ State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Association (1990), 61 Ohio Misc.2d 631, 582 N.E.2d 59.

⁴⁹ Sabo v. Hollister Water Association (Jan. 12, 1994), Athens App. No. CA1582, 1994 Ohio App. LEXIS 33.

⁵⁰ 1995 Ohio Atty. Gen. Ops. No. 95-001.

⁵¹ State ex rel Toledo Blade Co. v. Ohio Bureau of Workers Compensation (2005), 106 Ohio St.3d. 113, 2005 Ohio 3549, 832 N.E. 2d. 711 (fund was about exclusively comprised of workers’ compensation assets).

⁵² State ex rel. Toledo Blade Co. v. University of Toledo Foundation (1992), 65 Ohio St.3d 258, 602 N.E.2d 1159.

⁵³ State ex rel. Cincinnati Enquirer v. Dinkelacker (2001), 144 Ohio App.3d 725, Hamilton App. No. C-010153, 761 N.E.2d 656 (discovery documents introduced in court as exhibits, changed from trial preparation to public records); Adams v. Metallica, Inc. (2001), 143 Ohio App.3d 482, 758 N.E.2d 286 (Hamilton County); Doe v. American Cancer Society Ohio Div. (2001), 143 Ohio App.3d 495, Hamilton App. No. C-000751, 758 N.E.2d 296 (no clear, unqualified public right to inspect pretrial discovery materials).

⁵⁴ Halaby v. Board of Directors (1954), 162 Ohio St. 290, 123 N.E.2d 3 (a public institution organized for the purpose of rendering a public service to the residents).

⁵⁵ State ex rel. James v. Ohio State University (1994), 70 Ohio St.3d 168, 1994 Ohio 246, 637 N.E.2d 911.

⁵⁶ Ohio Rev. Code Ann. §149.43(A)(1)(m)-(n) and (A)(5)-(6).

⁵⁷ State ex rel. Strothers v. Wertheim (1997), 80 Ohio St.3d 155, 1997 Ohio 349, 684 N.E.2d 1239.

⁵⁸ 1999 Ohio Atty. Gen. Ops. No. 99-006.

E. RIGHTS AND RESPONSIBILITIES UNDER THE PUBLIC RECORDS ACT

An individual has two basic rights, and in turn, a public office has two primary corresponding obligations under the Public Records Act:

1. Upon request, prompt inspection of public records
2. Upon request, copies of public records within a reasonable amount of time. With respect to copies, if requested, the copies must be made available by ordinary U.S. mail. Additionally, copies must be made available on paper, on the same medium that the record is kept, or any other medium specified, so long as that medium is available as an integral part of the public office's normal business operations.⁵⁹

F. INSPECTION OF RECORDS

What is "prompt" inspection?

"Prompt" means without delay and with reasonable speed, but this standard must be judged within the context of the circumstances in each individual case.⁶⁰ This standard also contemplates the opportunity for legal review.⁶¹

When must a public office allow inspection of records?

At all reasonable times during regular business hours.⁶² Regular business hours mean established business hours.⁶³ Where a public office operates 24-hours-a-day, such as a police station, access to records does not need to be permitted during all 24 hours — instead, the office may adopt file room hours that approximate normal administrative hours.⁶⁴

Can a public office charge a person to inspect records?

No. The Public Records Act does not permit a public office to charge the public for inspection of public records.⁶⁵

G. COPIES OF RECORDS

How long is a "reasonable period of time" for providing copies?

This period of time must be judged within the context of the facts and circumstances in each individual case.⁶⁶ This standard also contemplates the opportunity for legal review.⁶⁷

How much can a public office charge for copies of records?

A public office is limited in the amount it can charge for copies of public records — it may only charge its actual

⁵⁹ Ohio Rev. Code Ann. §149.43(B)(2). See, also, Ohio Rev. Code Ann. §9.01 (where public office keeps information by machine readable means, such as microfilm, optical disk, or electronic or magnetic storage, office must make "readily available to the public" equipment necessary to reproduce information in readable form); State ex rel. Warren Newspapers, Inc. v. Hutson (1994), 70 Ohio St.3d 619, 640 N.E.2d 174.

⁶⁰ State ex rel. Consumer News Services, Inc. v. Worthington Board of Education (2002), 97 Ohio St.3d 58, 2002 Ohio 5311 (promptness is to be determined based on the facts and circumstances of the case); State ex rel. Wadd v. City of Cleveland (1998), 81 Ohio St.3d 50, 1998 Ohio 444, 689 N.E.2d 25 (where police department could provide access within seven days, eight days after accident is "prompt" access to accident reports).

⁶¹ State ex rel. Taxpayers Coalition v. City of Lakewood (1999), 86 Ohio St.3d 385, 1999 Ohio 114, 715 N.E.2d 179 (seven days for attorney to review documents is appropriate); State ex rel. Warren Newspapers, Inc. v. Hutson (1994), 70 Ohio St.3d 619, 623, 640 N.E.2d 174, 178.

⁶² Ohio Rev. Code Ann. §149.43(B).

⁶³ State ex rel. Butler County Bar Association v. Robb (1990), 66 Ohio App.3d 398, 584 N.E.2d 76 (Butler County).

⁶⁴ State ex rel. Warren Newspapers, Inc. v. Hutson (1994), 70 Ohio St.3d 619, 640 N.E.2d 174 (allowing records requests during all hours of the entire police department's operations is unreasonable).

⁶⁵ State ex rel. Lemke v. Columbiana County Prosecutor's Office (Feb. 16, 1996), Columbiana App. No. 93-C-56, 1996 Ohio App. LEXIS 521.

⁶⁶ State ex rel. Consumer News Services, Inc. v. Worthington Board of Education (2002), 97 Ohio St.3d 58, 2002 Ohio 5311 (promptness is to be determined based on the facts and circumstances of the case.); see State ex rel. Wadd v. City of Cleveland (1998), 81 Ohio St.3d 50, 1998 Ohio 444, 689 N.E.2d 25.

⁶⁷ State ex rel. Taxpayers Coalition v. City of Lakewood (1999), 86 Ohio St.3d 385, 1999 Ohio 114, 715 N.E.2d 179 (seven days for attorney to review documents is appropriate); State ex rel. Warren Newspapers, Inc. v. Hutson (1994), 70 Ohio St.3d 619, 623, 640 N.E.2d 174, 178.

cost of producing the copy,⁶⁸ unless the cost is otherwise set by statute.⁶⁹ For instance, the cost for copies of 8.5 x 11 inch, single-sided public records at the Attorney General's Office is five cents per page.

When records are stored, produced, organized or compiled in an enhanced or "value-added" format, the copying charge is the actual cost of copying the records in the format that they exist. A public office cannot include a fee to defray the cost of producing the records into the enhanced format.⁷⁰

Employee time may not be calculated into the charge for copying a public record.⁷¹ Specific statutory authority to charge a set fee for certified copies of a public record does not mean the same fee may be charged for uncertified copies of the same record. So, if the requester does not request a certified copy, the fee charged must be "at cost."⁷²

Can a public office hire an outside contractor to make copies of public records?

Yes. In some circumstances, it is permissible for a public office in response to a request for public records to have an outside contractor make copies and pass on the cost of the service directly to the requester.⁷³ A public office may employ the services of a private contractor to produce copies, so long as the decision to do so is reasonable.⁷⁴

Are there options available for public offices to "speed up" the processing of a request for copies of public records?

Yes. Aside from producing copies of public records in-house within a "reasonable period of time" using the office's normal staff and equipment at no additional labor charge upon the requester, a public office can satisfy its obligation of providing copies within a reasonable period of time in two additional ways: (1) with the consent of the requester, have the documents produced faster by means of employing additional personnel and equipment at the requester's expense; or (2) with the consent of the requester, contract out the work to a private contractor at the requester's expense.⁷⁵

Does a public office have to allow a requester to make his or her own copies of public records?

No. The Public Records Act does not require the public office to allow a requester to make the copies.⁷⁶

What if the person requesting copies of records is indigent or refuses to pay for the copies?

With the exception of an initial trial transcript of a criminal proceeding, a public office has no duty to provide copies of public records free of charge to someone who indicates an inability or unwillingness to pay for them.⁷⁷

⁶⁸ State ex rel. Warren Newspapers, Inc. v. Hutson (1994), 70 Ohio St.3d 619, 640 N.E.2d 174; State ex rel. Slagle v. Rogers (Aug. 7, 2003), 2003 Ohio 4162, 2003 Ohio App. LEXIS 3722, affirmed (2004), 103 Ohio St.3d 89, 2004 Ohio 4354, 814 N.E.2d 55 (transcripts from the clerk of court must be made available at actual cost); see, also, State ex rel. Russell v. Thomas (1999), 85 Ohio St.3d 83, 1999 Ohio 435, 706 N.E.2d 1251 (\$1 per page did not represent actual cost of copies); 2001 Ohio Atty. Gen. Ops. No. 01-012; State ex rel. Williams v. Stearn (Mar. 15, 1993), 1993 Ohio App. LEXIS 1624 (Stark County) ("at cost" includes, but is not limited to, the cost to respondent for materials, equipment and other things necessary for the retrieval and copying of the documents). But, see, State ex rel. Karasek v. Haines (Sept. 4, 1998), Montgomery App. No. 16490, 1998 Ohio App. LEXIS 4135 (10 cents for copies is "reasonable"); State ex rel. Strothers v. Murphy (1999), 132 Ohio App.3d 645, Cuyahoga App. No. 75399, 725 N.E.2d 1185 (parties agreed to vice cents per page for copies).

⁶⁹ E.g., Ohio Rev. Code Ann. §5502.12 (Department of Public Safety may charge for copies of accident reports).

⁷⁰ 2001 Ohio Atty. Gen. Ops. No. 01-012.

⁷¹ State ex rel. Warren Newspapers, Inc. v. Hutson (1994), 70 Ohio St.3d 619, 640 N.E.2d 174.

⁷² State ex rel. Slagle v. Rogers (Aug. 7, 2003), 2003 Ohio 4162, 2003 Ohio App. LEXIS 3722, affirmed (2004), 103 Ohio St.3d 89, 2004 Ohio 4354, 814 N.E.2d 55 (Marion County) (uncertified transcripts from the clerk of court must be made available at actual cost); State ex rel. Butler County Bar Association v. Robb (1990), 66 Ohio App.3d 398, 584 N.E.2d 76 (Butler County).

⁷³ State ex rel. Margolius v. City of Cleveland (1992), 62 Ohio St.3d 456, 460 n.4, 584 N.E.2d 665 (court noted that nothing precluded the city "from arranging with an outside contractor to make copies of tapes or disks in compliance with the [Public Records Act], and then passing the cost of this service directly to the requester").

⁷⁴ State ex rel. Gibbs v. Concord Twp. Trustees (2003), 2003 Ohio 1586, 31 (Lake County).

⁷⁵ State ex rel. Gibbs v. Concord Twp. Trustees (2003), 2003 Ohio 1586, 32 (Lake County).

⁷⁶ State ex rel. Bertolini v. Smith (July 26, 1988), Franklin App. No. 89AP-836, 1988 Ohio App. LEXIS 2994; but, see, Land Title Guarantee & Trust Co. v. Essex (1977), 52 Ohio App.2d 56, 6 Ohio Op.3d 42, 368 N.E.2d 326 (Lorain County) (requester permitted to photograph public records during inspection).

⁷⁷ State v. Billy Ray Reynolds (June 4, 2004), 2nd Dist. No. 19964, 2004 Ohio 2954, 2004 Ohio App. LEXIS 2592 ("R.C. 149.43(B)(4) allows an incarcerated defendant to have a free copy of trial records in certain circumstances."); State ex rel. Dunning v. Cleary (Jan. 11, 2001), Cuyahoga App. No. 78763, 2001 Ohio App. LEXIS 79; State ex rel. Mayrides v. City of Whitehall (1990), 62 Ohio App.3d 225, 575 N.E.2d 224 (Franklin County), aff'd (1991), 62 Ohio St.3d 203, 580 N.E.2d 1089; State ex rel. Edwards v. Cleveland Police Dept. (1996), 116 Ohio App.3d 168, Cuyahoga App. No. 71198, 687 N.E.2d 315 (citing Mayrides, supra); State ex rel. Lewis v. O'Brien (Dec. 31, 1996), Trumbull App. No. 96-T-5529, 1996 Ohio App. LEXIS 5944; State ex rel. Plowman v. Butler County Clerk of Courts (1995), 103 Ohio App.3d 77, Butler App. No. CA94-07-144,

Can a public office require a person to pay for copies in advance?

Yes. Many Ohio courts have held that prepayment of copy charges is appropriate under the Public Records Act.⁷⁸

Must a public office charge for copies?

No. A public office may decide to provide copies free of charge. However, the public office will want to make sure that such decisions are supported by office policy.

Does a public office have to mail copies of public records?

Yes. A public office is required to mail copies of public records via U.S. mail upon request.⁷⁹ The public office, however, may require prepayment of postage and the cost of mailing supplies, in addition to the cost of copies.⁸⁰ No statutory authority, however, requires a public office to make records available via the internet, facsimile, e-mail or express mail.⁸¹ The public office may adopt policies and procedures to follow in mailing out public records, including a limit of 10 records per month to any one requester, unless the requester certifies its use is non-commercial.⁸²

Can a public office choose the media upon which to make the copy?

No. The Public Records Act allows a person to choose the medium upon which they would like a record to be duplicated. They can choose to have the record (1) on paper; (2) in the same form as the public office keeps it (e.g., on computer disk); or (3) on any medium upon which the public office determines the record can "reasonably be duplicated as an integral part of the normal operations of the public office."⁸³

Is a public office under a duty to provide a requester with access to records that did not exist at the time of the records request?

No. A public office does not have a duty to provide records that are acquired after a request for records is complete.⁸⁴

H. PROPER REQUEST FOR PUBLIC RECORDS

In order to obtain inspection of a public record, a requester must simply request such access to the public record. Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity so that the public office can identify, retrieve and review the records.

Who can request public records?

Any *person*, including corporations, individuals and even other governmental agencies,⁸⁵ may request public records. The requester does not have to be an Ohio resident.⁸⁶ The person seeking the records may designate someone else to inspect or retrieve copies.⁸⁷

658 N.E.2d 812.

⁷⁸ State ex rel. Plowman v. Butler County Clerk of Courts (1995), 103 Ohio App.3d 77, Butler App. No. CA94-07-144, 658 N.E.2d 812; State ex rel. Bertolini v. Smith (July 26, 1988), 1988 Ohio App. LEXIS 2994 (Franklin County); Fant v. Sykes (Feb. 23, 1988), 1988 Ohio App. LEXIS 678 (Franklin County). See, also, State ex rel. Justice v. Enright (Aug. 27, 1992), 1992 Ohio App. LEXIS 4550 (Franklin County) (dollar a page copying cost challenged but court merely held that since relator sent only \$1.50 in advance, this would not cover 33 pages of copying).

⁷⁹ Ohio Rev. Code Ann. §149.43(B).

⁸⁰ Ohio Rev. Code Ann. §149.43(B); State ex rel. Call v. Fragale (2004), 104 Ohio St.3d 276, 2004 Ohio 6589, 819 N.E.2d 294.

⁸¹ But, see, In re: Engelhart (Feb. 10, 2004), 127 Misc.2d 12, 2004 Ohio 825, 804 N.E.2d 1052 (holding that the public records must be made available via the Internet as an available medium as opposed to a means of delivery).

⁸² Ohio Rev. Code Ann. §149.43(B)(3).

⁸³ Ohio Rev. Code Ann. §149.43(B)(2); State ex rel. Slagle v. Rogers, 103 Ohio St.3d 89, 2004 Ohio 4354, 814 N.E.2d 55 (audio tapes must be made available); State ex rel. Dispatch Printing Co. v. Morrow County Prosecutor's Office (2005), 105 Ohio St.3d 72, 2005 Ohio 685, 824 N.E. 2d 64 (copies of 911 tapes must be made available on tape if requested).

⁸⁴ State ex rel. Taxpayers Coalition v. City of Lakewood (1999), 86 Ohio St.3d 385, 1999 Ohio 114, 715 N.E.2d 179 (city had no duty to provide access to attorney fee records that did not exist at time of request).

⁸⁵ Franklin County Sheriff's Dept. v. State Employment Relations Board (1992), 63 Ohio St.3d 498, 589 N.E.2d 24.

⁸⁶ Ohio Rev. Code Ann. §1.59; 1990 Ohio Atty. Gen. Ops. No. 90 050.

⁸⁷ State ex rel. Steckman v. Jackson (1994), 70 Ohio St.3d 420, 639 N.E.2d 83; State ex rel. Finnerty v. Custodian of Records, Strongsville Police Dept. (1994), 96 Ohio App.3d 569, Cuyahoga App. No. 66096, Cuyahoga App. No. 66105, Cuyahoga App. No. 66106, Cuyahoga App. No. 66123, Cuyahoga No. 66124, Cuyahoga App. No. 66128, Cuyahoga App. No. 66138, Cuyahoga App. No. 66139, 645 N.E.2d 780.

Can an incarcerated person receive copies of public records?

Yes, but if the requested records concern a criminal investigation, the incarcerated person must follow very strict guidelines. First, the records must be “public records” (see Ohio Rev. Code §149.011(G)), which are not subject to some sort of exemption. Second, the incarcerated person must have secured a finding from the judge who imposed the sentence of incarceration or the judge’s successor in office that the information sought in the public record is necessary to support a justifiable claim of the person.⁸⁸ Courts have denied the public records requests of inmates because this procedure was not followed.⁸⁹

Does the request have to be in writing?

Not ordinarily. The Public Records Act does not have such a requirement,⁹⁰ unless the requester is a journalist seeking a peace officer’s residential and familial information.⁹¹

Is the motive of the requester relevant?

No. Any person may obtain public records without having to state the reason.⁹² This is true even if the information that is requested is going to be used for commercial purposes.⁹³

However, in at least one case, the Ohio Supreme Court has considered the requester’s motive in determining whether to make the records available.⁹⁴ Furthermore, the legislature changed the law to allow the public office to consider the requester’s motive, but only in determining whether a public office has an obligation to mail more than 10 copies of public records to a person within a one month period⁹⁵ or when determining whether otherwise protected familial or residential information is available to the media.⁹⁶ To further complicate matters, Ohio federal courts have implied that a requester’s motive and intended use of the requested information is pertinent in determining whether certain personal information about public employees will be exempt from disclosure under a constitutional right to privacy.⁹⁷

Additionally, the U.S. Supreme Court held that a California statute restricting public access to arrestees’ addresses based on the intended use of the information is not a facially unconstitutional abridgement of a person’s right to engage in speech.⁹⁸

Is undue burden or expense a valid excuse for a public office’s non-compliance with a public records request?

No. A request cannot be denied or delayed on the grounds that fulfilling it interferes with the operation of the

⁸⁸ Ohio Rev. Code Ann. §149.43(B)(4); *Bowman v. City of Trotwood Police Dept.*, Montgomery Cty. No. 20799, 2005 Ohio 4734, 2005 Ohio App. LEXIS 4257; *Holder v. Chester Twp.* (Dec. 20, 2002), 11th Dist. No. 2002-G-2461, 2002 Ohio 7168, 2002 LEXIS 6942.

⁸⁹ State ex rel. Breeden v. Judge Paul Mitrovich (Oct. 28, 2005), 11th Dist. No. 2005-L-005, 2005 Ohio 5763, 2005 Ohio App. LEXIS 5179; *State v. Zakrzewski* (2004), 6th Dist. No. L-03-1212, 2004 Ohio 2680, 2004 LEXIS 2378; State ex rel. Cohen v. Mazeika (June 25, 2004), 11th Dist. No. 2004-L-048, 2004 Ohio 3340, 2004 Ohio App. LEXIS 2978; State ex rel. Sevayega v. Reis (2002), 88 Ohio St.3d 458, 2000 Ohio 383, 727 N.E.2d 910; *Becker v. Ohio State Highway Patrol* (Mar. 25, 2003), 10th Dist. No. 02AP-918, 2003 LEXIS 1383; *Wilberger v. Highhills Police Dept.* (Mar. 22, 2001), Cuyahoga App. No. 79160, 2001 Ohio App. LEXIS 1312; State ex rel. Henderson v. Cleveland Police Dept. (June 1, 2001), Cuyahoga App. No. 78891, 2001 Ohio App. LEXIS 2535; State ex rel. Mack v. Fuerst (July 19, 2001), 8th Dist. App. No. 79087, 2001 Ohio App. LEXIS 3245; State ex rel. Whittaker v. Court of Common Pleas (Feb. 15, 2001), Cuyahoga App. No. 78718, 2001 Ohio App. LEXIS 680.

⁹⁰ *Franklin County Sheriff’s Dept. v. State Employment Relations Board* (1992), 63 Ohio St.3d 498, 504, 589 N.E.2d 24, 29 (Ohio Rev. Code Ann. §149.43 does not require any specific form for a public records request).

⁹¹ Ohio Rev. Code Ann. §149.43(B)(5).

⁹² State ex rel. Fant v. Enright (1993), 66 Ohio St.3d 186, 610 N.E.2d 997. But, cf., Ohio Rev. Code Ann. §149.43(B)(5) (journalist seeking peace officers’ personal or residential information must certify disclosure would be in public interest); 1974 Ohio Atty. Gen. Ops. No. 74-097.

⁹³ 1990 Ohio Atty. Gen. Ops. No. 90-050; see, also, State ex rel. Webster v. Burleman (1894), 1894 Ohio Misc. LEXIS 387, 4 Ohio Cir. Dec. 506, 8 Ohio C.C. 482. But, see, Ohio Rev. Code Ann. §149.43(B)(3) (public office may limit copies mailed to requester if purpose is commercial).

⁹⁴ State ex rel. Keller v. Cox (1999), 85 Ohio St.3d 279, 1999 Ohio 264, 707 N.E.2d 931 (police officer’s personal information not available to criminal defendant who might use the information to “nefarious ends”).

⁹⁵ Ohio Rev. Code Ann. §149.43(B)(3) (public office may limit copies mailed to requester if purpose is commercial).

⁹⁶ Ohio Rev. Code Ann. §149.43(B)(5) (journalist seeking peace officers’ personal and familial information must certify that disclosure would be in the public interest).

⁹⁷ *Kallstrom v. City of Columbus* (2001), 165 F.Supp.2d 686, 2001 U.S. Dist. LEXIS 16315, 2345 (“Kallstrom II”) (releasing personal information regarding police officers to press includes public understanding of city’s law enforcement agency, but releasing same information to criminal defense attorney does not). See, also, *Kallstrom v. City of Columbus* (1998), 136 F.3d 1055, 1998 U.S. App. LEXIS 1941 (6th Cir.) (“Kallstrom I”).

⁹⁸ *Los Angeles Police Dept. v. United Reporting Publ. Corp.* (1999), 120 S.Ct. 483, 1999 U.S. LEXIS 8239 (statute is “simply a law regulating access to information in the government’s hands” and “merely requires respondent to qualify under the statute if it wishes to obtain arrestees’ addresses”). Cf. *Amelkin v. McClure* (1999), 168 F.3d 893 (6th Cir.) (Kentucky statute limiting use of public records to non-commercial use is unconstitutional).

public office.⁹⁹ However, when a request unreasonably interferes with the discharge of the public office's duties, the office may not be obligated to comply.¹⁰⁰

Can a public records request ever be too broad?¹⁰¹

Yes. It is the responsibility of the requester of public records to identify with particular clarity the records that are sought.¹⁰² Although a records custodian has a duty to maintain records in a manner that will allow them to be available for inspection,¹⁰³ they might be indexed in a manner different than, and inconsistent with, the request. Such an inconsistency does not necessarily mean that the public office has violated its duty under Ohio Rev. Code §149.43(B)(1).¹⁰⁴ In reviewing at least one method of indexing, the court held that the primary concern of a retrieval system is to accommodate the mission of the office, and that providing reasonable access for citizens was only secondary or perhaps even tertiary.¹⁰⁵

For instance, a person requests copies of all traffic accident reports filed on one particular date, but the office files them alphabetically by driver name, the request does not match the method of retrieval.¹⁰⁶ Compliance with the request would force the public office to scrutinize every report filed to find the exact information requested – the reports filed on that date. A public office is under no duty to seek out and retrieve records that contain specific information that is of interest to a requester.¹⁰⁷ A mandamus will be denied where the request broadly asks a public office to search for records containing selected information.¹⁰⁸ For example, a request to a public office for “any and all records containing any reference whatsoever” to a particular person is an inappropriate public records request.¹⁰⁹ Therefore, a request should be “specific and particularly describe what is being sought.”¹¹⁰

A public body is not required to do research for a requester when the requester could inspect the records themselves. The public office should make all public records containing the information being sought available to allow the requester to inspect and retrieve the requested records.¹¹¹

⁹⁹ State ex rel. Beacon Journal Publ. Co. v. Andrews (1976), 48 Ohio St.2d 283, 358 N.E.2d 565 (“[n]o pleading of too much expense, or too much time involved, or too much interference with normal duties, can be used by the [public officer] to evade the public's right to inspect and obtain a copy of public records within a reasonable amount of time. The [public office] is under a statutory duty to organize his office and employ his staff in such a way that his office will be able to make these records available for inspection and to provide copies when requested within a reasonable time”).

¹⁰⁰ Barton v. Shupe (1988), 37 Ohio St.3d 308, 525 N.E.2d 812; State ex rel. Patterson v. Ayers (1960), 171 Ohio St.369, 171 N.E.2d 508 (“anyone may inspect [public] records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the records”); State ex rel. Zauderer v. Joseph (1989), 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist.).

¹⁰¹ State ex rel. Dillery v. Icsman (2001), 92 Ohio St.3d 312, 2001 Ohio 193, 750 N.E. 2d 156; Capers v. White (Apr. 7, 2002), Cuyahoga App. No. 80713, 2002 Ohio App. LEXIS 1962 (a requester must identify with reasonable clarity the records at issue). See State ex rel. Carter v. N. Olmsted (1994), 69 Ohio St.3d 315, 1994 Ohio 488, 631 N.E.2d 1048; State ex rel. Waterman v. City of Akron (Oct. 21, 1992), 9th Dist. No. 14507, 1992 Ohio App. LEXIS 5417; State ex rel. Bertolini v. Smith (July 26, 1988), Franklin App. No. 89AP-836, 1988 Ohio App. LEXIS 2994; State ex rel. Zauderer v. Joseph (1989), 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist.).

¹⁰² State ex rel. Taxpayers Coalition v. Lakewood (1999), 86 Ohio St.3d 385, 391, 715 N.E.2d 179, quoting State ex rel. Fant v. Tober (May 20, 1993), Cuyahoga App. No. 63737, aff'd (1993), 68 Ohio St.3d 117, 623 N.E.2d 1202; see State ex rel. Evans v. Parma (Mar. 13, 2003), Cuyahoga App. No. 81236, 2003 Ohio 1159, 2003 Ohio App. LEXIS 1097.

¹⁰³ Ohio Rev. Code Ann. §149.43(B)(1).

¹⁰⁴ See State ex rel. Zauderer v. Joseph (1989), 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist.).

¹⁰⁵ State ex rel. Zauderer v. Joseph (1989), 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist.).

¹⁰⁶ State ex rel. Zauderer v. Joseph (1989), 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist.).

¹⁰⁷ State ex rel. Evans v. Parma (Mar. 13, 2003), Cuyahoga App. No.81236, 2003 Ohio 1159, 2003 Ohio App. LEXIS 1097; Capers v. White (Apr. 17, 2002), Cuyahoga App. No. 80713, 2002 Ohio App. LEXIS 1962. See State ex rel. Fant v. Tober (May 20, 1993), Cuyahoga App. No. 63737, aff'd (1993), 68 Ohio St.3d 117, 623 N.E.2d 1202; see, also, State ex rel. Thomas v. Ohio State University (1994), 71 Ohio St.3d 245, 1994 Ohio 261, 643 N.E.2d 126.

¹⁰⁸ See State ex rel. Oriana House, Inc. v. Montgomery (2005), Franklin Cty App. Nos. 04AP-492, 04AP-504, 2005 Ohio 3377, 2005 Ohio App. LEXIS 3115; see State ex rel. Frank R. Recker & Assoc. Co., L.P.A. v. Montgomery (1997), 79 Ohio St.3d 1502, 684 N.E.2d 87; Capers v. White (Apr. 17, 2002), Cuyahoga App. No. 80713, 2002 Ohio App. LEXIS 1962 (requests for information are not enforceable in a public records mandamus); State ex rel. Fant v. Tober (May 20, 1993), Cuyahoga App. No. 63737, aff'd (1993), 68 Ohio St.3d 117, 623 N.E.2d 1202; see, also, State ex rel. Thomas v. Ohio State University (1994), 71 Ohio St.3d 245, 1994 Ohio 261, 643 N.E.2d 126.

¹⁰⁹ State ex rel. Dillery v. Icsman (2001), 92 Ohio St.3d 312, 2001 Ohio 193, 750 N.E.2d 156.

¹¹⁰ State ex rel. Dillery v. Icsman (2001), 92 Ohio St.3d 312, 2001 Ohio 193, 750 N.E.2d 156 (requester failed in duty to identify records with sufficient clarity); State ex rel. Whittaker v. Court of Common Pleas (Feb. 15, 2001), Cuyahoga App. No. 78718, 2001 Ohio App. LEXIS 680 (request for all other documents pertaining to a case is fatally vague and incapable of being acted upon); State ex rel. Zauderer v. Joseph (1989), 62 Ohio App.3d 752, 577 N.E.2d 444 (10th Dist.); State ex rel. Farley v. McIntosh (1998), 134 Ohio App.3d 531, Montgomery App. No. 16682, 731 N.E.2d 726.

¹¹¹ State ex rel. Waterman v. City of Akron (Oct. 21,1992), 9th Dist. No. 14507, 1992 Ohio App. LEXIS 5417; State ex rel. Fant v. Tober (Apr. 28, 1993), Cuyahoga App. No. 63737, 1993 Ohio App. LEXIS 2591 (no authority for requiring public body to do research for requester when he could inspect the records himself).

I. RECORDS EXEMPT FROM THE PUBLIC RECORDS ACT

In the public records context, the word “confidentiality” has different meanings. A record may be confidential in the sense that it is exempt from disclosure under the express language of the Public Records Act. This means that a public office does not have to disclose the record in response to a public records request, but it may, if it chooses to do so, without fear of punishment under the law. Such records are frequently referred to as being “discretionarily exempt.”

A record may also be confidential in the sense that it must not be disclosed under penalty of law, even if the public office would like to disclose it. Where a specific provision, either state or federal law, makes a certain type of record confidential in either of these senses, that law controls to whom and under what circumstances that record may be released.¹¹² Such records are frequently referred to as “mandatory exemptions.”

In short, public offices generally hold three types of records:

- Records that are not subject to any exemption which must be released. These are “public records” as defined under the Public Records Act
- Records, the release of which is prohibited by state or federal law, which must not be released, even if the public office would like to do so. These are mandatory exemption records. (See “Catch-All” Exemptions)
- Public records that are subject to an exemption, which may be released if the public office chooses to waive the exemption. These are discretionarily exempt records. (See Express Exemptions.)

Exemptions to the Public Records Act are to be narrowly construed.¹¹³ If a record does not clearly fit into one of these exemptions, then a public office must disclose the record. There is one “catch-all” exemption and 21 expressly stated exemptions to Ohio’s Public Records Act.

1. The “Catch-All” Exemption¹¹⁴

If any provision of Ohio or federal law prohibits public disclosure of a certain type of record, a public office must not release it in response to a public records request. A state statute or rule, or a federal statute or regulation may designate the records of certain government offices or particular types of records confidential.¹¹⁵ Such a designation means those records are not subject to the provisions of the Public Records Act.¹¹⁶

A state administrative rule, properly promulgated, has the effect of law.¹¹⁷ But, if the rule was promulgated outside the authority statutorily granted to the agency, it is not valid and cannot constitute an exemption to the Public Records Act.¹¹⁸

For example, matters occurring before the grand jury shall not be publicly disclosed.¹¹⁹ This means that a public office may not disclose records in response to a request that asks for all documents provided to a grand jury.¹²⁰

¹¹² 1990 Ohio Atty. Gen. Ops. No. 90-099; 1990 Ohio Atty. Gen. Ops. No. 90-007.

¹¹³ State ex rel. National Broadcasting Co. v. Cleveland (1988), 38 Ohio St.3d 79, 526 N.E.2d 786 (“NBC I”).

¹¹⁴ Ohio Rev. Code Ann. §149.43(A)(1)(v).

¹¹⁵ E.g., Ohio Rev. Code Ann. §2317.023 (designates mediation communications as “confidential.”); Ohio Rev. Code Ann. §4701.19(B)(audits by private accounting firm of public office are not public record.).

¹¹⁶ State ex rel. Schneider v. Kreiner (1998), 83 Ohio St.3d 203, 1998 Ohio 271, 699 N.E.2d 83 (statute stating “mediation communication is confidential” is sufficient prohibition for purposes of Ohio Rev. Code §Ann. 149.43); State ex rel. Renfro v. Cuyahoga County Dept. of Human Services (1990), 54 Ohio St.3d 25, 560 N.E.2d 230; State ex rel. Lindsay v. Dwyer (1996), 108 Ohio App.3d 462, Franklin App. No. 95APE08-952, 670 N.E.2d 1375 (State Teachers Retirement System properly denied access to beneficiary form pursuant to Ohio Administrative Code); 2000 Ohio Atty. Gen. Ops. No. 00-036 (service member’s discharge certificate prohibited from release by Governor’s Office of Veterans Affairs, per federal regulation, without service member’s written consent).

¹¹⁷ Columbus & Southern Ohio Electric Co. v. Industrial Com. of Ohio (1992), 64 Ohio St.3d 119, 1992 Ohio 112, 592 N.E.2d 1367; Doyle v. Ohio Bureau of Motor Vehicles (1990), 51 Ohio St.3d 46, 48, 554 N.E.2d 97; State ex rel. De Boe v. Industrial Com. (1954), 161 Ohio St. 67, 117 N.E.2d 925, paragraph one of the syllabus.

¹¹⁸ State ex rel. Gallon & Takacs Co., L.P. v. Conrad (1997), 123 Ohio App.3d 554, Franklin App. No. 97APD02-243, 704 N.E.2d 638 (BWC administrative rule prohibiting release of managed care organization applications was unauthorized attempt to create exemption to Public Records Act).

¹¹⁹ Ohio R. Crim. Proc. 6(E); State ex rel. Beacon Journal Publ. Co. v. Waters (1993), 67 Ohio St.3d 321, 1993 Ohio 77, 617 N.E.2d 1110; State ex rel. Collins v. O’Farrell (1991), 61 Ohio St.3d 142, 573 N.E.2d 113 (grand jury subpoenas and grand jury witness record book). See, also, In re: Special Grand Jury Investigation Concerning Organic Techs. (1995), 74 Ohio St.3d 30, 1995 Ohio 164, 656 N.E.2d 329. But, see, State ex rel. Gannett Satellite Info. Network v. Petro (1997), 80 Ohio St.3d 261, 1997 Ohio 319, 685 N.E.2d 1223 (grand jury secrecy does not apply to state auditor).

¹²⁰ See, e.g., State ex rel. Beacon Journal v. Water (1993), 67 Ohio St.3d 321, 1993 Ohio 77, 617 N.E.2d 1110; but, see, State ex rel. Gannett Satellite Info. Network v. Petro (1997), 80 Ohio St.3d 261, 1997 Ohio 319, 685 N.E.2d 1223 (grand jury secrecy does not apply to state auditor).

Here is a list of some common “catch-all” exemptions:

- a. Attorney-client privileged information.¹²¹
- b. Medical board investigative records.¹²²
- c. Child abuse reports.¹²³
- d. Student education records maintained by public schools, colleges, universities and at private institutions receiving public funding.¹²⁴ However, student “directory information” is public information¹²⁵ unless the student’s parent, guardian or custodian of a minor has requested the information not to be released without the parent’s prior consent.
- e. Records of a Certified Public Accountant or public accountant in the performance of an audit of a public office or private entity.¹²⁶
- f. Ohio Ethics Commission proceedings on a complaint or charge and certain information provided to the commission are not public record,¹²⁷ but letters requesting an opinion of the commission are public record.¹²⁸
- g. Taxpayer records maintained by the Ohio Department of Taxation¹²⁹ as well as those maintained by municipal corporations.¹³⁰
- h. Estate tax returns held by the probate court, the Department of Taxation, a county auditor, a county treasurer, the attorney general, or others listed in Ohio Rev. Code Chapter 5731 (estate tax).¹³¹
- i. Federal tax returns and return information filed under the jurisdiction of the Internal Revenue Service.¹³²
- j. Criminal background information and other law enforcement information on the LEADS/CCH/NCIC computer database.¹³³

121 State ex rel. Nix v. Cleveland (1998), 83 Ohio St.3d 379, 1998 Ohio 290, 700 N.E.2d 1; Allright Parking of Cleveland, Inc. v. Cleveland (1992), 63 Ohio St.3d 772, 591 N.E.2d 708; Woodman v. Lakewood (1988), 44 Ohio App.3d 118, Cuyahoga App. No. 53647, 541 N.E.2d 1084. See, also, American Motors Corp. v. Huffstutler (1991), 61 Ohio St.3d 343, 575 N.E.2d 116. But, cf., State ex rel. Multimedia, Inc. v. Whalen (1990), 48 Ohio St.3d 41, 549 N.E.2d 167; State ex rel. Thomas v. Ohio State University (1994), 71 Ohio St.3d 245, 1994 Ohio 261, 643 N.E.2d 126.

122 Ohio Rev. Code Ann. §4731.22(F)(5). State ex rel. Wallace v. State Medical Board of Ohio (2000), 89 Ohio St.3d 431, 732 N.E.2d 960 (Medical Board’s investigative records are not public records).

123 Ohio Rev. Code Ann. §2151.421(H). But, see, State ex rel. Strothers v. Wertheim (1997), 80 Ohio St.3d 155, 1997 Ohio 349, 684 N.E.2d 1239 (Ohio Rev. Code Ann. §2151.421(H) is directed to the children services boards or the departments of human services, not to a county ombudsman office); State ex rel. Munici v. Kovacic (June 15, 1994), Cuyahoga App. No. 64818, 1994 Ohio App. LEXIS 2612 (police investigatory reports are not governed by Ohio Rev. Code Ann. §2151.421).

124 The Family Educational Right to Privacy Act (“FERPA” or “Buckley Amendment”), 20 U.S.C. §1232g; Ohio Rev. Code Ann. §3319.321; United States v. Miami University (2000), 91 F.Supp.2d 1132, 2000 U.S. Dist. LEXIS 3345 (student disciplinary records are exempt under FERPA). But, cf., State ex rel. The Miami Student v. Miami University (1997), 79 Ohio St.3d 168, 1997 Ohio 386, 680 N.E.2d 956 (student disciplinary records are not student “education records” that are exempt from disclosure); Bauer v. Kincaid (1991), 759 F.Supp. 575 (W.D. Mo.) (campus police incident reports are not educational records as set forth in 20 U.S.C. §1232g); but, see, Phillips v. Village of Carey (Aug. 3, 2000), Wyandot App. No. 16-99-11, 2000 Ohio 1733, 2000 Ohio App. LEXIS 3675 (release of high school graduate’s transcript to his employer to verify GPA and class rank did not violate graduate’s constitutional rights. However, parent can request any or all information not be disclosed without parent’s prior consent).

125 FERPA, 20 U.S.C. §1232g; Ohio Rev. Code Ann. §3319.321(B) (regarding Ohio public schools, K-12).

126 Ohio Rev. Code Ann. §4701.19(B).

127 Ohio Rev. Code Ann. §102.06(F).

128 1986 Ohio Atty. Gen. Ops. No. 86 069.

129 Ohio Rev. Code Ann. §5703.21.

130 Ohio Rev. Code Ann. §718.13. But, see, 1992 Ohio Atty. Gen. Ops. No. 92 005 (W-2 forms prepared and made by a township as an employer are subject to inspection as a public record).

131 Ohio Rev. Code Ann. §5731.90; 1992 Ohio Atty. Gen. Ops. No. 92-076.

132 26 U.S.C. §6103.

133 42 U.S.C. §3789g; 28 C.F.R. §20.21, §20.33(a)(3); State ex rel. Multimedia, Inc. v. Snowden (1995), 72 Ohio St.3d 141, 1995 Ohio 248, 647 N.E.2d 1374; also, Ohio Rev. Code Ann. §109.57(D) and (E); Ohio Admin. Code §109:05 1 01; Ohio Admin. Code §4501:2-10-06; 1989 Ohio Atty. Gen. Ops. No. 89 005; State ex rel. Lippett v. Kovacic (1991), 70 Ohio App.3d 525, Cuyahoga App. No. 58243, 591 N.E.2d 422; State ex rel. National Broadcasting Co. v. Cleveland (1992), 82 Ohio App.3d 202, Cuyahoga App. No. 52337, 611 N.E.2d 838.

- k. Records that have been sealed pursuant to statutorily authorized court order.¹³⁴
- l. A trade secret deriving independent value from the fact that it is not generally known and has been the subject of reasonable efforts to maintain its confidentiality.¹³⁵ A detailed analysis is needed.¹³⁶
- m. “Judicial Mental Process” Privilege created by Ohio case law.¹³⁷
- n. Peace officers’ home addresses during the pendency of a criminal case in which the officer is a witness or arresting officer.¹³⁸
- o. Personal and medical records of the mentally retarded and developmentally disabled.¹³⁹
- p. Attorney General investigation files relating to consumer protection or charitable trust investigations.¹⁴⁰
- q. Mediation communications.¹⁴¹
- r. Employees’ and their family members’ records and documents relating to medical certifications, recertifications or medical histories that have been created for purposes of the Family Medical Leave Act (FMLA) are confidential medical records and shall be maintained in separate files/records from normal personnel files¹⁴². Should the Americans with Disabilities Act (ADA) also be applicable, then those records shall be maintained consistent with ADA confidentiality requirements.¹⁴³

For additional examples, see Appendix D for a list of Ohio provisions affecting records confidentiality.

2. Express Exemptions

a. Peace Officer, Firefighter or EMT’s Residential and Familial Information

Peace officer, firefighter or EMT’s residential and familial information is expressly exempt from disclosure under the Public Records Act.¹⁴⁴ Such data includes the following information kept in a personnel record of a peace officer, firefighter or EMT:

¹³⁴ E.g. Ohio Rev. Code Ann. §2953.52 constitutionality of which was discussed in *State ex rel. Cincinnati Enquirer v. Winkler* (2004), 101 Ohio St.3d 382, 2004 Ohio 1581, 805 N.E.2d 1094; c.f. *State ex rel. Highlander v. Rudduck* (2004), 103 Ohio St.3d 370, 2004 Ohio 4952, 816 N.E.2d 213 (sealing must be made pursuant to lawful authority); *State ex rel. WBNS v. Dues* (2004), 101 Ohio St.3d 406, 2004 Ohio 1497, 805 N.E.2d 1116 (a court may not create its own exemption to the Public Records Act by sealing its records absent an appropriate grant of authority). For a discussion of who may access sealed records, see *State v. Greene* (1991), 61 Ohio St.3d 137, 573 N.E.2d 110; for a discussion with respect to procedure, see *State ex rel. Leadingham* (Dec. 23, 2003), 4th Dist. No. 02CA2827, 2003 Ohio 7293, 2003 Ohio App. LEXIS 6637.

¹³⁵ Ohio Rev. Code Ann. §1333.61(D). See, also, *State ex rel. Besser v. Ohio State University* (2000), 87 Ohio St.3d 535, 2000 Ohio 475, 721 N.E.2d 1044 (“Besser I”) (public entity can have its own trade secrets); *State ex rel. Lucas County Board of Comm’rs. v. Ohio EPA* (2000), 88 Ohio St.3d 166, 2000 Ohio 282, 724 N.E.2d 411; *State ex rel. Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 1997 Ohio 75, 687 N.E.2d 661; compare, *State ex rel. Gannett Satellite Info. Network v. Shirey* (1997), 76 Ohio St.3d 1224, 669 N.E.2d 1148 (resumes are not trade secrets of private consultant); *State ex rel. Rea v. Ohio Dept. of Education* (1998), 81 Ohio St.3d 527, 1998 Ohio 334, 692 N.E.2d 596 (proficiency tests are public records after they have been administered); *State ex rel. Dayton Newspapers v. Dayton Board of Education* (2000), 140 Ohio App.3d 243, Montgomery App. No. 18247, 747 N.E.2d 255 (resumes of applicants for superintendent not trade secret).

¹³⁶ Ohio Rev. Code Ann. §1333.61(D). *State ex rel Toledo Blade Co. v. Ohio Bureau of Workers Compensation* (2005), 106 Ohio St.3d 113, 2005 Ohio 3549, 832 N.E.2d 711 (trade secret argument requires allegation of efforts to maintain recovery); *State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland* (1992), 63 Ohio St.3d 772, 591 N.E.2d 708 (an in camera inspection is necessary to determine whether disputed records contain trade secrets); *State ex rel. Lucas County Board of Comm’rs. v. Ohio EPA* (2000), 88 Ohio St.3d 166, 2000 Ohio 282, 724 N.E.2d 411; *State ex rel. Besser v. Ohio State University* (2000), 89 Ohio St.3d 396, 2000 Ohio 207, 732 N.E.2d 373 (“Besser II”) (following in camera inspection, court held documents did not constitute “trade secrets”); *State ex rel. Seballos v. School Employees Retirement Sys.* (1994), 70 Ohio St.3d 667, 1994 Ohio 80, 640 N.E.2d 829; *State ex rel. Dayton Newspapers v. Dayton Board of Education* (2000), 140 Ohio App.3d 243, Montgomery App. No. 18247, 747 N.E.2d 255.

¹³⁷ *TBC Westlake v. Hamilton County Board of Revision* (1998), 81 Ohio St.3d 58, 1998 Ohio 445, 689 N.E.2d 32 (hearing examiner’s report to Board of Tax Appeals is not a public record).

¹³⁸ Ohio Rev. Code Ann. §2921.24(A); in fact, violation of Ohio Rev. Code Ann. §2921.24(A) is a fourth degree misdemeanor. Ohio Rev. Code Ann. §2921.24(D).

¹³⁹ Ohio Rev. Code Ann. §5123.62(T); 1992 Ohio Atty. Gen. Ops. No. 92-071.

¹⁴⁰ Ohio Rev. Code Ann. §1345.05(A)(7) and Ohio Rev. Code Ann. §109.28, respectively. But, see, also, Ohio Rev. Code Ann. §109.34 (nonprofit health care entities proposing to transfer ownership or control of assets to persons exempt from taxation shall provide notice of the proposed transaction to the attorney general and obtain written approval of the transaction. The notice and all other documents or materials submitted pursuant to Ohio Rev. Code Ann. §109.34 are public records provided they meet the definition set forth in Ohio Rev. Code Ann. §149.43).

¹⁴¹ Ohio Rev. Code Ann. §2317.023.

¹⁴² 29 CFR 825.500(g)

¹⁴³ 29 CFR 1630.14(c)(1)

¹⁴⁴ Ohio Rev. Code Ann. §149.43(A)(7)(a)

- Officer's residential address (except the state or political subdivision, which is still public record)
- Information compiled by an employee assistance program (see, also, Ohio Rev. Code §3701.041)
- The officer's Social Security number
- Residential telephone number
- Bank account number
- Debit/charge/credit card numbers
- Emergency telephone number
- Any medical information
- Beneficiaries' names
- Voluntary payroll deductions
- The name, address, employer name and address, Social Security number, residential telephone number, bank account number, debit/charge/credit card numbers, or emergency telephone number for the officer's spouse, former spouse, and children.¹⁴⁵

The term also refers to any other record that identifies a person's occupation as a peace officer, firefighter or EMT.¹⁴⁶ Such records *are not* limited to those that contain the information listed above.¹⁴⁷ However, it does not include disclosure of that fact under campaign finance law.¹⁴⁸ However, a journalist may still obtain a peace officer, firefighter or EMT's residential address, and the name and address of the employer of the officer's spouse, former spouse, or children, if that employer is a public office.¹⁴⁹ To obtain this information, the journalist must first submit a written request that includes the journalist's name, title, employer's name and address. The request shall state that this disclosure of the information sought would be in the public interest.¹⁵⁰

b. Medical Records¹⁵¹

Records that pertain to a patient's medical history, diagnosis, prognosis or medical condition and that were generated and maintained in the process of medical treatment are not subject to disclosure under the Public Records Act.¹⁵² The record must have both of these characteristics to be exempt from public disclosure.¹⁵³ Birth records, death records, and the fact of admission to or discharge from a hospital are not "medical records,"¹⁵⁴ so they must be disclosed. The report of a medical professional that is generated for employment or litigation purposes, rather than in the process of medical treatment, is not a "medical record." For instance, a psychological report made as part of the hiring process was generated for employment purposes, not for medical treatment and is not a "medical record" for purposes of this exemption.¹⁵⁵ Similarly, when a run sheet created and maintained by a county emergency medical services (EMS) organization documents treatment of a living patient, the EMS

¹⁴⁵ Ohio Rev. Code Ann. §149.43(A)(7)(a). See, also, State ex rel. Keller v. Cox (1999), 85 Ohio St.3d 279, 1999 Ohio 264, 707 N.E.2d 931 (information is also protected by constitutional right to privacy and "good sense" because peace officers' personnel records should not be available to a defendant who might use the information to achieve "nefarious ends") (adopting reasoning of Kallstrom v. City of Columbus (2001), 165 F.Supp.2d 686, 2001 U.S. Dist. LEXIS 16315 ("Kallstrom II"); Kallstrom v. City of Columbus (1998), 136 F.3d 1055, 1998 U.S. App. LEXIS 1941 (6th Cir.) ("Kallstrom I"). See, also, 1999 Ohio Atty. Gen. Ops. No. 99-006 (two-part test to determine when personal information is protected from disclosure); Smith v. City of Dayton (1999), 68 F.Supp.2d 911 (release of police officer's home address, unlisted phone number, brother's name, address, and phone number to newspaper without notice violated officer's substantive and procedural due process rights).

¹⁴⁶ Ohio Rev. Code Ann. §149.43(A)(7)(b).

¹⁴⁷ State ex rel. Plain Dealer Publishing Co. v. City of Cleveland (2005), 106 Ohio St.3d 70, 2005 Ohio 3807, 831 N.E.2d 987 (photographs of uniformed police officers are included).

¹⁴⁸ Ohio Rev. Code Ann. §149.43(A)(7).

¹⁴⁹ Ohio Rev. Code Ann. §149.43(B)(5); but, see, State ex rel. Keller v. Cox (1999), 85 Ohio St.3d 279, 1999 Ohio 264, 707 N.E.2d 931 (good sense dictates personal information should not be released to person who might use it to achieve "nefarious ends"); Kallstrom v. City of Columbus (1998), 136 F.3d 1055 (6th Cir.), 1998 U.S. App. LEXIS 1941 ("Kallstrom I") (personal information of law enforcement officers held to be protected under constitutional right to privacy where release would cause substantial risk of serious bodily injury or death and release does not serve compelling interest).

¹⁵⁰ Ohio Rev. Code Ann. §149.43(B)(5).

¹⁵¹ Ohio Rev. Code Ann. §149.43(A)(1)(a) and (A)(3).

¹⁵² Ohio Rev. Code Ann. §149.43(A)(1)(a) and (A)(3); Bartley v. Little (Dec. 28, 2000), Muskingum App. No. CT99-16, 2000 Ohio App. LEXIS 6238.

¹⁵³ Ohio Rev. Code Ann. §149.43(A)(3); State ex rel. Strothers v. Wertheim (1997), 80 Ohio St.3d 155, 1997 Ohio 349, 684 N.E.2d 1239;

¹⁵⁴ Ohio Rev. Code Ann. §149.43(A)(1)(a) and (A)(3).

¹⁵⁵ State ex rel. Multimedia, Inc. v. Snowden (1995), 72 Ohio St.3d 141, 144-45, 1995 Ohio 248, 647 N.E.2d 1374, 1379; State v. Hall (2001), 141 Ohio App.3d 561, Lawrence App. No. 00CA23, 2001 Ohio 4059, 752 N.E.2d 318 (psychiatric reports compiled solely to assist court with competency to stand trial determination are not medical records); State ex rel. DeRemer v. Waller (Mar. 17, 1997), 5th Dist. No. 1997CA000055, 1997 Ohio App. LEXIS 1909. See, also, State ex rel. Richard v. Cleveland Metro Health Ctr. (1992), 84 Ohio App.3d 142, 616 N.E.2d 549; State ex rel. National Broadcasting Co. v. Cleveland (1992), 82 Ohio App.3d 202, Cuyahoga App. No. 52337, 611 N.E.2d 838; State ex rel. Toledo Blade Co. v. Telb (1990), 50 Ohio Misc. 2d 1, 552 N.E.2d 243. But, see, Sheely v. Norris (Oct. 7, 1993), 11th Dist. No. 92-P-0027, No. 92-P-0028, 1993 Ohio App. LEXIS 5205 (emergency room records in custody of prosecutor are not public records). (Note other statutes such as the federal Americans with Disabilities Act (see 29 U.S.C. §2601, et seq. (1993)).

organization may redact information that pertains to the patient's medical history, diagnosis, prognosis or medical condition.¹⁵⁶ The medical records exemption does not permit, however, the redaction of names, addresses or other non-medical personal information.¹⁵⁷ Such information may, at first blush, appear to be protected by the Health Insurance Portability And Accountability Act (HIPAA); however, a recent Ohio Supreme Court decision clarified that HIPAA is not available as a catch-all exemption under Ohio's Public Records Act.¹⁵⁸

c. Trial Preparation Records¹⁵⁹

Records that contain information that was specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney, are not subject to disclosure under the Public Records Act.¹⁶⁰ For example, attorney notes of trial proceedings and legal research are specifically compiled in reasonable anticipation or in defense of litigation.¹⁶¹

Accordingly, almost everything contained within a prosecutor's file in a pending criminal matter is either material compiled in anticipation of a specific criminal proceeding or personal trial preparation of the prosecutor; therefore, exempt from public disclosure as "trial preparation" material.¹⁶² This is a change in Ohio law. Before 1994, courts often found factual reports and witness statements to be subject to disclosure because they did not meet the definition of trial preparation records.¹⁶³ It appears now that only routine offense and incident reports are subject to release.¹⁶⁴ Keep in mind that once a record becomes exempt from release as a "trial preparation record," that record does not lose its exempt status unless and until all "trials," "actions" and/or "proceedings" have been fully completed.¹⁶⁵ Unquestionably, non-exempt materials do not transform into exempt material simply by virtue of being held in a prosecutor's file.¹⁶⁶

Where a governmental entity is a party to a settlement agreement, the trial preparation records exemption will not permit that agreement to be withheld.¹⁶⁷ Likewise, this exemption is also not available to protect pre-settlement negotiations.¹⁶⁸ But the parties are entitled to redact any information within the attorney-client privilege.¹⁶⁹

¹⁵⁶ 1999 Ohio Atty. Gen. Ops. No. 99-006.

¹⁵⁷ 1999 Ohio Atty. Gen. Ops. No. 99-006.

¹⁵⁸ State ex rel. Daniels (2006), __Ohio St. 3d __, 2006 Ohio 1215.

¹⁵⁹ Ohio Rev. Code Ann. §149.43(A)(1)(g) and (A)(4).

¹⁶⁰ Ohio Rev. Code Ann. §149.43(A)(4). State ex rel. Police Officers for Equal Rights v. Lashutka (1995), 72 Ohio St.3d 185, 1995 Ohio 19, 648 N.E.2d 808; State ex rel. National Broadcasting Co. v. Cleveland (1991), 57 Ohio St.3d 77, 566 N.E.2d 146 ("NBC II"); State ex rel. Coleman v. Cincinnati (1991), 57 Ohio St.3d 83, 566 N.E.2d 151; State ex rel. Renfro v. Cuyahoga County Dept. of Human Services (1990), 54 Ohio St.3d 25, 560 N.E.2d 230; State ex rel. National Broadcasting Co. v. Cleveland (1988), 38 Ohio St.3d 79, 526 N.E.2d 786 ("NBC I"); Barton v. Shupe (1988), 37 Ohio St.3d 308, 525 N.E.2d 812.

¹⁶¹ State ex rel. Nix v. City of Cleveland (1998), 83 Ohio St.3d 379, 1998 Ohio 290, 700 N.E.2d 12.

¹⁶² State ex rel. Steckman v. Jackson (1994), 70 Ohio St.3d 420, 432, 639 N.E.2d 83, 92.

¹⁶³ See, e.g., State ex rel. Morales v. City of Cleveland (1993), 67 Ohio St.3d 573, 1993 Ohio 109, 621 N.E.2d 403; Sheeley v. Norris (Oct. 7, 1993), 11th Dist. No. 92-P-0027, No. 92-P-0027, 1993 Ohio App. LEXIS 5205; State ex rel. Coleman v. Cincinnati (1991), 57 Ohio St.3d 83, 566 N.E.2d 151; State ex rel. Zuern v. Leis, (1990), 56 Ohio St.3d 20, 564 N.E.2d 81 (check list offense report forms, witness and detective statements describing the offense, and photographs of the crime scene are not trial preparation records); Pinkava v. Corrigan (1990), 64 Ohio App.3d 499, Cuyahoga App. No. 60041, 581 N.E.2d 1181 (victim's statement reporting offense to police is public record); State ex rel. National Broadcasting Co. v. Cleveland (1992), 82 Ohio App.3d 202, Cuyahoga App. No. 52337, 611 N.E.2d 838; State ex rel. Jells v. City of Cleveland (Dec. 3, 1992), Cuyahoga App. No. 62678, aff'd (1993), 67 Ohio St.3d 436, 1993 Ohio 108, 619 N.E.2d 686 (witness statements obtained during course of investigations were not trial preparation records).

¹⁶⁴ State ex rel. Rasul-Bey v. Onunwor (2002), 94 Ohio St.3d 119, 2002 Ohio 67, 760 N.E.2d 421 (criminal defendant's limitation to using only criminal discovery does not apply to initial incident reports, which are subject to immediate release upon request); State ex rel. Steckman v. Jackson, (1994), 70 Ohio St.3d 420, 639 N.E.2d 83.

¹⁶⁵ State ex rel. Steckman v. Jackson (1994), 70 Ohio St.3d 420, 432, 639 N.E.2d 83, 92.

¹⁶⁶ State ex rel. WLWT-TV5 v. Leis (1997), 77 Ohio St.3d 357, 1997 Ohio 273, 673 N.E.2d 1365.

¹⁶⁷ State ex rel. Kinsley v. Berea Board of Education (1990), 64 Ohio App.3d 659, Cuyahoga App. No. 56817, 582 N.E.2d 653, cited with approval in State ex rel. Findlay Publ. Co. v. Hancock County Board of Comm'rs. (1997), 80 Ohio St.3d 134, 1997 Ohio 353, 684 N.E.2d 1222; State ex rel. Sun Newspapers v. Westlake Board of Education (1991), 76 Ohio App.3d 170, 601 N.E.2d 173, cited with approval in State ex rel. Findlay Publ. Co. v. Hancock County Board of Comm'rs. (1997), 80 Ohio St.3d 134, 684 N.E.2d 1222.

¹⁶⁸ State ex rel. Cincinnati Enquirer v. Dupuis (2002), 98 Ohio St.3d 126, 2002 Ohio 7041, 781 N.E.2d 163.

¹⁶⁹ State ex rel. Sun Newspapers v. Westlake Board of Education (1991), 76 Ohio App. 3d 170, 601 N.E.2d 173; but, see, Covington v. Backner (June 1, 2000), Franklin Cty. Case No. 98CVH-07-5242 (attorney-client privilege was waived when staff attorney had reviewed, duplicated, and inadvertently produced documents to defendants during discovery request).

Some cases suggest that the trial preparation records exemption is not available for police investigation records since there also exists an exemption for confidential law enforcement investigatory records.¹⁷⁰ But at least one case has implied that these exemptions are not mutually exclusive.¹⁷¹

d. Confidential Law Enforcement Investigatory Records¹⁷² (CLEIRs)

Records that constitute confidential law enforcement investigatory records are exempt from disclosure.¹⁷³ Confidential law enforcement investigatory records¹⁷⁴ are defined as any records that pertain to a law enforcement matter¹⁷⁴ of a criminal,¹⁷⁵ quasi-criminal, civil, or administrative¹⁷⁶ nature and that, if released, would create a high probability of disclosing any of the following: the identity of an uncharged suspect;¹⁷⁷ the identity of a confidential source;¹⁷⁸ specific confidential investigatory techniques or procedures; specific investigatory work product;¹⁷⁹ or information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.¹⁸⁰

In determining whether a record constitutes a confidential law enforcement investigatory record, the courts use a two-step test.¹⁸¹ The record must both (a) pertain to a criminal, quasi-criminal, civil or administrative law enforcement matter, and (b) create a high probability of disclosing at least one of the five types of information highlighted above.¹⁸² If information does not meet the test, the information may not be withheld under CLEIRs. Note, however, release of the information may still be restricted under any of the other express exemptions or the catch-all exemption.¹⁸³

1) Pertaining to a Law Enforcement Matter

To satisfy the first part of the test for a confidential law enforcement investigatory record, a record must pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature.¹⁸⁴

This means (a) the investigation was initiated upon specific suspicion of wrongdoing;¹⁸⁵ (b) the alleged conduct

¹⁷⁰ State ex. rel. National Broadcasting Co. v. Cleveland (1991), 57 Ohio St.3d 77, 566 N.E.2d 146 (“NBC II”); State ex rel. Coleman v. Cincinnati (1991), 57 Ohio St.3d 83, 566 N.E.2d 151.

¹⁷¹ State ex rel. Vindicator Printing Co. v. Watkins (1993), 66 Ohio St.3d 129, 609 N.E.2d 551, 558 (records in a prosecutor’s file were ex Ohio Rev. Code Ann. §149.43(A)(1)(h) and Ohio Rev. Code Ann. §149.43(A)(2). Exempt either as trial preparation material or as confidential law enforcement investigatory records).

¹⁷² Ohio Rev. Code Ann. §149.43(A)(1)(h) and Ohio Rev. Code Ann. §149.43(A)(2).

¹⁷³ Ohio Rev. Code Ann. §149.43(A)(1)(h).

¹⁷⁴ State ex rel. Strothers v. Wertheim (1997), 80 Ohio St.3d 155, 1997 Ohio 349, 684 N.E.2d 1239 (records of alleged child abuse do not pertain to a law enforcement matter in the hands of county ombudsman office that has no legally mandated enforcement or investigative authority); State ex rel. Freedom Communs. v. Elida Community Fire Co. (1998), 82 Ohio St.3d 578, 1998 Ohio 411, 697 N.E.2d 210 (investigation of alleged sexual assault conducted internally as personnel matter is not law enforcement matter).

¹⁷⁵ State ex rel. Police Officers for Equal Rights v. Lashutka (1995), 72 Ohio St.3d 185, 1995 Ohio 19, 648 N.E.2d 808.

¹⁷⁶ State ex rel. Police Officers for Equal Rights v. Lashutka (1995), 72 Ohio St.3d 185, 1995 Ohio 19, 648 N.E.2d 808; State ex rel. Nat’l Broadcasting Co. v. City of Cleveland (1991), 57 Ohio St.3d 77, 566 N.E.2d 146 (“NBC II”) (overruled on other grounds); State ex rel. Polovischak v. Mayfield (1990), 50 Ohio St.3d 51, 552 N.E.2d 635; State ex rel. McGee v. Ohio State Board of Psychology (1990), 49 Ohio St.3d 59, 550 N.E.2d 945; State ex rel. National Broadcasting Co. v. Cleveland (1988), 38 Ohio St.3d 79, 526 N.E.2d 786 (“NBC I”); Franklin County Sheriff’s Dept. v. State Employment Relations Board (1992), 63 Ohio St.3d 498, 589 N.E.2d 24 (affirmed in part reversed in part and remanded to trial court). This does not include polygraph test results obtained to make hiring decisions. State ex rel. Lorain Journal Co. v. City of Lorain (1993), 87 Ohio App.3d 112, 621 N.E.2d 894.

¹⁷⁷ Ohio Rev. Code Ann. §149.43(A)(2)(a).

¹⁷⁸ Ohio Rev. Code Ann. §149.43(A)(2)(b).

¹⁷⁹ Ohio Rev. Code Ann. §149.43(A)(2)(c).

¹⁸⁰ Ohio Rev. Code Ann. §149.43(A)(2)(d).

¹⁸¹ State ex rel. Musial v. City of N. Olmsted (2005), 106 Ohio St.3d 459, 2005 Ohio 5521, 835 N.E.2d 1243; State ex rel. Beacon Journal Publ. Co. v. Maurer (2001), 91 Ohio St.3d 54, 2001 Ohio 282, 741 N.E.2d 511; State ex rel. Polovischak v. Mayfield (1990), 50 Ohio St.3d 51, 52, 552 N.E.2d 635, 636-37.

¹⁸² State ex rel. Multimedia, Inc. v. Snowden (1995), 72 Ohio St.3d 141, 1995 Ohio 248, 647 N.E.2d 1374; State ex rel. Polovischak v. Mayfield (1990), 50 Ohio St.3d 51, 552 N.E.2d 635.

¹⁸³ State ex rel. Beacon Journal Publ. Co. v. City of Akron (2004), 104 Ohio St.3d 399, 2004 Ohio 6557, overruling State ex rel. Beacon Journal Publ. Co. v. City of Akron (Apr. 12, 2004), 9th Dist. No. 21116, 2004 Ohio App. LEXIS 1814 (although incident reports are not exempt under CLEIRs, abuse reports from children services agencies incorporated therein are exempt from disclosure under a separate catch-all statute).

¹⁸⁴ State ex rel. Multimedia, Inc. v. Snowden, 72 Ohio St.3d 141, 1995 Ohio 248, 647 N.E.2d 1374 (1995); State ex rel. Beacon Journal Publ. v. Maurer (2001), 91 Ohio St.3d 54, 2001 Ohio 282, 741 N.E.2d 511 (initial incident report of police shooting are not part of the criminal investigation subject to the confidential law enforcement investigatory records exemption).

¹⁸⁵ See, e.g., State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor’s Office (2005), 105 Ohio St.3d 172, 2005 Ohio 685, 824 N.E.2d 64 (all tapes are not created upon specific suspicion of wrongdoing); State ex rel. Polovischak v. Mayfield (1990), 50 Ohio St.3d 51, 552 N.E.2d 635; State ex rel. Yant v. Conrad (1996), 74 Ohio St.3d 681, 1996 Ohio 234, 660 N.E.2d 1211.

violates law;¹⁸⁶ and, (c) the public office has the authority to investigate or enforce the law allegedly violated.¹⁸⁷ In determining whether there is a “specific suspicion,” it is irrelevant whether the investigation is “routine,”¹⁸⁸ so long as the alleged conduct violates law.

Moreover, the alleged conduct need not be a violation of criminal law.¹⁸⁹ The conduct being investigated need only be prohibited by statute or administrative rule,¹⁹⁰ whether the punishment is criminal, civil, or administrative in nature.¹⁹¹

Finally, the public office must have some authority to investigate or enforce the law that has allegedly been violated.¹⁹² If it does not, the record it holds does not pertain to a law enforcement matter, which means it fails the first part of the two-part test.¹⁹³

2) High Probability of Disclosing Five Different Types of Information

To satisfy the second part of the test of a confidential law enforcement investigatory record, the record must create a high probability of disclosing at least one of the following five types of information:¹⁹⁴

a) Uncharged Suspect

Information that presents a high probability of disclosing the identity of an uncharged suspect,¹⁹⁵ a person who has not been charged with the offense to which the record pertains, may be redacted from a record that may otherwise be released.¹⁹⁶ In the criminal context, a person is uncharged until arrest or indictment.¹⁹⁷ The suspect need not be a current suspect, which means that an uncharged suspect’s name may be redacted from the record no matter how much time has passed.¹⁹⁸

If a suspect’s identity has been released by law enforcement and published in news reports, the requirement that the uncharged suspect’s name be redacted has been questioned.¹⁹⁹ But it is clear that just because the suspect’s identity has been disclosed in widespread media coverage, the protection afforded the uncharged suspect is not lost and the name may still be redacted.²⁰⁰ The protection is also not lost even when the uncharged suspect requests the information.²⁰¹

¹⁸⁶ See, e.g., *State ex rel. Polovischak v. Mayfield* (1990), 50 Ohio St.3d 51, 552 N.E.2d 635 (1990); *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 660 N.E.2d 1211 (1996).

¹⁸⁷ *State ex rel. Strothers v. Wertheim* (1997), 80 Ohio St.3d 155, 684 N.E.2d 1239 (records of alleged child abuse do not pertain to a law enforcement matter in the hands of county ombudsman office that has no legally mandated enforcement or investigative authority); *State ex rel. Freedom Communs. v. Elida Community Fire Co.* (1998), 82 Ohio St.3d 578, 1998 Ohio 411, 697 N.E.2d 210 (investigation of alleged sexual assault conducted internally as personnel matter is not law enforcement matter).

¹⁸⁸ *State ex. rel. National Broadcasting Co. v. Cleveland* (1991), 57 Ohio St.3d 77, 566 N.E.2d 146 (“NBC II”) (overruled on other grounds).

¹⁸⁹ Ohio Rev. Code Ann. §149.43(A)(2). See, e.g., *State ex rel. Yant v. Conrad* (1996), 74 Ohio St.3d 681, 1996 Ohio 234, 660 N.E.2d 1211; *State ex rel. Polovischak v. Mayfield* (1990), 50 Ohio St.3d 51, 552 N.E.2d 635; *State ex rel. McGee v. Ohio State Board of Psychology* (1990), 49 Ohio St.3d 59, 550 N.E.2d 945.

¹⁹⁰ See, e.g., *State ex rel. Polovischak v. Mayfield* (1990), 50 Ohio St.3d 51, 552 N.E.2d 635; *State ex rel. McGee v. Ohio State Board of Psychology* (1990), 49 Ohio St.3d 59, 550 N.E.2d 945.

¹⁹¹ Ohio Rev. Code Ann. §149.43(A)(2).

¹⁹² *State ex rel. Strothers v. Wertheim* (1997), 80 Ohio St.3d 155, 158, 1997 Ohio 349, 684 N.E.2d 1239.

¹⁹³ *State ex rel. Strothers v. Wertheim* (1997), 80 Ohio St.3d 155, 158, 1997 Ohio 349, 684 N.E.2d 1239.

¹⁹⁴ *State ex rel. Multimedia v. Snowden* (1995), 72 Ohio St.3d 141.

¹⁹⁵ *State ex rel. Master v. City of Cleveland* (1996), 76 Ohio St.3d 340, 1996 Ohio 300, 667 N.E.2d 974; *State ex rel. Master v. City of Cleveland* (1996), 75 Ohio St.3d 23, 1996 Ohio 228, 661 N.E.2d 180; *State ex rel. Thompson Newspapers, Inc. v. Martin* (1989), 47 Ohio St.3d 28, 546 N.E.2d 939; *State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept.* (1988), 38 Ohio St.3d 324, 528 N.E.2d 175; *State ex rel. Plain Dealer Publ. Co. v. Lesak* (1984), 9 Ohio St.3d 1, 457 N.E.2d 821.

¹⁹⁶ But, see, *State ex rel. Beacon Journal Publ. Co. v. Maurer* (2001), 91 Ohio St.3d 54, 2001 Ohio 282, 741 N.E.2d 511 (name of uncharged suspect cannot be redacted from initial incident report form).

¹⁹⁷ *State ex rel. Musial v. City of N.Olmsted* (2005), 106 Ohio St.3d 459, 2005 Ohio 5521, 835 N.E.2d 1243; *State ex rel. Moreland v. City of Dayton* (1993), 67 Ohio St.3d 129, 616 N.E.2d 234. See, also, *State ex rel. Polovischak v. Mayfield* (1990), 50 Ohio St.3d 51, 552 N.E.2d 635; *State ex rel. Thompson Newspapers, Inc. v. Martin* (1989), 47 Ohio St.3d 28, 546 N.E.2d 939; *State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept.* (1988), 38 Ohio St.3d 324, 528 N.E.2d 175; but, see, *State ex rel. Beacon Journal Publ. Co. v. Mauer* (2001), 91 Ohio St.3d 54, 741 N.E.2d 511 (name of uncharged suspect cannot be redacted from incident report).

¹⁹⁸ *State ex rel. Moreland v. City of Dayton* (1993), 67 Ohio St.3d 129, 616 N.E.2d 234; *State ex rel. Thompson Newspapers, Inc. v. Martin* (1989), 47 Ohio St.3d 28, 546 N.E.2d 939.

¹⁹⁹ See *In re: T.R.* (1990), 52 Ohio St.3d 6, 556 N.E.2d 439 (to base the determination of whether a court’s “gag order” is valid upon whether the parties’ names had been “highly publicized” would effectively let the news media determine which hearings should be open).

²⁰⁰ See *State ex rel. WLWT-TV5 v. Leis* (1997), 77 Ohio St.3d 357, 1997 Ohio 273, 673 N.E.2d 1365; *State ex rel. Master v. City of Cleveland* (1996), 76 Ohio St.3d 340, 1996 Ohio 300, 667 N.E.2d 974; *State ex rel. Ohio Patrolmen’s Benevolent Association v. City of Mentor* (2000), 89 Ohio St.3d 440, 2000 Ohio 214, 732 N.E.2d 969, 975.

²⁰¹ *State ex rel. Musial v. City of N. Olmsted* (2005), 106 Ohio St.3d 459, 2005 Ohio 5521, 835 N.E.2d 1243.

b) Confidential Source

Information that presents a high probability of disclosing the identity of a source or witness who has been reasonably promised confidentiality may be redacted from a record that may otherwise be publicly released.²⁰² For a promise of confidentiality to be “reasonably promised,” it must have been based on an individualized determination that the promise was necessary to further the purpose of the investigation.²⁰³ Routine or automatic promises of confidentiality, whether they are in compliance with a policy statement or routine administrative procedure, are not “reasonable” within the meaning of the Public Records Act.²⁰⁴

Only the identity of the confidential source may be withheld; not necessarily the information provided by that source. But where the identity is inextricably intertwined with the investigatory file, the entire file may be exempt from disclosure.²⁰⁵

Where possible, it is advisable, although not required,²⁰⁶ to have the request for confidentiality in writing. The writing should also state the specific reasons that the investigator concluded the promise was necessary in that case, including that the information could not be obtained without such a promise.

c) Physical Safety

Information that presents a high probability of endangering the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source may be redacted from a record that must otherwise be publicly released.²⁰⁷ Mere allegations or bare conclusions that a person’s physical safety is threatened are not sufficient — the danger must be self-evident.²⁰⁸

d) Investigatory Techniques or Procedures

Information that presents a high probability of disclosing specific confidential investigatory techniques or procedures may be redacted from a record that must otherwise be publicly released.²⁰⁹ Clearly, routine investigative techniques may not be redacted under this exemption.²¹⁰ Sophisticated investigatory techniques or procedures, as well as, their results, may be redacted pursuant to this exemption.²¹¹

²⁰² State ex rel. Yant v. Conrad (1996), 74 Ohio St.3d 681, 1996 Ohio 234, 660 N.E.2d 1211; State ex rel. Martin v. City of Cleveland (1993), 67 Ohio St.3d 155, 1993 Ohio 192, 616 N.E.2d 886; State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept. (1988), 38 Ohio St.3d 324, 528 N.E.2d 175. See, also, State ex rel. Toledo Blade Co. v. Telb (1990), 50 Ohio Misc.2d 1, 552 N.E.2d 243.

²⁰³ See State ex rel. Toledo Blade Co. v. Telb (1990), 50 Ohio Misc.2d 1, 552 N.E.2d 243.

²⁰⁴ State ex rel. Toledo Blade Co. v. Telb (1990), 50 Ohio Misc.2d 1, 552 N.E.2d 243.

²⁰⁵ State ex rel. Master v. City of Cleveland (1996), 76 Ohio St.3d 340, 667 N.E.2d 974.

²⁰⁶ State ex rel. Martin v. City of Cleveland (1993), 67 Ohio St.3d 155, 156-57, 1993 Ohio 192, 616 N.E.2d 886, 887 (promise of confidentiality or threat to physical safety need not be within “four corners” of document to be exempt); State ex rel. Toledo Blade Co. v. Telb (1990), 50 Ohio Misc.2d 1, 552 N.E.2d 243.

²⁰⁷ State ex rel. Martin v. City of Cleveland (1993), 67 Ohio St.3d 155, 1993 Ohio 192, 616 N.E.2d 886 (document need not specify within the “four corners” the promise of confidentiality or threat to physical safety); State ex rel. Johnson v. Cleveland (1992), 65 Ohio St.3d 331, 603 N.E.2d 1011, overruled on different grounds by State ex rel. Steckman v. Jackson (1994), 70 Ohio St.3d 420, 639 N.E.2d 83; State ex rel. Beckman v. Kovacic (Feb. 5, 1993), 8th Dist. No. 63889; State ex rel. Jells v. City of Cleveland (Dec. 3, 1992), Cuyahoga App. No. 62678, aff’d (1993), 67 Ohio St.3d 436, 1993 Ohio 108, 619 N.E.2d 686; State ex rel. Carpenter v. Chief of Police (Sept. 17, 1992), Cuyahoga App. No. 62482, 1992 Ohio App. LEXIS 5055, aff’d (1993), 66 Ohio St.3d 58, 608 N.E.2d 1080; State ex rel. Lippitt v. Kovacic (1991), 70 Ohio App.3d 525, Cuyahoga App. No. 58243, 591 N.E.2d 422; State ex rel. National Broadcasting Co. v. Cleveland (1992), 82 Ohio App.3d 202, Cuyahoga App. No. 52337, 611 N.E.2d 838.

²⁰⁸ See, e.g., State ex rel. Johnson v. City of Cleveland (1992), 65 Ohio St.3d 331, 333-34, 603 N.E.2d 1011, 1013-14, overruled on different grounds by State ex rel. Steckman v. Jackson (1994), 70 Ohio St.3d 420, 639 N.E.2d 83. See, also, State ex rel. Martin v. City of Cleveland (1993), 67 Ohio St.3d 155, 156-57, 616 N.E.2d 886, 887 (promise of confidentiality or threat to physical safety need not be within “four corners” of document to be exempt).

²⁰⁹ Ohio Rev. Code Ann. §149.43(A)(2)(c); State ex rel. Walker v. Balraj (Aug. 2, 2000), Cuyahoga App. No. 77967, 2000 Ohio App.LEXIS 3620.

²¹⁰ State ex rel. Beacon Journal Publ. Co. v. University of Akron (1980), 64 Ohio St.2d 392, 18 Ohio Op.3d 534, 415 N.E.2d 310.

²¹¹ See State ex rel. Dayton Newspapers, Inc. v. Rauch (1984), 12 Ohio St.3d 100, 465 N.E.2d 458 (autopsy reports are exempt from disclosure as specific investigatory technique or work product); State ex rel. Lawhorn v. White (Mar. 7, 1994), Cuyahoga App. No. 63290, 67 Ohio St.3d 158, 1993 Ohio 169, 616 N.E.2d 888; State ex rel. Williams v. Cleveland (Jan. 24, 1991), Cuyahoga App. No. 57769, 1991 Ohio App. LEXIS 303; State ex rel. Jester v. Cleveland (Jan. 17, 1991), Cuyahoga App. No. 56438, 1991 Ohio App. LEXIS 149; State ex rel. Apanovitch v. Cleveland (Feb. 6, 1991), Cuyahoga App. No. 58867, 1991 Ohio App. LEXIS 663. The three preceding cases were affirmed in State ex rel. Williams v. City of Cleveland (1992), 64 Ohio St.3d 544 (autopsy photographs are exempt). See, also, State ex rel. Robertson v. Haines (Nov. 3, 1992), Montgomery App. No. 12843, 1992 Ohio App. LEXIS 5584; Devericks v. Royal Ins. Co. (1990), 52 Ohio St.3d 702, 556 N.E.2d 526, appeal dismissed.

e) Investigatory Work Product

Information that presents a high probability of disclosing specific investigatory work product may be redacted from a record that must otherwise be publicly released.²¹² Before the Ohio Supreme Court's decision in *State ex rel. Steckman v. Jackson*, only materials that would reveal an investigator's "deliberative and subjective analysis" of a case were exempt from public disclosure.²¹³ This standard left the exemption virtually meaningless.²¹⁴ Accordingly, the Ohio Supreme Court clarified this exemption in *Steckman*, at least as it applies to pending criminal investigations.²¹⁵

Under the current state of the law, the work product exemption is broadly intended to exempt from public disclosure materials, such as an investigator's notes, working papers, memoranda, or similar materials that were prepared in anticipation of litigation.²¹⁶ However, because this is such a broad exemption, it is not available unless an official proceeding in the investigation is pending or highly probable.²¹⁷ But a proceeding can still be "highly probable" as required for this exemption even where there is no suspect, so long as it is clear a crime has been committed.²¹⁸

Again, because this is such a broad exemption, it expires when all actions and proceedings in the case are over.²¹⁹ This standard includes appeals and post-conviction relief.²²⁰ As long as an opportunity for either still exists, the work product remains exempt from disclosure. However, where the criminal defendant who is the subject of the records being withheld agrees not to pursue appeal or post-conviction relief, the case is "over" and the exemption expires.²²¹ Accordingly, the work product becomes subject to public disclosure.

It is now clear that routine offense or incident reports are not covered by the confidential law enforcement investigatory records exemption. Although these records may appear to constitute investigatory work product, the Ohio Supreme Court has held that such routine records do not satisfy the first part of the two-part test for a confidential investigatory record.²²² Also, children services report information that may become part of an incident report is still protected by statute.²²³ Equally clear is the fact that 911 tapes are without doubt a public record, even in the hands of a prosecutor²²⁴ and they are not subject to any sort of redaction.²²⁵ However, the information within the reports may still be exempt under a "catch-all" exemption. Other than for specified purposes, disclosure of any information concerning telephone numbers, addresses or names obtained from the database that serves the public safety answering point of a 911 system is prohibited by statute.²²⁶

²¹² *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 639 N.E.2d 83.

²¹³ See, e.g., *State ex rel. Nat'l Broadcasting Co., Inc. v. City of Cleveland* (1988), 38 Ohio St.3d 79, 526 N.E.2d 786 ("NBC I").

²¹⁴ *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 639 N.E.2d 83.

²¹⁵ *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 639 N.E.2d 83.

²¹⁶ *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 639 N.E.2d 83.

²¹⁷ See *State ex rel. Police Officers for Equal Rights v. Lashutka* (1995), 72 Ohio St.3d 185, 1995 Ohio 19, 648 N.E.2d 808; *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 639 N.E.2d 83.

²¹⁸ *State ex rel. Leonard v. White* (1996), 75 Ohio St.3d 516, 1996 Ohio 204, 664 N.E.2d 527; *State ex rel. Hermes v. Fultz* (2004), Ottawa App. No. 05-04-036, 2004 Ohio 6461, 2004 Ohio App. LEXIS 5895.

²¹⁹ *State ex rel. Cleveland Police Patrolmen's Association v. City of Cleveland* (1999), 84 Ohio St.3d 310, 1999 Ohio 352, 703 N.E.2d 796; *State ex rel. WLWT v. Leis* (1997), 77 Ohio St.3d 357, 1997 Ohio 273, 673 N.E.2d 1365; *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 639 N.E.2d 83; *Toledo Police Patrolman's Association Local 10 v. City of Toledo* (Mar. 10, 2000), Lucas App. No. L-99-1143, 2000 Ohio App. LEXIS 875.

²²⁰ *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 432, 639 N.E.2d 83, 93; *Perry v. Onunwor* (Dec. 7, 2000), Cuyahoga App. No. 78398, 2000 Ohio App. LEXIS 5893; *State ex rel. Scuba v. Simmons* (Apr. 20, 2001), Geauga App. No. 2001-G-2286, 2001 Ohio App. LEXIS 1838.

²²¹ *State ex rel. Cleveland Police Patrolmen's Association v. City of Cleveland* (1999), 84 Ohio St.3d 310, 1999 Ohio 352, 703 N.E.2d 796 (when criminal signed affidavit agreeing not to pursue appeal or post-conviction relief, trial preparation and work product exemptions inapplicable).

²²² *State ex rel. Rasul-Bey v. Onunwor* (2002), 94 Ohio St.3d 119, 2002 Ohio 67, 760 N.E.2d 421 (criminal defendant's limitation to using only criminal discovery does not apply to initial incident reports, which are subject to immediate release upon request); *State ex rel. Beacon Journal Publ. Co. v. Mauer* (2001), 91 Ohio St.3d 54, 741 N.E.2d 511; *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 639 N.E.2d 83; *State ex rel. Kim v. Wachenschwanz* (2001), 93 Ohio St.3d 586, 2001 Ohio 1616, 757 N.E.2d 367 (log sheets, time sheets, and police reports comparable to routine incident reports).

²²³ *State ex rel. Beacon Journal Publishing Co. v. City of Akron* (2004), 104 Ohio St.3d 399, 2004 Ohio 6557, 819 N.E. 2d 1087 (reports made to Children's Services Agencies are protected from disclosure under R.C. 2151.421).

²²⁴ *State ex rel. Cincinnati Enquirer v. Hamilton County* (1996), 75 Ohio St.3d 374, 1996 Ohio 214, 662 N.E.2d 334, 337.

²²⁵ *State ex rel. Cincinnati Enquirer v. Hamilton County* (1996), 75 Ohio St.3d 374, 1996 Ohio 214, 662 N.E.2d 334.

²²⁶ Ohio Rev. Code Ann. §4931.49(F) and §4931.99(E).

e. Security and Infrastructure Records

Ohio Rev. Code §149.433 protects from public disclosure “security records” and “infrastructure records.” A “security record” is defined as “any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage, or to prevent, mitigate, or respond to acts of terrorism.”²²⁷ An “infrastructure record” is one that discloses the configuration of the building in which a public office is located. However, it does not mean a record that discloses the simple floor plan or spatial relationship of components of the public office or building in which the public office is located.²²⁸ This section also stipulates that security or infrastructure records may be disclosed for purposes of construction, renovation, or remodeling of a public office. However, that disclosure does not waive the exempt status of that record and cause it to become a public record for purposes of R.C. §149.43.²²⁹

f. Other Express Exemptions

The following are the remainder of the express exemptions listed within the Public Records Act:

1) Probation and Parole Records.²³⁰ Probation records need not be released, even to the defendant.²³¹ Records reviewed by the Parole Board in preparation for hearings and records containing the Board’s findings are not public records.²³² But interoffice communications of the Adult Parole Authority concerning parolees or probationers may not be subject to this exemption.²³³

Nonetheless, certain non-public records of the Adult Parole Authority are now available to representatives of approved media organizations, government officials, victims, an inmate who is the subject of the record, and the designated attorney for the victim or inmate, or the public.²³⁴ Access to these records requires a written request.²³⁵

2) Abortion. Records of Parental Notification Bypass.²³⁶ Records of minors seeking to bypass Ohio’s parental notification for an abortion under Ohio Rev. Code Ann. §2151.85 and any subsequent appeals are not public records.²³⁷ The complaint and all other records pertaining to an action commenced under this section shall be kept confidential²³⁸ and cannot be publicly released.²³⁹

However, for cases filed under Ohio Rev. Code Ann. §2505.073 (minor may appeal denial of abortion without notice to parent, guardian, or custodian), the public may obtain limited information, including the docket number, the judge’s name, the decision, and if appropriate, a redacted opinion.²⁴⁰

3) Adoption Records.²⁴¹ Records pertaining to adoption proceedings, including the Ohio Department of Health’s adoption file, are not public records.²⁴² Moreover, adoption records cannot be publicly released.²⁴³

²²⁷ Ohio Rev. Code Ann. §149.433(A)(3)(a)(b).

²²⁸ Ohio Rev. Code Ann. §149.433(A)(2).

²²⁹ Ohio Rev. Code Ann. §149.433(C).

²³⁰ Ohio Rev. Code Ann. §149.43(A)(1)(b).

²³¹ Ohio Rev. Code Ann. §2951.03; State v. Patrick (June 8, 2001), Sandusky App. No. S-00-33, 2001 Ohio App. LEXIS 2554 (appellate court’s use of a pre-sentence investigation report does not cause that report to become a public record); State ex rel. Whittaker v. Court of Common Pleas (Feb. 15, 2001), Cuyahoga App. No. 78718, 2001 Ohio App. LEXIS 680.

²³² State ex rel. Lipschutz v. Shoemaker (1990), 49 Ohio St.3d 88, 551 N.E.2d 160. See, also, State ex rel. Gaines v. Adult Parole Authority (1983), 5 Ohio St.3d 104, 449 N.E.2d 762; State, ex rel. Johnston v. Shoemaker (Aug. 11, 1983), 1983 Ohio App. LEXIS 15613 (Franklin County); Jarrell vs. Donton (June 17, 1981), 1981 Ohio App. LEXIS 13408 (Ross County).

²³³ State ex rel. Community Corrections Association v. Ohio Dept. of Rehabilitation and Correction (1992), 84 Ohio App. 3d 821, 619 N.E.2d 20 (Franklin County).

²³⁴ Ohio Admin. Code §5120:1-1-36.

²³⁵ Ohio Admin. Code §5120:1-1-36.

²³⁶ Ohio Rev. Code Ann. §149.43(A)(1)(c).

²³⁷ Ohio Rev. Code Ann. §149.43(A)(1)(c).

²³⁸ Ohio Rev. Code Ann. §2151.85(F).

²³⁹ Ohio Rev. Code Ann. §2151.85(F); Ohio Rev. Code Ann. §2505.073(B); Ohio v. Akron Ctr. for Reproductive Health (1990), 497 U.S. 502, 110 S.Ct. 2972; see, also, Bellotti v. Baird (1979), 443 U.S. 622, 99 S.Ct. 3035.

²⁴⁰ State ex rel. The Cincinnati Post v. Court of Appeals, Second Appellate Judicial Dist. (1992), 65 Ohio St.3d 378, 604 N.E.2d 153.

²⁴¹ Ohio Rev. Code Ann. §149.43(A)(1)(d) and (f).

²⁴² Ohio Rev. Code Ann. §149.43(A)(1)(d) and (f).

²⁴³ Ohio Rev. Code Ann. §3107.17, Ohio Rev. Code Ann. §3107.42 and Ohio Rev. Code Ann. §3107.52; State ex rel. Wolff v. Donnelly (1986), 24 Ohio St.3d 1, 492 N.E.2d 810.

4) Putative Father Registry Records.²⁴⁴ This registry is designed to notify men if their children or alleged children become the subject of an adoption petition.²⁴⁵ This information is not public record, no matter whether it is held by the Ohio Department of Job and Family Services, the division of child support, or by a child support enforcement agency.²⁴⁶

5) Civil Rights Commission Records.²⁴⁷ Certain records relating to investigations by the Ohio Civil Rights Commission are not public record.²⁴⁸

6) DNA Database Records.²⁴⁹ The Ohio Bureau of Criminal Identification and Investigation stores DNA records in a database.²⁵⁰ These records are not public records.²⁵¹

7) Rehabilitation and Correction/Youth Services Records.²⁵² Certain records of the Ohio Department of Rehabilitation and Corrections, as well as, certain records of the Ohio Department of Youth Services are not public record.²⁵³

8) Intellectual Property Records.²⁵⁴ Records that are not financial or administrative records, but that are produced or collected by or for faculty or staff of a state college or university in conducting or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, and that has not been publicly released, published, or patented are not public records.²⁵⁵ It does not matter whether the study was sponsored by the college or university alone or in conjunction with another governmental body or private entity.²⁵⁶

9) Donor Profile Records.²⁵⁷ Virtually all records about donors or potential donors to a public institution of higher education are exempt from public disclosure.²⁵⁸ The only records that are publicly available are the names and reported addresses of actual donors, the date, the amount and conditions of the actual donation.²⁵⁹

10) Department of Job and Family Services Records.²⁶⁰ Records maintained by the Ohio Department of Job and Family Services for use in locating child support obligors and in detecting fraud are exempt from public disclosure.²⁶¹

11) Records Concerning Recreational Activities of People under Age 18.²⁶² Particular personal information pertaining to the recreational activities of people under 18 years of age may be withheld from public disclosure.²⁶³

12) Child Fatality Review Board Records.²⁶⁴ Certain records, statements and all work products of a child fatality review board are confidential.²⁶⁵

²⁴⁴ Ohio Rev. Code Ann. §149.43(A)(1)(e).

²⁴⁵ Ohio Rev. Code Ann. §3107.062.

²⁴⁶ Ohio Rev. Code Ann. §149.43(A)(1)(e).

²⁴⁷ Ohio Rev. Code Ann. §149.43(A)(1)(i) and Ohio Rev. Code Ann. §4112.05.

²⁴⁸ Ohio Rev. Code Ann. §149.43(A)(1)(i).

²⁴⁹ Ohio Rev. Code Ann. §149.43(A)(1)(j).

²⁵⁰ Ohio Rev. Code Ann. §109.573.

²⁵¹ Ohio Rev. Code Ann. §149.43(A)(1)(j).

²⁵² Ohio Rev. Code Ann. §149.43(A)(1)(k) and (l), Ohio Rev. Code Ann. §5120.21 and Ohio Rev. Code Ann. §5139.05.

²⁵³ Ohio Rev. Code Ann. §149.43(A)(1)(k) and (l), Ohio Rev. Code Ann. §5120.21 and Ohio Rev. Code Ann. §5139.05.

²⁵⁴ Ohio Rev. Code Ann. §149.43(A)(1)(m).

²⁵⁵ Ohio Rev. Code Ann. §149.43(A)(5); State ex rel. Physicians Comm. for Responsible Medicine v. Ohio State Univ. Bd. Of Trustees (2006), 108 Ohio St.3d 288, 2006-Ohio-903; State ex rel. Besser v. Ohio State University (2000), 89 Ohio St.3d 396, 2000 Ohio 207, 732 N.E.2d 373 ("Besser II").

²⁵⁶ Ohio Rev. Code Ann. §149.43(A)(5)

²⁵⁷ Ohio Rev. Code Ann. §149.43(A)(1)(n).

²⁵⁸ Ohio Rev. Code Ann. §149.43(A)(6)

²⁵⁹ Ohio Rev. Code Ann. §149.43(A)(6).

²⁶⁰ Ohio Rev. Code Ann. §149.43(A)(1)(o).

²⁶¹ Ohio Rev. Code Ann. §149.43(A)(1)(o) and Ohio Rev. Code Ann. §5101.312(F).

²⁶² Ohio Rev. Code Ann. §149.43(A)(1)(r); see, also, State ex rel. McCleary v. Roberts (2000), 88 Ohio St.3d 365, 2000 Ohio 345, 725N.E.2d 1144.

²⁶³ Ohio Rev. Code Ann. §149.43(A)(8).

²⁶⁴ Ohio Rev. Code Ann. §149.43(A)(1)(s).

²⁶⁵ Ohio Rev. Code Ann. §307.629; but, see, Ohio Rev. Code Ann. §307.626 (annual report to Ohio Department of Health is a public record).

13) Public Children Services Agency.²⁶⁶ Certain records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney²⁶⁷ are not public records.²⁶⁸

14) Licensure of a Nursing Home Administrator.²⁶⁹ Test materials, examinations or evaluation tools used in an examination to license a nursing home administrator are not public records.²⁷⁰

15) County Hospitals' Trade Secrets.²⁷¹ Trade secrets belonging to a county hospital may be withheld from public disclosure.

16) Proprietary Information of the Ohio Venture Capital Authority.²⁷² Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code may be withheld from public disclosure.

J. HOW EXEMPTIONS WORK

How does a public office handle records that contain exemptions?

When faced with a record that contains certain exempt information, a public office may redact the exempt portion of the record; the remainder of the record must be disclosed.²⁷³ Although a court would ultimately decide a dispute over records, a public office must redact information in good faith. A public office may not avoid this responsibility by refusing public access to records, nor may it delegate the duty to the court by forcing a mandamus action.²⁷⁴

If challenged on its decision to withhold a record or redact information, the public office has the burden of proving in court that the records are exempt from disclosure.²⁷⁵ A court in mandamus must review, in camera, the materials that were withheld or redacted.²⁷⁶ After an in camera inspection, the court may decide whether to describe each document and its applicable exemption.²⁷⁷ A court has the discretion to apply an exemption, even where the public office has not so requested.²⁷⁸

An in camera review is not always necessary — such as where only the status of the record as a “public record” is in dispute, rather than the content of the record, or where the matters are entirely public or entirely confidential.²⁷⁹

²⁶⁶ Ohio Rev. Code Ann. §149.43(A)(1)(q).

²⁶⁷ Ohio Rev. Code Ann. §5153.171.

²⁶⁸ Ohio Rev. Code Ann. §149.43(A)(1)(t).

²⁶⁹ Ohio Rev. Code Ann. §149.43(A)(1)(u) and Ohio Rev. Code Ann. §4751.04.

²⁷⁰ Ohio Rev. Code Ann. §149.43(A)(1)(u).

²⁷¹ Ohio Rev. Code Ann. §149.43(A)(1)(q). See, also, Ohio Rev. Code Ann. §1333.61(D).

²⁷² Ohio Rev. Code Ann. §149.43(A)(1)(w).

²⁷³ State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept. (1988), 38 Ohio St.3d 324, 528 N.E.2d 175; State ex rel. National Broadcasting Co. v. Cleveland (1988), 38 Ohio St.3d 79, 526 N.E.2d 786 (“NBC I”); State ex rel. Dispatch Printing Co. v. Wells (1985), 18 Ohio St.3d 382, 481 N.E.2d 632; 1999 Ohio Atty. Gen. Ops. No. 99-006. But, see, State ex rel. McGee v. Ohio State Board of Psychology (1990), 49 Ohio St.3d 59, 60, 550 N.E.2d 945, 947 (where information exempted is so “intertwined” with the information otherwise required to be released as to reveal the exempted information from the context, the record itself, and not just the exempted information, may be withheld); State ex rel. Polovischak v. Mayfield (1990), 50 Ohio St.3d 51, 54, 552 N.E.2d 635, 638.

²⁷⁴ State ex rel. Toledo Blade Co. v. Telb (1990), 50 Ohio Misc.2d 1, 552 N.E.2d 243.

²⁷⁵ State ex rel. Multimedia, Inc. v. Whalen (1990), 48 Ohio St.3d 41, 549 N.E.2d 167; State ex rel. Nat'l. Broadcasting Co. v. City of Cleveland (1988), 38 Ohio St.3d 79, 526 N.E.2d 786 (“NBC I”).

²⁷⁶ State ex rel. Seballos v. School Employees Retirement Sys. (1994), 70 Ohio St.3d 667, 1994 Ohio 80, 640 N.E.2d 829; State ex rel. Lawhorn v. White (Mar. 7, 1994), Cuyahoga App. No. 63290, 67 Ohio St.3d 158, 1993 Ohio 169, 616 N.E.2d 888; State ex rel. Coleman v. Cincinnati (1991), 57 Ohio St.3d 83, 566 N.E.2d 151; State ex rel. Nat'l. Broadcasting Co. v. City of Cleveland (1988), 38 Ohio St.3d 79, 526 N.E.2d 786; State ex rel. Rash v. Canton Police Dept. (Nov. 9, 1992), 1992 Ohio App. LEXIS 5741 (Stark County); State ex rel. Besser v. Ohio State University (2000), 89 Ohio St.3d 396, 2000 Ohio 207, 732 N.E.2d 373 (“Besser II”); State ex rel. Dayton Newspapers v. Dayton Board of Education (2002), 140 Ohio re: App.3d 243, Montgomery App. No. 18247, 747 N.E.2d 255; In re: E.M. (Nov. 8, 2001), Cuyahoga App. No. 79249, 2001 Ohio App. LEXIS 5011 (judge required to conduct in camera review of confidential investigatory records used by witness to refresh memory during testimony when record is requested by opposing side).

²⁷⁷ State ex rel. Strothers v. Rish (June 5, 2003), 2003 Ohio 2955, 2003 Ohio App. LEXIS 2674 (Cuyahoga County); State ex rel. National Broadcasting Co. v. Cleveland (1992), 82 Ohio App.3d 202, Cuyahoga App. No. 52337, 611 N.E.2d 838 (court can choose whether to list each document and identify specific exemptions).

²⁷⁸ State ex rel. Clark v. Toledo (1992), 62 Ohio St.3d 452, 584 N.E.2d 662.

²⁷⁹ State ex rel. Renfro v. Cuyahoga County Dept. of Human Services (1990), 54 Ohio St.3d 25, 560 N.E.2d 230; compare State ex rel. Fostoria Daily Review Co. v. Fostoria Hosp. Association (1989), 44 Ohio St.3d 111, 541 N.E.2d 587; State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept. (1988), 38 Ohio St.3d 324, 528 N.E.2d 175; with State ex rel. McGee v. Ohio State Board of Psychology (1990), 49 Ohio St.3d 59, 550 N.E.2d 945; State ex rel. Multimedia, Inc. v. Whalen (1990), 48 Ohio St.3d 41, 549 N.E.2d 167. (Even if contents are not disputed, court may conduct in camera inspection.) In re: Vavrock (Sept. 29, 1993), 1993 Ohio App. LEXIS 4999 (Union County).

For example, one court decided an in camera inspection was unnecessary where it had determined that a record was a confidential law enforcement investigatory record because the “identity of uncharged suspects and confidential witnesses or information sources would necessarily be intertwined with any retained investigatory records.”²⁸⁰

Can an exemption be “waived”?

Voluntary disclosure of a record that is appropriately withheld under one of the exemptions may result in a waiver of that exemption, particularly if the disclosure was to a person whose interests are antagonistic to those of the public office.²⁸¹ However, the disclosure must have been voluntary and to a member of the public.²⁸²

Does an exemption qualify as an exception to civil discovery?

An exemption does not automatically qualify as a “privilege” or other exemption to civil discovery.²⁸³

K. REMEDIES AND LIABILITIES UNDER THE PUBLIC RECORDS ACT

1. For Improper Withholding of Public Records

The Attorney General has no enforcement authority under the Act, which means that the Attorney General cannot institute an investigation or a lawsuit on behalf of a private citizen. Rather, the public has the authority to enforce the Act. There are no criminal penalties or civil penalties for violation of the Public Records Act. Nonetheless, violation of the Public Records Act may result in a public office paying the requester’s attorney’s fees.²⁸⁴

If a person feels that a public office has wrongfully withheld public records, the only remedy available is to file a petition for a writ of mandamus.²⁸⁵ Mandamus is a court action that basically asks a court to order a public office to comply with the law. The request is called a “petition.” The person who files the mandamus is called the “relator,” while the entity that is holding the records is called the “respondent.” The order that is sought is called a “writ of mandamus.” To be entitled to the writ of mandamus, the relator will have to show that an appropriate request for a public record was made prior to the filing of the mandamus action.²⁸⁶

Mandamus does not need to be brought against the person ultimately responsible for the records; it needs only to name a person responsible. Where an official is under a legal duty to oversee a public body’s records, the official is “a person responsible.”²⁸⁷ If an official responsible for records denies a public records request, no administrative appeal to the official’s supervisor is necessary before filing a mandamus action in court.²⁸⁸

²⁸⁰ State ex rel. McGee v. Ohio State Board of Psychology (1990), 49 Ohio St.3d 59, 550 N.E.2d 945.

²⁸¹ See, e.g., State ex rel. Gannett Satellite Info. Network v. Petro (1997), 80 Ohio St.3d 261, 1997 Ohio 319, 685 N.E.2d 1223; State ex rel. Zuern v. Leis (1990), 56 Ohio St.3d 20, 564 N.E.2d 81; Ohio Dept. of Liquor Control v. BPOE Lodge 0107 (1991), 62 Ohio St.3d 1452, 579 N.E.2d 1391 (introduction of record at administrative hearing waives any bar to dissemination); State ex rel. Coleman v. City of Norwood (Aug. 2, 1989), 1989 Ohio App. LEXIS 3088 (1st Dist.) (“The visual disclosure of the documents to relator [the requester in this case] waives any contractual bar to dissemination of these documents”); but, see, State ex rel. Cincinnati Enquirer v. Sharp (2003), 151 Ohio App.3d 756, 2003 Ohio 1186, 785 N.E.2d 822 (dissemination of exempt records to another agency did not constitute waiver).

²⁸² State ex rel. Cincinnati Enquirer v. Sharp (2003), 151 Ohio App.3d 756, 2003 Ohio 1186, 785 N.E.2d 822; State ex rel. Musial v. City of N.Olmsted (2005), 106 Ohio St.3d 459, 835 N.E. 2d 1243 (sharing information with Ethics Commission not waived).

²⁸³ See Baker v. Mitchell-Waters (2005), 160 Ohio App.3d 250, 2005 Ohio 1572, 826 N.E.894.

²⁸⁴ State ex rel. Cincinnati Enquirer v. Krings (2001), 93 Ohio St.3d 654, 2001 Ohio 1895, 758 N.E.2d 1135; State ex rel. Kim v. Wachenschwanz (2001), 93 Ohio St.3d 586, 2001 Ohio 1616, 757 N.E.2d 367; State ex rel. Pennington v. Gundler (1996), 75 Ohio St.3d 171, 1996 Ohio 161, 661 N.E.2d 1049. However, as to the duty to give reasons for withholding records, see State ex rel. Leonard v. White (1996), 75 Ohio St.3d 516, 1996 Ohio 204, 664 N.E.2d 527; State ex rel. Dispatch Printing Co. v. Loudon (2001), 91 Ohio St.3d 61, 2001 Ohio 268, 741 N.E.2d 517 (writ of mandamus appropriate to compel judge to disclose unredacted copy of hearing transcript); *Sylvania Board of Trustees v. Twin City Fire Ins. Co.* (Feb. 6, 2004), 6th Dist. No. L-03-1075, 2004 Ohio 483, 2004 Ohio App. Lexis 420 (attorneys fees may be covered by public offices’ insurance policy).

²⁸⁵ Franklin-Rengan v. Rengan (2005), Montgomery Cty. App. No.20869, 2005 Ohio 2764, 2005 Ohio App. LEXIS 2606 (appeal not appropriate alternative); State ex rel. McGowan v. Cuyahoga Metro. Hous. Auth. (1997), 78 Ohio St.3d 518, 1997 Ohio 191, 678 N.E.2d 1388; State ex rel. Steckman v. Jackson (1994), 70 Ohio St.3d 420, 639 N.E.2d 83.

²⁸⁶ State v. Bush (Oct. 5, 2001), Trumbull App. No. 2001-T-0042, 2001 Ohio 4306, 2001 Ohio App. LEXIS 4511 (mandamus inappropriate where relator failed to first make request upon public office before filing action).

²⁸⁷ State ex rel. Cincinnati Post v. Schweikert (1988), 38 Ohio St.3d 170, 527 N.E.2d 1230.

²⁸⁸ State ex rel. Multimedia, Inc. v. Whalen (1990), 48 Ohio St.3d 41, 549 N.E.2d 167.

A mandamus is unique. A claim for a writ of mandamus can be raised even if the public records issue is involved or is on appeal in another case.²⁸⁹ Mandamus also permits forum shopping — it allows litigants to file for mandamus in the court where they feel they are most likely to prevail. This means that a person may file in one of three courts: the local court of common pleas, the appellate court for that district, or the Ohio Supreme Court.²⁹⁰ Note, however, if a relator files in the Ohio Supreme Court, the case may be assigned to mediation through the Court.²⁹¹

The petition must specifically state the records that are being sought.²⁹² If a public office loses in mandamus and the court finds that the relator is entitled to the records, the court may order that the attorney's fees of the relator be paid by the public office.²⁹³ However, only those fees directly associated with the mandamus may be awarded²⁹⁴ and the relator is entitled to fees only insofar as the requests had merit.²⁹⁵

Whether or not to award attorney's fees is within the discretion of the court.²⁹⁶ The court will consider several issues when making this decision, including whether the request was proper; whether the public office failed to comply with the request; whether the requester subsequently filed a mandamus; and, whether the public office subsequently turned over the records.²⁹⁷ If so, the court will then examine the benefit to the public of the relator's action;²⁹⁸ whether there was a reasonable basis for refusal to provide access to the records;²⁹⁹ and, whether there is evidence of respondent's bad faith.³⁰⁰

The opportunity to collect attorney's fees does not apply when the requester appears before the court pro se. The Public Records Act authorizes only "attorney fees," not compensation to pro se litigants,³⁰¹ even where the pro se litigant is an attorney.³⁰²

289 State ex rel. Highlander v. Rudduck (2004), 103 Ohio St.3d 370, 2004 Ohio 4952, 816 N.E.2d 213 (mandamus claim may be raised even when issue is pending on appeal from separate court action).

290 Ohio Rev. Code Ann. §149.43(C).

291 S. Ct. Prac. R. XIV (public records mandamus actions may be ordered to attempt mediation).

292 State ex rel. Citizens for Envtl. Justice v. Campbell (2001), 93 Ohio St.3d 585, 2001 Ohio 1617, 757 N.E.2d 366; State ex rel. Rivers v. Miller (Dec. 16, 1993), 1993 Ohio App. LEXIS 6051 (Franklin County).

293 State ex rel. Pennington v. Gundler (1996), 75 Ohio St.3d 171, 1996 Ohio 161, 661 N.E.2d 1049.

294 State ex rel. Gannett Satellite Info. Network v. Petro (1998), 81 Ohio St.3d 1234, 1998 Ohio 638, 690 N.E.2d 11 (fees incurred as result of other efforts to obtain same records, not related to mandamus action, are to be excluded from an award).

295 State ex rel. Dillery v. Icsman (2001), 92 Ohio St.3d 312, 2001 Ohio 193, 750 N.E.2d 156.

296 State ex rel. Pennington v. Gundler (1996), 75 Ohio St.3d 171, 1996 Ohio 161, 661 N.E.2d 1049; State ex rel. Multimedia, Inc. v. Whalen (1990), 51 Ohio St.3d 99, 554 N.E.2d 132; State ex rel. Beacon Journal Publ. Co. v. Akron Metropolitan Housing Authority (1989), 42 Ohio St.3d 1, 535 N.E.2d 1366; State ex rel. Fox v. Cuyahoga County Hosp. System (1988), 39 Ohio St.3d 108, 529 N.E.2d 443.

297 State ex rel. Dillery v. Icsman (2001), 92 Ohio St.3d 312, 2001 Ohio 193, 750 N.E.2d 156 (attorneys fees denied for improperly broad request); State ex rel. Pennington v. Gundler (1996), 75 Ohio St.3d 171, 1996 Ohio 161, 661 N.E.2d 1049. Compare State ex rel. Logan Daily News v. Jones (1997), 78 Ohio St.3d 322, 1997 Ohio 32, 677 N.E.2d 1195 (attorney's fees were not appropriate where requester's failure to inspect records was due to own inaction).

298 State ex rel. Cincinnati Enquirer v. Krings (2001), 93 Ohio St.3d 654, 2001 Ohio 1895, 758 N.E.2d 1135 (court awarded "The Enquirer" nearly \$10,000 stating the newspaper established an "unquestioned [public] benefit"); State ex rel. Dillery v. Icsman (2001), 92 Ohio St.3d 312, 2001 Ohio 193, 750 N.E.2d 156; State ex rel. Fairfield Leader v. Ricketts (1990), 56 Ohio St.3d 97, 564 N.E.2d 486; State ex rel. Multimedia, Inc. v. Whalen (1990), 51 Ohio St.3d 99, 554 N.E.2d 132; State ex rel. Mazzaro v. Ferguson (1990), 49 Ohio St.3d 37, 550 N.E.2d 464; State ex rel. Athens County Property Owners Association v. City of Athens (1992), 85 Ohio App.3d 129, 619 N.E.2d 437 (Athens County); State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Association (1990), 61 Ohio Misc.2d 631, 582 N.E.2d 59.

299 State ex rel. Fairfield Leader v. Ricketts (1990), 56 Ohio St.3d 97, 564 N.E.2d 486; State ex rel. Multimedia, Inc. v. Whalen (1990), 51 Ohio St.3d 99, 554 N.E.2d 132; State ex rel. Beacon Journal Publ. Co. v. Ohio Dept. of Health (1990), 51 Ohio St.3d 1, 553 N.E.2d 1345; State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Association (1988), 40 Ohio St.3d 10, 531 N.E.2d 313; State ex rel. Athens County Property Owners Association v. City of Athens (1992), 85 Ohio App.3d 129, 619 N.E.2d 437 (Athens County).

300 State ex rel. Fairfield Leader v. Ricketts (1990), 56 Ohio St.3d 97, 564 N.E.2d 486; State ex rel. Multimedia, Inc. v. Whalen (1990), 51 Ohio St.3d 99, 554 N.E.2d 132; State ex rel. Beacon Journal Publ. Co. v. Ohio Dept. of Health (1990), 51 Ohio St.3d 1, 553 N.E.2d 1345; State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Association (1988), 40 Ohio St.3d 10, 531 N.E.2d 313; State ex rel. Athens County Property Owners Association v. City of Athens (1992), 85 Ohio App.3d 129, 619 N.E.2d 437 (Athens County).

301 State ex rel. Thomas v. Ohio State University (1994), 71 Ohio St.3d 245, 1994 Ohio 261, 643 N.E.2d 126; Fant v. Board of Trustees, Regional Transit Authority (1990), 50 Ohio St.3d 72, 552 N.E.2d 639, cert. denied 498 U.S. 967, 111 S.Ct. 429; State ex rel. Fant v. Mengel, 62 Ohio St.3d 197, 580 N.E.2d 1085, 1990 Ohio App. LEXIS 3091; compare State ex rel. Mayrides v. Whitehall (1990), 62 Ohio App.3d 225, 575 N.E.2d 224 (Franklin County), aff'd (1991), 62 Ohio St.3d 203, 580 N.E.2d 1089. See, also, State ex rel. McGowan v. Cuyahoga Metro. Hous. Auth. (1997), 78 Ohio St.3d 518, 1997 Ohio 191, 678 N.E.2d 1388.

302 State ex rel. Thomas v. Ohio State University (1994), 71 Ohio St.3d 245, 643 N.E.2d 126.

2. For Improper Destruction, Removal, or Transfer of Public Records

If a person believes that a public office has destroyed, removed, or transferred public records outside of its statutorily approved retention schedule, there are three choices.

A person may file:

- An action to enjoin or stop the behavior complained of plus attorney's fees
- A civil action for forfeiture of \$1,000 plus attorney's fees³⁰³
- Both³⁰⁴

A person has only one year from the date of discovery of the violation to file these actions.³⁰⁵ The requester must also be aggrieved.³⁰⁶ However, a cause of action for destruction of records does not accrue until either of the following occurs: (1) Relator discovers or should have discovered that the items were destroyed, or (2) Relator requests the records and is notified that they are not available because of their destruction.³⁰⁷

L. COMPLIANCE WITH THE PUBLIC RECORDS ACT

If a public office is not sure whether a record should be released, is it best just to deny the request?

No. In the context of a public records request, automatically saying "no" creates more problems than it solves. In all but the most routine situations, the right response to a public records request is that "it depends" or perhaps more properly, "we will be happy to allow inspection or provide copies to the extent permissible as soon as our legal counsel has had an opportunity to review them."

Are resumes submitted for public employment public records?

Yes. The Ohio Supreme Court has clearly stated that such records are unquestionably available for public inspection.³⁰⁸

When confidential material in a record is mixed with material that is not confidential, should the public office withhold the entire record?

No. Simply redact the portions of the record that are exempt from disclosure; the remainder of the record must be disclosed.³⁰⁹

If a person refuses to fill out or sign a public records request form, may the public office refuse to respond to the request?

No. The Public Records Act does not expressly permit a public office to require a person to fill out a form before being entitled to inspect or have copies of public records. Indeed, a request need not be in writing. An oral request is sufficient. In short, a public office may ask a person to fill out a form or to submit a request for records in writing, but the office may not refuse to respond if the person declines to do so.

³⁰³ State ex rel. Sensel v. Leone (1999), 85 Ohio St.3d 152, 1999 Ohio 446, 707 N.E.2d 496.

³⁰⁴ Ohio Rev. Code Ann. §149.351(B).

³⁰⁵ Hughes v. City of North Olmsted (Jan. 23, 1997), Cuyahoga App. No. 70705, 1997 Ohio App. LEXIS 224 (statute of limitations for improper destruction of records is one year); Ohio Rev. Code Ann. §2305.11(A).

³⁰⁶ State ex rel. Cincinnati Enquirer v. Allen (2005), Hamilton Cty App. No. C-040838, 2005 Ohio 4856, 2005 Ohio App. LEXIS 4384.

³⁰⁷ State ex rel. Delmonte v. Village of Woodmere (May 6, 2004), 8th Dist. No 83293, 2004 Ohio 2340, 2004 Ohio App. LEXIS.

³⁰⁸ State ex rel. Plain Dealer Publ. Co. v. City of Cleveland (1996), 75 Ohio St.3d 31, 1996 Ohio 379, 661 N.E.2d 187 (resumes of police chief applicants collected by a private executive search firm retained by the City of Cleveland were public records subject to disclosure under Ohio Rev. Code Ann. §149.43); State ex rel. Gannett Satellite Info. Network v. Shirey (1997), 78 Ohio St.3d 400, 1997 Ohio 206, 678 N.E.2d 557 (resumes of safety director applicants collected by a private consultant purporting to be "sole property of the consultant" are public records subject to disclosure under Ohio Rev. Code Ann. §149.43); State ex rel. Dayton Newspapers v. Dayton Board of Education (2000), 140 Ohio App.3d 243, Montgomery App. No. 18247, 747 N.E.2d 255 (resumes for superintendent not trade secret.)

³⁰⁹ State ex rel. Coleman v. Cincinnati (1991), 57 Ohio St.3d 83, 566 N.E.2d 151; State ex. rel. National Broadcasting Co. v. Cleveland (1991), 57 Ohio St.3d 77, 566 N.E.2d 146 ("NBC II"); State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept. (1988), 38 Ohio St.3d 324, 528 N.E.2d 175; State ex rel. National Broadcasting Co. v. Cleveland (1988), 38 Ohio St.3d 79, 526 N.E.2d 786 ("NBC I"); State ex rel. Dispatch Printing Co. v. Wells (1985), 18 Ohio St.3d 382, 481 N.E.2d 632. But, see, State ex rel. Master v. City of Cleveland (1996), 76 Ohio St.3d 340, 1996 Ohio 300, 667 N.E.2d 974; State ex rel. McGee v. Ohio State Board of Psychology (1990), 49 Ohio St.3d 59, 550 N.E.2d 945 (where information exempted is "so intertwined" with the information otherwise required to be released as to reveal the exempted information from the context, the record itself, and not just the exempted information, may be withheld).

Should a public office apply a privacy-balancing test each time a request for public records is made?

No. In the 1970s, language within the Personal Information Systems Act and the Public Records Act was modified to limit the application of the PISA only to non-records or otherwise exempt public records.³¹⁰ For many years since, the Ohio Supreme Court abstained from applying privacy balancing tests weighing an individual's common law right to privacy against the public's "right to know" when considering "public record" issues. However, in 1999 the Court altered its position when it addressed the privacy rights of peace officers.³¹¹ The Court found that the constitutional right to privacy and a "good sense" rule prohibits the release of personal information of a peace officer to a criminal defendant.³¹² Therefore, select personal information of peace officers contained within their personnel files is exempt. However, as with all exemptions under the public records law, exemptions based on a constitutional right to privacy will be narrowly construed and will probably only be recognized sparingly under exceptional, factual and policy circumstances.³¹³ Only under narrow and exceptional circumstances will personal information be exempted under a constitutionally recognized right of privacy.³¹⁴

The privacy issue arises most commonly when a request is made to inspect or copy personnel files of public employees. But absent an expressly applicable exemption, such as the peace officer, firefighter and EMT exemption,³¹⁵ nearly all of the items in a public employee's personnel file are public record.³¹⁶

If a record exists, but no statute or rule requires that particular record to be kept, must it be disclosed pursuant to a public records request?

Yes. So long as the record is created, received by, or comes under the jurisdiction of a public office and generally relates to the activities of the office, it is a public record.³¹⁷ So, unless some exemption applies, the record should be released.

If an investigation is "ongoing," are the investigative files automatically exempt from public disclosure?

No. The status of an investigation as "ongoing" may be instructive in determining whether the records are exempt as confidential law enforcement investigatory work product, but it is not determinative. Just because an investigation is ongoing does not mean that all of the investigatory records are exempt. Similarly, some of the information in an inactive investigation, e.g., where no charges have been brought yet, may be exempt.³¹⁸ This is an area of the law that is complex and requires very careful legal analysis. (See the previous discussion about the confidential law enforcement investigatory records exemption.)

³¹⁰ See Personal Information Systems Act, R.C. 1347.01, et seq.

³¹¹ State ex rel. Keller v. Cox (1999), 85 Ohio St.3d 279, 1999 Ohio 264, 707 N.E.2d 931 (peace officers' personnel records should not be available to a defendant who might use the information to achieve "nefarious ends" - such information is protected by constitutional right to privacy and "good sense") (adopting reasoning of Kallstrom v. Columbus (1998), 136 F.3d 1055 (6th Cir.), 1998 U.S. App. LEXIS 1941.) See, also, 1999 Ohio Atty. Gen. Ops. No. 99-006 (two-part test to determine when personal information is protected from disclosure); Smith v. City of Dayton (1999), 68 F.Supp.2d 911 (release of police officer's home address, unlisted phone number, brother's name, address, and phone number to newspaper without notice violated officer's substantive and procedural due process rights).

³¹² State ex rel. Keller v. Cox (1999), 85 Ohio St.3d 279, 707 N.E.2d 931.

³¹³ See State ex rel. McCleary v. Roberts (2000), 88 Ohio St.3d 365, 2000 Ohio 345, 725 N.E.2d 1144

³¹⁴ See State ex rel. Cincinnati Enquirer v. Adcock (Dec. 30, 2004), 2004 Ohio 7130 (lead investigation reports revealing personal and blood-test information of children are exempt). See, also, *Deja Vu of Cincinnati v. Union Township Board of Trustees* (2005), 411 F.3d 777, 2005 U.S. App. LEXIS 11807.

³¹⁵ Ohio Rev. Code Ann. §149.43(A)(1)(p) and Ohio Rev. Code Ann. §149.43(A)(7).

³¹⁶ State ex rel. Nat'l Broadcasting Co. v. City of Cleveland (1988), 38 Ohio St.3d 79, 526 N.E.2d 786 ("NBC I"); State ex rel. Dispatch Printing Co. v. Wells (1985), 18 Ohio St.3d 382, 481 N.E.2d 632; State v. Bundy (1985), 20 Ohio St.3d 51, 485 N.E.2d 1039; State ex rel. Petty v. Wurst (1989), 49 Ohio App.3d 59, 550 N.E.2d 214 (Butler County); State v. Yates (1981), 66 Ohio St.2d 245, 421 N.E.2d 855 ("There is no statutory or common law right of an employee to privacy concerning his employer's earning records, and there is no reason for the employee to expect such privacy."); 1990 Ohio Atty. Gen. Ops. No. 90 050. But, cf., State ex rel. Fant v. Enright (1993), 66 Ohio St.3d 186, 610 N.E.2d 997 (personnel files are generally a public records, but not every item in the personnel file may satisfy the definition of a "record."); *Habe v. South Euclid Civil Serv. Comm'n.* (Feb. 4, 1993), Cuyahoga App. No. 61786, 1993 Ohio App. LEXIS 583. But, see, *Kallstrom v. City of Columbus* (1998), 136 F.3d 1055 (6th Cir.).

³¹⁷ Ohio Rev. Code Ann. §149.011(G).

³¹⁸ State ex rel. Polovischak v. Mayfield (1990), 50 Ohio St.3d 51, 552 N.E.2d 635; State ex rel. Thompson Newspapers, Inc. v. Martin (1989), 47 Ohio St.3d 28, 546 N.E.2d 939.

If the information is not kept on paper, is it still subject to release as a public record?

Yes. Information kept on computer disks or tapes, audiotape, videotape, microfilm, microfiche, or just about any other fixed media imaginable is subject to disclosure under the Public Records Act,³¹⁹ including e-mail.³²⁰

If the terms of an agreement require records, including the agreement itself, to be confidential, are they exempt from disclosure under the Public Records Act?

No, unless there is a separately applicable exemption in the Ohio Revised Code. Parties to a public contract, including settlement agreements and collective bargaining agreements, cannot nullify the Public Records Act's guarantee of public access to public records.³²¹ Nor can an employee handbook confidentiality provision alter the status of public records.³²² In other words, the contract cannot nullify or restrict the public's access to public records.³²³ Absent a statutory exception, a "public entity cannot enter into enforceable promises of confidentiality with respect to public records."³²⁴

If a public office is finished with a record, can they just throw it away?

No. Records may only be destroyed in compliance with a properly approved records retention schedule.³²⁵ If the retention schedule does not address the particular type of record in question, the record should be maintained until the schedule is properly amended to address that category of records.³²⁶ Indeed, improper destruction of a record is a violation of Ohio Rev. Code § 149.351. Also, if a record is maintained beyond its properly approved destruction date and is not otherwise exempt, it keeps its public record status until it is destroyed.³²⁷

Does discovery affect a public office's responsibilities under the Public Records Act?

No. Public records requests during litigation are handled the same as any other request. However, in pending criminal proceedings, criminal defendants are still generally entitled only to the materials that are available to them under criminal discovery rules.³²⁸ That is the situation because almost everything else within the prosecutor's case file is exempt under the trial preparation and confidential law enforcement exemptions.³²⁹ In addition, just because a prosecutor discloses certain information to a criminal defendant as required by the criminal discovery rules, that disclosure does not waive the trial preparation and confidential law enforcement exemptions.³³⁰

In pending civil proceedings, civil litigants may have more leeway under the Public Records Act than their

³¹⁹ State ex rel. Harmon v. Bender (1986), 25 Ohio St.3d 15, 494 N.E.2d 1135; Lorain County Title Co. v. Essex (1976), 53 Ohio App.2d 274, 373 N.E.2d 1261 (Lorain County).

³²⁰ But, cf., State ex rel. Wilson-Simmons v. Lake County Sheriff's Dept. (1998), 82 Ohio St.3d 37, 693 N.E.2d 789 (when an e-mail message does not serve to document the organization, functions, policies, procedures, or other activities of the public office, it is not a "record," even if it was created by public employees on a public office's e-mail system).

³²¹ State ex rel. Findlay Publ. Co. v. Hancock County Board of Comm'rs. (1997), 80 Ohio St.3d 134, 1997 Ohio 353, 684 N.E.2d 1222; State ex rel. Dispatch Printing Co. v. Well (1985), 18 Ohio St.3d 382, 481 N.E.2d 632; Toledo Police Patrolman's Assn., Local 10 v. City of Toledo (1994), 94 Ohio App.3d 734, 641 N.E.2d 799 (Lucas County); Bowman v. Parma Board of Education (1988), 44 Ohio App.3d 169, Cuyahoga App. No. 53501, 542 N.E.2d 663; State ex rel. Dwyer v. Middletown (1988), 52 Ohio App.3d 87, 557 N.E.2d 788 (Butler County); State ex rel. Kinsley v. Berea Board of Education (1990), 64 Ohio App.3d 659, Cuyahoga App. No. 56817, 582 N.E.2d 653; State ex rel. Toledo Blade Co. v. Telb (1990), 50 Ohio Misc.2d 1, 552 N.E.2d 243; State ex rel. Sun Newspapers v. Westlake Board of Education (1991), 76 Ohio App.3d 170, 601 N.E.2d 173 (Cuyahoga County); State ex rel. Dispatch Printing Co. v. City of Columbus (2000), 90 Ohio St.3d 39, 2000 Ohio 8, N.E.2d 797; Keller v. City of Columbus (Feb.19, 2002), Franklin App.No.01AP-1045, 2002 Ohio 622.

³²² State ex rel. Russell v. Thomas (1999), 85 Ohio St.3d 83, 1999 Ohio 435, 706 N.E.2d 1251.

³²³ See State ex rel. Gannett Satellite Info. Network v. Shirey (1997), 78 Ohio St.3d 400, 1997 Ohio 206, 678 N.E.2d 557.

³²⁴ State ex rel. Findlay Publ. Co. v. Hancock County Board of Comrs. (1997), 80 Ohio St.3d 134, 1997 Ohio 353, 684 N.E.2d 1222; State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland (1992), 63 Ohio St.3d 772, 591 N.E.2d 708 (reversed and remanded on grounds that court failed to examine records in camera to determine existence of trade secrets); State ex rel. National Broadcasting Co. v. Cleveland (1992), 82 Ohio App.3d 202, Cuyahoga App. No. 52337, 611 N.E.2d 838.

³²⁵ Ohio Rev. Code Ann. §121.211 and Ohio Rev. Code Ann. §149.351.

³²⁶ State ex rel. Dispatch Printing Co. v. City of Columbus (2000), 90 Ohio St.3d 39, 2000 Ohio 8, 734 N.E.2d 797.

³²⁷ State ex rel. Dispatch Printing Co. v. City of Columbus (2000), 90 Ohio St.3d 39, 2000 Ohio 8, 734 N.E.2d 797 (police department violated Ohio Rev. Code Ann. §149.43 when records were destroyed pursuant to FOP contract); Hunter v. Carr (Feb. 22, 2000), Stark App. No. 99-CA-0134, 2000 Ohio App. LEXIS 683 (mayor violates Ohio Rev. Code Ann. §149.351 when she destroys community hospital board minutes in her possession).

³²⁸ State ex rel. Steckman v. Jackson (1994), 70 Ohio St.3d 420, 639 N.E.2d 83, followed by City of Toledo v. Spicuzza (2005), Lucas Cty. App. No. L-05-1038, 2005 Ohio 4875, 2005 Ohio App. LEXIS 4422; State ex rel. Dillery v. Icsman (2001), 92 Ohio St.3d 312, 2001 Ohio 193, 750 N.E.2d 156; State ex rel. Towler O'Brien (2005), Franklin Cty App. No. 04AP-752, 2005 Ohio 363, 2005 Ohio App. LEXIS 342; Wilberger v. Highhills Police Dept. (Mar. 22, 2001), Cuyahoga App. No. 79160, 2001 Ohio App. LEXIS 1312; State ex rel. Scuba v. Simmons (Apr. 20, 2001) Geauga App. No. 2001-G-2286, 2001 Ohio App. LEXIS 1838.

³²⁹ State ex rel. Steckman v. Jackson (1994), 70 Ohio St.3d 420, 639 N.E.2d 83.

³³⁰ State ex rel. WHIO-TV-7 v. Lowe (1997), 77 Ohio St.3d 350, 1997 Ohio 271, 673 N.E.2d 1360.

criminal counterparts.³³¹ Civil litigants are not confined to materials available under the civil rules of discovery.³³² Nonetheless, as to the use of the public records as evidence in litigation, the Ohio Rules of Evidence will still govern.³³³ Therefore, even if a civil litigant circumvents the limitations within the rules of discovery using the Public Records Act, the litigant may not be able to use them in court.³³⁴ A trial court may rule the public records inadmissible.³³⁵

A CLOSER LOOK:

SEX OFFENDER REGISTRATION RECORDS

The Ohio Attorney General issued Opinion No. 97-038 in 1997, which concludes that a county sheriff's registration records pertaining to sex offenders are public records and must be disclosed in accordance with the Public Records Act.³³⁶ Ohio's version of "Megan's Law" categorizes offenders as: (1) sexual predators,³³⁷ (2) habitual sex offenders,³³⁸ and (3) sexually oriented offenders.³³⁹ It requires an offender who is convicted of or pleads guilty to a sexually oriented offense to register with the sheriff of the county in which the offender is residing or is domiciled.³⁴⁰ Although the statute clearly makes registration and notification information about sexual predators and habitual sex offenders, who are subject to community notification, available for public review,³⁴¹ it does not address whether a sheriff's registration information about sexually oriented offenders or habitual sex offenders, who are not subject to community notification, is available as public records. Opinion No. 97-038 concludes that these records are public records and must be disclosed upon request pursuant to the Public Records Act.³⁴²

The Attorney General reached this conclusion by applying the general rule that a public record is subject to disclosure unless there exists an express prohibition to disclosure under state or federal law.³⁴³ On January 1, 2002, Amended Substitute S.B. 3 became law, codifying this opinion.³⁴⁴

MOTOR VEHICLE RECORDS

On June 1, 2000, state and federal laws went into effect changing the availability of hundreds of thousands of records at the Bureau of Motor Vehicles (BMV).³⁴⁵ In the past, applicants for driver's licenses had to "opt out" if they wanted particular personal information from a motor vehicle record withheld from bulk mailing lists and particular record requests. Now, the law prohibits the disclosure of the personal information for such purposes unless applicants specifically "opt in."³⁴⁶ Nonetheless, some personal information may still be made available to law enforcement agencies, insurance companies and other businesses.³⁴⁷ Personal information affected by the new laws includes a person's name, photograph, social security number, driver's license identification number, date of birth, telephone number, medical or disability information, and home address other than the county and five-digit zip code.³⁴⁸ Other non-personal information pertaining to traffic citations, convictions, points and driver's status is not included, and therefore remains available to the public.

³³¹ See *Gilbert v. County of Summit* (2004), 104 Ohio St.3d 660, 2004 Ohio 7108., 821 N.E. 2d 564.

³³² *Gilbert v. County of Summit* (2004), 104 Ohio St.3d 660, 2004 Ohio 7108, 821 N.E. 2d 564.

³³³ Ohio R. Evid. 803(8) and Ohio R. Evid. 1005. Ohio Dept. of Liquor Control v. BPOE Lodge 0107 (1991), 62 Ohio St.3d 1452, 579 N.E.2d 1391.

³³⁴ See *Gilbert v. County of Summit* (2004), 104 Ohio St.3d 660, 2004 Ohio 7108, concurring opinion by J. Lundberg Stratton at 12-14.

³³⁵ Ohio R. Evid. 803(8) and Ohio R. Evid. 1005. Ohio Dept. of Liquor Control v. BPOE Lodge 0107 (1991), 62 Ohio St.3d 1452, 579 N.E.2d 1391; *Gilbert v. County of Summit* (2004), 104 Ohio St.3d 660, 2004 Ohio 7108, concurring opinion by J. Lundberg Stratton at 12-14.

³³⁶ 1997 Ohio Atty. Gen. Ops. No. 97-038.

³³⁷ Ohio Rev. Code Ann. §2950.01, et seq.

³³⁸ Ohio Rev. Code Ann. §2950.01(E) and Ohio Rev. Code Ann. §2950.01(G).

³³⁹ Ohio Rev. Code Ann. §2950.01(B).

³⁴⁰ Ohio Rev. Code Ann. §2950.01(D).

³⁴¹ Ohio Rev. Code Ann. §2950.04.

³⁴² Ohio Rev. Code Ann. §2950.11(E).

³⁴³ 1997 Ohio Atty. Gen. Ops. No. 97-038

³⁴⁴ Ohio Rev. Code Ann. §2950.08.01. But, see, Ohio Rev. Code Ann. §2950.08 (sex offender registration and records maintained by the Bureau of Criminal Identification and Investigation are expressly prohibited from public inspection with limited exceptions).

³⁴⁵ 18 U.S.C. §2721; Ohio Rev. Code Ann. §4501.27; Ohio Admin. Code §4501:1-12-02.

³⁴⁶ 18 U.S.C. §2721; Ohio Rev. Code Ann. §4501.27; Ohio Admin. Code §4501:1-12-02.

³⁴⁷ Ohio Rev. Code Ann. §4501.27(B)(2).

³⁴⁸ Ohio Rev. Code Ann. §4501.27(F)(3), (5).



PROHIBITION REQUIRED FOR CATCH-ALL EXEMPTION

The Freedom of Information Act (FOIA) is a federal law that gives any person the right to access certain records or information of a federal agency.³⁴⁹ The FOIA, however, does not apply to state agencies or officers.³⁵⁰ Nor do the exemptions codified in FOIA.³⁵¹ For example, federal agencies do not have to disclose records that would constitute “an unwarranted invasion of personal privacy.”³⁵² But Ohio courts have determined that this FOIA privacy exemption does not constitute a “catch-all” exemption under the Ohio public records law.³⁵³ Our courts have determined that the General Assembly has already balanced privacy considerations in enacting various exemptions to the mandatory disclosure requirements of the public records law and they reject the invitation to apply the FOIA privacy exemption in Ohio public records requests.³⁵⁴ Thus, just because a certain type of record is exempt under FOIA, that exemption, standing alone, is probably not sufficient grounds upon which an Ohio public office may withhold the record.



STUDENT EDUCATION RECORDS

A college or university student’s disciplinary records are not public records and must not be disclosed in response to a public records request, according to the United States Court of Appeals for the Sixth Circuit.³⁵⁵ The federal appellate court issued its landmark decision in June 2002 affirming the lower court’s conclusion that disciplinary records are “educational records” as that term is defined in the Family Education Rights and Privacy Act (FERPA). The court concluded that releasing such records and the personally identifiable information contained therein constitutes a violation of the Act. FERPA prohibits institutions from releasing a student’s “education records” without the written consent of the students or their parents.³⁵⁶



PROTECTING SOCIAL SECURITY NUMBERS

Social Security numbers (SSNs) are based on a federal constitutional right to privacy.³⁵⁷ Although the federal Privacy Act (5 U.S.C. §552a) does not expressly prohibit the release of SSNs by state and local public offices, it does create an individual expectation of privacy.³⁵⁸ Any federal, state, or local government agency that asks individuals to disclose their SSNs must state 1) whether that disclosure is mandatory or voluntary, and if mandatory under what authority the SSN is solicited, and 2) what use will be made of it.³⁵⁹ Therefore, a SSN can only be disclosed after individuals have been given prior notice that their SSNs will be publicly available. However, the Ohio Supreme Court has ruled that 911 tapes are always a public record which must be made immediately available. This is the case even if the tapes contain SSNs. The court found that there is no expectation of privacy when a person makes a 911 call. Instead, there is an expectation that the information will be recorded and disclosed to the public.³⁶⁰

349 5 U.S.C. §552.

350 State ex rel. Findlay Publ. Co. v. Schroeder (1996), 76 Ohio St.3d 580, 1996 Ohio 361, 669 N.E.2d 835.

351 State ex rel. Thomas v. Ohio State University (1990), 71 Ohio St.3d 245, 1994 Ohio 261, 643 N.E.2d 126; State ex rel. Toledo Blade Co. v. University of Toledo Foundation (1992), 65 Ohio St.3d 258, 602 N.E.2d 1159.

352 5 U.S.C. §552(b)(6).

353 State ex rel. Thomas v. Ohio State University (1994), 71 Ohio St.3d 245, 1994 Ohio 261, 643 N.E.2d 126; State ex rel. Toledo Blade Company v. University of Toledo Foundation (1992), 65 Ohio St.3d 258, 602 N.E.2d 1159.

354 State ex rel. Toledo Blade Company v. University of Toledo Foundation (1992), 65 Ohio St.3d 258, 602 N.E.2d 1159.

355 United States v. Miami University (2002), 294 F.3d 797, 2002 FED App. 213P (6th Cir.). See, also, United States v. Miami University (2000), 91 F.Supp.2d 1132, 2000 U.S. Dist. LEXIS 3345.

356 20 U.S.C. §1232g(b)(1).

357 State ex rel. Beacon Journal Publ. Co. v. City of Akron (1994), 70 Ohio St.3d 605, 1994 Ohio 6, 640 N.E.2d 164. See, also, State ex rel. Beacon Journal Publ. Co. v. Kent State University (1993), 68 Ohio St.3d 40, 1993 Ohio 146, 623 N.E.2d 51 (on remand, Court of Appeals may redact confidential information, i.e. Social Security Numbers). Compare, State ex rel. Cincinnati Enquirer v. Hamilton County (1996), 75 Ohio St.3d 374, 1996 Ohio 214, 662 N.E.2d 334 (Social Security Numbers contained in 911 tapes are public records subject to disclosure); but, see, Ohio Rev. Code Ann. §4931.49(E) and Ohio Rev. Code Ann. §4931.99(E) (information from database that serves public safety answering point of 911 system may not be disclosed); 1996 Ohio Atty. Gen. Ops. No. 96-034 (county recorder under no duty to obliterate Social Security Number before making document available for public inspection where recorder was presented with document and was asked to file it); *Bardes v. Todd* (2000), 139 Ohio App.3d 938, Hamilton App. No. C-00055, 746 N.E.2d.229 (when a court document contains a Social Security Number, the concerned party must move the court to direct the clerk of courts to redact it).

358 State ex rel. Beacon Journal Publ. Co. v. City of Akron (1994), 70 Ohio St.3d 605, 609, 1994 Ohio 6, 640 N.E.2d 164.

359 Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (codified at 5 U.S.C.A. §552a (West 2000)); State ex rel. Cincinnati Enquirer v. Hamilton County (1996), 75 Ohio St.3d 374, 377, 1996 Ohio 214, 662 N.E.2d 334.

360 State ex rel. Cincinnati Enquirer v. Hamilton County (1996), 75 Ohio St.3d 374, 377, 1996 Ohio 214, 662 N.E.2d 334.



COURT RECORDS AS PUBLIC RECORDS

Absent a specific statutory exception, all documents or recorded proceedings of a court are public records subject to disclosure under the Public Records Act.³⁶¹ When pretrial discovery materials, such as a deposition, are filed with a court, the character of the record changes from trial preparation materials or discovery materials to public records.³⁶² However, a narrow exception exists in circumstances where the release of the court records would prejudice the rights of the parties in an ongoing criminal or civil proceeding.³⁶³ Under such circumstances, the court may impose a protective order prohibiting release of the records.³⁶⁴



JUVENILE RECORDS MAINTAINED BY LAW ENFORCEMENT

No Ohio law categorically excludes all juvenile records from public disclosure.³⁶⁵ In general, juvenile records maintained by law enforcement agencies are treated no differently than adult records, including those containing the juvenile's name.³⁶⁶ Juvenile records maintained by the juvenile court on the other hand are treated very differently than those maintained by other public offices. They are typically not available for public inspection and copying.³⁶⁷

In addition to analyzing a public records request for juvenile records under the confidential law enforcement investigatory records exemption to the Public Records Act,³⁶⁸ careful attention must be paid to whether state or federal "catch-all" exemptions apply. One important state law exemption applies after a juvenile has been fingerprinted and photographed on the basis of an arrest or custody. Once that happens, the fingerprints, photographs, and "other records" relating to the arrest or custody must not be disclosed.³⁶⁹

Other examples of state law exemptions include records of social, mental and physical examinations conducted pursuant to a juvenile court order;³⁷⁰ records held by the Department of Youth Services pertaining to juveniles in its custody;³⁷¹ reports regarding allegations of child abuse;³⁷² sealed or expunged juvenile records;³⁷³ juvenile probation records;³⁷⁴ and, certain records of children's services agencies.³⁷⁵ However, most information held by local law enforcement is generally public information and may be shared with other law enforcement agencies and local schools.³⁷⁶

Federal law prohibits disclosure of records associated with federal juvenile delinquency proceedings, except for use by authorized persons and law enforcement agencies.³⁷⁷ Federal law also restricts the disclosure of fingerprints and photographs of a juvenile found guilty in federal delinquency proceedings of committing a crime that would have been a felony if the juvenile was prosecuted as an adult.³⁷⁸

³⁶¹ State ex rel. Mothers Against Drunk Drivers v. Gosser (1985), 20 Ohio St.3d 30, 485 N.E.2d 706, 710; State ex rel. Cincinnati Enquirer v. Dinkelacker (2001), 144 Ohio App.3d 725, Hamilton App. No. C-010153, 761 N.E.2d 656.

³⁶² State ex rel. Cincinnati Enquirer v. Dinkelacker (2001), 144 Ohio App.3d 725, Hamilton App. No. C-010153, 761 N.E.2d 656.

³⁶³ State ex rel. Vindicator Printing Co. v. Watkins (1993), 66 Ohio St.3d 129, 609 N.E.2d 551 (prohibiting disclosure of pretrial court records prejudicing rights of criminal defendant); Adams v. Metallica, Inc. (2001), 143 Ohio App.3d 482, Hamilton App. No. C-000513, 758 N.E.2d 286 (applying balancing test in determining whether record prejudicing party to civil proceeding should be released even though already filed with the court).

³⁶⁴ State ex rel. Cincinnati Enquirer v. Dinkelacker (2001), 144 Ohio App.3d 725, Hamilton App. No. C-010153, 761 N.E.2d 656 (trial judge required to determine whether release of records would jeopardize defendant's right to a fair trial).

³⁶⁵ See, generally, 1990 Ohio Atty. Gen. Ops. No. 90-101.

³⁶⁶ See, generally, 1990 Ohio Atty. Gen. Ops. No. 90-101. But, cf., State ex rel. Carpenter v. Chief of Police (Sept. 17, 1992), Cuyahoga App. No. 62482, 1992 Ohio App. LEXIS 5055 ("other records" may include juvenile's statement or an investigator's report if they would identify the juvenile).

³⁶⁷ 1990 Ohio Atty. Gen. Ops. No. 90-101. See, also, Juv. Rule of Civ. Proc. 37(B). But, cf., State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga County Court of Common Pleas, Juvenile Div. (1995), 73 Ohio St.3d 19, 652 N.E.2d 179 (release of transcript of juvenile contempt proceeding required when proceedings were open to the public).

³⁶⁸ See discussion re: Confidential Law Enforcement Investigatory Records at Section II. K.2.d., above.

³⁶⁹ Ohio Rev. Code Ann. §2151.313. See State ex rel. Carpenter v. Chief of Police (Sept. 17, 1992), Cuyahoga App. No. 62482, 1992 Ohio App. LEXIS 5055 ("other records" may include the juvenile's statement or an investigator's report if they would identify the juvenile).

³⁷⁰ Juv. Rule of Civ. Proc. 32(B).

³⁷¹ Ohio Rev. Code Ann. §5139.05(D).

³⁷² Ohio Rev. Code Ann. §2151.421(H)(1).

³⁷³ Ohio Rev. Code Ann. §2151.358.

³⁷⁴ Ohio Rev. Code Ann. §2151.14.

³⁷⁵ Ohio Rev. Code Ann. §5153.17.

³⁷⁶ 1987 Ohio Atty. Gen. Ops. No. 87-010. See also, 1990 Ohio Atty. Gen. Ops. No. 90-099 (local board of education may request and receive information regarding student drug or alcohol use from the public records of law enforcement agencies).

³⁷⁷ 18 U.S.C. §§ 5038(a), 5038(c) 5038(e), Federal Juvenile Delinquency Act (18 U.S.C. §§ 5031-5042).

³⁷⁸ See 18 U.S.C. §5038(d).



**SECTION III.
THE OPEN MEETINGS ACT**

THE OPEN MEETINGS ACT

A. OVERVIEW

Similar to the Public Records Act, the Ohio Open Meetings Act is based on the principle that citizens must be able to observe the operations of their representative government. To that end, the Open Meetings Act is intended to require public bodies to take official action and to conduct deliberations upon official business in open meetings. The law is to be liberally construed with these goals in mind.³⁷⁹ There are limited situations, however, where a public body may adjourn into executive session to discuss matters privately.³⁸⁰

When confronted with a particular public body and the question of whether its meetings ought to be held open or may be held in executive session, reviewing the Open Meetings Act only begins the analysis. In many situations, a particular public body may have specific ordinances, bylaws, rules, statutes or legislation that allow it to act, in some circumstances, contrary to the Open Meetings Act.

For instance, when the State Medical Board is considering whether to suspend a licensee's certificate without a prior hearing, it is exempt from certain open meetings requirements.³⁸¹ Conversely, all proceedings of a board of County Commissioners shall be public³⁸² and all meetings of the legislative authority of a municipal corporation shall be open to the public.³⁸³

B. DEFINITION OF A "PUBLIC BODY"

A **public body** subject to the Open Meetings Act is any board, commission, committee or similar decision-making body of a state agency, institution or authority and any legislative authority, board, commission, committee, agency, authority or similar decision-making body of a county, township, municipal corporation, school district or other political subdivision or local public institution or any subcommittee of a public body,³⁸⁴ or any committee or subcommittee thereof.³⁸⁵ Note: A body may be a public office for purposes of public records, but not a public body for purposes of open meetings.³⁸⁶

What if the public body does not have final decision-making authority?

Courts disagree as to whether an ad hoc staff or advisory committee that lacks final decision-making authority is a public body.³⁸⁷

³⁷⁹ Ohio Rev. Code Ann. §121.22(A).

³⁸⁰ Ohio Rev. Code Ann. §121.22(G).

³⁸¹ Ohio Rev. Code Ann. §4731.22(G).

³⁸² Ohio Rev. Code Ann. §305.09.

³⁸³ Ohio Rev. Code Ann. §731.46.

³⁸⁴ Ohio Rev. Code Ann. §121.22(B)(1)(a)-(b), (D)-(E); *Wheeling Corp. v. Columbus* (2001), 147 Ohio App.3d 460, Franklin App. No. 00AP-1224, 2001 Ohio 8751, 771 N.E.2d 263 (in determining that Selection Committee was a "public body" court relied on the following factors: 1) called a "committee," term included in definition of a "public body" in Ohio Rev. Code Ann. §121.22; 2) majority of members also members of Commission; 3) made decisions in formulating recommendations to Commission, therefore "decision-making body"; 4) advised the Commission, which is a public body; and 5) fact that it was established by Commission without formal action is "immaterial"). See, also, 1976 Ohio Atty. Gen. Ops. No. 76-062, at 2-211 ("the General Assembly apparently intended the statute to apply to all bodies comprised of public officials"). But, see, *Beacon Journal Publ. Co. v. Akron* (1965), 3 Ohio St.2d 191, 209 N.E.2d 399 (where a public official who is not subject to the Open Meetings Act appoints a board or commission, the board or commission may not be subject to Ohio Rev. Code Ann. §121.22 either); *Maser v. Canton* (1978), 62 Ohio App.2d 174, 405 N.E.2d 731 (Stark County); *Stegall v. Joint Township Dist. Memorial Hospital* (1985), 20 Ohio App.3d 100, 103, 484 N.E.2d 1381 (3rd Dist) (three-tiered analysis for public body: 1) the body must be among the types of entities covered by Ohio Rev. Code Ann. §121.22; 2) it must be a "decision-making body"; 3) the body must be created by operation of law); *Cincinnati Enquirer v. City of Cincinnati* (Aug. 24, 2001), 145 Ohio App.3d 335, Hamilton App. No. C-010095, 762 N.E.2d 1057 (a review board makes decisions in the process of reaching a consensus recommendation for the city manager and/or city council).

³⁸⁵ Ohio Rev. Code Ann. §121.22(B)(1)(b).

³⁸⁶ See *Sabo v. Holister Water Association* (Jan. 12, 1994), Athens App. No. CA1582, 1994 Ohio App. LEXIS 33.

³⁸⁷ *Maser v. City of Canton* (1978), 62 Ohio App.2d 174, 405 N.E.2d 731 (5th Dist.); *Thomas v. White* (1992), 85 Ohio App.3d 410, 620 N.E.2d 85 (Summit County); *State ex rel. Vindicator Printing Co. v. Fuda* (Dec. 6, 1991), 1991 Ohio App. LEXIS 5797 (Trumbull County); *Ungaro v. Reuben McMillan Free Library Association* (Apr. 24, 1991), 1991 Ohio App. LEXIS 1899 (Mahoning County); 1994 Ohio Atty. Gen. Ops. No. 94-473; 1992 Ohio Atty. Gen. Ops. No. 92-077; 1992 Ohio Atty. Gen. Ops. No. 92-065; 1979 Ohio Atty. Gen. Ops. No. 79-110; 1979 Ohio Atty. Gen. Ops. No. 79-061; but, see, *Cincinnati Enquirer v. City of Cincinnati* (Aug. 24, 2001), 145 Ohio App.3d 335, Hamilton App. No. C-010095, 762 N.E.2d 1057 (whether a review board has the ultimate decision making authority is not controlling).

Does the Open Meetings Act apply to an individual?

No.³⁸⁸ The Cleveland city safety director is not a public body and may conduct disciplinary hearings without complying with the Open Meetings Act.³⁸⁹ Moreover, if an individual creates a group solely pursuant to his or her executive authority, the Open Meetings Act probably does not apply to the group's gatherings.³⁹⁰ However, one court recently determined that a committee appointed by the Commission Chair, and not by formal action of the Commission, is a public body.³⁹¹

Can a private body ever be subject to the open meetings requirements?

Yes. A private body may be a "public body" for purposes of the Open Meetings Act where it is organized pursuant to state statute and is statutorily authorized to receive and expend government funds for a governmental purpose.³⁹² A governmental decision-making body cannot assign its decision-making authority to a nominally private body to shield decisions from public scrutiny.

Are there any public bodies that are exempt from the Open Meetings Act for particular types of meetings?

Yes. Some public bodies, upon unanimous vote, may meet in executive session³⁹³ to consider confidentially received information about trade secrets, business strategies and related business information. These bodies are the Controlling Board, the Development Financing Advisory Council, the Industrial Technology and Enterprise Advisory Council, the Tax Credit Authority and the Minority Development Financing Commission.³⁹⁴

What are some examples of public bodies?

Bodies that have been determined to be "public bodies:"

- County agriculture society board of directors³⁹⁵
- County commissioners advisory committee created to make recommendations regarding new jail³⁹⁶
- Housing advisory board created pursuant to Ohio Rev. Code 176.01³⁹⁷
- Building leadership teams authorized by school district collective bargaining agreement³⁹⁸
- Grant advisory committee³⁹⁹
- Private, not-for-profit PASSPORT administrative agency operated pursuant to Ohio Admin. Code §5101:3-31 03(A)(1)⁴⁰⁰

Are there public bodies that are expressly exempt from the Open Meetings Act?

Yes. Bodies that are expressly not subject to the Open Meetings Act requirements:

- Grand juries⁴⁰¹
- Audit conferences by the Auditor of State or an independent accountant⁴⁰²
- Ohio Organized Crime Investigations Commission⁴⁰³
- Adult Parole Authority meetings to determine parole or pardon⁴⁰⁴
- Board of Nursing when determining pursuant to Ohio Rev. Code §4723.181(B) whether to suspend licensee's certificate without prior hearing⁴⁰⁵

³⁸⁸ See Ohio Rev. Code Ann. §121.22(B)(1).

³⁸⁹ *Smith v. City of Cleveland* (1994), 94 Ohio App.3d 780, 641 N.E.2d 828 (Cuyahoga County).

³⁹⁰ Ohio Rev. Code Ann. §121.22(B)(1)(a) and (b); *Beacon Journal Publ. Co. v. Akron* (1965), 3 Ohio St.2d 191, 209 N.E.2d 399; *Smith v. City of Cleveland* (1994), 94 Ohio App.3d 780, 641 N.E.2d 828 (Cuyahoga County).

³⁹¹ *Wheeling Corp. v. Columbus* (2001), 147 Ohio App.3d 460, Franklin No. 00AP-1224, 2001 Ohio 8751, 771 N.E.2d 263.

³⁹² *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Association* (1990), 61 Ohio Misc.2d 631, 582 N.E.2d 59; see, also, *Stegall v. Joint Township Dist. Memorial Hospital* (1985), 20 Ohio App.3d 100, 484 N.E.2d 1381 (Auglaize County).

³⁹³ See "What is an 'Executive Session'?" at Section B, below.

³⁹⁴ Ohio Rev. Code Ann. §121.22(E).

³⁹⁵ 1992 Ohio Atty. Gen. Ops. No. 92-078.

³⁹⁶ 1992 Ohio Atty. Gen. Ops.No. 92-077

³⁹⁷ 1992 Ohio Atty. Gen. Ops. No.92-065

³⁹⁸ *Weissfeld v. Akron Public Sch. Dist.* (1994), 94 Ohio App.3d 455, 640 N.E.2d 1201 (Summit County).

³⁹⁹ 1994 Ohio Atty. Gen. Ops. No. 94-096 (a committee of private citizens and various public officers or employees that is established by the board of health of a general health district for the purpose of advising the board on matters pertaining to the administration of a state or federal grant program is a public body subject to the requirements of Ohio Rev. Code Ann. §121.22, the Open Meetings Law).

⁴⁰⁰ 1995 Ohio Atty. Gen. Ops. No. 95-001.

⁴⁰¹ Ohio Rev. Code Ann. §121.22(D)(1).

⁴⁰² Ohio Rev. Code Ann. §121.22(D)(2).

⁴⁰³ Ohio Rev. Code Ann. §121.22(D)(4).

⁴⁰⁴ Ohio Rev. Code Ann. §121.22(D)(3).

⁴⁰⁵ Ohio Rev. Code Ann. §121.22(D)(7).

- Emergency Response Commission’s executive committee when meeting to determine whether to issue an enforcement order or request enforcement action pursuant to Ohio Rev. Code Chapter 3750⁴⁰⁶
- Meetings of a child fatality review board⁴⁰⁷
- The State Medical Board when determining to suspend a certificate without a prior hearing⁴⁰⁸
- The State Board of Pharmacy when determining to suspend a license without a prior hearing⁴⁰⁹
- State Chiropractic Board when determining whether to suspend a license without a prior hearing⁴¹⁰

C. DEFINITION OF A “MEETING” UNDER THE OPEN MEETINGS ACT

Before a public body is subject to the requirements of the Open Meetings Act, it must first have a meeting. A “meeting” is a prearranged gathering of a majority of the members of a public body to discuss or conduct public business.⁴¹¹ Each of these three characteristics must be present; otherwise, the gathering is not a meeting and is not subject to the Open Meetings Act requirements. Where each of these characteristics is present, the gathering is a meeting, regardless of whether the public body itself initiated the meeting or it was initiated by another entity.⁴¹²

If the members of multiple public bodies meet together, whose meeting is it?

Where members of a public body gather with representatives of other public bodies, the gathering may be construed to be a separate meeting of each public body with a majority attending.⁴¹³

What if the members of the public body are not “deliberating” or “discussing” public business?

Some courts have found that a gathering of the members of a public body is not a meeting where they act only as passive observers in a ministerial fact-gathering capacity or informational session.⁴¹⁴

“Discussion”⁴¹⁵ is an exchange of words, comments or ideas. The simple presentation of information to a public body, without more, may not be discussion.⁴¹⁶

“Deliberation” involves the weighing and examination of reasons for and against a course of action.⁴¹⁷ Simple information gathering or fact finding may not be enough.⁴¹⁸ However, the open meetings act is to be liberally construed.⁴¹⁹

⁴⁰⁶ Ohio Rev. Code Ann. §121.22(D)(10).

⁴⁰⁷ Ohio Rev. Code Ann. §121.22(D)(5).

⁴⁰⁸ Ohio Rev. Code Ann. §121.22(D)(6).

⁴⁰⁹ Ohio Rev. Code Ann. §121.22(D)(8).

⁴¹⁰ Ohio Rev. Code Ann. §121.22(D)(9).

⁴¹¹ Ohio Rev. Code Ann. §121.22(B)(2). See, also, *Dayton Newspaper, Inc. v. Dayton* (1971), 28 Ohio App.2d 95, 274 N.E.2d 766; *State ex rel. Plain Dealer Publ. Co. v. Barnes* (1988), 38 Ohio St.3d 165, 527 N.E.2d 807 (if municipal charter controls conduct of municipal meetings but does not define “meetings,” as used in the charter, the term means any assemblage of the municipal council or its committees where a majority of members attend and the gathering is arranged for the purpose of discussing public business); see, also, *State ex rel. Long v. Council of Cardington* (2001), 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E.2d 58 (the requirements are to be liberally construed and therefore committee meetings of available council are open meetings).

⁴¹² *State ex rel. Fairfield Leader v. Ricketts* (1990), 56 Ohio St.3d 97, 564 N.E.2d 486.

⁴¹³ *State ex rel. Fairfield Leader v. Ricketts* (1990), 56 Ohio St.3d 97, 564 N.E.2d 486.

⁴¹⁴ *Steingass Mech., Inc. v. Warrensville Heights Board of Educ.* (2003), 151 Ohio App.3d 321, 2003 Ohio 8, 784 N.E.2d 118; *DeVere v. Miami University Board of Trustees* (June 10, 1986), 1986 Ohio App. LEXIS 7171 (Butler County); *McIntyre v. Board of County Comm’rs.* (Sept. 12, 1986), *Ashtabula App. No. 1269*, 1986 Ohio App. LEXIS 8267; *Theile v. Harris* (June 11, 1986), *Hamilton App. No. C-860103*, 1986 Ohio App. LEXIS 7096. But, see, *State ex rel. Fairfield Leader v. Ricketts* (1990), 56 Ohio St.3d 97, 564 N.E.2d 486 (a “retreat” where public business was discussed, but where no specific proposals were made and no official action was taken, was a “meeting”); *Carver v. Township of Deerfield* (2002), 139 Ohio App.3d 64, *Portage App. No. 99PA0015*, 742 N.E.2d 1182 (trial preparation of potential witnesses/board members would be exempt as long as it did not involve making policy decisions).

⁴¹⁵ Ohio Rev. Code Ann. §121.22(B)(2).

⁴¹⁶ *DeVere v. Miami University Board of Trustees* (June 10, 1986), 1986 Ohio App. LEXIS 7171 (Butler County). See, also, *State ex rel. Floyd v. Rock Hill Local School Board of Education* (Feb. 10, 1988), *Lawrence App. No. 1862*, 1988 Ohio App. LEXIS 471 (no one-on-one discussions regarding employment of public employee – must be open or in executive session).

⁴¹⁷ *Piekutowski v. South Cent. Ohio Educ. Serv. Ctr. Governing Bd.* (2005), 161 Ohio App.3d 372, 2005 Ohio 2868, 830 N.E.2d 423; see, also, *Theile v. Harris*, *Hamilton Cty. App. No. C-860103*, 1986 Ohio App. LEXIS 7096.

⁴¹⁸ *Springfield Local Sch. Dist. Bd. of Educ. v. Ohio Ass’n. of Pub. Sch. Empl. Local 530* (1995), 106 Ohio App.3d 855, 667 N.E.2d 458, 1995 Ohio App. LEXIS 4616.

⁴¹⁹ Ohio Revised Code Annotated 121.22 (A)

Conversation between employees of a public body does not constitute deliberation⁴²⁰ of the public body.⁴²¹ A presentation to a public body by its legal counsel, where legal advice is received by the public body, may not constitute deliberation by the public body.⁴²² A press conference is probably not a gathering where deliberation occurs.⁴²³

Is a quasi-judicial hearing, such as a State Medical Board hearing, subject to the Open Meetings Act?

The Ohio Supreme Court has determined that quasi-judicial hearings are not “meetings,” and are not subject to the Open Meetings Act.⁴²⁴

Can a member participate in a meeting by telephone or video?

No. Teleconferencing and videoconferencing are prohibited – a member must be present in person to vote, deliberate or to be counted in a quorum.⁴²⁵

Can members of a public body have one-on-one conversations amongst themselves about public business without issuing notice for a meeting?

Gatherings of public body members outside the traditional meeting context are difficult to safely characterize. Standing alone, one-on-one conversations between individual members, either in person or by telephone, do not violate the Open Meetings Act.⁴²⁶ But a conference call between a majority of the members where public business is discussed is prohibited.⁴²⁷ A public body must not, however, circumvent the act by scheduling back-to-back discussions of public business which, taken together, are attended by a majority of the members.⁴²⁸ Such “**round-robin**” or “**serial**” meetings appear to violate the Open Meetings Act.⁴²⁹

Are work sessions “meetings” subject to the Open Meetings Act?

Yes. Work sessions where public business is discussed among a majority of the members of a public body are meetings and must be noticed and open as any other meeting.⁴³⁰

Where must public meetings be held?

The Open Meetings Act does not specifically address where meetings may be held. However, some case law exists to suggest that meetings must be held in a public meeting place⁴³¹ and within the geographical jurisdiction of the public body.⁴³² Where space in the facility is too limited to accommodate all interested members of the

⁴²⁰ Ohio Rev. Code Ann. §121.22(A) and (H).

⁴²¹ *Kandell v. Kent* (Aug. 2, 1991), 1991 Ohio App. LEXIS 3640 (Portage County); *State ex rel. Board of Education School Dist. v. Board of Education* (1988), 40 Ohio St.3d 136, 532 N.E.2d 715.

⁴²² *Steingass Mech., Inc. v. Warrensville Heights Board of Educ* (2003), 151 Ohio App.3d 321, 2003 Ohio 28, 784 N.E.2d 118, following *Theile v. Harris* (June 11, 1986), Hamilton App. No. C-860103, 1986 Ohio App. LEXIS 7096; *Holeski v. Lawrence* (1983), 85 Ohio App.3d 824, 621 N.E.2d 802 (Geauga County); *Wyse v. Rupp* (Sept. 15, 1995), 1995 Ohio App. LEXIS 4008 (Fulton County); see, also, *State ex rel. Cincinnati Enquirer v. Hamilton County Comm’rs.* (Apr. 26, 2002), Hamilton App. No. C-010605, 2002 Ohio 2038, 2002 Ohio App. LEXIS 1977.

⁴²³ *Holeski v. Lawrence* (1993), 85 Ohio App.3d 824, 621 N.E.2d 802 (Geauga County).

⁴²⁴ *TBC Westlake v. Hamilton County Board of Revision* (1998), 81 Ohio St 3d 58, 1998 Ohio 445, 689 N.E.2d 32; *Jones v. Liquor Control Comm’n.* (Dec. 20, 2001), Franklin App. No. 01AP-344, 2001 Ohio 8766, 2001 Ohio App. LEXIS 5719; *Angerman v. State Medical Bd.* (1990), 70 Ohio App.3d 346, 591 N.E.2d 3 (Franklin County); *In re: Petition for Annexation* (1988), 52 Ohio App.3d 8, 556 N.E.2d 200 (Franklin County); *Carver v. Township of Deerfield* (2000), 139 Ohio App.3d 64, Portage App. No. 99PA0015, 742 N.E.2d 1182.

⁴²⁵ Ohio Rev. Code Ann. §121.22(C). But, see, e.g., Ohio Rev. Code Ann. §3333.02 in which Ohio Board of Regents is specifically granted authority to meet via video conferencing.

⁴²⁶ *Haverkos v. Northwest Local Sch. Dist. Bd. Of Educ.*, Hamilton App. No. C-040589, 2005 Ohio 3489, 2005 Ohio App. LEXIS 3237 (One e-mail, one phone call, and one letter was not a meeting); *Maser v. Canton* (1978), 62 Ohio App.2d 174, 405 N.E.2d 731 (Stark County); *McIntyre v. Westerville Sch. Dist.* (June 6, 1991), Franklin App. No. 90AP-1024, 1991 Ohio App. LEXIS 2658. But, compare, *State ex rel. Floyd v. Rock Hill Local School Board of Education* (Feb. 10, 1988), Lawrence App. No. 1862, 1988 Ohio App. LEXIS 471 (no one-on-one discussions re: employment of public employee – must be in open meeting or in executive session).

⁴²⁷ Ohio Rev. Code Ann. §121.22(C) – the Open Meetings Act was specifically amended to require the physical presence of members at a meeting.

⁴²⁸ *State ex rel. Cincinnati Post v. City of Cincinnati* (1996), 76 Ohio St.3d 540, 1996 Ohio 372, 668 N.E.2d 903.

⁴²⁹ *State ex rel. Floyd v. Rock Hill Local Sch. Board of Education* (Feb. 10, 1988), Lawrence App. No. 1862, 1988 Ohio App. LEXIS 471.

⁴³⁰ *State ex rel. Singh v. Schoenfeld* (May 4, 1993), 1993 Ohio App. LEXIS 2409 (Franklin County).

⁴³¹ *Crist v. True* (1973), 39 Ohio App.2d 11, 314 N.E.2d 186 (Clermont County); 1992 Ohio Atty. Gen. Ops. No. 92-032.

⁴³² 1994 Ohio Atty. Gen. Ops. No. 7038; 1992 Ohio Atty. Gen. Ops. No. 92-032.

public, closed circuit television may be an acceptable alternative.⁴³³ The meeting place must also be accessible to individuals with disabilities pursuant to federal law, but this requirement has no Open Meetings Act ramifications.⁴³⁴

D. RESPONSIBILITIES OF A PUBLIC BODY UNDER THE OPEN MEETINGS ACT

A public body has the following three basic responsibilities under the Open Meetings Act:

1. Openness

Every public body must vote and take all official actions and hold all deliberations on official business in meetings that are open to the public.⁴³⁵ Executive Sessions are an exception; however, public bodies may not vote or take official action in an Executive Session. The courts have even held that making a determination to take no action on a pending matter may be a decision that should be made and voted upon in open session.⁴³⁶ Openness prohibits the public body from banning all video tape recordings.⁴³⁷ However, the obligation of openness does not require the public body to allow the public to speak at the meeting.

2. Notice

Depending upon the type of meeting a public body is holding, it must meet specific requirements for the timing and type of notice it provides to the public.

3. Minutes

Meeting minutes must be composed and filed for each meeting. However, there is no requirement for minutes to be kept of Executive Sessions.

E. TYPES OF MEETINGS AND NOTICE

Three different types of meetings exist and the notice requirements differ for each type.

1. Regular Meetings

A regular meeting is a meeting that is held at prescheduled intervals,⁴³⁸ such as, "every Tuesday at 7:30 p.m. in town hall." The notice requirement for a regular meeting is that public bodies must establish by rule a reasonable method that allows the public to determine the time⁴³⁹ and place of regular meetings.⁴⁴⁰

2. Special Meetings

Any meeting other than a regular meeting is a special meeting.⁴⁴¹ The notice requirement for a special meeting is that public bodies must establish by rule a reasonable method that allows the public to determine the time, place and purpose of a special meeting.⁴⁴² The rule must require at least 24 hours advance notification to all media outlets that have requested such notification.⁴⁴³

⁴³³ Wyse v. Rupp (Sept. 15, 1995), 1995 Ohio App. LEXIS 4008 (Fulton County).

⁴³⁴ 42 U.S.C. §12101, American with Disabilities Act of 1990, Pub. L. No. 201-02.

⁴³⁵ Ohio Rev. Code Ann. §121.22(C).

⁴³⁶ Mansfield City Counsel v. Richland City Council (Dec. 24, 2003), 5th Dist. No. 03 CA 55, 2003 Ohio App. LEIS 6654.

⁴³⁷ McVey v. Carthage Twp. Trs. (2005), Athens App. No. 04CA44, 2005 Ohio 2869, 2005 Ohio App. LEXIS 2690.

⁴³⁸ 1988 Ohio Atty. Gen. Ops. No. 88-029; State ex rel. Fairfield Leader v. Ricketts (1990), 56 Ohio St.3d 97, 564 N.E.2d 486. See, generally, Moss v. Leifheit (Jan. 19, 1989), 1989 Ohio App. LEXIS 461 (Licking County) (notice is defective if it fails to specify the public body's meeting place) (case overruled and dismissed on other grounds).

⁴³⁹ Wyse v. Rupp (Sept. 15, 1995), 1995 Ohio App. LEXIS 4008 (Fulton County).

⁴⁴⁰ Ohio Rev. Code Ann. §121.22(F).

⁴⁴¹ State ex rel. Fairfield Leader v. Ricketts (1990), 56 Ohio St.3d 97, 564 N.E.2d 486.

⁴⁴² Doran v. Northmont Board of Education (2002), 147 Ohio App.3d 268, Montgomery App. No. 19024, 2002 Ohio 386, 770 N.E.2d 92, affirmed and discussed in Doran v. Northmont Board Of Education (Dec. 24, 2004), 2nd Dist. No. 19956, 2003 Ohio 7097, 2003 Ohio App. LEXIS 6422; State ex rel. Stiller v. Columbiana Exempted Village Sch. Dist. Board of Education (1995), 74 Ohio St.3d 113, 1995 Ohio 266, 656 N.E.2d 679; Jones v. Brookfield Township Trustees (June 30, 1995), Trumbull App. No. 92-T-4692, 1995 Ohio App. LEXIS 2805.

⁴⁴³ Ohio Rev. Code Ann. §121.22(F); 1988 Ohio Atty. Gen. Ops. No. 88-029; Doran v. Northmont Board of Education (2002), 147 Ohio App.3d 268, Montgomery App. No. 19024, 2002 Ohio 386, 770 N.E.2d 92 (court suggested that notices of special meetings, sent to newspapers, direct the newspapers to publish the notice), affirmed (Dec. 24, 2004), 2nd Dist. No. 19956, 2003 Ohio 7097, 2003 Ohio App. LEXIS 6422.

Although the notice for a special meeting must state the purpose for the meeting,⁴⁴⁴ it may be for “general purposes.”⁴⁴⁵ If a public body wants to adjourn into executive session during a special meeting, the topic of the executive session should directly relate to some matter expressly included in the notice.

3. Emergency Meetings

An emergency meeting is a special meeting that is convened because a situation requires immediate official action. The emergency cannot be the result of the public body’s own failure to meet earlier.⁴⁴⁶ For this type of meeting, the notice requirement is immediate. The members of the public body must immediately notify all news media outlets that have requested such notice.⁴⁴⁷

The Open Meetings Act also requires a public body to establish a method by which a person may sign up to receive notice of meetings when a particular type of business is going to be discussed. The method may require payment of a reasonable fee and failure to pay that fee means that a person is not entitled to receive the requested notice.⁴⁴⁸ If the topic of a special or emergency meeting relates to the particular type of business that a person asked to be notified about, the notice should go to that person as well as the media.

F. KEEPING THE MINUTES

A public body must keep full and accurate minutes, which must enable the public to understand and appreciate the rationale behind the public body’s decisions.⁴⁴⁹ It must prepare the minutes for all meetings promptly, file them and maintain them.⁴⁵⁰ Minutes are merely the record of actions; they are not actions in and of themselves.⁴⁵¹ For example, if a public body fails to approve minutes of a meeting, the failure does not necessarily render all action taken during that meeting void.⁴⁵²

Minutes do not have to detail discussions during executive sessions. Instead, the minutes need only reflect the general subject matter of the executive session.⁴⁵³

G. EFFECT OF MUNICIPAL CHARTERS

A charter municipality has the right to determine by charter the manner in which meetings will be held.⁴⁵⁴ If a municipality is a charter municipality, charter provisions concerning its public bodies’ meetings probably take precedence over the Open Meetings Act.⁴⁵⁵ The Ohio Supreme Court, however, has expressly reserved the issue and has not yet issued an opinion.⁴⁵⁶

⁴⁴⁴ Ohio Rev. Code Ann. §121.22(F).

⁴⁴⁵ Jones v. Brookfield Township Trustees (June 30, 1995), Trumbull App. No. 92-T-4692, 1995 Ohio App. LEXIS 2805; Hoops v. Jerusalem Twp. Board of Trustees (Apr. 10, 1998), Lucas App. No. L-97-1240, 1998 Ohio App. LEXIS 1496 (business transacted at special meeting exceeded scope of published purpose and were thus in violation of Ohio Rev. Code Ann. §121.22(F)).

⁴⁴⁶ Neuvirth v. Board Of Trustees of Bainbridge Twp. (June 29, 1981), 11th Dist. No. 919, 1981 Ohio App. LEXIS 14641; c.f. Wolf v. East Liverpool City School Dist. (May 12, 2004), 7th Dist. No. 03 CO 5, 2004 Ohio 2479, 2004 Ohio App. LEXIS 2213.

⁴⁴⁷ Ohio Rev. Code Ann. §121.22(F). State ex rel. Brookfield Fed’n of Teachers v. Brookfield Local Sch. Dist., No. 3515, 1985 Ohio App. LEXIS 9882 (Trumbull Cty. C.P. Dec. 20, 1985); 1988 Ohio Atty. Gen. Ops. No. 88-029.

⁴⁴⁸ McIntyre v. Board of County Comm’rs. (Sept. 12, 1986), Ashtabula App. No. 1269, 1986 Ohio App. LEXIS 8267.

⁴⁴⁹ White v. Clinton County Board of Comm’rs. (1996), 76 Ohio St.3d 416, 667 N.E.2d 1223; State ex rel. Long v. Council of Cardington (2001), 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E.2d 58.

⁴⁵⁰ Ohio Rev. Code Ann. §121.22(C). See, also, White v. Clinton County Board of Comm’rs. (1996), 76 Ohio St.3d 415, 667 N.E.2d 1223; State ex rel. Fairfield Leader v. Ricketts (1990), 56 Ohio St.3d 97, 564 N.E.2d 486; State ex rel. Long v. Council of Cardington (2001), 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E.2d 58 (audiotapes that are later erased do not meet requirement to maintain).

⁴⁵¹ Davidson v. Village of Hanging Rock (1994), 97 Ohio App.3d 723, 647 N.E.2d 527 (Lawrence County).

⁴⁵² Davidson v. Village of Hanging Rock (1994), 97 Ohio App.3d 723, 647 N.E.2d 527 (Lawrence County).

⁴⁵³ Ohio Rev. Code Ann. §121.22(C).

⁴⁵⁴ State ex rel. Bond v. Montgomery (1989), 63 Ohio App.3d 728, 580 N.E.2d 38 (Hamilton County); Hills & Dales, Inc. v. City of Wooster (1982), 4 Ohio App.3d 240, 448 N.E.2d 163 (Wayne County).

⁴⁵⁵ State ex rel. Inskeep v. Staten (1996), 74 Ohio St.3d 676, 660 N.E.2d 1207; State ex rel. Fenley v. Kyger (1995), 72 Ohio St.3d 164, 648 N.E.2d 493; State ex rel. Fairfield Leader v. Ricketts (1990), 56 Ohio St.3d 97, 564 N.E.2d 486; Fox v. Lakewood (1988), 39 Ohio St.3d 19, 528 N.E.2d 1254; State ex rel. Gannett Satellite Info. Network v. Cincinnati City Council (2001), 137 Ohio App.3d 589, Hamilton App. No. C-990806, 739 N.E.2d 387; Hills & Dales, Inc. v. City of Wooster (1982), 4 Ohio App.3d 240, 448 N.E.2d 163 (Wayne County); Klaben Ford, Inc. v. Kent Board of Zoning Appeals (Mar. 31, 1992), 1992 Ohio App. LEXIS 1622 (Portage County).

⁴⁵⁶ State ex rel. Plain Dealer Publ. Co. v. Barnes (1988), 38 Ohio St.3d 165, 527 N.E.2d 807.

It is clear, however, that if the municipality formulates and includes in its charter guidelines with which its public bodies must comply when conducting their meetings, the municipality must abide by those guidelines.⁴⁵⁷ It is also clear that if a charter expressly requires that all meetings of the public bodies must be open, the municipality may not adopt ordinances that permit executive session.⁴⁵⁸

H. EXECUTIVE SESSIONS

An executive session occurs when members of a public body exclude the public from a portion of a public meeting.⁴⁵⁹ Executive sessions may be held exclusively to discuss limited matters.⁴⁶⁰ Only persons invited by the public body to join the executive session may attend.⁴⁶¹ The public body may permit anyone it chooses to attend⁴⁶² and, likewise, may exclude anyone it so chooses.⁴⁶³

There are seven valid reasons for a public body to adjourn into executive session, as summarized below:

1. Personnel

A public body may adjourn into executive session to consider the appointment, employment, dismissal, discipline, promotion, demotion or compensation of a public employee or official, or to consider the investigation of charges or complaints against a public employee, official, licensee or regulated individual, unless the employee, official, licensee or regulated individual requests a public hearing.⁴⁶⁴

However, the law does not allow a public body to hold an executive session to consider the discipline of an elected official⁴⁶⁵ for conduct related to the performance of the elected official's duties or to consider that person's removal from office.⁴⁶⁶

There are restrictions associated with this exception. First, it does not give a person a substantive right to a public hearing. The right must already exist in Ohio or federal law before a person may demand one under this personnel exception.⁴⁶⁷

Second, some courts have determined that this exception may not be used unless the matters to be discussed directly affect specific personnel or regulated individuals.⁴⁶⁸ These decisions may also indicate that it is inappropriate to use this exception to discuss the creation of a new position.

⁴⁵⁷ *Johnson v. Kindig* (Aug. 15, 2001), Wayne App. No. 00CA0095, 2001 Ohio App. LEXIS 3569 (where charter explicitly states all council meetings shall be public, must also explicitly state exception for executive session); *State ex rel. Bond v. Montgomery* (1989), 63 Ohio App.3d 728, 580 N.E.2d 38 (Hamilton County).

⁴⁵⁸ *State ex rel. Inskeep v. Staten* (1996), 74 Ohio St.3d 676, 660 N.E.2d 1207; *State ex rel. Plain Dealer Publ. Co. v. Barnes* (1988), 38 Ohio St.3d 165, 527 N.E.2d 807, n.2; *State ex rel. Gannett Satellite Info. Network v. Cincinnati City Council* (2001), 137 Ohio App.3d 589, Hamilton App. No. C-990806, 739 N.E.2d 387 (when a city charter mandates all meetings be open, rules of council cannot supersede this mandate).

⁴⁵⁹ *Dayton Newspapers, Inc. v. Dayton* (1971), 28 Ohio App.2d 95, 274 N.E.2d 766; *Weisel v. Palmyra Township Board of Zoning Appeals* (July 19, 1991), 1991 Ohio App. LEXIS 3379 (Portage County); *Davidson v. Sheffield-Sheffield Lake Board of Education* (May 23, 1990), 1990 Ohio App. LEXIS 2190 (Lorain County).

⁴⁶⁰ Ohio Rev. Code Ann. §121.22(G).

⁴⁶¹ *Dayton Newspapers, Inc. v. Dayton* (1971), 28 Ohio App.2d 95, 274 N.E.2d 766; *Weisel v. Palmyra Township Board of Zoning Appeals* (July 19, 1991), 1991 Ohio App. LEXIS 3379 (Portage County); *Davidson v. Sheffield-Sheffield Lake Board of Education* (May 23, 1990), 1990 Ohio App. LEXIS 2190 (Lorain County).

⁴⁶² *Dayton Newspapers, Inc. v. Dayton* (1971), 28 Ohio App.2d 95, 274 N.E.2d 766; *Chudner v. Cleveland City Sch. Dist.* (Aug. 10, 1995), Cuyahoga App. No. 68572, 1995 Ohio App. LEXIS 3303.

⁴⁶³ *Dayton Newspapers, Inc. v. Dayton* (1971), 28 Ohio App.2d 95, 274 N.E.2d 766; *Chudner v. Cleveland City Sch. Dist.* (Aug. 10, 1995), Cuyahoga App. No. 68572, 1995 Ohio App. LEXIS 3303.

⁴⁶⁴ Ohio Rev. Code Ann. §121.22(G)(1). See *Brownfield v. Warren Local Sch. Dist. Board of Education* (Aug. 28, 1990), Washington App. No. 89CA26, 1990 Ohio App. LEXIS 3878 (upon request, teacher was entitled to have deliberations regarding his dismissal in open meetings).

⁴⁶⁵ Ohio Rev. Code Ann. §121.22(G)(1).

⁴⁶⁶ Ohio Rev. Code Ann. §121.22(G)(1).

⁴⁶⁷ *Lawrence v. Village of Edon*, Williams App. No. Wm-05-001, 2005 Ohio 5883, 2005 Ohio App. LEXIS 5315; *Matheny v. Frontier Local Board of Education* (1980), 62 Ohio St.2d 362, 405 N.E.2d 1041; *Davidson v. Sheffield-Sheffield Lake Board of Education* (May 23, 1990), 1990 Ohio App. LEXIS 2190 (Lorain County); *State ex rel. Harris v. Industrial Comm'n.* (Dec.14, 1995), 1995 Ohio App. LEXIS 5491 (Franklin County).

⁴⁶⁸ *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Board of Education* (1988), 41 Ohio App.3d 218, 534 N.E.2d 1239 (Ross County); *Davidson v. Sheffield-Sheffield Lake Board of Education* (May 23, 1990), 1990 Ohio App. LEXIS 2190 (Lorain County). But, see, *Wright v. Mt. Vernon City Council* (Oct. 23, 1997), Knox App. No. 97-CA-07, 1997 Ohio App. LEXIS 4931 (permissible for public body to discuss merit raises for exempt city employees in executive session without referring to individuals in particular positions).

2. Property

A public body may adjourn into executive session to consider the purchase of property (real property and personal property, whether it is tangible or intangible).⁴⁶⁹ A public body may also adjourn into executive session to consider the sale of property by competitive bid (real or personal property) if disclosure of the information would result in a competitive advantage to the other side.⁴⁷⁰

No member of a public body may use this exception as subterfuge for providing covert information to prospective buyers or sellers.⁴⁷¹

3. Court Action

A public body may adjourn into executive session with the public body's attorney to discuss pending or imminent court action.⁴⁷² Court action is pending if a lawsuit has been commenced. Court action is imminent if it is on the point of happening or is impending.⁴⁷³

A public body may not use this exception to adjourn into executive session for discussions with a board member who also happens to be an attorney⁴⁷⁴ – the attorney should be the duly appointed counsel for the public body.

4. Collective Bargaining

A public body may adjourn into executive session to prepare for, conduct or review collective bargaining strategy.⁴⁷⁵

5. Confidential Matters

A public body may adjourn into executive session to discuss matters required to be kept confidential by federal law, federal rules or state statutes.⁴⁷⁶

6. Security Arrangements

A public body may adjourn into executive session to discuss details of security arrangements and emergency response protocols where disclosure could be expected to jeopardize the security of the public body or public office.⁴⁷⁷

7. County Hospitals' Trade Secrets

A public body may adjourn into executive session to discuss trade secrets of a county hospital organized under Ohio Rev. Code Chapter 339.⁴⁷⁸

⁴⁶⁹ Ohio Rev. Code Ann. §121.22(G)(2). See, also, 1988 Ohio Atty. Gen. Ops. No. 88-003.

⁴⁷⁰ Ohio Rev. Code Ann. §121.22(G)(2). See, also, 1988 Ohio Atty. Gen. Ops. No. 88-003.

⁴⁷¹ Ohio Rev. Code Ann. §121.22(G)(2).

⁴⁷² Ohio Rev. Code Ann. §121.22(G)(3).

⁴⁷³ State ex rel. Cincinnati Enquirer v. Hamilton County Comm'rs. (Apr. 26, 2002), Hamilton App. No. C-010605, 2002 Ohio 2038 ("imminent" is satisfied when a public body has moved beyond mere investigation and assumed an aggressive litigious posture manifested by the decision to commit government resources to the prospective litigation); State ex rel. Bond v. Montgomery (1989), 63 Ohio App.3d 728, 580 N.E.2d 38 (1st Dist.). But, compare, Greene County Guidance Center, Inc. v. Greene-Clinton Community Mental Health Board (1984), 19 Ohio App.3d 1, 482 N.E.2d 982 (discussion with legal counsel in executive session under Ohio Rev. Code Ann. §121.22(G)(3) is permitted where litigation is a "reasonable prospect").

⁴⁷⁴ Awadalla v. Robinson Memorial Hosp. (June 5, 1992), 1992 Ohio App. LEXIS 2838 (Portage County).

⁴⁷⁵ Ohio Rev. Code Ann. §121.22(G)(4).

⁴⁷⁶ Ohio Rev. Code Ann. §121.22(G)(5). See, also, State ex rel. Cincinnati Enquirer v. Hamilton County Comm'rs. (Apr. 26, 2002), Hamilton App. No. C-010605, 2002 Ohio 2038; J.C. Penney Properties, Inc. v. Board of Revision of Franklin County (Ohio Board of Tax Appeals Jan. 19, 1982), Nos. 81-D-509, 81-D-510, 1982 Ohio Tax LEXIS 535 (common law attorney-client privilege may not be available under Ohio Rev. Code Ann §121.22 (G)(5) given the presence of Ohio Rev Code Ann. §121.22(G)(3)). See, also, Theile v. Harris (June 11, 1986), Hamilton App. No. C-860103, 1986 Ohio App. LEXIS 7096 (public officials have the right and duty to seek legal advice from their duly constituted legal advisor).

⁴⁷⁷ Ohio Rev. Code Ann. §121.22(G)(6).

⁴⁷⁸ Ohio Rev. Code Ann. §121.22(G)(7).

I. RESTRICTIONS ON DISCUSSIONS HELD IN EXECUTIVE SESSION

There are restrictions on the discussions held in executive session. First, there can be no decision-making (actual voting) in the executive session.⁴⁷⁹

Second, even when non-excepted matters are so intertwined with matters permitted to be discussed in executive session, the non-excepted matters may not be discussed in private.⁴⁸⁰ However, it does not appear that the Open Meetings Act will prohibit the public body or one of its members from disclosing the information discussed in executive session, unless otherwise prohibited by statute.⁴⁸¹

If a public body is challenged in court for discussions or deliberations held in executive session, the public body has the burden of proof to establish that one of the statutory exemptions permits the executive session.⁴⁸² The court will strictly construe the law in favor of openness.⁴⁸³ A court may look beyond the express reason stated by the public body for the executive session to find an implied or circumstantial violation of the Open Meetings Act.⁴⁸⁴

J. PROCEDURE FOR ADJOURNING INTO EXECUTIVE SESSION

An executive session must always begin and end in open session.⁴⁸⁵

1. Motion

First, there must be a motion that states the purpose for the executive session and the motion must be specific as to the matters to be discussed.⁴⁸⁶

For instance, if the purpose of the executive session is to discuss one of the personnel-related matters listed in the personnel exception, the motion must specify one or more of the listed purposes it is going to discuss, i.e., "to discuss the dismissal of a public employee."⁴⁸⁷ It is not sufficient to move for an executive session to discuss "personnel."⁴⁸⁸ But the motion does not need to specify by name the person who is to be discussed.⁴⁸⁹

2. Second

After the motion, there must be a second on the motion.

⁴⁷⁹ Mathews v. Eastern Local Sch. Dist. (Jan. 4, 2001), Pike App. No. 00CA647, 2001 Ohio 2372, 2001 Ohio App. LEXIS 1677; State ex rel. Humphrey v. Adkins (1969), 18 Ohio App.2d 101, 247 N.E.2d 330 (Montgomery County); Drake v. Fairfield County Dist. Board of Health (Jan. 22, 1991), 1991 Ohio App. LEXIS 301 (Fairfield County).

⁴⁸⁰ Chudner v. Cleveland City Sch. Dist. (Aug. 10, 1995), Cuyahoga App. No. 68572, 1995 Ohio App. LEXIS 3303.

⁴⁸¹ Springfield Local Sch. Dist. Board of Education v. Ohio Association of Public Sch. Emps., Local 530 (1995), 106 Ohio App.3d 855, Summit App. No. 17128, 667 N.E.2d 458; Swanson v. Board of Police Comm'rs. (1990), 197 Ill. App.3d 592, 555 N.E.2d 35; Informal Opinion of the Ohio Ethics Commission issued to Elaine S. Buck (Oct. 10, 1986). But, see, Ohio Rev. Code Ann. §102.03(B) and Ohio Rev. Code Ann. §121.22(G)(2) (no member of a public body shall provide covert information to prospective buyers or sellers of public property that has not been disclosed to the general public).

⁴⁸² State ex rel. Bond v. Montgomery (1989), 63 Ohio App.3d 728, 580 N.E.2d 38 (1st Dist.).

⁴⁸³ Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Board of Education (1988), 41 Ohio App.3d 218, 534 N.E.2d 1239 (Ross County).

⁴⁸⁴ Sea Lakes, Inc. v. Lipstreu (Sept. 30, 1991), 1991 Ohio App. LEXIS 4615 (Portage County) (court found violation where board was to discuss administrative appeal merits privately, appellant's attorney objected, board immediately held executive session "to discuss pending litigation," then emerged to announce decision on appeal); In the Matter of Removal of Smith (May 15, 1991), 5th Dist. No. CA 90 11, 1991 Ohio App. LEXIS 2409 (court found violation where county commission emerged from executive session "to discuss legal matters" and announced decision to remove Smith from Board of Mental Health, where no county attorney present in executive session and a request for public hearing on removal decision was pending).

⁴⁸⁵ Ohio Rev. Code Ann. §121.22(G).

⁴⁸⁶ Ohio Rev. Code Ann. §121.22(G); In re: Removal of Kuehnle (2005), 161 Ohio App. 3d 399, 2005 Ohio 2373 830 N.E.2d 1173 (stating multiple reasons for executive session may actually make the action less specific.); Vermilion Teachers' Association v. Vermilion Local Sch. Dist. Board of Education (1994), 98 Ohio App.3d 524, 648 N.E.2d 1384 (Erie County); 1988 Ohio Atty. Gen. Ops. No. 88-029 (detailing proper procedure for executive session).

⁴⁸⁷ Jones v. Brookfield Township Trustees (June 30, 1995), Trumbull App. No. 92-T-4692, 1995 Ohio App. LEXIS 2805; 1988 Ohio Atty. Gen. Ops. No. 88-029; State ex rel. Long v. Council of Cardington (2001), 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E. 2d 58.

⁴⁸⁸ Jones v. Brookfield Township Trustees (June 30, 1995), Trumbull App. No. 92-T-4692, 1995 Ohio App. LEXIS 2805; 1988 Ohio Atty. Gen. Ops. No. 88-029; State ex rel. Long v. Council of Cardington (2001), 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E.2d 58.

⁴⁸⁹ Ohio Rev. Code Ann. §121.22(G)(1); Beisel v. Monroe County Board of Education (Aug. 29, 1990), 1990 Ohio App. LEXIS 3761 (Monroe County).

3. Roll Call Vote

A vote to adjourn into executive session must be made by roll call vote by a majority of a quorum of the public body.⁴⁹⁰ The vote may not be by acclamation⁴⁹¹ or by show of hands. The vote must be recorded in the minutes.

K. RIGHTS AND REMEDIES UNDER THE OPEN MEETINGS ACT

1. Rights

A person is guaranteed the right to attend a public meeting; not the right to be heard at that meeting.⁴⁹² A disruptive person waives the right to remain and observe the meeting and may be removed.⁴⁹³

Audio and video recording may not be prohibited, but the public body may establish reasonable rules regulating the use of such equipment, such as requiring equipment to be silent, unobtrusive, self-contained and self-powered to limit interference with the ability of others to hear, see and participate in the meeting.⁴⁹⁴ In fact, at least one federal court has held that there is no constitutional right to videotape public meetings.⁴⁹⁵

Minutes of a public body's meetings are open for public inspection.⁴⁹⁶ Public release of information contained in the minutes that has a certain stigma attached to it or would negatively affect the subject of the information is not an invasion of privacy.⁴⁹⁷

2. Remedies and Ramifications

a. Court Action

If a person believes that the Open Meetings Act has been violated, that person may file a court action called an injunction,⁴⁹⁸ which, if granted, will compel the members of the public body to comply with the law. Any person⁴⁹⁹ may file an injunction to enforce the Open Meetings Act. The action should be filed in the court of common pleas for the county where the meeting at issue took place within two years of the violation or alleged violation.⁵⁰⁰ A request for enforcement of the Open Meetings Act must be initially raised in the complaint, not in a motion before the court in a pending proceeding.⁵⁰¹

To prevail in an injunction action, the filing party must demonstrate the legal elements of irreparable harm and prejudice to the filing party. However, if the filing party proves that the public body violated or threatened to

⁴⁹⁰ Ohio Rev. Code Ann. §121.22(G).

⁴⁹¹ Ohio Rev. Code Ann. §121.22(G); 1988 Ohio Atty. Gen. Ops. No. 88-029. See *Shaffer v. West Farmington* (1992), 82 Ohio App.3d 579, 612 N.E.2d 1247 (minutes may not be conclusive evidence as to whether roll call vote was taken).

⁴⁹² *Black v. Mecca Township Board of Trustees* (1993), 91 Ohio App.3d 351, 632 N.E.2d 923 (Trumbull County); 1992 Ohio Atty. Gen. Ops. No. 92-032; *Community Concerned Citizens, Inc. v. Union Township Board of Zoning Appeals* (Dec. 2, 1991), 1991 Ohio App. LEXIS 5718 (Clermont County), *aff'd.* (1993), 66 Ohio St.3d 452, 613 N.E.2d 580; *Forman v. Blaser* (Aug. 8, 1988), 1988 Ohio App. LEXIS 3405 (Seneca County).

⁴⁹³ *Forman v. Blaser* (Aug. 8, 1988), 1988 Ohio App. LEXIS 3405 (Seneca County). See, also, *Jones v. Heyman* (1989), 888 F.2d 1328, 1989 U.S. App. LEXIS 17448 (11th Cir. Fla.) (no violation of 1st and 14th Amendments to U.S. Constitution where disruptive person was silenced and removed from a public meeting).

⁴⁹⁴ *Kline v. Davis* (Dec. 11, 2001), Lawrence App. No. 00CA32, 2001 Ohio 2625, 2001 Ohio App. LEXIS 5598 (blanket prohibition on recording a public meeting, not justified); 1988 Ohio Atty. Gen. Ops. No. 88-087 (township trustees have authority to adopt reasonable rules for use of recording equipment at their meetings).

⁴⁹⁵ *Whiteland Woods, L.P. v. Township of W. Whiteland* (1999), 193 F.3d 177, 1999 U.S. App. LEXIS 23028 (3d Cir. Pa.) (while person may have right under Pennsylvania and United States constitutions to attend public meetings, there is no right to videotape those meetings).

⁴⁹⁶ Ohio Rev. Code Ann. §121.22(C).

⁴⁹⁷ *Carrelli v. Ginsburg* (1992), 956 F.2d 598 (6th Cir.).

⁴⁹⁸ Ohio Rev. Code Ann. §121.22(I)(1). For a discussion regarding the elements necessary to sustain a cause of action for injunctive relief, see *State ex rel. Schuette v. Liberty Township* (Aug 19, 2004), 2004 Ohio 4431, 2004 Ohio App. LEXIS 4015.

⁴⁹⁹ *Adams County/Ohio Valley School Dist. v. South Central Ohio Educational Service Center Governing Board* (2004), 158 Ohio App.3d 253, 2004 Ohio 4256, 814 N.E.2d 1239 (Board of Education has standing to initiate a lawsuit under R.C. 121.22 despite lack of standing to bring action under separate statute); *State ex rel. Mason v. State Empl. Rels. Board* (1999), 133 Ohio App.3d 213, Franklin App. No. 98AP-780, 727 N.E.2d 181 (a person seeking to enforce Open Meetings Act need not demonstrate personal stake in outcome or controversy); *Thompson v. Joint Township District Memorial Hospital* (June 23, 1983), 1983 Ohio App. LEXIS 11519 (Auglaize County); *Forman v. Blaser* (Aug. 8, 1988), 1988 Ohio App. LEXIS 3405 (3rd Dist.).

⁵⁰⁰ Ohio Rev. Code Ann. §121.22(I)(1); see, also, *State ex rel. Cincinnati Enquirer v. Hamilton County Comm'rs.* (Apr. 26, 2002), Hamilton App. No. C-010605, 2002 Ohio 2038 (trial court has a "gatekeeper function" to evaluate legitimacy of public body's reasons to go into executive session).

⁵⁰¹ See *McGinnis v. Lawrence Economic Development Corp.* (Dec. 3, 2003), 4th Dist. App. No. 02CA33, 2003 Ohio 6552, 2003 Ohio App. LEXIS 5858.

violate the Open Meetings Act, the court will conclusively and irrebuttably presume these elements, which relieves the filing party from this responsibility.⁵⁰² A “knowing” violation of an injunction may result in the removal from office of one or more members of the public body.⁵⁰³

Once the court finds a violation of the Open Meetings Act, it must consider granting the injunction, regardless of the public body’s subsequent attempt to cure the violation.⁵⁰⁴ Indeed, Ohio courts have disagreed as to whether an invalid action can ever be cured by re-discussion followed by official action taken in an open session.⁵⁰⁵ If the action is the removal of a public official decided during a meeting allegedly not open to the public, the proper vehicle to challenge that action is a quo warranto action.⁵⁰⁶ Besides an injunction, a person may also file a mandamus action under the Public Records Act to compel the creation of or access to meeting minutes.⁵⁰⁷ Mandamus is also appropriate to order a public body to give notice of meetings to the person filing the action.⁵⁰⁸

b. Invalidity

A resolution, rule or formal action of any kind is invalid unless adopted in an open meeting of the public body.⁵⁰⁹ If the formal action is adopted in an open meeting and if it results from deliberations that occurred in a meeting not open to the public, its action is still invalid,⁵¹⁰ unless the deliberations were on a topic specifically permitted to be conducted in executive session.⁵¹¹ However, a public body may not attempt to avoid a contractual obligation by claiming that approval of the contract was void under the Open Meetings Act.⁵¹²

Furthermore, a formal action taken in a meeting for which notice was not properly given may also be invalid.⁵¹³ The Open Meetings Act itself makes clear that violation of the notice provisions of the act subjects the body to the invalidation penalty.⁵¹⁴ Invalid minutes, however, do not invalidate the actions recorded in the minutes.⁵¹⁵ Additionally, an action of a public body will not be invalidated on the technicality of its failure to set forth the manner in which the public will be notified of its meetings.⁵¹⁶

c. Fines and Attorney’s Fees

If the court issues the injunction, the court shall order the public body to pay a civil forfeiture of \$500 to the party

- ⁵⁰² Ohio Rev. Code Ann. §121.22(I)(3). But, see, *Korchnak v. Civil Service Com.* (Jan. 7, 1991), 1991 Ohio App. LEXIS 291 (Stark County) (aggrieved person has no standing to challenge alleged notice violation without formal request and payment of reasonable fee established by public body); *Ream v. Civil Service Com.* (Nov. 26, 1990), 1990 Ohio App. LEXIS 5184 (Stark County).
- ⁵⁰³ Ohio Rev. Code Ann. §121.22(I)(4); *McClarren v. Alliance* (Oct. 13, 1987), 1987 Ohio App. LEXIS 9211 (Stark County).
- ⁵⁰⁴ *Beisel v. Monroe County Board of Education* (Aug. 29, 1990), 1990 Ohio App. LEXIS 3761 (Monroe County).
- ⁵⁰⁵ Compare *Danis Montco Landfill Co. v. Jefferson Township Zoning Comm’n.* (1993), 85 Ohio App.3d 494, 620 N.E.2d 140 (Montgomery County); *M. F. Waste Ventures, Inc. v. Board of Amanda Township Trustees* (Feb. 12, 1988), Allen App. No. 1-87-46, 1988 Ohio App. LEXIS 493 (invalidity under Ohio Rev. Code Ann. §121.22(H) cannot be cured); *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Board of Education* (1988), 41 Ohio App.3d 218, 534 N.E.2d 1239 (Ross County) (a violation cannot be cured by subsequent open meeting if matter initially discussed in executive session and should have been discussed in open meeting) with *State ex rel. Cincinnati Enquirer v. Hamilton County Commissioners* (Apr. 26, 2002), Hamilton App. No. C-010605, 2002 Ohio 2038 (court can issue an injunction to compel a public body to re-deliberate the matter in accordance with Sunshine Law); *Theile v. Harris* (June 11, 1986), Hamilton App. No. C-860103, 1986 Ohio App. LEXIS 7096; *Kuhlman v. Village of Leipsic* (Mar. 27, 1995), 1995 Ohio App. LEXIS 1269 (Putnam County); *Carpenter v. Bd. Of Allen County Commissioners* (Aug. 10, 1982), 1982 Ohio App. LEXIS 15269 (Allen County) (invalidity may be cured). See also *Fox v. Lakewood* (1988), 39 Ohio St.3d 19, 528 N.E. 1254 (invalidity may be cured by subsequent referendum); *Beisel v. Monroe County Bd. Of Educ.* (Aug. 29, 1990), 1990 Ohio App. LEXIS 3761 (Monroe County) (invalidity may be cured by subsequent rescission and re-execution of employment contract); *Brownfield v. Warren Local Sch. Dist. Bd. of Educ.* (Aug. 28, 1990), Washington App. No. 89CA26, 1990 Ohio Appl. LEXIS 3878.
- ⁵⁰⁶ *State ex rel. Randles v. Hill* (1993), 66 Ohio St.3d 32, 1993 Ohio 204, 607 N.E.2d 458.
- ⁵⁰⁷ *State ex rel. Fairfield Leader v. Ricketts* (1990), 56 Ohio St.3d 97, 564 N.E.2d 486; *State ex rel. Long v. Council of Cardington* (2001), 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E.2d 58.
- ⁵⁰⁸ *State ex rel. Vindicator Printing Co. v. Kirila* (Dec. 31, 1991), 1991 Ohio App. LEXIS 6413 (Trumbull County).
- ⁵⁰⁹ Ohio Rev. Code Ann. §121.22(H); *State ex rel. Holliday v. Marion Twp. Board of Trustees* (Sept. 27, 2000), Marion App. No. 9-2000-22, 2000 Ohio 1877.
- ⁵¹⁰ Ohio Rev. Code Ann. §121.22(H); *State ex rel. Holliday v. Marion Twp. Board of Trustees* (Sept. 27, 2000), Marion App. No. 9-2000-22, 2000 Ohio 1877.
- ⁵¹¹ Ohio Rev. Code Ann. §121.22(G) and (H). See, also, *State ex rel. Delph v. Barr* (1989), 44 Ohio St.3d 77, 541 N.E.2d 59.
- ⁵¹² *Roberto v. Brown County General Hospital* (Feb. 8, 1988), 1988 Ohio App. LEXIS 372 (Brown County).
- ⁵¹³ See *Staley v. St. Clair Township Board of Trustees* (Dec. 15, 1987), 1987 Ohio App. LEXIS 10087 (Columbiana County). But, see, *Barbeck v. Twinsburg Township* (1992), 73 Ohio App.3d 587, Summit App. No. 15243, 597 N.E.2d 1204.
- ⁵¹⁴ Ohio Rev. Code Ann. §121.22(H). See *Hoops v. Jerusalem Twp. Board of Trustees* (Apr. 10, 1998), Lucas App. No. L-97-1240, 1998 Ohio App. LEXIS 1496.
- ⁵¹⁵ *Davidson v. Village of Hanging Rock* (1994), 97 Ohio App.3d 723, 647 N.E.2d 527 (Lawrence County).
- ⁵¹⁶ *Doran v. Northmont Board of Education* (2002), 147 Ohio App.3d 268, Montgomery App. No. 19024, 2002 Ohio 386, 770 N.E.2d 92, affirmed (Dec. 24, 2004), 2nd Dist. No. 19956, 2003 Ohio 7097, 2003 Ohio App. LEXIS 6422; *Swickrath & Sons Inc. v. Village of Elida* (Nov. 24, 2003), 3rd Dist. No. 1-03-46, 2003 Ohio 6288, 2003 Ohio App. LEXIS 5620.

that filed the action.⁵¹⁷ In addition, the court shall also award to the filing party all court costs and reasonable attorney's fees.⁵¹⁸ These monetary awards, if awarded against a state body, are not the type of damages that require an action to be brought in the Ohio Court of Claims.

However, the attorney's fees award may be reduced or not awarded at all, if the court finds that (1) a well-informed public body reasonably would believe that the body was not violating the Open Meetings Act; and (2) a well-informed public body reasonably would believe that the conduct that was enjoined served the public policy underlying the authority asserted for the conduct.⁵¹⁹

On the other hand, if the public body wins in court and the injunction does not issue and the court deems the action to have been frivolous, the court shall award to the public body all court costs and reasonable attorney's fees.⁵²⁰

d. Removal from Office

A member of a public body may be removed from office by a prosecuting attorney or the Attorney General if they knowingly violate an injunction issued for past violations of the Open Meetings Act.⁵²¹ Violations of the Open Meetings Act may also justify removal under a separate cause of action for misfeasance, malfeasance and nonfeasance.⁵²²

A CLOSER LOOK:



MEETING NOTICE

How does a newly created public body give notice of its first regular meeting?

While there is no clear answer, it appears that a reasonable solution is to treat the first regular meeting as a special meeting. Notice of a special meeting is then given by a minimum of 24-hour notification to the local media.

Is a public body in violation of the Open Meetings Act if the newspaper misprints the meeting information?

No. As long as the public body transmitted accurate information to the media as required by its notice rules, the public body is not liable for an open meetings violation.⁵²³



VOTING AT MEETINGS

Does the Open Meetings Act govern the method by which a public body must vote?

No. Unless a particular statute requires a specified method, the public body may use its own discretion in determining the method of voting it will use.⁵²⁴ The Open Meetings Act does not require a roll call vote, except for adjourning into executive session,⁵²⁵ nor does it prohibit vote by "secret ballot."⁵²⁶

⁵¹⁷ Ohio Rev. Code Ann. §121.22(I)(2); State ex rel. Long v. Village Council of Cardington (2001), 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E.2d 58; Cincinnati Enquirer v. City of Cincinnati (2001), 145 Ohio App.3d 335, Hamilton App. No. C-010095, 762 N.E.2d 1057

⁵¹⁸ Ohio Rev. Code Ann. §121.22(I)(2); State ex rel. Long v. Cardington Village Council (2001), 92 Ohio St.3d 54, 2001 Ohio 130, 748 N.E.2d 58 (private citizen awarded more than \$17,000 in attorney's fees); Cincinnati Enquirer v. City of Cincinnati (2001), 145 Ohio App.3d 335, Hamilton App. No. C-010095, 762 N.E.2d 1057..

⁵¹⁹ Ohio Rev. Code Ann. §121.22(I)(2); Mathews v. Eastern Local Sch. Dist. (Jan. 4, 2001), Pike App. No. 00CA647, 2001 Ohio 2372, 2001 Ohio App. LEXIS 1677 (where two board members knew not to take formal action during executive session, Board was not entitled to a reduction in attorneys fees).

⁵²⁰ Ohio Rev. Code Ann. §121.22(I)(2)(b); Ohio Rev. Code Ann. §121.22(I)(2); McIntyre v. Westerville Sch. Dist. (June 6, 1991), Franklin App. No. 90AP 1024, 1991 Ohio App. LEXIS 2658.

⁵²¹ Ohio Rev.Code Ann. §121.22(I).

⁵²² In re: Removal of Kuehnle (2005), 161 Ohio App.3d 399, 2005 Ohio 2373, 830 N.E.2d 1173

⁵²³ Black v. Mecca Township. Board of Trustees (1993), 91 Ohio App.3d 351, 632 N.E.2d 923 (Trumbull County).

⁵²⁴ State ex rel. Roberts v. Snyder (1948), 149 Ohio St. 333, 78 N.E.2d 716.

⁵²⁵ Ohio Rev. Code Ann. §121.22(G).

⁵²⁶ 1980 Ohio Atty. Gen. Ops. No. 80 083.

EXECUTIVE SESSIONS

Is it appropriate for a public body to adjourn into executive session to discuss the creation of a new position or to discuss salary issues for a class of employees?

Some Ohio courts believe that the answer to this question is no.⁵²⁷ These courts have determined that the “personnel” exception is only appropriately used to discuss matters that directly affect specific personnel or regulated individuals.

What is a “regulated individual” for purposes of the Open Meetings Act?

Is either a student in a state or local public educational institution or a person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or retardation, disease, disability, age, or other condition requiring custodial care.⁵²⁸

Are documents created in an executive session subject to public disclosure under the Public Records Act?

Perhaps. If the record is a public record and not otherwise exempt under one of the exemptions to the Public Records Act discussed elsewhere in this book, the record will be subject to public disclosure. However, simply because the record was created in an executive session does not exempt the record from the Public Records Act.⁵²⁹

E-MAILS

Can e-mail communications constitute the meeting?

At least one appellate court has held that Open Meetings Act does not cover e-mail exchanges.⁵³⁰ However, the Act does not mention the manner of communication one way or another.⁵³¹

MEETING OF THE GENERAL ASSEMBLY

Is the Ohio General Assembly governed by the Open Meetings Act?

No. However, committees of the Ohio House of Representatives and the Ohio Senate are both required to follow the guidelines set forth in the Legislature’s Open Meetings Act.⁵³² There are exceptions to the Legislature’s Open Meeting Act.⁵³³ Meetings of a party caucus are not subject to open meeting requirements.⁵³⁴

⁵²⁷ Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Board of Education (1988), 41 Ohio App.3d 218, 534 N.E.2d 1239 (Ross County); Davidson v. Sheffield-Sheffield Lake Board of Education (May 23, 1990), 1990 Ohio App. LEXIS 2190 (Lorain County).

⁵²⁸ Ohio Rev. Code Ann. §121.22(B)(3)

⁵²⁹ State ex rel. Findlay Publ. Co. v. Hancock County Board of Comm’rs. (1997), 80 Ohio St.3d 134, 1997 Ohio 353, 684 N.E.2d 1222 (Ohio Rev. Code Ann. §121.22(G)(3) permits private discussions about litigation, but settlement agreement resulting from those discussions is public record).

⁵³⁰ Haverkosv. Northwest Local School District Bd. Of Edu., Hamilton App. Nos. C040578, C-040589, 2005 Ohio 3489, 2005 Ohio App. LEXIS 3237.

⁵³¹ See generally, Ohio Rev. Code Ann. §121.22.

⁵³² Ohio Rev. Code Ann. §101.15.

⁵³³ Ohio Rev. Code Ann. §101.15(F).

⁵³⁴ Ohio Rev. Code Ann. §101.15(F)(2).



APPENDIX A

Records Management For Public Agencies¹

In today's ever-changing and fast-paced business environment, success or failure can be measured by how well a public agency manages information. Information, whether it is created, received or sent, documents the administration and management of your agency. Every work day, information is created or obtained from many sources, using many different types of technologies. Paper, electronic and microfilm, and imaging, just to mention a few, represent examples of storage media types for information.

RECORDS MANAGEMENT

Records management is an integral part of information management. Sound records management protects an organization from litigation and ensures regulations compliance. It provides a "collective memory" that can be used to improve business practices. The process of records management involves maintenance issues relating to the many media types in which records are created and stored. These issues become more complex when balanced against the internal and external requirements faced by public agencies concerning information or knowledge management. Today, records management responsibilities are one of the most challenging and important aspects for public agencies.

STATE LAWS AFFECTING RECORDS MANAGEMENT

State laws affecting records management are found in Chapter 149 of the Ohio Revised Code which sets forth a number of requirements affecting the management of records maintained by public agencies. Additionally, there are hundreds of references within the Ohio Revised Code that affect the release of specific types of information or records that a public agency might maintain.

PUBLIC ADMINISTRATION REQUIRES SOUND BUSINESS PRACTICES

A sound records management program will contribute in many ways to the operation and public perception of local, county and state government. These contributions can be found in the fiscal, administrative, personnel and general operations and functions of the agency it serves. A good records management system ensures that time and money is not wasted maintaining unnecessary records, while at the same time preserving the rights and heritage of Ohioans. Without a sound records program, citizens will be unable to determine if their tax dollars are being spent wisely and properly.

A GOOD RECORDS MANAGEMENT PROGRAM

A good records management program is comprised of many essential elements. Some of these elements originate from state law, while others are derived from good management practices. Several of the essential elements are:

1. An educated staff
2. A current inventory of the records maintained
3. A schedule of records retention and disposition
4. Written guidelines for record and document management

¹ Contributions and edits by Robert W. Schulz, Martin D. Susec, Assistant Attorney General, Ohio Attorney General's Office, and Pari Swift, assistant state archivist, Ohio Historical Society.

I. AN EDUCATED STAFF

Education and training are essential for proper records management. The law is one place to start. Chapter 149 of the Ohio Revised Code titled "Documents, Reports and Records" includes many sections that affect the proper management of records. Chapter 1347 of the Ohio Revised Code titled "*Personal Information Systems*" includes many sections that impact records management for public agencies. Public officials, administrators and employees must receive continuing training to prepare themselves for the numerous responsibilities they face. Public officials need only look to the definition of "records," as set forth in Ohio Revised Code section 149.011(G), to gain an appreciation of the importance for training and education.

"Records includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in Ohio Revised Code section 1306.01, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

There are many publications available to assist public employees in understanding the public records law. The most widely known and most utilized is the Ohio Attorney General's *Ohio Sunshine Laws Update*, also known as the "Yellow Book." This publication has been widely distributed by the Ohio Attorney General's Office since 1989 and can be downloaded from the Ohio Attorney General's Web site at www.ag.state.oh.us.

There are also many public offices available besides the Ohio Attorney General's Office for assistance in understanding the law. Ohio Revised Code section 149.30 "Performance of Public Functions by the Ohio Historical Society" directs that the Ohio Historical Society shall act as the archives administration for the state and its political subdivisions as provided in Ohio Revised Code sections 149.31 to 149.42. The Ohio Historical Society - Local Government Records Program assists all local governments with their record management responsibilities. To find out more, contact the Ohio Historical Society - Local Government Records Program at the phone number at the end of this appendix.

II. OBTAINING A CURRENT INVENTORY OF THE RECORDS MAINTAINED

To determine your office's currently identified inventory of records maintained, contact your local records commission. Ohio Revised Code sections 149.38 (Counties), 149.39 (Municipal Corporations), 149.41 (School Districts), and 149.42 (Townships) govern local records commissions. Ohio Revised Code section 149.34 governs state records retention.

You might want to review the most current Ohio Auditor of State's Audit Report for your agency. This report may contain comments concerning meetings of the local record commission. State law requires the record commission to meet at least once every six months for municipal and county commissions while townships and school districts must meet once a year.

Check to see if your agency has an approved Schedule of Records Retention and Disposition (Form RC-2). This can be accomplished by checking with your local records commission or contacting a representative of the Ohio Historical Society-Local Government Records Program. This schedule serves a dual purpose. Not only does it act as an inventory for the records maintained by the agency, it also sets forth the retention periods that those records must be maintained. If your agency has a retention schedule, when was the last time it was updated? Determine if any changes need to be made; such as, updating retention periods, adding newly created record series, or updating storage media type.

III. CREATING OR UPDATING A SCHEDULE OF RECORDS RETENTION AND DISPOSITION

Suppose you are assigned the challenging task of developing or updating the Schedule of Records Retention and Disposition (Form RC-2) for your agency. Where do you start? The following are the basic steps as recommended in the Local Government Records Handbook² by the Ohio Historical Society. Although these steps are discussed in terms of local agencies, these steps will generally apply to both local and state agencies that desire to update their schedules.

1. If Necessary, Contact or Establish Your Records Commission.

The members of local record commissions are designated by applicable law and are required to meet in accordance with that law. (Ohio Revised Code 149.38-149.42) State agencies simply contact the Ohio Department of Administrative Services.

2. Designate a Records Officer in Each Department.

It is most effective if a single person in each department is responsible for all aspects of record retention and disposition within that department and serves as a liaison with the Records Commission.

3. Conduct a Complete Records Inventory.

An inventory of the records holdings of all public offices and agencies is the essential first step in creating a sound records program. The main purpose of the inventory is to identify and describe the records types or series maintained by each office. A "records series" is defined as a sequence of records systematically classified and filed or as a group of records created for a specific activity or function. On August 7, 1998, the Local Government Records Program of the Ohio Historical Society issued new guidelines for records maintained on more than one media type throughout the record's lifecycle. Under the new guidelines, public agencies are required to list records that are maintained on different media types separately on the Schedule of Records Retention and Disposition. These changes also affected the requirements for submitting a Certificate for Records Disposal (Form RC-3).

For those instances when public agencies are preparing to dispose of records of one media type that are still maintained in another media type, the certificate requires additional information. The revised certificate requires information, which reports that although a record series is about to be disposed of, it is still maintained in another media type.

For each record series, the inventory should include its office of origin, location, information content, inclusive dates, frequency of use and purpose. Information gathered during the inventory can often be directly transferred to the Schedule of Records Retention and Disposition.

A common example of a record series would be motor vehicle accident reports or investigations. The Bureau of Motor Vehicles supplies several different types of preprinted forms to accomplish and document a motor vehicle traffic accident. Rather than listing each form separately on your Schedule of Records Retention and Disposition, you list the record series "Traffic Accident Investigations."

Begin the inventory process by involving other staff members who work with records as part of their job. Select a staff member from each functional area of the agency. Each staff member should be familiar with what records their area creates and why, what the records document, and how they are maintained. Once the office or functional areas are completed, the same staff members should be assigned the task of conducting the inventory of records maintained in the storage areas. Use one inventory form for each record series in each location. Note location not only by room, but also by storage unit. The completed inventory provides a ready guide to the location of those records that are going to be disposed of and those to be retained.

² For a copy of the handbook, please visit www.ohiohistory.org/resource/lgr/schl.html

4. Determine a Retention Period for Each Series of Records Created by Each Department.

A retention period – the lengths of time records are kept – is determined by assessing four values for each record series: administrative, legal, fiscal and historical.

1. A record has *administrative value* if it is used by the office or agency to carry out its duties. Administrative value is based on how often and for how long the record is used by office personnel, and whether a program would be jeopardized upon disposal of the record. Retain records as long as they have administrative value.
2. A record has *legal value* if it documents or protects the rights or obligations of citizens or of the agency that created it. Retain records having legal value until all the legal rights or obligations expire.
3. A record has *fiscal value* if it pertains to the receipt, transfer, payment, adjustment or encumbrance of funds or if it is required for an audit. Retain records as long as they have fiscal value.
4. A record has *historical value* if it documents an agency's organization, policies, decisions, procedures, operations, or other activities, or if it contains significant information about people, places or events. Retain historical records permanently.

Retention periods are determined and expressed in one of three ways:

1. In terms of time (e.g., retain four years or retain permanently).
2. In terms of an event or action (e.g., retain until audited or retain until case closed).
3. In terms of both (e.g., retain six months after audit and retain three years after case closed).

A retention period may be subdivided – retain in office five years, then retain in storage area for five more years, then destroy.

In determining the proper retention period for your records, below are three resources:

1. Published by the Ohio Historical Society, the Ohio Municipal Records Manual³ is designed to aid city and village officials in the retention and disposition of the records they create and maintain. This manual is subdivided into various functions that correspond to the normal functions of these types of governments.
2. Published by the Ohio Historical Society, the Ohio County Records Manual⁴ is designed to aid county officials with the retention and disposition of county records.
3. Published by the Ohio Historical Society, the Ohio Township Records Manual⁵ is designed to aid township officials with assigning proper retention periods for their public records.

There are many considerations when determining a proper retention period. Today, many public sector labor contracts seek to establish retention periods for certain types of records. Administrators must use caution. Public agencies are subject to many state and federal guidelines whose compliance is established by documentation. Public agencies should always maintain adequate records to ensure they are meeting appropriate state and federal guidelines.

Another major challenge facing records administrators is the lack of control over the creation of new forms or records. Often when new services are provided or to meet changes in policy or procedure, staff members create forms or records to document the changes. These new records may have created a new series of records; therefore these changes need to be added to your current Schedule of Records Retention and Disposition (Form RC-2).

³ For a copy of the Ohio Municipal Records Manual, visit www.ohiohistory.org/resource/lgr/publications.html

⁴ For a copy of the Ohio Municipal County Records Manual, visit www.ohiohistory.org/resource/lgr/publications.html

⁵ For a copy of the Ohio Municipal Township Records Manual, visit www.ohiohistory.org/resource/lgr/publications.html

As part of the inventory process, agencies may consider creating a “forms” manual for all the records they create and use in their operation. By including this within the inventory process, an agency may save itself many hours in dealing with maintenance and control of required forms and reports.

Once the inventory process is concluded, a complete review should be conducted. This review should include determining how long each identified record series should be maintained and which records can be destroyed or transferred according to previously approved retention schedules. You may also discover that you need to update retention periods or add newly created record series to your retention schedules.

5. Prepare Retention and Disposal Lists.

Local government records may be destroyed or transferred only in accordance with Ohio Revised Code sections 149.351, 149.38 (Counties), 149.39 (Municipal Corporations), 149.41 (School Districts), or 149.42 (Townships). Such an action involves either the preparation of a Schedule of Records Retention and Disposition (Form RC-2) or an Application for One-Time Records Disposal (Form RC-1). These forms may be obtained by contacting the Ohio Historical Society - Local Government Records Program.

The Schedule of Records Retention and Disposition (Form RC-2), when completed and approved, is one of the most important documents that a public agency maintains. A well prepared and thought out Schedule of Records Retention and Disposition (Form RC-2) provides the continuing legal authority for public agencies to dispose of their records.

One of the initial requirements in the preparation of the Schedule of Records Retention and Disposition is creating a schedule number. This number should allow a convenient reference in determining when a records series retention period was most recently updated, such as using the last two numbers of the year of the update [ex: 05...]. This portion of the schedule number should be followed with some type of numeric designation that separates this record from another record series [ex: 05-1, 05-2, ...].

Once your agency has completed an inventory of all its records and prepared a Schedule of Records Retention and Disposition (Form RC-2), the two documents should be compared. It is very important to understand that the Schedule of Records Retention and Disposition only needs to document those records currently being created or received in the normal operation of the agency. This differs from the contents of the inventory, which contains all the records currently being stored or maintained by the agency, active or inactive.

From the comparison of the inventory and the Schedule of Records Retention and Disposition, an agency may develop and submit an Application for One-Time Records Disposal (Form RC-1). This process permits an agency to remove and destroy many old records that are obsolete or no longer created. Public agencies should always guard against disposing of records that have a potential historical significance. Public agencies are encouraged to seek assistance from the Ohio Historical Society prior to the disposal of any records with historical significance.

6. Submit Schedules or Applications to Records Commission.

Provide the commission with the original and two copies of whichever form, RC-1 or RC-2, that your agency chooses to use and retain a third copy in your office until an fully approved copy is returned.

7. Obtain Approval from Ohio Historical Society and Auditor of State Before Records Disposal.

The Schedule of Records Retention and Disposition (Form RC-2) is normally prepared from the information collected during the inventory process. Once a public agency prepares their Schedule of Records Retention and Disposition (Form RC-2), they must forward it to their records commission for review and approval in an open meeting per Ohio Rev. Code 121.22. After obtaining approval from the records commission, the proposed Schedule of Records Retention and Disposition (Form RC-2) must be forwarded to the Local Government Records Program of the Ohio Historical Society for review. The Ohio Historical Society will forward the schedules to the Auditor of State’s Office for approval. This process may take up to 60 days to review the documents before copies are returned to your local records commission. The Ohio Historical Society-Local Government Records Program will maintain the original documents.

It is important that persons who have responsibility for maintaining public records understand the role of the Ohio Historical Society. Pursuant to Ohio Revised Code section 149.31, the Ohio Historical Society is designated the archives administration for the state of Ohio and its political subdivisions. The Ohio Historical Society's mandate is to:

“...preserve government archives, documents, and records of historical value that may come into its possession from public or private sources...” and “... evaluate, preserve, arrange, service, repair, or make other disposition, such as transfer to public libraries, county historical societies, state universities, or other public or quasi-public institutions, agencies, or corporations, of those public records of the state and its political subdivisions which may come into its possession...”

The Ohio Historical Society functions as the archives administration for the state of Ohio pursuant to Ohio Rev. Code section 149.31. This section specifies that records cannot be transferred to other public or quasi-public entities without a written agreement between the Ohio Historical Society and the entity receiving the records. If your agency wishes to transfer records to an entity other than the Ohio Historical Society or an Ohio Network of American History Research Center, contact the Local Government Records Program to obtain a transfer agreement.

The State Archivist reviews retention schedules at the time of their approval if the State Archives wishes to review for selection any record series before they are disposed of once the records have met their retention requirements. Before any records can be transferred to the State Archives, a Certificate of Records Disposal must be submitted to the Ohio Historical Society to serve as the official transfer agreement.

While most of the records management concepts are the same for state agencies as they are for local governments, the basic procedures for scheduling records differ. Records management procedures for state agencies are covered in Ohio Revised Code section 149.43. Within one year of creating a new record series, state agencies must submit a retention schedule for the record series, based on the administrative, fiscal, legal and historical value of the record. Retention schedules are submitted online through the Department of Administrative Service's (DAS) RIMS Web site at www.gsd.das.state.oh.us/rims/General/General.asp. DAS can assist you in setting up a login and password. Once your agency's records officer or manager approves the retention schedule, it is reviewed and approved or disapproved with suggested changes by the State Records Analyst from DAS, the records officer from the Auditor of State's Office and the State Archivist at the Ohio Historical Society.

IV. ESTABLISHING WRITTEN RECORD AND DOCUMENT MANAGEMENT GUIDELINES

In order to establish and maintain trust with the citizens we serve, we should establish written policies that control the management of the records and documents under our control. These controls must provide the public access to your public records. Whether dealing with the news media, business leaders or local citizens, public officials who are trusted with maintaining records must not prevent lawful access to them.

These guidelines should define your normal business hours when records are available for inspection and to how to obtain copies, copying fees, common records that are NOT subject to public inspection, and the manner in which your agency redacts restricted information from records before their release to the public.

The guidelines should explain why certain information is allowed to be obscured or erased from a public record. A complete explanation may prevent unnecessary legal fees and problems. When restricting access to some information contained within a record, the requesting person should be informed that this was undertaken in accordance with either state or federal law.

A requester should never be left to believe that they are being denied access to information for some personal reasons. A complete records and document management program must provide an explanation of this process.

Upon request, a person responsible for records management shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, government units shall maintain their records in such a manner that they can be made available for inspection in accordance with this division.

To ensure equal access to all, records management systems must be maintained in a manner compliant with federal guidelines established under the Americans with Disabilities Act.

SPECIAL TOPICS

Scheduling Electronic Records

Records in an electronic format are becoming more prevalent and should be scheduled in the same manner that paper and microfilm records are scheduled; they should be scheduled according to record series or the content contained within the record. The electronic media that the record is stored on (i.e. CD, magnetic tape, etc.) is simply a storage medium, not a record series.

Ensuring Long Term Access to Public Records

Public officials are responsible by law for ensuring that their records are protected and accessible for the time period stipulated in the record retention schedule. This responsibility applies regardless of the storage media on which records are recorded and maintained. With that responsibility, comes the authority to decide in which medium to maintain their records. If an agency decides to retain records in electronic format permanently or for any long-term period, it is the agency's responsibility to ensure that these records remain reliable, authentic and continually accessible throughout the stated retention period.

There are several issues to be aware of when deciding to keep records of long-term value only in electronic format. Keep in mind that the records must be continuously accessible and, therefore, the hardware and software used to decode and view the records must be updated as technology changes. Also, be aware that after the initial expenditures, it is estimated to cost annually between 20 percent and 30 percent of the original system's cost for upgrades, training and maintenance. As well, backups of electronic records should be maintained, preferably offsite. Those backups and any systems documentation should be scheduled as well.

The Ohio Electronic Records Committee was formed to draft policy and guidelines for the creation, maintenance, long-term preservation of and access to electronic records created by Ohio's state and local governments. The guidelines can be found at www.ohiojunction.net/erc and include:

- Revised Digital Imaging Guidelines
- Guidelines for Managing Web Content
- Databases as Public Records Guidelines
- Guidelines for Managing Electronic Mail
- Electronic Records Management Guidelines
- Ohio Trustworthy Information Systems Handbook

The Ohio Historical Society-State Archives offers advice and assistance on how to preserve records of enduring historical value that may one day come into its possession. Due to the unstable nature of electronic records over time, archivists must take precautions to ensure the survivability of electronic records at the time of their creation, not at the end of a record's life cycle.

Destruction of original materials should always be considered with extreme caution. Since electronic records and the technology surrounding them are in a continuous state of change, any record in an electronic format cannot be considered stable and capable of remaining reliable, authentic and accessible over any long-term or permanent retention period. Therefore, the State Archives of the Ohio Historical Society recommends that any digitally imaged records of permanent value also be maintained in either paper or microfilm format.

CONCLUSION

It is important that public officials, who are entrusted with the maintenance and preservation of records, obtain continuing education on records management and maintenance issues. Public officials should strive to provide continuing and on-going education to all members of their agencies involved with information and record management. Public agencies must never lose sight of the fact that they are maintaining these records as part of their service to the public.

RESOURCES

Ohio Historical Society – Local Government Records Program

1982 Velma Ave.

Columbus, OH 43211-2497

(614) 297-2553

Email: localrecs@ohiohistory.org

Web sites:

www.ohiohistory.org/lgr

www.ohiojunction.net/erc

The Ohio Attorney General's Office

Public Records Unit

30 East Broad St., 17th Fl.

Columbus, OH 43215

(614) 466-2872

www.ag.state.oh.us



APPENDIX B

THE OHIO ELECTRONIC RECORDS COMMITTEE

The Ohio Electronic Records Committee is a coalition of archivists, information technology personnel, librarians, policymakers, and records managers representing state and local agencies, universities, libraries, and historical societies of Ohio. The Ohio Electronic Records Committee is dedicated to drafting guidelines and best practices for the creation, maintenance, preservation, and access to electronic records created by Ohio government entities. Electronic records present unique challenges for archivists and records managers. As society shifts from traditional methods of recordkeeping to electronic recordkeeping, the issues surrounding the management of electronic records become more significant. Although the nature of electronic records is constantly evolving, these records are being produced at an ever-increasing rate. As these records multiply, the need for leadership and policy becomes more urgent.

Given this need, the State Archives, in conjunction with the Department of Administrative Services, Office of Policy and Planning, formed the Electronic Records Committee. The goal of the Electronic Records Committee is to draft policy for the creation, maintenance, long-term preservation of, and access to electronic records created by Ohio's state government. One of the primary concerns of the Electronic Records Committee is to ensure that its work results in practical, easy to implement policies for electronic records in Ohio. To that end sub-committees are formed to develop guidelines on specific issues. A selection of sub-committee guideline summaries follows. All of these guidelines are available on the Electronic Records Committee's web site at: www.ohiojunction.net/erc.

The Databases as Public Records Guidelines were written to assist state and local government entities respond to public records requests for information contained in an electronic database.

The Digital Document Imaging Guidelines are to assist in the design of responsible digital imaging systems. These guidelines identify critical issues for public officials to consider in designing, selecting, implementing and operating digital imaging technologies.

The Trustworthy Information Systems Handbook provides a set of criteria for establishing accurate government records. Whether electronic or paper-based it is imperative government records are maintained and reproduced in a manner that ensures their accuracy and authenticity.

The Guidelines for Managing Electronic Mail explain the requirements, guidelines, and best practices for electronic mail messages that meet the criteria for records as defined by the Ohio Revised Code. The guidelines are intended to assist state and local government employees in complying with their use of e-mail with Ohio public records law. They also promote best practices and suggestions that facilitate the effective capture, management, and retention of electronic messages as public records.

The Managing Web Content Guidelines are designed to raise awareness about and provide guidance for managing and preserving web resources that meet the criteria for records as defined by the Ohio Revised Code. For more information, contact the Ohio Electronic Records Commission at ERC@ohiohistory.org.



APPENDIX C

Selected Ohio Revised Code Provisions

GOVERNING PUBLIC INFORMATION

R.C. 9.01 Methods for making records, copies, and reproductions

When any officer, office, court, commission, board, institution, department, agent, or employee of the state, of a county, or of any other political subdivision who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, or to make or furnish copies of any of them, deems it necessary or advisable, when recording or making a copy or reproduction of any of them or of any such record, for the purpose of recording or copying, preserving, and protecting them, reducing space required for storage, or any similar purpose, to do so by means of any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, or perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, or graphic or video display, or any combination of those processes, means, or displays, which correctly and accurately copies, records, or reproduces, or provides a medium of copying, recording, or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any of those processes, means, or displays for any such purpose is hereby authorized. Any such records, copies, or reproductions may be made in duplicate, and the duplicates shall be stored in different buildings. The film or paper used for a process shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards. All such records, copies, or reproductions shall carry a certificate of authenticity and completeness, on a form specified by the director of administrative services through the state records program.

Any such officer, office, court, commission, board, institution, department, agent, or employee of the state, of a county, or of any other political subdivision may purchase or rent required equipment for any such photographic process and may enter into contracts with private concerns or other governmental agencies for the development of film and the making of reproductions of film as a part of any such photographic process. When so recorded, or copied or reproduced to reduce space required for storage or filing of such records, such photographs, microphotographs, microfilms, perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or combination of these processes, means, or displays, or films, or prints made therefrom, when properly identified by the officer by whom or under whose supervision they were made, or who has their custody, have the same effect at law as the original record or of a record made by any other legally authorized means, and may be offered in like manner and shall be received in evidence in any court where the original record, or record made by other legally authorized means, could have been so introduced and received. Certified or authenticated copies or prints of such photographs, microphotographs, films, microfilms, perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or combination of these processes, means, or displays, shall be admitted in evidence equally with the original.

Such photographs, microphotographs, microfilms, or films shall be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers, and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging them whenever requested, during office hours.

All persons utilizing the methods described in this section for keeping records and information shall keep and make readily available to the public the machines and equipment necessary to reproduce the records and information in a readable form.

History: Formerly General Code § 32-1

H.B. 32	1929
Am. S.B. 351	1937
Am. S.B. 35	1945
Am. S.B. 14	1949
Am. Sub. S.B. 44	1951
Am. H.B. 1	1953
Am. H.B. 604	eff. 10/21/61
Am. Sub. H.B. 205	eff. 8/19/75
Am. Sub. H.B. 238	eff. 7/1/85
H.B. 95	eff. 9/26/03

R.C. 121.211 Retention periods for records.

Records in the custody of each agency shall be retained for time periods in accordance with law establishing specific retention periods, and in accordance with retention periods or disposition instructions established by the state records administration.

History:

Am. H.B. 631	eff. 11/1/65
Am. Sub. H.B. 238	eff. 7/1/85

OHIO’S OPEN MEETINGS ACT

R.C. 121.22 Meetings of public bodies to be public; exceptions.

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) “Public body” means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, “court of jurisdiction” has the same meaning as “court” in section 6115.01 of the Revised Code.

(2) “Meeting” means any prearranged discussion of the public business of the public body by a majority of its members.

(3) "Regulated individual" means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or retardation, disease, disability, age, or other condition requiring custodial care.

(4) "Public office" has the same meaning as in section 149.011 [149.01.1] of the Revised Code.

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D) This section does not apply to any of the following:

(1) A grand jury;

(2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;

(3) The adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon;

(4) The organized crime investigations commission established under section 177.01 of the Revised Code;

(5) Meetings of a child fatality review board established under section 307.621 [307.62.1] of the Revised Code and meetings conducted pursuant to sections 5153.171 [5153.17.1] to 5153.173 [5153.17.3] of the Revised Code;

(6) The state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code;

(7) The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to division (B) of section 4723.281 [4723.28.1] of the Revised Code;

(8) The state board of pharmacy when determining whether to suspend a license without a prior hearing pursuant to division (D) of section 4729.16 of the Revised Code;

(9) The state chiropractic board when determining whether to suspend a license without a hearing pursuant to section 4734.37 of the Revised Code.

(10) The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750 of the Revised Code.

(E) The controlling board, the development financing advisory council, the industrial technology and enterprise advisory council, the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122. or 166. of the Revised Code, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board, council, or authority members present, may close the meeting during consideration of the following information confidentially received by the authority, council, or board from the applicant:

- (1) Marketing plans;
- (2) Specific business strategy;
- (3) Production techniques and trade secrets;
- (4) Financial projections;
- (5) Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority, council, or board to accept or reject the application, as well as all proceedings of the authority, council, or board not subject to this division, shall be open to the public and governed by this section.

(F) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(G) Except as provided in division (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

- (1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

- (2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

- (3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or regulations or state statutes;

(6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(7) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.61 of the Revised Code.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (7) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

A public body specified in division (B)(1)(c) of this section shall not hold an executive session when meeting for the purposes specified in that division.

(H) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

(I) (1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

(2) (a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;

(ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(b) If the court of common pleas does not issue an injunction pursuant to division (I)(1) of this section and the court determines at that time that the bringing of the action was frivolous conduct, as defined in division (A) of section 2323.51 of the Revised Code, the court shall award to the public body all court costs and reasonable attorney's fees, as determined by the court.

(3) Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrefutably presumed upon proof of a violation or threatened violation of this section.

(4) A member of a public body who knowingly violates an injunction issued pursuant to division (I)(1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

(J) (1) Pursuant to division (C) of section 5901.09 of the Revised Code, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

(a) Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;

(b) Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;

(c) Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.

(2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under sections 5901.01 to 5901.15 of the Revised Code, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.

(3) A veterans service commission shall vote on the grant or denial of financial assistance under sections 5901.01 to 5901.15 of the Revised Code only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

History:

Am. H.B. 440	eff. 1/31/54
Am. S.B. 423	eff. 9/30/55
Am. H.B. 1	eff. 1/10/61
Am. Sub. S.B. 74	eff. 11/28/75
Am. Sub. H.B. 440	eff. 3/13/81
Am. Sub. H.B. 227	eff. 7/14/83
Sub. H.B. 201	eff. 7/1/85
Am. S.B. 279	eff. 7/24/86
Am. Sub. S.B. 74	eff. 9/3/86
Am. Sub. H.B. 769	eff. 3/17/87
Am. Sub. H.B. 529	eff. 6/14/88
Am. Sub. S.B. 150	eff. 6/29/88
Sub. S.B. 367	eff. 12/14/88
Am. S.B. 326	
Am. H.B. 111	eff. 2/9/94
Am. H.B. 98	eff. 11/9/95
Am. H.B. 670	eff. 12/2/96
H.B. 26	eff. 5/6/98
H.B. 606	eff. 3/9/99
H.B. 448	eff. 10/5/00
S.B. 172	eff. 2/12/01
H.B. 506	eff. 4/10/01
S.B. 184	eff. 5/15/02
S.B. 222	eff. 4/27/05

R.C. 149.011 Definitions.

As used in this chapter:

- (A) "Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.
- (B) "State agency" includes every department, bureau, board, commission, office, or other organized body established by the constitution and laws of this state for the exercise of any function of state government, including any state-supported institution of higher education, the general assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision.
- (C) "Public money" includes all money received or collected by or due a public official, whether in accordance with or under authority of any law, ordinance, resolution, or order, under color of office, or otherwise. It also includes any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.
- (D) "Public official" includes all officers, employees, or duly authorized representatives or agents of a public office.
- (E) "Color of office" includes any act purported or alleged to be done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.
- (F) "Archive" includes any public record that is transferred to the state archives or other designated archival institutions because of the historical information contained on it.
- (G) "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

History:

Am. Sub. H.B. 238 eff. 7/1/85
H.B. 95 eff. 9/26/03

R.C. 149.33 State records program

- (A) The department of administrative services shall have responsibility for establishing and administering a state records program for all state agencies, except for state-supported institutions of higher education. The department shall apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposition of state records.

There is hereby established within the department of administrative services a state records program, which shall be under the control and supervision of the director of administrative services or the director's appointed deputy.

- (B) The boards of trustees of state-supported institutions of higher education shall have full responsibility for establishing and administering a records program for their respective institutions. The boards shall apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposition of the records of their respective institutions.

History:

Am. H.B. 631	eff. 11/1/65
Am. S.B. 174	eff. 12/4/73
Am. Sub. H.B. 238	eff. 7/1/85
Am. Sub. H.B. 298	eff. 7/26/91
H.B. 95	eff. 9/26/03

R.C. 149.331 Functions of program.

The state records program of the department of administrative services shall do all of the following:

- (A) Establish and promulgate in consultation with the state archivist standards, procedures, and techniques for the effective management of state records;
- (B) Review applications for one-time records disposal and schedules of records retention and destruction submitted by state agencies in accordance with section 149.333 [149.33.3] of the Revised Code;
- (C) Establish “general schedules” proposing the disposal, after the lapse of specified periods of time, of records of specified form or character common to several or all agencies that either have accumulated or may accumulate in such agencies and that apparently will not, after the lapse of the periods specified, have sufficient administrative, legal, fiscal, or other value to warrant their further preservation by the state;
- (D) Establish and maintain a records management training program, and provide a basic consulting service, for personnel involved in record-making and record-keeping functions of departments, offices, and institutions;
- (E) Provide for the disposition of any remaining records of any state agency, board, or commission, whether in the executive, judicial, or legislative branch of government, that has terminated its operations. After the closing of the Ohio veterans’ children’s home, the resident records of the home and the resident records of the home when it was known as the soldiers’ and sailors’ orphans’ home required to be maintained by approved records retention schedules shall be administered by the state department of education pursuant to this chapter, the administrative records of the home required to be maintained by approved records retention schedules shall be administered by the department of administrative services pursuant to this chapter, and historical records of the home shall be transferred to an appropriate archival institution in this state prescribed by the state records program.
- (F) Establish a centralized program coordinating micrographics standards, training, and services for the benefit of all state agencies;
- (G) Establish and publish in accordance with the applicable law necessary procedures and rules for the retention and disposal of state records.

This section does not apply to the records of state-supported institutions of higher education, which shall keep their own records.

History:

Am. H.B. 631	eff. 11/1/65
Am. H.B. 844	eff. 8/16/78
Am. Sub. H.B. 238	eff. 7/1/85
Am. Sub. H.B. 298	eff. 7/26/91
H.B. 95	eff. 9/26/03

R.C. 149.332 Records management programs in the legislative and judicial branches.

Upon request the director of administrative services and the state archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch under section 149.33 of the Revised Code. Prior to the disposal of any records, the state archivist shall be allowed sixty days to select for preservation in the state archives those records the state archivist determines to have continuing historical value.

History:

Am. H.B. 631	eff. 11/1/65
Am. Sub. H.B. 238	eff. 7/1/85
H.B. 95	eff. 9/26/03

R.C. 149.333 Applications for records disposal or transfer; schedules of retention and destruction.

No state agency shall retain, destroy, or otherwise transfer its state records in violation of this section. This section does not apply to state-supported institutions of higher education.

Each state agency shall submit to the state records program under the director of administrative services all applications for records disposal or transfer and all schedules of records retention and destruction. The state records program shall review the applications and schedules and provide written approval, rejection, or modification of an application or schedule. The state records program shall then forward the application for records disposal or transfer or the schedule for retention or destruction, with the program's recommendation attached, to the auditor of state for review and approval. The decision of the auditor of state to approve, reject, or modify the application or schedule shall be based upon the continuing administrative and fiscal value of the state records to the state or to its citizens. If the auditor of state disapproves the action by the state agency, the auditor of state shall so inform the state agency through the state records program within sixty days, and the records shall not be destroyed.

At the same time, the state records program shall forward the application for records disposal or transfer or the schedule for retention or destruction to the state archivist for review and approval. The state archivist shall have sixty days to select for custody the state records that the state archivist determines to be of continuing historical value. Records not selected shall be disposed of in accordance with this section.

History:

Am. Sub. H.B. 238	eff. 7/1/85
Am. Sub. H.B. 298	eff. 7/26/91
H.B. 95	eff. 9/26/03

R.C. 149.34 Records management procedures for all state agencies.

The head of each state agency, office, institution, board, or commission shall do the following:

- (A) Establish, maintain, and direct an active continuing program for the effective management of the records of the state agency;
- (B) Submit to the state records program, in accordance with applicable standards and procedures, schedules proposing the length of time each record series warrants retention for administrative, legal, or fiscal purposes after it has been received or created by the agency. The head also shall submit to the state records program applications for disposal of records in the head's custody that are not needed in the transaction of current business and are not otherwise scheduled for retention or destruction.

Within one year after their date of creation or receipt, schedule all records for disposition or retention in the manner prescribed by applicable law and procedures.

This section does not apply to state-supported institutions of higher education.

History: Derived from General Code § 1465-116

Am. H.B. 1	1953
Am. H.B. 27	1957
Am. Sub. H.B. 737	10/19/59
Am. H.B. 631	11/1/65
Am. Sub. H.B. 238	7/1/85
Am. Sub. H.B. 298	7/26/91
H.B. 95	eff. 9/26/03

R.C. 149.35 Laws prohibiting the destruction of records.

If any law prohibits the destruction of records, the director of administrative services, the director’s designee, or the boards of trustees of state-supported institutions of higher education shall not order their destruction or other disposition. If any law provides that records shall be kept for a specified period of time, the director of administrative services, the director’s designee, or the boards shall not order their destruction or other disposition prior to the expiration of that period.

History: Formerly General Code § 1465-117

H.B. 89	1945
Am. H.B. 1	1953
Am. Sub. H.B. 238	eff. 7/1/85
Am. Sub. S.B. 351	eff. 7/1/92
H.B. 95	eff. 9/26/03

R.C. 149.351 Prohibition against destruction or damage of records.

- (A) All records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code. Such records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, transferred, or destroyed unlawfully.
- (B) Any person who is aggrieved by the removal, destruction, mutilation, or transfer of, or by other damage to or disposition of a record in violation of division (A) of this section, or by threat of such removal, destruction, mutilation, transfer, or other damage to or disposition of such a record, may commence either or both of the following in the court of common pleas of the county in which division (A) of this section allegedly was violated or is threatened to be violated:
 - (1) A civil action for injunctive relief to compel compliance with division (A) of this section, and to obtain an award of the reasonable attorney’s fees incurred by the person in the civil action;
 - (2) A civil action to recover a forfeiture in the amount of one thousand dollars for each violation, and to obtain an award of the reasonable attorney’s fees incurred by the person in the civil action.

History:

Am. H.B. 631	eff. 11/1/65
Am. Sub. H.B. 238	eff. 7/1/85
Am. Sub. S.B. 275	eff. 10/15/87
Am. Sub. S.B. 351	eff. 7/1/92

R.C. 149.36 Authority not restricted.

The provisions of sections 149.31 to 149.42, inclusive, of the Revised Code shall not impair or restrict the authority given by other statutes over the creation of records, systems, forms, procedures, or the control over purchases of equipment by public offices.

History: Formerly General Code § 1465-118

H.B. 89	1945
Am. H.B. 1	1953
Am. Sub. H.B. 737	10/19/59

R.C. 149.38 County records commission.

- (A) There is hereby created in each county a county records commission, composed of the president of the board of county commissioners as chairperson, the prosecuting attorney, the auditor, the recorder, and the clerk of the court of common pleas. The commission shall appoint a secretary, who may or may not be a member of the commission and who shall serve at the pleasure of the commission. The commission may employ an archivist to serve under its direction. The commission shall meet at least once every six months, and upon call of the chairperson.
- (B) The functions of the county records commission shall be to provide rules for retention and disposal of records of the county and to review applications for one-time records disposal and schedules of records retention and disposal submitted by county offices. Records may be disposed of by the commission pursuant to the procedure outlined in this section. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule, subject to division (D) of this section.
- (C) When the county records commission has approved county records for disposal, a copy of a list of those records shall be sent to the auditor of state. If the auditor of state disapproves the action by the commission in whole or in part, the auditor of state shall so inform the commission within a period of sixty days, and those records shall not be destroyed. Before public records are to be disposed of, the commission shall inform the Ohio historical society and give the society the opportunity for a period of sixty days to select for its custody such records as it considers to be of continuing historical value. When the Ohio historical society is so informed that public records are to be disposed of, the county records commission also shall notify the county historical society, and any public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the Ohio historical society has been so informed and may select records of continuing historical value, including records that may be distributed to any of the notified entities under section 149.31 of the Revised Code.
- (D) The rules of the county records commission shall include a rule that requires any receipts, checks, vouchers, or other similar records pertaining to expenditures from the delinquent tax and assessment collection fund created in section 321.261 [321.26.1] of the Revised Code, from the real estate assessment fund created in section 325.31 of the Revised Code, or from amounts allocated for the furtherance of justice to the county sheriff under section 325.071 [325.07.1] of the Revised Code or to the prosecuting attorney under section 325.12 of the Revised Code to be retained for at least four years.

No person shall knowingly violate the rule adopted under division (D) of this section. Whoever violates that rule is guilty of a misdemeanor of the first degree.

History: Formerly General Code § 1465-120

Am. Sub. H.B. 44	1951
Am. H.B. 1	1953
Am. Sub. H.B. 737	eff. 10/19/59
Am. H.B. 466	eff. 8/8/80
Sub. H.B. 201	eff. 7/1/85
Am. Sub. H.B. 238	eff. 7/1/85
Sub. H.B. 428	eff. 12/23/86
Am. S.B. 243	eff. 8/19/92
Am. S.B.	eff. 11/05/04

R.C. 149.39 City records commission.

There is hereby created in each municipal corporation a records commission composed of the chief executive or his appointed representative, as chairman, and the chief fiscal officer, the chief legal officer, and a citizen appointed by the chief executive. The commission shall appoint a secretary, who may or may not be a member of the commission and who shall serve at the pleasure of the commission. The commission may employ an archivist to serve under its direction. The commission shall meet at least once every six months, and upon call of the chairman.

The functions of the commission shall be to provide rules for retention and disposal of records of the municipal corporation and to review applications for one-time records disposal and schedules of records retention and disposition submitted by municipal offices. Records may be disposed of by the commission pursuant to the procedure outlined in this section. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When municipal records have been approved for disposal, a list of such records shall be sent to the auditor of state. If he disapproves of the action by the municipal commission, in whole or in part, he shall so inform the commission within a period of sixty days and these records shall not be destroyed. Before public records are disposed of, the Ohio historical society shall be informed and given the opportunity for a period of sixty days to select for its custody such public records as it considers being of continuing historical value.

History: Formerly General Code § 1465-121

Am. Sub. S.B. 44	1951
Am. H.B. 1	1953
Am. Sub. H.B. 737	eff. 10/19/59
Am. H.B. 466	eff. 8/8/80
Sub. H.B. 201	eff. 7/1/85
Am. Sub. H.B. 238	eff. 7/1/85
Sub. H.B. 428	eff. 12/23/86
S.B. 107	1eff. 12/20/05

R.C. 149.40 Only necessary records to be made.

The head of each public office shall cause to be made only such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency’s activities.

History: Analogous to former General Code § 154-18; R.C. 121.21

H.B. 249	1921
Am. H.B. 1	1953
Am. H.B. 631	eff. 11/1/65
Am. Sub. H.B. 238	eff. 7/1/85

R.C. 149.41 School district and educational service center records commission.

There is hereby created in each city and exempted village school district a school district records commission and in each educational service center an educational service center records commission. Each records commission shall be composed of the president, the treasurer of the board of education or governing board of the educational service center, and the superintendent of schools in each such district or educational service center. The commission shall meet at least once every twelve months.

The function of the commission shall be to review applications for one-time records disposal and schedules of records retention and disposition submitted by any employee of the school district or educational service center. Records may be disposed of by the commission pursuant to the procedure outlined in this section. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When school district or educational service center records have been approved for disposal, a list of such records shall be sent to the auditor of state. If he disapproves the action by the commission, in whole or in part, he shall so inform the commission within a period of sixty days and these records shall not be destroyed. Before public records are disposed of, the Ohio historical society shall be informed and given the opportunity for a period of sixty days to select for its custody such public records as it considers to be of continuing historical value. The society may not review or select for its custody either of the following:

- (A) Records containing personally identifiable information concerning any pupil attending a public school other than directory information, as defined in Section 3319.321 [3319.32.1] of the Revised Code, without the written consent of the parent, guardian, or custodian of each such pupil who is less than eighteen
- (B) years of age, or without the written consent of each such pupil who is eighteen years of age or older;

Records the release of which would, according to the "Family Educational Rights and Privacy Act of 1974," 88 Stat. 571, 20 U.S.C.A. 1232g, disqualify a school or other educational institution from receiving federal funds.

History:

Am. S.B. 95	eff. 10/16/53
Sub. HB 1	eff. 5/16/79
Am. HB 466	eff. 8/8/80
Am. HB 201	eff. 7/1/85
Am. HB 238	eff. 7/1/85
Sub. HB 428	eff. 12/23/86
H.B. 117	eff. 9/29/95

R.C. 149.42 Township records commission.

There is hereby created in each township a township records commission, composed of the chairperson of the board of township trustees and the fiscal officer of the township. The commission shall meet at least once every twelve months, and upon call of the chairperson.

The function of the commission shall be to review applications for one-time records disposal and schedules of records retention and disposition submitted by township offices. Records may be disposed of by the commission pursuant to the procedure outlined in this section. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When township records have been approved for disposal, a list of the records shall be sent to the auditor of state. If the auditor of state disapproves the action by the commission, in whole or in part, the auditor of state shall so inform the commission within a period of sixty days, and these records shall not be destroyed. Before public records are disposed of, the Ohio historical society shall be informed and given the opportunity for a period of sixty days to select for its custody those public records it considers to be of continuing historical value.

History:

Am. Sub. HB 737	eff. 10/19/59
Am. HB 466	eff. 8/8/80
Sub. HB 201	eff. 7/1/85
Am. Sub. HB 238	eff. 7/1/85
Sub. HB 428	eff. 12/23/86
S.B. 158	eff. 5/8/96

OHIO'S PUBLIC RECORDS ACT**R.C. 149.43 Availability of public records.**

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for profit entity operating such alternative school pursuant to section 3313.533 [3313.53.3] of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 [2919.12.1] of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 [3107.06.2] of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 [109.57.3] of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

- (m) Intellectual property records;
- (n) Donor profile records;
- (o) Records maintained by the department of job and family services pursuant to section 3121.894 [3121.89.4] of the Revised Code;
- (p) Peace officer, firefighter, or EMT residential and familial information;
- (q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;
- (r) Information pertaining to the recreational activities of a person under the age of eighteen;
- (s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 [307.62.1] to 307.629 [307.62.9] of the Revised Code, other than the report prepared pursuant to section 307.626 [307.62.6] of the Revised Code;
- (t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 [5153.17.1] of the Revised Code other than the information released under that section;
- (u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;
- (v) Records the release of which is prohibited by state or federal law;
- (w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;
- (x) Information reported and evaluations conducted pursuant to section 3701.072 [3701.07.2] of the Revised Code.
- (y) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

- (a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;
- (b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;
- (c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Peace officer, firefighter, or EMT residential and familial information" means either of the following:

(a) Any information maintained in a personnel record of a peace officer, firefighter, or EMT that discloses any of the following:

(i) The address of the actual personal residence of a peace officer, firefighter, or EMT, except for the state or political subdivision in which the peace officer, firefighter, or EMT resides;

(ii) Information compiled from referral to or participation in an employee assistance program;

(iii) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, firefighter, or EMT;

(iv) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, firefighter, or EMT by the peace officer's, firefighter's, or EMT's employer;

(v) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, firefighter's, or EMT's employer from the peace officer's, firefighter's, or EMT's compensation unless the amount of the deduction is required by state or federal law;

(vi) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, firefighter, or EMT.

(b) Any record that identifies a person's occupation as a peace officer, firefighter, or EMT other than statements required to include the disclosure of that fact under the campaign finance law.

As used in divisions (A)(7) and (B)(5) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in divisions (A)(7) and (B)(5) of this section, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A)(7) and (B)(5) of this section, "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

(8) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(B) (1) Subject to division (B)(4) of this section, all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(4) of this section, upon request, a public office or person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

(2) If any person chooses to obtain a copy of a public record in accordance with division (B)(1) of this section, the public office or person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy.

(3) Upon a request made in accordance with division (B)(1) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage and other supplies used in the mailing.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail pursuant to this division. A public office that adopts a policy and procedures under this division shall

comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(4) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justifiable claim of the person.

(5) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, firefighter, or EMT shall disclose to the journalist the address of the actual personal residence of the peace officer, firefighter or EMT and, if the peace officer's, firefighter's or EMT's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, firefighter's, or EMT's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

As used in division (B)(5) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

- (C) If a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section, or if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a public office or the person responsible for the public record to make a copy available to the person allegedly aggrieved in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section and that awards reasonable attorney's fees to the person that instituted the mandamus action. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.
- (D) Chapter 1347. of the Revised Code does not limit the provisions of this section.
- (E) (1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in divisions (B)(3) and (E)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage medical costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (E)(1) and (2) of this section, "commercial surveys, marketing, solicitation, or resale" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

History:

Am. Sub. H.B. 187	eff. 9/27/63
Am. Sub. S.B. 62	eff. 1/18/80
Am. Sub. H.B. 84	eff. 3/19/85
Am. Sub. H.B. 238	eff. 7/1/85
Am. Sub. H.B. 319	eff. 3/24/86
Am. Sub. S.B. 275	eff. 10/15/87
Am. Sub. H.B. 152	eff. 7/1/93
Am. Sub. H.B. 5	eff. 8/30/95
S.B. 269	eff. 7/1/96
H.B. 353	eff. 9/17/96
H.B. 419	eff. 9/18/96
H.B. 352	eff. 1/1/98
H.B. 421	eff. 5/6/98
Sub. S.B. 55	eff. 10/26/99
Sub. S.B. 78	eff. 12/16/99
H.B. 471	eff. 3/14/00
H.B. 539	eff. 6/21/00
H.B. 640	eff. 9/14/00
H.B. 448	eff. 10/5/00
S.B. 180	eff. 3/22/01
H.B. 196	eff. 11/20/01
S.B. 180	eff. 04/09/03
S.B. 258	eff. 04/09/03
H.B. 490	eff. 01/01/04
H.B. 6	eff. 02/12/04
H.B. 431	eff. 07/01/05
H.B. 303	eff. 10/29/05

R.C. 149.431 Financial records of nonprofit organizations receiving governmental funds; confidentiality of patient and client records.

(A) Any governmental entity or agency and any nonprofit corporation or association, except a corporation organized pursuant to Chapter 1719 of the Revised Code prior to January 1, 1980 or organized pursuant to Chapter 3941 of the Revised Code, that enters into a contract or other agreement with the federal government, a unit of state government, or a political subdivision or taxing unit of this state for the provision of services shall keep accurate and complete financial records of any moneys expended in relation to the performance of the services pursuant to such contract or agreement according to generally accepted accounting principles. Such contract or agreement and such financial records shall be deemed to be public records as defined in division (A)(1) of Section 149.43 of the Revised Code and are subject to the requirements of division (B) of that section, except that:

(1) Any information directly or indirectly identifying a present or former individual patient or client or his diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, treatment for mental retardation or a developmental disability, treatment for drug abuse or alcoholism, or counseling for personal or social problems is not a public record;

(2) If disclosure of the contract or agreement or financial records is requested at a time when confidential professional services are being provided to a patient or client whose confidentiality might be violated if disclosure were made at that time, disclosure may be deferred if reasonable times are established when the contract or agreement or financial records will be disclosed.

(3) Any nonprofit corporation or association that receives both public and private funds in fulfillment of any such contract or other agreement is not required to keep as public records the financial records of any private funds expended in relation to the performance of services pursuant to the contract or agreement.

(B) Any nonprofit corporation or association that receives more than fifty percent of its gross receipts excluding moneys received pursuant to Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, in a calendar year in fulfillment of a contract or other agreement for services with a governmental entity shall maintain information setting forth the compensation of any individual serving the nonprofit corporation or association in an executive or administrative capacity. Such information shall be deemed to be public records as defined in division (A)(1) of Section 149.43 of the Revised Code and is subject to the requirements of division (B) of that section.

Nothing in this section shall be construed to otherwise limit the provisions of Section 149.43 of the Revised Code.

History:

Am. Sub. H.B. 1011 eff. 1/6/81
Am. Sub. H.B. 1237 eff. 1/6/81
Sub. S.B. 124 eff. 10/1/87
Am. Sub. H.B. 569 eff. 7/1/91

R.C. 149.433 Exemption of Security and infrastructure records.

(A) As used in this section:

(1) "Act of terrorism" has the same meaning as in Section 2909.21 of the Revised Code.

(2) "Infrastructure record" means any record that discloses the configuration of a public office's critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office is located. "Infrastructure record" does not mean a simple floor plan that discloses only the spatial relationship of components of a public office or the building in which a public office is located.

(3) "Security record" means either of the following:

(a) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;

(b) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:

(i) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;

(ii) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;

(iii) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

(B) A record kept by a public office that is a security record or an infrastructure record is not a public record under Section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section.

(C) Notwithstanding any other section of the Revised code, a public office's or a public employee's disclosure of a security record or infrastructure record that is necessary for construction, renovation, or remodeling work on any public building or project does not constitute public disclosure for purposes of waiving division (B) of this section and does not result in that record becoming a public record for purposes of Section 149.43 of the Revised Code.

History:

S.B. 184 eff. 5/15/02

R.C. 149.44 Availability of records in centers and archival institutions.

Any state records center or archival institution established pursuant to sections 149.31 and 149.331 of the Revised Code is an extension of the departments, offices, and institutions of the state and all state and local records transferred to records centers and archival institutions shall be available for use under Section 149.43 of the Revised Code. The state records administration, assisted by the state archivist, shall establish rules and procedures for the operation of state records centers and archival institutions holding public records, respectively.

History:

Am. Sub. H.B. 631 eff. 11/1/65

Am. H.B. 466 eff. 8/8/80

Am. Sub. H.B. 238 eff. 7/1/85

OHIO'S PERSONAL INFORMATION SYSTEMS ACT

R.C. 1347.01 Definitions

As used in this chapter:

(A) "State agency" means the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state.

- (B) "Local agency" means any municipal corporation, school district, special purpose district, or township of the state or any elected officer or board, bureau, commission, department, division, institution, or instrumentality of a county.
- (C) "Special purpose district" means any geographic or political jurisdiction that is created by statute to perform a limited and specific function, and includes, but is not limited to library districts, conservancy districts, metropolitan housing authorities, park districts, port authorities, regional airport authorities, regional transit authorities, regional water and sewer districts, sanitary districts, soil and water conservation districts, and regional planning agencies.
- (D) "Maintains" means state or local agency ownership of, control over, responsibility for, or accountability for systems and includes, but is not limited to, state or local agency depositing of information with a data processing center for storage, processing, or dissemination. An agency "maintains" all systems of records that are required by law to be kept by the agency.
- (E) "Personal information" means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person.
- (F) "System" means any collection or group of related records that are kept in an organized manner and that are maintained by a state or local agency, and from which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person. "System" includes both records that are manually stored and records that are stored using electronic data processing equipment. "System" does not include collected archival records in the custody of or administered under the authority of the Ohio historical society, published directories, reference materials or newsletters, or routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.
- (G) "Interconnection of systems" means a linking of systems that belong to more than one agency or to an agency and other organizations, which linking of systems results in a system that permits each agency or organization involved in the linking to have unrestricted access to the systems of the other agencies and organizations.
- (H) "Combination of systems" means a unification of systems that belong to more than one agency, or to an agency and another organization, into a single system in which the records that belong to each agency or organization may or may not be obtainable by the others.

History:

S.B. 99 1976
 S.B. 224 1977
 H.B. 799 eff. 1/23/81

R.C. 1347.04 Exemptions.

- (A) (1) Except as provided in division (A)(2) of this section or division (C)(2) of Section 1347.08 of the Revised Code, the following are exempt from the provisions of this chapter:
 - (a) Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;
 - (b) The criminal courts;
 - (c) Prosecutors;

(d) Any state or local agency or part of any state or local agency that is a correction, probation, pardon, or parole authority;

(e) Personal information systems that are comprised of investigatory material compiled for law enforcement purposes by agencies that are not described in divisions (A)(1)(a) and (D) of this section.

(2) A part of a state or local agency that does not perform, as its principal function, an activity relating to the enforcement of the criminal laws is not exempt under this section.

(B)

The provisions of this chapter shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in Section 149.43 of the Revised Code, or to authorize a public body to hold an executive session for the discussion of personal information if the executive session is not authorized under division (G) of Section 121.22 of the Revised Code.

The disclosure to members of the general public of personal information contained in a public record, as defined in Section 149.43 of the Revised Code, is not an improper use of personal information under this chapter.

(C)

The provisions of this chapter shall not be construed to prohibit, and do not prohibit, compliance with any order issued pursuant to division (D)(1) of Section 2151.14 of the Revised Code, any request for records that is properly made pursuant to division (D)(3)(a) of Section 2151.14 or division (A) of Section 2151.141 of the Revised Code, or any determination that is made by a court pursuant to division (D)(3)(b) of Section 2151.14 or division (B)(1) of Section 2151.141 of the Revised Code.

History:

S.B. 62	eff. 1/18/80
H.B. 799	eff. 1/23/81
S.B. 94	eff. 7/20/88
S.B. 258	eff. 8/22/90
Am. S.B. 99	eff. 10/25/95

R.C. 1347.05 Duties of state and local agencies.

Every state or local agency that maintains a personal information system shall:

(A)

Appoint one individual to be directly responsible for the system;

(B)

Adopt and implement rules that provide for the operation of the system in accordance with the provisions of this chapter that, in the case of state agencies, apply to state agencies or, in the case of local agencies, apply to local agencies;

(C)

Inform each of its employees who has any responsibility for the operation or maintenance of the system, or for the use of personal information maintained in the system, of the applicable provisions of this chapter and of all rules adopted in accordance with this section;

(D)

Specify disciplinary measures to be applied to any employee who initiates or otherwise contributes to any disciplinary or other punitive action against any individual who brings to the attention of appropriate authorities, the press, or any member of the public, evidence of unauthorized use of information

(E)

Inform a person who is asked to supply personal information for a system whether the person is legally required to, or may refuse to, supply the information;

(F)

Develop procedures for purposes of monitoring the accuracy, relevance, timeliness, and completeness of the personal information in this system, and, in accordance with the procedures, maintain the personal information in the system with the accuracy, relevance, timeliness, and completeness that is necessary to

assure fairness in any determination made with respect to a person on the basis of information;

(G)

Take reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure;

(H)

Collect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions.

History:

H.B. 799 eff. 1/23/81

R.C. 1347.06 Rules.

The director of administrative services shall adopt, amend, and rescind rules pursuant to Chapter 119. of the Revised Code for the purposes of administering and enforcing the provisions of this chapter that pertain to state agencies.

A state or local agency that, or an officer or employee of a state or local agency who, complies in good faith with a rule applicable to the agency is not subject to criminal prosecution or civil liability under this chapter.

History:

S.B. 99 eff. 1/1/77
S.B. 224 eff. 8/26/77
H.B. 799 eff. 1/23/81

R.C. 1347.07 Use of personal information.

A state or local agency shall only use the personal information in a personal information system in a manner that is consistent with the purposes of the system.

History:

H.B. 799 eff. 1/23/81

R.C. 1347.071 Interconnected or combined systems.

(A)

No state or local agency shall place personal information in an interconnected or combined system, or use personal information that is placed in an interconnected or combined system by another state or local agency or another organization, unless the interconnected or combined system will contribute to the efficiency of the involved agencies in implementing programs that are authorized by law.

(B)

No state or local agency shall use personal information that is placed in an interconnected or combined system by another state or local agency or another organization, unless the personal information is necessary and relevant to the performance of a lawful function of the agency.

(C)

When a state or local agency requests a person to supply personal information that will be placed in an interconnected or combined system, the agency shall provide the person with information relevant to the system, including the identity of the other agencies or organizations that have access to the information in the system.

History:

H.B. 799 eff. 1/23/81

R.C. 1347.08 Rights of subject of personal information

- (A) Every state or local agency that maintains a personal information system, upon the request and the proper identification of any person who is the subject of personal information in the system, shall:
- (1) Inform the person of the existence of any personal information in the system of which the person is the subject;
 - (2) Except as provided in divisions (C) and (E)(2) of this section, permit the person, the person's legal guardian, or an attorney who presents a signed written authorization made by the person, to inspect all personal information in the system of which the person is the subject;
 - (3) Inform the person about the types of uses made of the personal information, including the identity of any users usually granted access to the system.
- (B) Any person who wishes to exercise a right provided by this section may be accompanied by another individual of the person's choice.
- (C)
- (1) A state or local agency, upon request, shall disclose medical, psychiatric, or psychological information to a person who is the subject of the information or to the person's legal guardian, unless a physician, psychiatrist, or psychologist determines for the agency that the disclosure of the information is likely to have an adverse effect on the person, in which case the information shall be released to a physician, psychiatrist, or psychologist who is designated by the person or by the person's legal guardian.
 - (2) Upon the signed written request of either a licensed attorney at law or a licensed physician designated by the inmate, together with the signed written request of an inmate of a correctional institution under the administration of the department of rehabilitation and correction, the department shall disclose medical information to the designated attorney or physician as provided in division (C) of Section 5120.21 of the Revised Code.
- (D) If an individual who is authorized to inspect personal information that is maintained in a personal information system requests the state or local agency that maintains the system to provide a copy of any personal information that the individual is authorized to inspect, the agency shall provide a copy of the personal information to the individual. Each state and local agency may establish reasonable fees for the service of copying, upon request, personal information that is maintained by the agency.
- (E)
- (1) This section regulates access to personal information that is maintained in a personal information system by persons who are the subject of the information, but does not limit the authority of any person, including the person who is the subject of personal information maintained in a personal information system, to inspect or have copied, pursuant to Section 149.43 of the Revised Code, a public record as defined in that section.
 - (2) This section does not provide a person who is the subject of personal information maintained in a personal information system, the person's legal guardian, or an attorney authorized by the person, with a right to inspect or have copied, or require an agency that maintains a personal information system to permit the inspection of or to copy, a confidential law enforcement investigatory record or trial preparation record, as defined in divisions (A)(2) and (4) of Section 149.43 of the Revised Code.
- (F) This section does not apply to any of the following:
- (1) The contents of an adoption file maintained by the department of health under Section 3705.12 of the Revised Code;
 - (2) Information contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to Section 3111.69 of the Revised Code, the office of child support in the

department or a child support enforcement agency;

- (3) Papers, records, and books that pertain to an adoption and that are subject to inspection in accordance with Section 3107.17 of the Revised Code;
- (4) Records listed in division (A) of Section 3107.42 of the Revised Code or specified in division (A) of Section 3107.52 of the Revised Code;
- (5) Records that identify an individual described in division (A)(1) of Section 3721.031 of the Revised Code, or that would tend to identify such an individual;
- (6) Files and records that have been expunged under division (D)(1) of Section 3721.23 of the Revised Code;
- (7) Records that identify an individual described in division (A)(1) of Section 3721.25 of the Revised Code, or that would tend to identify such an individual;
- (8) Records that identify an individual described in division (A)(1) of Section 5111.61 of the Revised Code or that would tend to identify such an individual.
- (9) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under Section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer.

History:

S.B. 99	1976
S.B. 224	1977
S.B. 62	1979
H.B. 799	1980
H.B. 84	1984
S.B. 94	1988
H.B. 419	1996
H.B. 471	2000
H.B. 640	2000
S.B. 180	2001

R.C. 1347.09 Disputed information; duties of agency.

- (A) (1) If any person disputes the accuracy, relevance, timeliness, or completeness of personal information that pertains to him and that is maintained by any state or local agency in a personal information system, he may request the agency to investigate the current status of the information. The agency shall, within a reasonable time after, but not later than ninety days after, receiving the request from the disputant, make a reasonable investigation to determine whether the disputed information is accurate, relevant, timely, and complete, and shall notify the disputant of the results of the investigation and of the action that the agency plans to take with respect to the disputed information. The agency shall delete any information that it cannot verify or that it finds to be inaccurate.
- (2) If after an agency's determination, the disputant is not satisfied, the agency shall do either of the following:
 - (a) Permit the disputant to include within the system a brief statement of his position on the disputed information. The agency may limit the statement to not more than one hundred words if the agency assists the disputant to write a clear summary of the dispute.
 - (b) Permit the disputant to include within the system a notation that the disputant protests that the information is inaccurate, irrelevant, outdated, or incomplete. The agency shall maintain a copy of the disputant's statement of the dispute. The agency may limit the

statement to not more than one hundred words if the agency assists the disputant to write a clear summary of the dispute.

(3) The agency shall include the statement or notation in any subsequent transfer, report, or dissemination of the disputed information and may include with the statement or notation of the disputant a statement by the agency that it has reasonable grounds to believe that the dispute is frivolous or irrelevant, and of the reasons for its belief.

(B) The presence of contradictory information in the disputant's file does not alone constitute reasonable grounds to believe that the dispute is frivolous or irrelevant.

(C) Following any deletion of information that is found to be inaccurate or the accuracy of which can no longer be verified, or if a statement of dispute was filed by the disputant, the agency shall, at the written request of the disputant, furnish notification that the information has been deleted, or furnish a copy of the disputant's statement of the dispute, to any person specifically designated by the person. The agency shall clearly and conspicuously disclose to the disputant that he has the right to make such a request to the agency.

History:

H.B. 799 eff. 1/23/81

R.C. 1347.10 Liability for wrongful disclosure; limitation of action.

(A) A person who is harmed by the use of personal information that relates to him and that is maintained in a personal information system may recover damages in civil action from any person who directly and proximately caused the harm by doing any of the following:

(1) Intentionally maintaining personal information that he knows, or has reason to know, is inaccurate, irrelevant, no longer timely, or incomplete and may result in such harm;

(2) Intentionally using or disclosing the personal information in a manner prohibited by law;

(3) Intentionally supplying personal information for storage in, or using or disclosing personal information maintained in, a personal information system, that he knows, or has reason to know, is false;

(4) Intentionally denying to the person the right to inspect and dispute the personal information at a time when inspection or correction might have prevented the harm.

An action under this division shall be brought within two years after the cause of action accrued or within six months after the wrongdoing is discovered, whichever is later; provided that no action shall be brought later than six years after the cause of action accrued. The cause of action accrues at the time that the wrongdoing occurs.

(B) Any person who, or any state or local agency that, violates or proposes to violate any provision of this chapter may be enjoined by any court of competent jurisdiction. The court may issue an order or enter a judgment that is necessary to ensure compliance with the applicable provisions of this chapter or to prevent the use of any practice that violates this chapter. An action for an injunction may be prosecuted by the person who is the subject of the violation, by the attorney general, or by any prosecuting attorney.

History:

H.B. 799 eff. 1/23/81

R.C. 1347.99 Penalty.

No public official, public employee, or other person who maintains, or is employed by a person who maintains, a personal information system for a state or local agency shall purposely refuse to comply with division (E), (F), (G), or (H) of Section 1347.05, Section 1347.071 [1347.07.1], division (A), (B), or (C) of Section 1347.08, or division (A) or (C) of Section 1347.09 of the Revised Code. Whoever violates this section is guilty of a minor misdemeanor.

History:

H.B. 799 eff. 1/23/81



APPENDIX D

Ohio Provisions Affecting Public Records Status of Certain Records

The following is a list of statutory citations from the Legislative Services Commission that affect whether certain records may be released pursuant to a public records request. Each statutory provision may either constitute a “catch-all” exemption under the public records law or an express discretionary exemption. Although we believe the list to be exhaustive, we are aware that there may be additional statutory provisions that do not appear on the list. If you are aware of such a provision, please contact our office so that we may add it to this list.

Topic	Citation
911 Database Records: Information concerning telephone numbers, addresses, or names obtained from the 9-1-1 database.	R.C. 4931.49(E)
Abortion Records: Upon court order in a civil action, except for limited purposes, the identity of a woman upon whom an abortion was allegedly performed, induced, or attempted.	R.C. 2307.46(A)
Abuse Records: A victim impact statement associated with a felony that was committed by an adjudicated delinquent child or adult offender and that involved a specified “physical harm” aspect.	R.C. 2152.19(D)(3) and 2947.051(C)
Abuse Records: Reports by specified individuals regarding their knowledge or suspicion of a suffered, or of a threat of a, physical or mental wound, injury, disability, or condition reasonably indicating abuse or neglect of a minor or of a mentally retarded, developmentally disabled, or physically impaired child under age 21.	R.C. 2151.421(H)(1)
Adoption Records: Certain placement or adoption records and information; forms concerning the social or medical histories of the biological parents of an adopted person (only specified individuals may access).	R.C. 3107.17(B)(1) and (D)
Artificial Insemination Records: A physician’s files concerning non-spousal artificial inseminations.	R.C. 3111.94(A)
Attorney General Records: A record or report that the Court of Claims or Attorney General obtains under the Crime Victims Reparations Awards Law that is confidential or exempt from public disclosure when in its creator’s possession.	R.C. 2743.62(A)(2)(a)
Attorney General Records: A record, other document, or information obtained by the Attorney General pursuant to an investigation of a money transmitter.	R.C. 1315.54(C)
Attorney General Records: Attorney General cannot disclose, as reflected in a fund-raising counsel’s solicitation campaign records, a contributor’s name and address and the date and amount of each contribution to the fund-raising counsel.	R.C. 1716.05(B)(5)(a)
Attorney General Records: Attorney General cannot disclose, as reflected in a professional solicitor’s solicitation campaign records, a contributor’s name, address, and telephone number and the date and amount of each contribution to the professional solicitor.	R.C. 1716.07(G)(1)(a)
Attorney General Records: Certain documents associated with an Attorney General investigative demand under the Solid and Hazardous Wastes Law.	R.C. 3734.43(L)
Attorney General Records: Certain records and information provided to the Attorney General pursuant to an investigative demand under the Monopoly Law.	R.C. 1331.16(L)
Attorney General Records: Certain tax information about a tobacco product manufacturer acquired by the Department of Taxation and provided to the Attorney General.	R.C. 1346.03
Attorney General Records: Identity of suppliers investigated or facts developed in investigations of Consumer Sales Practices Act violations.	R.C. 1345.05(A)(7)

Topic	Citation
Attorney General Records: Information obtained by the Attorney General in an investigation to determine whether to defend a state officer or employee.	R.C. 109.365
Attorney General Records: Records, information, etc. obtained by the Attorney General or a federal agency pursuant to the Currency and Foreign Transactions Reporting Act, 84 Stat. 1118 (1970).	R.C. 1315.53(H)
Audit Records: Annual audit report of the Auditor of State's office until specified filing.	R.C. 117.14
Audit Records: Annual audit report of the Treasurer of State's office until specified submission.	R.C. 117.15
Audit Records: Certified copies of completed audit reports until specified filing.	R.C. 117.26
Audit Records: In certain legal proceedings, the proceedings, records, and work papers of a public accounting firm peer reviewer; the statements, records, schedules, working papers, and memoranda made by a public accountant or CPA with respect to a public office's audit (other than client's copy of report), including the same in Auditor of State's possession; and the investigative proceedings of the Accountancy Board.	R.C. 4701.04(K)(1), 4701.19(B), and 4701.29(D)
Audit Records: Statements and reports of individual depositor information relative to attorney interest-bearing trust accounts.	R.C. 4705.10(B)
Benefit Records: Certain information obtained and furnished under the State Benefit Eligibility Verification System.	R.C. 125.24(D)
Bureau of Criminal Identification and Investigation Records: BCII criminal records check information relative to a person under final consideration for specified types of employment, a prospective adoptive parent, or a prospective recipient of a foster home certificate from the Department of Job and Family Services (DJFS).	R.C. 2151.86(E)
Bureau of Criminal Identification and Investigation Records: BCII criminal records check results and associated report relative to a registered nurse or licensed practical nurse license applicant.	R.C. 4723.09(C)
Bureau of Criminal Identification and Investigation Records: BCII criminal records check results and associated report relative to a dialysis technician certificate applicant.	R.C. 4723.75(C)
Bureau of Criminal Identification and Investigation Records: BCII criminal records check results and associated report relative to a community health worker certificate applicant.	R.C. 4723.83(B)
Bureau of Criminal Identification and Investigation Records: Certain DNA-related records and information BCII receives.	R.C. 109.573(E)
Bureau of Criminal Identification and Investigation Records: Information and materials furnished to the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) and information obtained by a board, administrator, or other person under a criminal records check.	R.C. 109.57(D) and (H)
Bureau of Criminal Identification and Investigation Records: Reports of BCII criminal records checks requested by entities that provide services through the PASSPORT Program.	R.C. 173.41(E)
Bureau of Criminal Identification and Investigations Records: BCII criminal records check information relative to a Head Start employment applicant, a preschool employment applicant, an applicant to participate in the Ohio Reads Program in a specified manner, or a school district, educational service center, or chartered nonpublic school employment applicant.	R.C. 3301.32(D), 3301.541(D), 3301.88(E), and 3319.39(D)

Topic	Citation
Bureau of Criminal Identification and Investigations Records: BCII criminal records check information relative to a day -care center, type A family day-care home, or certified type B family day -care home employment applicant; a day-care center or type A family day - care home owner, licensee, or administrator; a Department of Mental Health employment applicant; a Department of Mental Retardation and Developmental Disabilities (DMRDD) employment applicant; a county MRDD board employment applicant; or a public children services agency employment applicant.	R.C. 5104.012(D), 5104.013(F), 5119.072(C), 5123.081(H), 5126.28(H), and 5153.111(D)
Bureau of Criminal Identification and Investigations Records: BCII criminal records check information relative to an applicant under final consideration for employment, or an existing employee, with a waiver agency in a position involving home and community-based waiver services to persons with disabilities.	R.C. 5111.95(E)
Bureau of Criminal Identification and Investigations Records: BCII criminal records check information relative to an independent provider in a DJFS administered home and community-based services program providing home and community-based waiver services to consumers with disabilities.	R.C. 5111.96(F)
Bureau of Criminal Identification and Investigations Records: Certificates, applications, records, and reports identifying patients, former patients, or persons whose hospitalization was sought under the Hospitalization of the Mentally Ill Law; notices (including their information) BCII receives from courts or others in order to conduct incompetency records checks (the notices pertain to individuals found by a court to be a mentally ill person subject to hospitalization by court order and individuals who become involuntary patients other than only for purposes of observation); and quality assurance records associated with mental health and medical services at certain locations.	R.C. 5122.31, 5122.311(B), and 5122.32(B)(1)
Bureau of Criminal Investigation and Identification Records: BCII criminal records check information relative to a home health agency, a hospice care program, an adult day-care program, or an adult care facility employment applicant.	R.C. 3701.881(E), 3712.09(E), 3721.121(E), and 3722.151(E)
Bureau of Motor Vehicle Records: An individual's driver's license identification number, name, telephone number, address, photograph or digital image, Social Security number, and medical or disability information obtained by the Bureau of Motor Vehicles in connection with a motor vehicle record, subject to certain exceptions ("personal information" and "sensitive personal information").	R.C. 4501.27
Bureau of Motor Vehicle Records: Applications for licenses and copies of contracts provided under the Motor Vehicle Dealers Law to the Registrar of Motor Vehicles.	R.C. 4517.43
Bureau of Motor Vehicle Records: Lists of names and addresses on driver's license applications may be furnished by Registrar of Motor Vehicles, but no other application information is to be disclosed.	R.C. 4501.34(B)
Bureau of Motor Vehicle Records: Motor vehicle accident reports submitted to the Registrar of Motor Vehicles under the Financial Responsibility Law.	R.C. 4509.10
Bureau of Motor Vehicle Records: Snowmobile, off-highway motorcycle, or all-purpose vehicle accident reports received by the Registrar of Motor Vehicles.	R.C. 4519.46
Bureau of Motor Vehicle Records: Under certain circumstances, a peace officer's residential address obtained by the Bureau of Motor Vehicles in connection with a motor vehicle record.	R.C. 4501.271(B)
Carrying Concealed Weapons Records: Sheriff records concerning the issuance, renewal, suspension, or revocation of a concealed handgun license or temporary emergency concealed handgun license, subject to a specified journalist exception.	R.C. 2923.129(B)(1)
Cemetery Records: Proceedings and records maintained as confidential by the Ohio Cemetery Dispute Resolution Commission because the nature of a complaint merits the action.	R.C. 4767.06(A)(7)
Charitable Trust Investigation Records: Any investigation of a charitable trust by the Attorney General.	R.C. 109.28

Topic	Citation
Chemical Dependency Professionals Board Records: Records of the Chemical Dependency Professionals Board concerning an ongoing investigation.	R.C. 4758.31
Chiropractic Board Records: Summaries, reports, and records the State Chiropractic Board receives and maintains regarding formal disciplinary actions taken with respect to chiropractors by a health care facility, their alleged violations of the Chiropractors Law, their professional membership revocation or suspension for certain reasons, or their professional liability insurance claim final dispositions; records of a chiropractor's participation in the Board's chemical dependency and mental illness monitoring program; and information the Board receives in an investigation of an alleged violation of the Chiropractors Law.	R.C. 4734.32(F), 4734.41(C), and 4734.45(B)
Citizen's Reward Program: Records maintained relative to a citizens' reward program.	R.C. 9.92(E) and 2933.41(G)
Community Improvement Corporation Records: Certain financial, proprietary, and other information submitted by an entity to a community improvement corporation acting as a political subdivision's agent.	R.C. 1724.11(A)(1) and (2)
Competitive Bidding Records: Additional financial information requested by a state agency or political subdivision from an apparent low bidder on a public contract.	R.C. 9.312(A)
Counseling Records: Certain privileged communications between an attorney, physician, dentist, psychologist, school psychologist, school guidance counselor, professional clinical counselor, professional counselor, social worker, independent social worker, social work assistant, mediator, communications assistant, member of the clergy, spouse, or chiropractor and a client, patient, person being religiously counseled, other spouse, or parent.	R.C. 2317.02, 2317.021, and 4732.19
Counseling Records: Records of the Counselor, Social Worker, and Marriage and Family Therapist Board's investigations of alleged violations of the Counselor, Social Worker, and Marriage and Family Therapist Law.	R.C. 4757.38
Court Records: A file, record, petition, motion, account, or paper pertaining to a conservatorship upon probate court order.	R.C. 2111.021
Court Records: Official records in a first offender's case sealed by court order.	R.C. 2953.32(C)
Court Records: Official records pertaining to a case sealed by court order (person found not guilty; complaint, indictment, or information against person dismissed; or no bill entered by grand jury) whether in the possession of court or another public office or agency.	R.C. 2953.52(B) and 2953.53(D)
Court Records: Sealed or expunged court records concerning delinquent children, unruly children, or juvenile traffic offenders.	R.C. 2151.358(E), (F), and (G)
Credit Union Records: Certain conferences and administrative proceedings, and associated documents, regarding a credit union.	R.C. 1733.327(A)
Credit Union Records: Information obtained by the Superintendent of Financial Institutions under an examination or independent audit of a credit union.	R.C. 1733.32(H)
Day-Care Records: Names and other identifying information regarding children enrolled in or attending, and individuals who make a complaint about, a child day-care center or home.	R.C. 5101.29
Dental Board Records: State Dental Board proceedings concerning an investigation of a complaint and the determination in them whether reasonable grounds exist to believe a violation of the Dentists and Dental Hygienists Law has occurred.	R.C. 4715.03(D)
Department of Aging Records: Records identifying recipients of Golden Buckeye Cards or Department of Aging (DOA) prescription drug cards, subject to DOA Director discretion but never a recipient's medical or prescription drug utilization history.	R.C. 173.062

Topic	Citation
Department of Alcohol and Drug Addiction Services Records: (Communications by a person seeking aid in good faith for alcoholism or drug dependence and information revealing the person's identity not to be collected or disclosed by the Department of Alcohol and Drug Addiction Services (DADAS).	R.C. 3793.12(C)
Department of Alcohol and Drug Addiction Services Records: A record or information DADAS obtains or maintains for the Addicted Pregnant Women Program that could identify a specific woman or her child.	R.C. 3793.15(D)
Department of Alcohol and Drug Addiction Services Records: Health and medical records of a person treated for alcoholism or drug addiction.	R.C. 3793.14
Department of Alcohol and Drug Addiction Services Records: Records or information pertaining to the identity, diagnosis, or treatment of any DADAS-licensed or certified drug treatment program patient.	R.C. 3793.13(A)
Department of Commerce Records: Information acquired by the Department of Commerce's Division of Liquor Control concerning a D-4 liquor permit holder's membership roster.	R.C. 4303.17(A)(1)
Department of Commerce Records: Names of individuals who request inspections for a violation of an Ohio Employment Risk Reduction Standard (OERRS); and a trade secret in information reported in an OERRS investigation, inspection, or proceeding (Department of Commerce).	R.C. 4167.10(B)(1) and 4167.12
Department of Development Records: Certain financial statements and information submitted to the DOD or the Tax Credit Authority.	R.C. 122.17(G) and 122.171(G)
Department of Development Records: Financial statements and data submitted to the DOD Director in connection with certain loan applications.	R.C. 122.42(D)
Department of Development Records: Financial statements and data submitted to the DOD Director, the Development Financing Advisory Council, or the Controlling Board in connection with applications for mortgage payments insurance.	R.C. 122.561
Department of Development Records: Financial statements and other data submitted to the DOD Director in connection with specified financial assistance.	R.C. 122.74(C)(2)
Department of Development Records: Financial statements and other data submitted to the DOD Director, the Development Financing Advisory Council, or the Controlling Board by a private sector person in connection with specified financial assistance, and information taken from same.	R.C. 166.05(E)
Department of Development Records: Financial statements and other data submitted to the DOD Director, the Development Financing Advisory Council, or the Controlling Board by a private sector person in connection with the Innovation Financial Assistance Program, and information taken from same.	R.C. 166.14(D)
Department of Development Records: Financial statements and other data submitted to the DOD Director, the Development Financing Advisory Council, or the Controlling Board by a private sector person in connection with the Research and Development Financial Assistance Program, and information taken from same.	R.C. 166.19(D)
Department of Development Records: Proposals and related documents submitted in response to requests for competitive sealed proposals, until specified time.	R.C. 125.071(C)
Department of Development Records: Records concerning tourism market research of the Department of Development (DOD)--Division of Travel and Tourism.	R.C. 122.07(B)
Department of Development Records: Trade secrets or commercial or financial information received by the DOD Director, the Industrial Technology and Enterprise Advisory Council, or the Controlling Board.	R.C. 122.36
Department of Development Records: Trade secrets or other proprietary information submitted to the Director of Development regarding utilization of present, new, or alternative energy sources, the conservation of energy, or energy resource development facilities.	R.C. 1551.11(B)
Department of Jobs and Family Services Records: Any record, data, pricing information, or other information regarding a drug rebate or supplemental drug rebate agreement for the Medicaid Program or the Disability Medical Assistance Program that the DJFS receives from a pharmaceutical manufacturer or creates pursuant to negotiation of the agreement.	R.C. 5101.31

Topic	Citation
Department of Jobs and Family Services Records: Certain records for children attending a day-care center and health and employment records for center employees.	R.C. 5104.011(C)(2)
Department of Jobs and Family Services Records: New hire reports filed by employers with the DJFS.	R.C. 3121.899(A)
Department of Jobs and Family Services Records: Reports made to the DJFS concerning adult abuse, neglect, or exploitation and related investigatory reports.	R.C. 5101.61(F)
Department of Jobs and Family Services Records: The identity of a nursing facility resident, an individual who submits a complaint about a nursing facility, or an individual who provides information about a nursing facility (DJFS).	R.C. 5111.61(B)
Department of Mental Health Records: The source of a complaint of a Residential Facilities Law violation when disclosure could be detrimental to the Department of Mental Health's purposes or could jeopardize the investigation.	R.C. 5119.22(I)
Department of Mental Retardation and Developmental Disabilities Records: Records created or received pursuant to a DMRDD audit; the source of certain complaints made to the DMRDD; certain records maintained by the DMRDD relative to residents in its institutions or persons discharged or transferred from them; files and records of certain DMRDD investigations pertaining to abuse or neglect of an individual with mental retardation or a developmental disability or misappropriation of such an individual's property; and information in DMRDD records pertaining to a mentally retarded or developmentally disabled person for whom a guardian, trustee, or protector has been appointed.	R.C. 5123.05, 5123.19(K), 5123.31, 5123.51(G), and 5123.57
Department of Mental Retardation and Developmental Disabilities Records: Communications between personnel and agents of the Legal Rights Service (LRS) and its clients; the identities of certain individuals who provide information to the LRS's Ombudsman Section; and the Ombudsman Section's records and files. Reports of wounds, injuries, disabilities, and conditions reasonably indicating abuse or neglect or of another major unusual incident made to DRMDD relative to mentally retarded or developmentally disabled persons, and the DMRDD's associated report on a review committee's recommendations.	R.C. 5123.60(G), 5123.601(D), 5123.602, and 5123.603(B) R.C. 5123.61(M) and 5123.611(C)
Department of Mental Retardation and Developmental Disabilities Records: Information in the personal and medical records of mentally retarded and developmentally disabled persons.	R.C. 5123.62(T)
Department of Mental Retardation and Developmental Disabilities Records: Certificates, applications, records, and reports identifying residents or persons whose institutionalization was sought under the Mental Retardation and Developmental Disabilities Law.	R.C. 5123.89(A)
Department of Mental Retardation and Developmental Disabilities Records: The identity of an individual who requests programs or services of a county MRDD board, and the record of a person eligible for the programs or services.	R.C. 5126.044
Department of Mental Retardation and Developmental Disabilities Records: Reports by a county MRDD board of reviews of abuse and neglect allegations. Records maintained by the Department of Youth Services (DYS) pertaining to the children in its custody, and certain victim-related statements pertaining to a child who is committed to DYS's legal custody and who is the subject of a release hearing.	R.C. 5126.31(E) R.C. 5139.05(D) and 5139.56(C)
Department of Mental Retardation and Developmental Disabilities Records: Records kept by a public children services agency concerning certain investigations; and information concerning a deceased child possessed by an agency if a court determines disclosing the information would not be in the best interest of the deceased child's sibling or another specified child.	R.C. 5153.17 and 5153.173
Department of Natural Resources Records: Information pertaining to the analysis of the chemical and physical properties of coal and certain other information by the Chief of DNR's Division of Mineral Resources Management.	R.C. 1513.07(B)(3), (C)(12), and (D)
Department of Natural Resources Records: Information relating to test boring results submitted to the Chief of DNR's Division of Mineral Resources Management.	R.C. 1514.02(A)(9)

Topic	Citation
Department of Natural Resources Records: Questionnaires and financial statements submitted to the Director of Natural Resources by a public service facility construction contract bidder, by a bidder for a contract for the operation of public service facilities, or by a bidder for a lease of public service facilities in a state park.	R.C. 1501.012(B), 1501.091, and 1501.10
Department of Natural Resources Records: Revelation by the Director of Natural Resources of abandoned property's location during certain time periods.	R.C. 1506.32(J)
Department of Natural Resources Records: Trade secrets or certain privileged commercial or financial information submitted to the Chief of DNR's Division of Mineral Resources Management (coal exploration operations).	R.C. 1513.072(B)
Department of Rehabilitation and Correction Records: Certain records that identify an inmate under the law concerning transfer of mentally ill or mentally retarded inmates from a Department of Rehabilitation and Correction (DRC) state correctional institution to a psychiatric hospital; certain records maintained by DRC; and DRC quality assurance records.	R.C. 5120.17(K), 5120.21, and 5120.211(B)(1)
Department of Rehabilitation and Correction Records: Information provided to the Office of Victim Services in DRC's Division of Parole and Community Services by victims of crime or victim representatives for certain purposes.	R.C. 5120.60(G)
Department of Transportation Records: Information the Director of Transportation receives from transportation construction project contract bidders, and the estimate of cost of any project to be constructed by ODOT by competitive bidding, in the Director's discretion and until a specified time.	R.C. 5525.04 and 5525.15
Department of Transportation Records: Reports of an investigation the Department of Transportation (ODOT) conducts relative to the safety practices of rail fixed guideway systems; and any part of a transit agency's system safety program plan that concerns security for the system.	R.C. 5501.55(D)(1) and 5501.56(B)
Domestic Violence Records: Residential address and county of residence information for a person admitted to a domestic violence shelter that is possessed by the shelter.	R.C. 3113.40
Education Records: Certain identifying information provided pursuant to a school district or educational service center reward offer relative to crimes committed against school employees or pupils or on school property.	R.C. 3313.173
Education Records: Certain records of the Ohio Tuition Trust Authority concerning tuition credits or college savings bonds.	R.C. 3334.11(J)
Education Records: Certain records regarding the examination of pupils, teachers, or other school employees for tuberculosis.	R.C. 3313.71
Education Records: Data collected or maintained in the Statewide Education Management Information System that identifies a pupil.	R.C. 3301.0714(I)
Education Records: Information obtained during a State Board of Education or Superintendent of Public Instruction investigation that may be the basis for suspending, revoking, or limiting an educator's license.	R.C. 3319.311(A)
Education Records: Information received by a board of education in relation to a Healthcheck program.	R.C. 3313.714(C)
Education Records: Personal information concerning a pupil in the school district that was obtained or obtainable by an educational assistant.	R.C. 3319.088(E)
Education Records: Personally identifiable data, information, and records collected under a State Board of Education plan concerning the education of handicapped children.	R.C. 3323.06(A)
Education Records: Privately sought written opinions and associated records of JLEC.	R.C. 102.08(D)
Education Records: Records of the Ohio Tuition Trust Authority indicating the identity of purchasers, contributors, and beneficiaries under the Variable College Savings Program and amounts contributed to, earned by, or distributed from Program accounts.	R.C. 3334.19(H)
Education Records: Release of personally identifiable information concerning students attending a public school for certain reasons.	R.C. 3319.321(A) and (B)

Topic	Citation
Education Records: Under certain circumstances, confidential or proprietary information or trade secrets contained in alternative school proposals submitted to a school district board of education.	R.C. 3313.533(H)(6)
Electronic Records: Records that would jeopardize the state's use or security of computer or telecommunications devices or services associated with electronic signatures, records, or transactions.	R.C. 1306.23
Emergency Records: Certain information obtained by the Emergency Response Commission and local emergency planning committees, such as trade secrets and confidential business information.	R.C. 3750.02
Emergency Records: Deliberations of persons performing risk adjustment functions under the emergency medical services incidence reporting system of the State Board of Emergency Medical Services; information the Board collects or receives under its law which would identify a specific patient or recipient of emergency medical services or trauma care; and information generated solely for use in a peer review or quality assurance program conducted for an emergency medical service organization.	R.C. 4765.06(E), 4765.10(C), and 4765.12(B)
Emergency Records: For purposes of the Emergency Planning Law and the Hazardous Substances Law, trade secrets or confidential business information obtained under the Emergency Planning and Community Right-To-Know Act of 1986.	R.C. 3750.09 and 3751.04
Emergency Records: Information pertaining to any shipment of special nuclear material or by-product material, until specified time (Executive Director of Emergency Management Agency).	R.C. 4163.07(C)
Emergency Records: Under certain circumstances, the storage location of a hazardous chemical at a facility provided on an emergency and hazardous chemical inventory form to the Emergency Response Commission or a local emergency planning committee.	R.C. 3750.10(B)(5)
Environmental Records: Records or information relating to secret processes or secret methods of manufacture or production the Ohio Water Development Authority obtains.	R.C. 6121.21 and 6123.20
Environmental Records: Records, reports, or information accessible under the Water Pollution Control Law by the Director of Environmental Protection that constitute trade secrets.	R.C. 6111.05
Environmental Records: Secret processes, or methods of manufacture or production, information or records obtained by the Ohio Air Quality Development Authority.	R.C. 3706.20
Environmental Records: Trade secrets obtained by the Director of Environmental Protection under the Air Pollution Control Law; emissions data obtained by public officials under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program; communications and information from small businesses seeking assistance under the Program; and information on problems and grievances assistance given to a small business by the Program's ombudsman.	R.C. 3704.08(A) and (B), 3704.18(A)(7), and 3706.19(C)(6)
Ethics Commission Records: Disclosure statements filed with the Ohio Ethics Commission.	R.C. 102.02(B)
Ethics Commission Records: Information and records concerning investigations of complaints and charges by appropriate ethics commission.	R.C. 102.06(B), (C)(2), and (F)
Ethics Commission Records: Information and records presented to the Ohio Ethics Commission, Joint Legislative Ethics Committee (JLEC), or Board of Commissioners on Grievances and Discipline of the Supreme Court.	R.C. 102.07
Financial Institution Records: Annual reports filed by second mortgage security loans registrants with the Superintendent of Financial Institutions, and other information.	R.C. 1321.55(B)(2) and (C)
Financial Institution Records: Examination, investigation, and certain application information obtained by the Superintendent of Financial Institutions regarding mortgage broker registrants.	R.C. 1322.061(A), (B), and (D)
Financial Institution Records: Information obtained by the Superintendent of Financial Institutions regarding insurance premium finance company licensees.	R.C. 1321.76(C)
Financial Institution Records: Information obtained from a financial institution pursuant to an account information access agreement.	R.C. 3121.76

Topic	Citation
Financial Institution Records: Reports and information regarding investigations of transmitters of money businesses by the Superintendent of Financial Institutions.	R.C. 1315.06(D)
Financial Institution Records: Reports filed with the Superintendent of Financial Institutions by small loans licensees.	R.C. 1321.09(A)
Fire Marshall Records: Information the Fire Marshal and certain other officials receive from an insurance company that has investigated or is investigating a fire loss of real or personal property, until a specified time.	R.C. 3737.16(E)
Fire Marshall Records: Testimony given in an investigation into a fire is not a matter of public record in the Fire Marshal's record of Ohio fires determined by investigations.	R.C. 3737.23
Forfeiture Records: Until property is seized, the recording and transcript of certain hearings or proceedings in relation to "participating in a criminal gang" forfeitures.	R.C. 2923.44(D)(4) and 2923.45(C)(2)
Forfeiture Records: Until property is seized, the recording and transcript of certain proceedings in relation to "felony drug abuse offense" forfeitures.	R.C. 2925.42(D)(4) and 2925.43(C)(2)
Geological Records: Geological records accepted and retained on a confidential basis by the Chief of the Division of Geological Survey of the Department of Natural Resources (DNR).	R.C. 1505.03
Health Care Records: Proceedings and records of a peer review committee of a health care entity.	R.C. 2305.252
Health Records: An original birth record and documentary evidence supporting a new registration of birth (following fatherhood presumption, finding, declaration, or acknowledgement).	R.C. 3705.09(G)
Health Records: Certain information concerning a case of malignant disease furnished to a cancer registry or the Department of Health and information concerning individual cancer patients obtained by the Department for the Ohio Cancer Incidence Surveillance System.	R.C. 3701.263(A) and (B)
Health Records: Contents or particulars of maternity hospital or home-related records (the Department of Health, boards of health, and hospital/home keepers).	R.C. 3711.11
Health Records: Copies of the American College of Surgeons' report of a consultative or reverification visit and the plan and timetable for obtaining verification or reverification that are provided to the Director of Health by an adult or pediatric trauma center operating under provisional status.	R.C. 3727.101(E)(2)
Health Records: Healthcare facilities and coroners must keep confidential information concerning possible exposure to a contagious or infectious disease when the information is communicated by measures other than the statutory procedures for notification of emergency medical services workers and funeral services workers of that possible exposure.	R.C. 3701.248(D)
Health Records: Identifying information about any patient in certain Director of Health investigations under the Certificates of Need Law.	R.C. 3702.531
Health Records: Identifying patient information the Department of Health obtains in a Health Care Practitioner Balance Billing Law alleged violation investigation.	R.C. 4769.07
Health Records: Information concerning AIDS cases, AIDS-related conditions, or confirmed positive HIV tests reported to the Department of Health that identifies an individual; information obtained or maintained under the associated partner notification system; certain information concerning an individual's HIV test and the identity of an individual diagnosed as having AIDS or an AIDS-related condition; and the identity of an individual against whom a probate court action has been brought to compel HIV testing.	R.C. 3701.24(D), 3701.241(A), 3701.243(A), and 3701.247(A)
Health Records: Information contained in the "Information for Medical and Health Use Only" section of a birth record (Department of Health's Office of Vital Statistics and local registrars).	R.C. 3705.23(A)(4)(b)
Health Records: Information filed under the Hospital Care Assurance Program that includes patient-identifying material.	R.C. 5112.21

Topic	Citation
Health Records: Information obtained during an ongoing investigation or inquiry by the Director of Health (cause of disease or illness related) that is not in summary, statistical or aggregate form and that identifies a person.	R.C. 3701.14(B) and (D)
Health Records: Information of a poison prevention and treatment center about individuals to whom treatment or services are provided.	R.C. 3701.20(E)
Health Records: Information provided to the Department of Health through the toll-free patient safety telephone line.	R.C. 3701.91
Health Records: Information that is a medical record and that is required to be reported under Public Health Council lead abatement project and lead poisoning record-keeping and reporting rules.	R.C. 3742.03(E)(3)
Health Records: Information that is reported to or obtained by the Director of Health, the Department of Health, or a board of health of a city or general health district that describes an individual's past, present, or future physical or mental health status or condition, receipt of treatment or care, or purchase of health products, and that reveals the identity of the individual or could be used to reveal the identity of the individual.	R.C. 3701.17(A) and (B)
Health Records: Information that the Public Health Council requires radon testers and mitigation specialists to report to the Director of Health, and the name of a complainant to the Director concerning a radon tester, mitigation specialist or contractor, or operator of a radon laboratory or a training course.	R.C. 3723.09(H) and 3723.10
Health Records: Names and Social Security numbers of patients and physicians not to be included in data required to be reported by hospitals to the Department of Health; Department reports not to include information violative of patient or physician confidentiality.	R.C. 3727.14 and 3727.15
Health Records: Original birth records and certain documents after a new record has been issued or obtained after an adoption.	R.C. 3705.12 and 3705.29(D)
Health Records: Original birth records and index references after a new record is issued due to an unregistered birth, lost or destroyed birth record, or correction of the original birth record.	R.C. 3705.15(D)(1)
Health Records: Patient-identifying information contained in newborn hearing screening reports submitted by hospitals and freestanding birthing centers to the Department of Health.	R.C. 3701.509(E)
Health Records: Prescriptions, orders, and records required by the Controlled Substances Law.	R.C. 3719.13
Health Records: Quality-of-care data, or records copied in an investigation of a violation of the Department of Health's rules, that identify specific patients; or safety reports concerning specific adverse events, bodily injuries, or complaints that are reported to the Department.	R.C. 3702.18
Health Records: Radon-related information collected by the Department of Health concerning a private residence or the real property upon which it is located, under certain circumstances.	R.C. 3723.12(A)
Health Records: Records received and information assembled by the Birth Defects Information System.	R.C. 3705.32(A)
Health Records: Technical assistance reports of the Department of Health's technical assistance unit for nursing facilities.	R.C. 3721.026(B)
Health Records: The identity of a person who makes, and the contents of, a report alleging a violation of the Community Alternative Homes Law (Director of Health).	R.C. 3724.11
Health Records: Under certain circumstances, a foundling report for a child of unknown parentage.	R.C. 3705.11
Health Records: The name of a person who files a complaint with the Director of Health concerning a lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, lead abatement worker, clearance technician, clinical laboratory, environmental lead analytical laboratory, or training course.	R.C. 3742.15

Topic	Citation
Homeless Person Records: Last known residential address and county of residence of a homeless person that is possessed by a homeless shelter.	R.C. 2151.422(D)
Inspector General Records: Reports of an investigation conducted and designated confidential by the Inspector General or a deputy inspector general.	R.C. 121.44(A)
Juvenile Arrest Records: Originals and copies of fingerprints and photographs of a child and the child's related records of arrest or custody.	R.C. 2151.313(C)
Juvenile Records: Reports and records of a juvenile court's probation department.	R.C. 2151.14(B)
Legislative Records: Certain files of former House and Senate ethics committees.	R.C. 101.34(F)(1)
Legislative Records: Legislative documents arising out of confidential General Assembly member/staff and legislative staff relationship.	R.C. 101.30(B)
Library Records: Library records and patron information.	R.C. 149.432(B)
Lottery Commission Records: State Lottery Commission meeting records, unless prior notification of the Director and a showing of good cause.	R.C. 3770.02(B)
Major League Records: Certain records of a corporation that owns tax-exempt "public recreational facility" property used by a major league professional team.	R.C. 5709.081(D)
Marriage License Applications: In connection with marriage license applications, under specified circumstances, a record containing applicant Social Security numbers.	R.C. 3101.05(A) and 3101.051
Medical Board Records: Information the State Medical Board receives in an investigation of an alleged violation of the Physician Assistants Law, the Physicians Law, the Anesthesiologist Assistants Law, or the Acupuncturists Law; and summaries, reports, and records the Board receives and maintains regarding formal disciplinary actions taken with respect to physician assistants, physicians, anesthesiologist assistants, or acupuncturists by a health care facility, their alleged violations of the applicable law, their professional membership revocation or suspension for certain reasons, or their professional liability insurance claim final dispositions.	R.C. 4730.26(E), 4730.32(F), 4731.22(F)(5), 4731.224(F), 4760.14(E), 4760.16(F), 4762.14(E), and 4762.16(F)
Medical Records: Records of a person's identity, diagnosis, prognosis, or treatment under the Employee Assistance Program.	R.C. 3701.041(B)
Medical Records: Specified records of the program for medically handicapped children and of programs funded by the federal Maternal and Child Health Block Grant.	R.C. 3701.028(A)
Motor Vehicle Salvage Records: Applications for licenses as a motor vehicle salvage dealer. Licensee-related information obtained in investigations under the Occupational Therapist, Physical Therapist, and Athletic Trainers Law; and other information obtained by the Athletic Trainers Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board Records: Therapy, and Athletic Trainers Board regarding applicable violations of the Law.	R.C. 4738.14 R.C. 4755.04 and 4755.61(A)(7)
Nursing Board Records: Information received by the Board of Nursing in an investigation of an alleged violation of the Nurses Law; records of the Board for the purpose of the practice intervention and improvement program; and all records of a participant in the Board's chemical dependency monitoring program.	R.C. 4723.28(I), 4723.282(D), and 4723.35(E)
Nursing Home Records: Certain identifying information relative to reports alleging a violation of the Adult Care Facility Law (Director of Health).	R.C. 3722.17(A)
Nursing Home Records: Certain records and information concerning reports of long-term care facility or residential care facility resident abuse or neglect or misappropriation of resident property.	R.C. 3721.25(A), (B), and (C)
Nursing Home Records: Information that identifies a patient or resident of a nursing home, a residential care facility, a home for the aging, or an Ohio Veterans' Home, or an individual who files a complaint or provides confidential information about a home or facility (Department of Health).	R.C. 3721.031

Topic	Citation
Nursing Home Records: Personal and/or medical records of the residents or patients of nursing homes, residential care facilities, homes for the aging, an Ohio Veterans' Home, adult care facilities, community alternative homes, and certain other homes.	R.C. 3721.13(A)(10), 3722.12(B)(19), and 3724.07(B)(5)
Ohio Air Quality Development Authority Records: Trade secrets or proprietary information in materials or data submitted to the Ohio Air Quality Development Authority or the Director of the Ohio Coal Development Office in connection with agreements for financial assistance relative to coal research and development projects.	R.C. 1551.35(C) and 1555.17
Ohio Family and Children First Cabinet Council Records: Certain records of meetings of the Ohio Family and Children First Cabinet Council.	R.C. 121.37(A)(2)(c)
Ohio Rail Development Commission Records: Confidential data or information obtained from a railroad by the Ohio Rail Development Commission, and trade secrets and proprietary information the Commission receives.	R.C. 4981.03(D) and 4981.29(A)(7)
Ombudsman Records: Information that the Migrant Agricultural Ombudsman's Office receives as a result of reports of certain violations of law filed with it.	R.C. 3733.471(D)
Ombudsperson Records: Certain investigative and other files and information contained in the State Long-Term Care Ombudsperson Program's or regional program's office.	R.C. 173.22(A)
Optometry Board Records: Information the State Board of Optometry receives regarding the final disposition of a claim or malpractice action against an optometrist; and information the Board receives in an investigation of an alleged violation of the Optometrists Law.	R.C. 4725.22(C) and 4725.23(C)
Patient Records: Certain information identifying a patient or client or a patient's or client's diagnosis, prognosis, or medical or other specified treatment.	R.C. 149.431(A)(1)
Peace Officer Training Records: Ohio Peace Officer Training Commission certification examinations, either before or after completion.	R.C. 109.75(L)
Physician Records: Information, data, reports, or records furnished by a physician to a quality assurance or utilization committee.	R.C. 2305.24
Port Authority Records: Certain trade secret and other financial and proprietary information submitted by an employer to a port authority or specified nonprofit corporation; other information so submitted until specified time.	R.C. 4582.091(A) and 4582.58(B)
Presentence Investigative Reports: Certain or all information in presentence investigation reports (contents and summaries) and those reports, psychiatric reports, and other investigative reports in an appellate court record to be reviewed.	R.C. 2947.06, 2951.03, and 2953.08(F)(1)
Protective Orders: Under specified circumstances, certain records of a law enforcement agency or prosecuting attorney regarding abused, neglected, or dependent child complaints (protective orders).	R.C. 2151.141(B)(2)
Public Defender Records: Information obtained by a public defender when determining if a person is indigent and communications between a defendant and public defender.	R.C. 120.38(A) and (B)
Public Utilities Commission Records: Certain information acquired by a Public Utilities Commission (PUCO) employee or agent concerning a public utility.	R.C. 4901.16
Public Utilities Commission Records: Confidential information provided to the PUCO regarding competitive retail electric service.	R.C. 4928.06(F)
Public Utilities Commission Records: Financial statements, financial data, and trade secrets the Director of Development receives under the Energy Efficiency Revolving Loan Program.	R.C. 4928.62(C)
Public Utilities Commission Records: Information concerning competitive retail natural gas service provided by retail natural gas suppliers or governmental aggregators to the PUCO.	R.C. 4929.23(A)
Public Utilities Commission Records: Information concerning corporate structure and personnel on a uniform permit application, or for a background investigation for an application for a uniform permit as a carrier of hazardous wastes, submitted to the PUCO.	R.C. 4905.82(B) and (C)

Topic	Citation
Real Estate Appraisers Records: Information obtained in investigations of alleged violations of the Real Estate Appraisers Law (the Superintendent of Real Estate and Professional Licensing, Department of Commerce).	R.C. 4763.03(D)
Real Estate Broker Records: Information obtained in investigations and audits concerning alleged violations of the Real Estate Brokers and Salespersons Law, and associated reports, documents, and work products (Department of Commerce, Superintendent of Real Estate and Professional Licensing).	R.C. 4735.05(D)
Rehabilitation Services Records: Lists of names or information in the Rehabilitation Services Commission's records pertaining to applicants for or recipients of Commission services.	R.C. 3304.21
Residential Addresses: Home address of any peace officer who is a witness or arresting officer in a pending criminal case (law enforcement agency, court, or court clerk's office cannot disclose in absence of court order).	R.C. 2921.24(A)
Residential addresses: Under specified circumstances, residential address of an officer or employee, or person related by blood or marriage to an officer or employee, of a public children services agency or private child placing agency (the agency, the juvenile court, and any law enforcement agency cannot disclose).	R.C. 2151.142(C)
Respiratory Care Board Records: Confidential information obtained by, and the identity of complainants to, the Ohio Respiratory Care Board during investigations of alleged violations of the Respiratory Care Law.	R.C. 4761.03(E)
Retirement System Records: Certain information and records of the Public Employees Retirement Board, State Teachers Retirement Board, and School Employees Retirement Board.	R.C. 145.27(A), (B), and (D)(4), 3307.20(A)(1), (B), (C), and (E)(4), and 3309.22(A), (B), and (D)(4)
Search Warrant Records: Until search warrant is returned, the recording and transcript of proceeding concerning a request for a waiver of the statutory precondition for nonconsensual entry.	R.C. 2933.231(E)
Securities Records: Investigation information, confidential law enforcement investigatory records, and trial preparation records of the Department of Commerce's Division of Securities.	R.C. 1707.12(B) and (C)
Securities Records: Records of ownership, registration, transfer, and exchange of securities.	R.C. 9.96(C)
Security and Infrastructure Records: Public office's security records and infrastructure records: "security record" being (1) any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage, or (2) any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism; and "infrastructure record" being any record that discloses the configuration of a public office's critical systems, including communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office is located, but not including a simple floor plan that discloses only the spatial relationship of components of a public office or the building in which a public office is located.	R.C. 149.433(B)
Sentencing Statements: Written statement before sentencing of a victim, defendant, or alleged juvenile offender.	R.C. 2930.14(A)
Sex Offender Registration Records: BCII's Internet database of the State Registry of Sex Offenders and Child-Victim Offenders and information obtained by local law enforcement representatives through use of the database.	R.C. 2950.13(A)(13)
Sex Offender Registration Records: Certain statements, information, photographs, and fingerprints required under the Sex Offender Registration Law.	R.C. 2950.08 and 2950.10(A)(4)
Special Improvement District Records: Records of organizations contracting with a special improvement district.	R.C. 1710.02(C)
State Highway Patrol Records: State Highway Patrol (SHP) reports, statements, and photographs relative to accidents it investigates, in the Director of Public Safety's discretion and until a specified time.	R.C. 5502.12

Topic	Citation
State Highway Patrol Records: State Highway Patrol Retirement Board records containing a personal history record or monthly allowance or benefit information; the identity of recipients of public assistance.	R.C. 5505.04(C) and (D)(4)
Superintendent of Financial Institutions Records: Information arising from, obtained by, or contained in the Superintendent of Financial Institutions' investigation of a pawnbroker or of another person the Superintendent reasonably suspects has violated or is violating the Pawnbroker Law.	R.C. 4727.18(A) and (B)
Superintendent of Insurance Records: A memorandum received by the Superintendent of Insurance in support of a qualified actuary's opinion on the valuation of an insurance company's reserves for policies and annuities and other related information.	R.C. 3903.72(B)(3)(g)
Superintendent of Insurance Records: Any document or information pertaining to a complaint or response that contains a medical record, that is provided to the Superintendent of Insurance and the Director of Health for inspection by a health insuring corporation.	R.C. 1751.19(C)
Superintendent of Insurance Records: Certain conferences and administrative proceedings, and associated documents, regarding a credit union share guaranty corporation.	R.C. 1761.21(A)
Superintendent of Insurance Records: Certain financial statements and analyses furnished to a credit union share guaranty corporation.	R.C. 1761.08(A)
Superintendent of Insurance Records: Certain records concerning an audit of an insurance company or health insuring company; and the work papers of the Superintendent of Insurance from specified insurer examinations and from performance regulation examinations.	R.C. 3901.48(A), (B), and (C)
Superintendent of Insurance Records: Certain records concerning the detection and prevention of life and health insurance company insolvencies (Superintendent of Insurance and the Board of Directors of the Ohio Life and Health Insurance Guaranty Association).	R.C. 3956.12(A)(4), (C), and (E)
Superintendent of Insurance Records: Certain records pertaining to delinquency proceedings against an insurer and judicial reviews of those proceedings.	R.C. 3903.11
Superintendent of Insurance Records: Certain viator-related and other information, documents, reports, etc. produced or acquired by the Superintendent of Insurance in the course of an examination under the Viatical Settlements Law; and documents and evidence obtained by the Superintendent in an investigation of a suspected or actual fraudulent viatical settlement act.	R.C. 3916.11(D) and 3916.18(E)(1)
Superintendent of Insurance Records: Data or information concerning an enrollee's or applicant's diagnosis, treatment, or health obtained by a health insuring corporation from specified sources.	R.C. 1751.52(B)
Superintendent of Insurance Records: Documents, reports, and evidence in the possession of the Superintendent of Insurance pertaining to an insurance fraud investigation.	R.C. 3901.44(B)
Superintendent of Insurance Records: Health insuring corporation's clinical review rationale when made available to government agency.	R.C. 1751.80(A)
Superintendent of Insurance Records: Information a law enforcement or prosecuting agency receives from an insurance company investigating a claim involving motor vehicle or vessel insurance, until a specified time.	R.C. 3937.42(F)
Superintendent of Insurance Records: Information and documents obtained by the Superintendent of Insurance in an examination or investigation of an insurer's financial condition or legality of conduct.	R.C. 3901.36
Superintendent of Insurance Records: Information or documentation provided to an agent or to the Superintendent of Insurance by an insurer regarding termination of an independent insurance agency contract.	R.C. 3905.50(H)
Superintendent of Insurance Records: Information submitted for an examination of policies, etc. by an insurance rating bureau.	R.C. 3935.06
Superintendent of Insurance Records: Ohio Insurance Guaranty Association's recommendations regarding the status of certain member insurers.	R.C. 3955.14(A)(2)

Topic	Citation
Superintendent of Insurance Records: Record containing the medical history, diagnosis, prognosis, or medical condition of an enrollee of a health insuring corporation, insured of an insurer, or plan member of a public employee benefit plan, which is provided to Superintendent of Insurance under law.	R.C. 3901.83
Superintendent of Insurance Records: Reports and communications concerning the performance of powers and duties by the Ohio Commercial Insurance Joint Underwriting Association, the Superintendent of Insurance, and others under the Commercial Market Assistance Plan Law.	R.C. 3930.10
Superintendent of Insurance Records: Reports and communications made in connection with certain actions of the Medical Liability Underwriting Association, the Stabilization Reserve Fund, the Superintendent of Insurance, and others.	R.C. 3929.68
Superintendent of Insurance Records: Reports obtained by or disclosed to Superintendent of Insurance relative to insurer material transactions.	R.C. 3901.70(A)
Superintendent of Insurance Records: Statements and reports submitted by a financial institution regarding trust account (IOTA) interest used to fund legal aid programs.	R.C. 3953.231(E)
Superintendent of Insurance Records: The risk-based capital (RBC) plans, reports, information, and orders maintained by the Superintendent of Insurance.	R.C. 1753.38(C)(1) and 3903.88
Superintendent of Insurance Records: Under certain circumstances, records and other information obtained by the Superintendent of Insurance in an investigation of an insurance agent license applicant, or of an agent, solicitor, broker, or other person licensed or appointed under the Insurance Producers Licensing Law, the Public Insurance Adjusters Law, the Home Warranty Companies Law, or the Third-Party Administrators Law.	R.C. 3905.24
Superintendent of Insurance Records: Written notice of impairment sent by an insurer to the Superintendent of Insurance.	R.C. 3999.36(C)
Tax Records: An investments-related document filed with returns of taxable property under certain circumstances; a document filed with returns of taxable property when the Tax Commissioner requires a business to file a financial statement or balance sheet; tax returns listing personal property used in business or credits and other returns; information about a taxpayer's business, property, or transactions the Tax Commissioner obtains for the purpose of adopting or modifying the method of determining true value; and preliminary, amended, and final assessment certificates concerning certain taxpayers.	R.C. 5711.10, 5711.101, 5711.11, 5711.18, 5711.25, and 5711.26
Tax Records: For purposes of the Corporation Franchise Tax Law, information gained from returns, investigations, hearings, or verifications; a financial institution's balance sheet made available upon the Tax Commissioner's request; and financial statements and other information submitted to the Director of Job and Family Services for an employee "eligible training program" tax credit.	R.C. 5733.03, 5733.056(B)(4), and 5733.42(E)
Tax Records: For purposes of the Motor Vehicle Fuel Tax Law, information the Tax Commissioner acquires by examination of records, books, and papers, and information acquired by Department of Taxation employees in an investigation.	R.C. 5735.19 and 5735.33
Tax Records: For purposes of the Ohio Estate Tax Law, certain tax returns and information the probate court, Department of Taxation, county auditor or treasurer, municipal or township fiscal officer, or Attorney General possesses.	R.C. 5731.90(A)(1)
Tax Records: Information about the business, property, or transactions of any public utility obtained by the Tax Commissioner in adopting or modifying the utility's composite annual allowance.	R.C. 5727.11(I)
Tax Records: Information acquired by a Department of Taxation agent as to any person's transactions, property, or business; and certain opinions the Tax Commissioner prepares for a taxpayer and identifying information in the opinions.	R.C. 5703.21(A) and 5703.53(I)
Tax Records: Information acquired by Department of Taxation employees in an investigation under the Sales Tax Law, the Use Tax Law, the Cigarette Tax Law, or the Personal Income Tax Law.	R.C. 5739.35, 5741.24, 5743.45, and 5747.60
Tax Records: Information from a return, investigation, hearing, or verification associated with the Personal Income Tax Law.	R.C. 5747.18

Topic	Citation
Tax Records: Information furnished by the Tax Commissioner to certain officials as part of the procedure to determine overpayment of public assistance.	R.C. 5101.182
Tax Records: Tax forms or schedules submitted to the Director of Job and Family Services to determine eligibility for medical assistance.	R.C. 5111.011(D)
Tax Records: Taxpayer transactions, property, or business information acquired by a county auditor; county board of revision member; expert, clerk, or employee of a county auditor; a county board of revision, or the Tax Commissioner; or Tax Commissioner deputy, assistant, or agent, in the course of employment.	R.C. 5715.49 and 5715.50
Telephone Solicitor Records: Social Security number and other specified information submitted in an application for a certificate of registration or registration renewal as a telephone solicitor.	R.C. 4719.02(E)
Test Records: Individual proficiency test scores and proficiency field test questions.	R.C. 3301.0711(I) and (N)(3)
Test Records: Individual student test scores and reports used in the Value-Added Progress Dimension.	R.C. 3302.021(A)(2)
Test Records: Test materials, examinations, or evaluation tools used in any Department of Health examination or evaluation, specifically including competency evaluation programs and training and competency evaluation programs relative to long-term care facilities.	R.C. 3701.044 and 3721.31(F)
Trade Secret Records: Trade secrets contained in a record of the Ohio's Best Rx Program Council; certain other information related to the Program's purposes.	R.C. 5110.50, 5110.51, and 5110.56
Trade Secrets: Trade secrets and other information required to be furnished to or procured by a licensor of retail food establishments or of food service operations.	R.C. 3717.28 and 3717.48
Unclaimed Funds Records: Audited records of holders of unclaimed funds.	R.C. 169.03(F)(4)
Veterans Assistance Records: Certain documents and information relative to applications for financial assistance to a county veterans service commission and, generally, commission documents that the Director of the Governor's Office of Veterans Affairs obtains which identify applicants for or recipients of financial assistance.	R.C. 5901.09(A), (B), and (C) and 5902.04(B) and (C)(2)
Voter Registration Records: Designated agencies under the Voter Registration Law generally must keep certain agency-related information confidential.	R.C. 3503.10(E)(4)
Voter Registration Records: Information relating to an applicant's decision to decline to register to vote or update the applicant's voter registration (Registrar of Motor Vehicles and deputy registrars).	R.C. 3503.11
Voter Registration Records: Records relating to the declination of a person to register to vote and the identity of the voter registration agency through which a particular person registered to vote (directors and deputy directors of elections and board of elections employees).	R.C. 3599.161(B)
Welfare Records: Information regarding recipients of public assistance (procedure for determination of overpayments and other purposes).	R.C. 5101.181(B) and 5101.27
Welfare Records: Written agreement between a multiple employer welfare arrangement operating a group self-insurance program and a third party administrator.	R.C. 1739.16(E)
Workers' Compensation Records: Certain information maintained by the Director of Job and Family Services under the Unemployment Compensation Law; and redisclosure of information declared confidential by the Unemployment Compensation Law.	R.C. 4141.162(E), 4141.21, and 4141.22
Workers' Compensation Records: Certain vendor and other information associated with the Bureau of Workers' Compensation qualified health plan system, health partnership program, and health care data program.	R.C. 4121.44(D)(1) and (H)(3)
Workers' Compensation Records: Information concerning a claim or appeal filed with the Bureau of Workers' Compensation or the Industrial Commission.	R.C. 4123.88
Workers' Compensation Records: Information contained in employer annual statements filed with the Bureau of Workers' Compensation.	R.C. 4123.27



APPENDIX E

Ohio Attorney General Opinions

Interpreting Ohio's Public Records Act

The following are summaries of those Opinions of the Ohio Attorney General that have addressed or interpreted the Public Records Act. You must be aware that the validity of any one opinion may have been affected by a subsequent court opinion or statutory change.

- 05-47 Because individuals possess a constitutionally protected privacy right in their social security numbers, such numbers when contained in a court's civil case files are not public records for purposes of R.C. 149.43

Prior to releasing information from a court's civil case files, the clerk of court has a duty to redact social security numbers included in those files.

An individual's personal financial information contained in a court's civil case files is a public record for purposes of R.C. 149.43 unless the information is not a "record" of the court or the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1).

- 04-50 Under Ohio law, a board of elections has a duty to preserve ballots in sealed containers until any possible recount or election contest is completed. Ballots are therefore not "public records" for purposes of R.C. 149.43 while they remain under seal or where they are subject to a court order prohibiting their release. In addition, they are not subject to inspection under R.C. 3501.13 during such time.

However, once the time within which a possible recount or election contest may occur has passed, pursuant to R.C. 3501.13, such ballots are subject to public inspection "under such reasonable regulations as shall be established by the board." Nonetheless, the board of elections remains under a duty to "carefully preserve" ballots used in an election for the remainder of the preservation period prescribed by R.C. 3505.31.

In addition, following the completion of the canvass of election returns under R.C. 3505.32, poll books used in an election are public records of a board of elections and are subject to public inspection in accordance with any reasonable regulations the custodian board of elections has established under R.C. 3501.1.

- 04-45 Information within a criminal case file is subject both to Ohio's public records law and a constitutional right of access. Therefore, whether information within a criminal case file may be withheld depends on whether the information meets or is exempt from the definition of a "public record" under the Public Records Act, R.C. 149.43(A)(1), and whether the qualified constitutional right has been overridden.

- 04-33 A county recorder who makes available in her office a photocopying machine for use by the public may not charge the two dollar per page fee set forth in R.C. 317.32(I) where the copier is operated by the public without the assistance of the recorder or her staff. The recorder is, instead, subject to R.C. 149.43(B), which requires a public office to provide copies of public records "at cost."

- 04-11 A county recorder may not impose a fee upon a requester to inspect records or make copies using their own equipment. However, the county recorder may impose reasonable rules governing the use and operation of such equipment.

- 03-30 R.C. 2303.26 requires the clerk of courts to carry out her duties "under the direction of [her] court." Once the judges of a court of common pleas have delegated to the judges of a division of that court authority to determine whether to make that division's records available to the public through the Internet, and the judges of that division have ordered that its records are not to be accessible to the public through the Internet, the clerk of courts must obey that order, unless a court of competent jurisdiction reverses that order or prohibits its enforcement.

- 03-25 Information within investigatory work product of a law enforcement office that pertains to case the records of which have been ordered sealed or expunged pursuant to R.C. 2953.31-.61 or R.C. 2151.358

may not be publicly disclosed pursuant to Ohio's Public Records Act. However, the information may be discoverable under Ohio R. Crim. P. 16.

- 02-40 Except as provided in R.C. 149.43(A)(1) and R.C. 2950.081(B), sex offender registration information submitted to a county sheriff by a sex offender who is required to register with the sheriff under R.C. Chapter 2950 may be made available to the general public on the Internet through the sheriff's web site, provided such access to the public records does not endanger the safety and Integrity of the records or interfere with the discharge of the sheriff's duties.

A county sheriff that provides sex offender registration information to the general public on the Internet through a web site must provide a written notice containing the information set forth in R.C. 2950.11(B) to all the persons listed in R.C. 2950.11(A).

Except for the persons listed in R.C. 2950.11(A)(1) and 2 Ohio Admin. Code 109:5-2-03(A)(1)(c), a county sheriff may use e-mail to electronically transmit the written notice required by R.C. 2950.11(A). The persons listed in R.C. 2950.11(A)(1) and rule 109:5-2-03(A)(1)(c) must receive the written notice required by R.C. 2950.11(A) by regular mail or by personal delivery to their residences.

- 02-30 In the absence of facts indicating that the names and addresses of a county sewer district's customers fall within one of the exceptions to the definition of "[p]ublic record" contained in R.C. 149.43(A)(1), such names and addresses are public records that are subject to disclosure by the sewer district in accordance with R.C. 149.43.

- 02-14 Transcripts prepared pursuant to R.C. 2301.23 by a court reporter of the court of common pleas are public records under R.C. 149.43, unless the transcripts include or comprise a record that is excepted from the definition of "public record" in R.C. 149.43(A)(1). (1989 Op. Att'y Gen. No. 89-073, syllabus, paragraph two, approved and followed.) A party in a trial of a civil or criminal action in the court of common pleas that requests a photocopy of a transcript previously prepared pursuant to R.C. 2301.23 in the action is required to pay the compensation fixed by the judges of the court of common pleas under R.C. 2301.24 in order to obtain the photocopy of the transcript from the court.

Each party in a trial of a civil or criminal action in the court of common pleas that requests a transcript pursuant to R.C. 2301.23 is required to pay the court reporter of the court of common pleas who prepares the transcript the compensation fixed by the judges of the court of common pleas in accordance with R.C. 2301.24.

Each time that a party in a trial of a civil or criminal action in the court of common pleas requests a transcript pursuant to R.C. 2301.23, the court reporter of the court of common pleas who prepares the transcript is entitled to the entire compensation fixed by the judges of the court of common pleas in accordance with R.C. 2301.24, unless the party requests at the same time more than one transcript of the same testimony or proceeding. In such a situation, pursuant to R.C. 2301.25, the court reporter is entitled to the entire compensation fixed by the judges of the court of common pleas in accordance with R.C. 2301.24 for the first copy and to one-half the compensation allowed for the first copy for each additional copy .

A prosecuting attorney in a trial of a civil or criminal action in the court of common pleas or the court of appeals may not obtain a photocopy of a transcript previously prepared in the action from the court's file without paying the court reporter of the court of common pleas or the court of appeals, respectively, the compensation fixed by the judges of the court of common pleas in accordance with R.C. 2301.24 or the judges of the court of appeals in accordance with R.C.2501.17, R.C. 9.92(E) and 2933.41(G) respectively.

- 01-41 Information on a run sheet created and maintained by a county emergency medical services (EMS) organization that documents medication or other treatment administered to a patient by an EMS unit, diagnostic procedures performed by an EMS unit, or the vital signs and other indicia of the patient's condition or diagnosis satisfies the "medical records" exception of R.C. 149.43(A)(1)(a), and thus is not a "public record" that must be released to the public pursuant to R.C. 149.43(B). (1999 Op. Att'y Gen. No. 99-006, approved and followed.)

Information on a run sheet created and maintained by a county emergency medical services organization that documents medication or other treatment administered to a patient by an EMS unit, diagnostic procedures performed by an EMS unit, or the vital signs and other indicia of the patient's condition or diagnosis, and is relied upon by a physician for diagnostic or treatment purposes, is a communication covered by the physician-patient testimonial privilege of R.C. 2317.02(B), and thus is confidential information, the release of which is prohibited by law for purposes of R.C. 149.43(A)(1)(v). (1996 Op. Att'y Gen. No. 96-005 and 1999 Op. Att'y Gen. No. 99-006, approved and followed.) If a physician authorizes an emergency medical technician (EMT) to administer a drug or perform other emergency medical services, documentation of the physician's authorization and administration of the treatment or procedure by the EMS unit may also fall within the physician-patient testimonial privilege.

A written protocol, developed pursuant to R.C. 4765.41, without reference to a particular patient, for use by emergency squad personnel in cases where communication with a physician is not possible and the patient's life is in danger, does not establish, for purposes of R.C. 149.43(A)(1)(v), a physician-patient testimonial privilege between the physician who prepared the protocol and a patient who is treated by an EMS unit pursuant to that protocol, where there is no further communication by the EMS unit with the physician about the condition or treatment of the patient.

If an EMS unit administers a controlled substance to a patient, the patient's name and address documented on the run sheet will, pursuant to 11 Ohio Admin. Code 4729-9-14(A)(3) (Supp. 2000-2001), be deemed to meet a portion of the record keeping requirements of R.C. 3719.07, and thus will be confidential under the terms of R.C. 3719.13, if the run sheet becomes a permanent part of the patient's medical record. However, information on the run sheet that pertains to the administration of a drug that is not a controlled substance is not required by R.C. 3719.07 or other provision of R.C. Chapter 3719, and thus does not fall within the confidentiality requirements of R.C. 3719.13.

- 01-12 Data, photographs, maps, and other information created, collected, prepared, maintained, and published pursuant to R.C. 1504.02(A)(6) by the Department of Natural Resources' Division of Real Estate and Land Management are public records for purposes of R.C. 149.43.

If the Department of Natural Resources stores, produces, organizes, or compiles public records in such a manner that enhances the value of data or information included therein, it may charge for copies an amount that includes the additional costs of copying the information in such enhanced or "value-added" format.

R.C. 1501.01, which authorizes the director of the Department of Natural Resources to "publish and sell" data, reports, and information, does not authorize the director to charge an amount in excess of its actual cost for providing copies of the records created and maintained pursuant to R.C. 1504.02(A)(6).

- 00-46 A county recorder may make indexed public records available through the Internet, provided this does not endanger the records or interfere with the recorder's duties; a fee cannot be charged or collected to inspect or copy records from the Internet when a person does not use equipment maintained by the recorder; Internet access cannot be limited to real estate title companies.
- 00-36 Governor's Office of Veterans Affairs is prohibited by 32 C.F.R. § 45.3(e)(4) from releasing a copy of a Certificate of Release or Discharge from Active Duty (DD Form 214) without the written consent of the service member who is the subject of the DD Form 214.
- 00-21 R.C. 149.43, as amended by Am. Sub. S.B. 78, 123rd Gen. A. (1999) (eff. Dec. 16, 1999), imposes no duty upon any particular individual or office to notify public offices of a peace officer's residential and familial information or to update the database.

For purposes of R.C. 149.43, a child of a peace officer includes a natural or adopted child, a stepchild, and a minor or adult child.

Under the definition in R.C. 149.43(A)(7), peace officer residential and familial information encompasses only records that both contain the information listed in the statute and disclose the relationship of the information to a peace officer or a spouse, former spouse, or child of the peace officer, and those are the only records that come within the statutory exception to mandatory disclosure provided by R.C. 149.43(A)(1)(p). The exception for peace officer residential and familial information applies only to information contained in a record that presents a reasonable expectation of privacy, and does not extend to records kept by a county recorder or other public official for general public access. The general provisions of R.C. 149.43 excluding peace officer residential and familial information from mandatory disclosure do not operate to impose requirements or limitations on systems of public records that have been designed and established for general public access, where there is no reasonable basis for asserting a privacy interest and no expectation that the information will be identifiable as peace officer residential and familial information.

R.C.149.43 provides no liability for disclosing information that comes within an exception to the definition of "public record." Liability may result, however, from disclosing a record that is made confidential by a provision of law other than R.C.149.43.

- 99-012 When county office chooses to create customized document from existing public record it may only charge its actual cost, which does not include employee time or computer programming fees.
- 99-006 Information on a county EMS run sheet that does not satisfy either the medical records exception or the "catch-all" exception is a public record and must be disclosed pursuant to R.C. 149.43(B). HIV testing information contained in run sheets must not be disclosed.
- 97-038 Information submitted to county sheriff pursuant to R.C. Chapter 2950 by an individual who has been convicted of or pleaded guilty to a sexually oriented offense is a public record that must be made available for inspection to any person, except to the extent that such information comprises "records the release of which is prohibited by state or federal law."
- 97-010 Information in workers' compensation claim file that indicates that an individual has been diagnosed as having AIDS or an AIDS-related condition is not a public record that the Bureau of Workers' Compensation must disclose to the public.
- 96-034 County recorder not required to remove or obliterate Social Security account numbers from documents before recording those instruments.
- 96-005 Records collected for trauma system registry or emergency medical services incidence reporting system that constitute medical records or physician/patient privilege do not constitute public records; State Board of Emergency Medical Services not required to disclose such records; Board is required to maintain confidentiality of any patient-identifying information contained therein.
- 95-001 PASSPORT administrative agency operated by a private non-profit agency is a public office for purposes of Public Records Act and public body for purposes of Open Meetings Act.
- 94-089 Clerk of court cannot remove from a court file a pleading that is stricken from the record or an original pleading when a substitute pleading is filed in place of the original unless permitted by law or appropriate records commission.
- 94-084 A county human services department may release the address of a current recipient of aid to dependent children, general assistance, or disability assistance to a law enforcement agency that has authority to apprehend an individual under an outstanding felony warrant.
- 94-058 A township clerk is authorized to have access to estate tax returns or other records or information made confidential by R.C. 5731.90 in connection with the duties and responsibilities of the clerk; county treasurer who reports collection of estate tax to a township clerk is permitted to reveal the identity of

the taxpayer to the township clerk in the course of making the report.

- 94-046 All information pertaining to LEADS is not public record subject to disclosure.
- 94-006 If a person requesting copies of public records stored by the county recorder on microfiche or film presents a legitimate reason why paper copies are insufficient or impracticable and assumes the expense of making the copies in that medium, the county recorder is required to make available in the same medium a copy of the portions of the microfiche or film containing the public records.
- 93-038 When a court orders official records of a case sealed and such order does not require sealing of the pertinent official records of an administrative licensing agency, the agency is not required to seal its records; agency may seal its records containing information prohibited from disclosure pursuant to R.C. 2953.35(A).
- 93-010 Blueprints submitted to a county building inspection department for approval under 3791.04 are public records while in possession of the department.
- 92-076 Estate tax returns and other tax returns filed pursuant to R.C. 5731 are confidential and may be inspected or copied only as provided in R.C. 5731.90; township clerk has no authority to inspect or copy estate tax materials that are made confidential by R.C. 5731.90 except pursuant to court order for good cause shown.
- 92-071 A county board of mental retardation and developmental disabilities may not disclose to a parent organization the names of the board's clients or the names, addresses and phone numbers if the parents of the board's clients unless proper consent is obtained.
- 92-046 Reports and investigations pursuant to R.C. 2151.421 are confidential and dissemination of such information to an agency or organization is permitted only if the agency or organization has rules or policies governing the dissemination of confidential information consistent with O.A.C. 5101:2-34-38; O.A.C. 5101:2-34-38(F) permits disclosure of child abuse and neglect investigation information when the dissemination of information is believed to be in the best interest of an alleged child victim, his family, or caretaker, a child residing or participating in an activity at an out-of-home care setting where alleged abuse or neglect has been reported, or a child who is an alleged perpetrator.
- 92-005 A copy of a federal income tax Form W-2 prepared and maintained by a township as an employer is subject to inspection as a public record.
- 91-053 Federal tax return information filed by an individual pursuant to R.C. 3113.215(B)(5) and a local rule of court is a public record; confidentiality of federal income tax returns is inapplicable to income tax returns submitted to a court of common pleas by a litigant in connection with a child support determination or modification proceeding in that court.
- 91-003 County prosecuting attorney may release children services agency's child abuse or neglect investigation file only with written permission of agency executive secretary; executive secretary may only grant permission for good cause; child abuse or neglect investigation records are not public records.
- 90-103 Absent statutory authority, county recorder is without authority to delete documents from the records of the county recorder.
- 90-102 Public Records Act does not make confidential all records filed with Ohio taxation authorities; specific revised code sections make particular information confidential.
- 90-101 Records of juvenile offenders are not public records to the extent they are law enforcement investigatory records; sealed or expunged juvenile records are not public records.
- 90-099 Public school officials may not release information concerning illegal drug or alcohol use by students to law enforcement agencies where such information is personally identifiable information other than

directory information concerning any student attending a public school.

- 90-057 Subject to the provisions of R.C. 149.351(A), a county official may, pursuant to a valid contract, temporarily transfer physical custody of the records of his office to a private contractor to microfilm such records at the facilities of the contractor; contract must incorporate sufficient safeguards to prevent loss, damage, mutilation, or destruction of the records.
- 90-050 Names, addresses, and telephone numbers of employees of a public school district are public records open to inspection by any person; motive is irrelevant even if for commercial purposes.
- 90-007 Unless state or federal law prohibits disclosure to person who is subject of information kept by Ohio public office, R.C. Chapter 1347 permits person to inspect and copy such information. Chapter 1347 is not a provision of state law prohibiting the release of information under R.C. 149.43.
- 89-084 Records that do not constitute personal information systems as used in R.C. chapter 1347 are not subject to disclosure provision of chapter 1347; child abuse and neglect investigatory records maintained by public children services agency constitute investigatory material compiled for law enforcement purposes within the meaning of R.C. 1347(A)(1)(e).
- 89-073 Shorthand notes taken pursuant to R.C. 2301.20 and transcripts prepared pursuant to 2301.23 are public records unless they include or comprise a record excepted from the definition of public record.
- 89-055 A judicial determination that a particular entity is a public office under R.C. 149.011(A) is not determinative of the question whether that entity is a public office under R.C. 117.01(D) for purposes of audit and regulation by the Auditor of State.
- 89-042 Providing that properly approved record retention schedules under R.C. 149.333 permit disposal of paper or other original documents after recording by optical disk process, original documents may be destroyed and the recorded information stored on optical disks becomes the original of the public record.
- 88-103 Application to the county veterans service commission for assistance under R.C. chapter 5901 is a public record (now exempt, R.C. 121.22 and 149.43).
- 87-024 A community improvement corporation organized pursuant to R.C. chapter 724 is not a political subdivision as that term is defined in R.C. 2744.01(F).
- 87-010 A public school may not forward personal information regarding the first-time use of drugs or alcohol by a student on school property to local law enforcement agencies without the consent of the student's parent or guardian, or the student, where appropriate.
- 86-096 Disclosure of the number of persons employed by an applicant at the time of application for a loan is prohibited where such information is submitted to the Director of Development, the Controlling Board, or the Minority Development Financing Commission in connection with a loan application.
- 86-089 A personnel file maintained by an exempted village school district is a public record except to the extent such file may include records that are excepted from the definition of the term public record.
- 86-069 A letter requesting an advisory opinion from the Ohio Ethics Commission under R.C. 102.08 and the documents held by the Commission concerning such advisory opinion are public records.
- 86-033 The Unemployment Compensation Board of Review may, in accordance with the specific terms of the schedule of retention pertaining thereto and approved by the State Records Commission, destroy or dispose of its hearing records six months after a decision by the Board of Review becomes final; the hearing records shall be destroyed or disposed of within 60 days after the expiration of the six-month retention period, unless, in the opinion of the Board of Review, they pertain to any pending case, claim or action.

- 85-087 Appraisal cards that are kept by the office of the county auditor and that contain information used in the evaluation and assessment of real property for purposes of taxation are subject to public inspection and disclosure of such documents does not violate either R.C. 5715.49 or R.C. 5715.50.
- 84-084 Client records held by the Rehabilitation Services Commission in connection with the state vocational rehabilitation services program are not public records and cannot be disclosed without the consent of the person to whom the records relate.
- 84-079 Grand jury subpoenas while in possession of the clerk of courts prior to issuance in accordance with R.C. 2939.12 are not public records.
- 84-077 Under R.C. 1347.08, a juvenile court must permit a juvenile or a duly-authorized attorney who represents the juvenile to inspect court records pertaining to the juvenile unless the records are exempted under R.C. 1347.04(A)(1)(e), .08(C) or (E)(2). Under Juv. R. 37(B), the records may not be put to any public use except in the course of an appeal or as authorized by order of the court.
- 84-015 The director of the Ohio Department of Mental Retardation and Developmental Disabilities may make available to persons approved by the director the medical, psychological, social, and educational records of persons who have been nominated for protective services pursuant to R.C. 5123.58.
- 83-100 The Ohio State Board of Psychology does not have the authority to expunge or actually destroy its official records except as provided by law; not required to seal any of its official records unless an order sealing the same specifically directs to do so by the court; may seal information or data contained in its official records which are not public records within meaning of 149.43(A)(1).
- 83-099 Since the examinations administered by the State Board of Examiners of Architects are records under R.C. 149.40, and there is no law prohibiting the destruction of such examinations or requiring the retention of such examinations for a specified period of time, such examinations may be disposed of in accordance with a schedule of records retention or an application for records disposal approved by the State Records Commission pursuant to R.C. 149.32.
- 83-071 A county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of Aid to Families with Dependent Children or poor relief unless such law enforcement personnel are prosecuting fraud or seeking child support and are directly connected with the enforcement of the Food Stamp Act or regulations, other federal assistance programs or general relief programs or the applicant or recipient has consented in writing.
- 83-003 Materials of all varieties (including but not limited to, correspondence, memorandums, notes, reports, audio and video recordings, motion picture films, and photographs) which are received by public officials and employees, or created and maintained by them at public expense, are considered records if they serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office.
- 82-104 Birth and death records kept by a probate court pursuant to R.C. 2101.12 are public records which must be made available to any member of the general public as required by R.C. 149.43, regardless of the motive which such member of the public has for inspecting such records.
- 81-051 Neither federal law nor R.C. 149.43 exempts from disclosure records concerning amounts paid to individual providers by the state of Ohio in connection with the Medicaid program.
- 81-043 A news-hook maintained by a city police department is not a public record under the terms of R.C. 149.43, and need not, therefore, be disclosed to all members of the public for any reason whatsoever.
- 81-038 With the exception of confidential law enforcement investigatory records, trial preparation records, and adoption records, the Ohio Civil Rights Commission must disclose to an employee personnel information that is subject to the provisions of R.C. chapter 1347, including medical records and records the release of which is prohibited by state or federal law, unless state or federal law expressly prohibits disclosure

of such information even to the person who is the subject of the information unless it is determined that the disclosure of medical records to the employee may have an adverse effect upon the employee, the Commission must disclose the medical records to a physician, psychiatrist, or psychologist designated by the employee, rather than to the employee himself.

- 81-019 The faculty inventory and the report on faculty services maintained by the Ohio Board of Regents on computer tapes are not public records as 20 U.S.C. 1 232(b)(1) restricts the public release of such.
- 81-014 Complaints filed with the Division of Real Estate concerning violations of R.C. chapter 4735 except those that qualify as confidential law enforcement investigatory records are public records.
- 81-006 Employee address and payroll records maintained by a board of township trustees are public records.
- 80-103 Trial preparation records include only those records specifically compiled by a governmental unit after the unit's attention has focused upon a particular person or claim, in reasonable anticipation of a civil or criminal proceeding and does not include those records routinely compiled by a governmental unit as a matter of common practice.
- 80-096 Unless made confidential by law, all records maintained by a governmental agency that are necessary to the agency's execution of its duties and responsibilities are public records; public records must be disclosed upon request to any member of the public for any reason; records made confidential by law and subject to Ohio's Privacy Act may not be disclosed to the public at large, but must be disclosed to the person who is the subject of the records; records pertaining to confidential law enforcement investigations, trial preparations, and adoptions may not be disclosed to either the public at large nor to the person who is the subject of the records, except adoption records may be disclosed with consent of the court.
- 79-023 As used in R.C. 149.99, "each offense" means each transaction that results in the removal, destruction, mutilation, transfer or other disposal of records or other damage to records in violation of R.C. 149.351.
- 77-075 Pursuant to R.C. 4112.05(B), the Ohio Civil Rights Commission may not reveal the final terms of conciliation, written or unwritten, to members of the general public who are not parties to the matters conciliated.
- 77-043 It is not a violation of R.C. 5122.31 to permit unrestricted access to the general and separate indices of mental illness matters filed in the probate court by the public as they are public records.



APPENDIX F

Ohio Attorney General Opinions

Interpreting Ohio's Open Meetings Act

The following are summaries of those Opinions of the Ohio Attorney General that have addressed or interpreted the Open Meetings Act. You must be aware that the validity of any one opinion may have been affected by a subsequent court opinion or statutory change.

- 00-035 Public hearings conducted by a township board of zoning appeals to consider the matters described in R.C. 519.14(A)-(C) are not "meetings" for purposes of R.C. 121.22, but, rather, are quasi-judicial proceedings. (1985 Op. Atty. Gen. No. 85-044 (syllabus, paragraph two), overruled.); followed by *Groeff-Knight v. Brd. of Appeals of Liberty Twnshp*, (June 14, 2004) Fifth Dist. No. 03CAH08042.
- 96-010 Absent adoption of a rule by a county board of mental retardation and developmental disabilities specifying the day on which its annual organizational meeting is to be held, the board's annual organizational meeting is not one of the regularly scheduled meetings for purposes of the removal provision of R.C. 5126.04.
- 95-030 A district advisory council, established pursuant to R.C. 3709.03 has inherent authority to call special meetings of the council by acting through the concurrence of a majority of its members with respect to a particular meeting or by promulgating a procedural rule authorizing specified officers or members of the council to call special meetings; the board of health of a general health district and the state director of health, as expressly provided in R.C. 3709.03, are the only other public authorities with power to call a special meeting of the district advisory council.
- 95-001 A PASSPORT administrative agency that is operated by a private not-for-profit agency pursuant to 14 Ohio Admin. Code 51101:3-31-03(A)(1) is a public office as defined at R.C. 149.011(A) for purposes of the public records law and a public body as defined at R.C. 121.22 for purposes of the open meetings law.
- 94-096 A committee of private citizens and various public officers or employees that is established by the board of health of a general health district for the purpose of advising the board on matters pertaining to the administration of a state or federal grant program is a public body; where the establishment of the committee is not required or authorized by the terms of the grant or any action of the general health district board, such committee is not a public body.
- 94-014 The panel created by the Erie County Court of Common Pleas in local rule 17.08(F) is not subject to the open meeting requirements.
- 93-012 The Industrial Commission is a public body as defined in R.C. 121.22(B)(1) and is therefore subject to the open meeting requirements of R.C. 121.22; R.C. 4121.36 provides that orders, rules, memoranda, and decisions of the Industrial Commission with respect to hearings conducted under R.C. 4121.36 may be adopted either in a meeting of the commission or by circulation to individual commissioners and thereby establishes an exception to the requirement of R.C. 121.22 that the Industrial Commission adopt all resolutions, rules, or formal actions in an open meeting.
- 92-078 The board of directors of a county agricultural society is a public body subject to the open meeting requirements of R.C. 121.22.
- 92-077 An advisory committee legislatively created by a board of county commissioners to make recommendations to the board on matters relating to a proposed county jail is a public body subject to the provisions of R.C. 121.22.
- 92-065 A housing advisory board created by a county under R.C. 176.01 is a public body for purposes of R.C. 121.22.

- 92-032 A board of township trustees must conduct its open meetings in a public meeting place, as determined in its fair and impartial discretion; board of township trustees may not conduct an executive session from which the public is excluded in order to deliberate about a proposed zoning change, even if the board ultimately votes on that matter in an open meeting, unless the deliberations were solely for the purpose of discussing one or more of the six subject areas listed in R.C. 121.22(G).
- 92-028 Unless a statutory or constitutional provision expressly grants a specific officer of a public body the power to make the decision to call a meeting of such body, the power to make the decision is vested in the body itself and not in an individual officer; the decision that a meeting is necessary requires a concurrence of a majority of the body; pursuant to R.C. 5715.09, the secretary of the board of revision has the power to call a meeting of the board as necessary.
- 88-087 A board of township trustees has authority to adopt reasonable rules for the conduct of its meetings; such rules may not prohibit audio and video recording of township proceedings, but may regulate such recording to promote the orderly transaction of business without unreasonably interfering with the rights of those present.
- 88-029 The Public Utilities Commission Nominating Council is a public body as defined in R.C. 121.22.
- 88-003 The word “property” as used in R.C. 121.22(G)(2) means real and personal property, which includes both tangible and intangible property; the PERS may discuss in executive session the purchase or sale of tangible or intangible property authorized under R.C. 145.11, including but not limited to such items as bonds, notes, stocks, shares, securities commercial paper, and debt or equity interests.
- 86-091 The Ohio Legal Rights Service Commission is a public body for purposes of R.C. 121.22.
- 85-048 The open meeting requirements of R.C. 121.22 and R.C. 305.09 are satisfied where a board of county commissioners convenes a public meeting at which only two of the three members are present and the third member of the board, who is not physically present, participates in such board proceedings by means of communications equipment (prior to enactment of R.C. 121.22(C)).
- 85-046 In its development of amendments to the state health plan, the Statewide Health Coordinating Council (SHCC), must, pursuant to R.C. 3702.56(C), following the procedures set forth in R.C. 119.03(A), (B), (C), and (H), with the exception of requirements imposed pursuant to R.C. 119.03(D), (E), (F), (G), and (I); in particular, the SHCC must follow the public notice and hearing procedures of R.C. 119.03(A) and (C) and must file proposals with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review under R.C. 119.03(B) and (H); but proposed amendments to the state health plan are not subject to invalidation by the General Assembly pursuant to R.C. 119.03(I).
- 85-044 A township board of zoning appeals is a public body for purposes of R.C. 121.22; a township board of zoning appeals may not conduct, in an executive session, deliberations concerning a zoning appeal heard pursuant to R.C. 519.14(A) or (B). (Syllabus, paragraph two, overruled by 2000 Op. Atty. Gen. No. 00-035.)
- 82-081 A soldiers’ relief commission established pursuant to R.C. 5901.02 is a public body for the purposes of R.C. 121.22.
- 81-005 Because the superintendents’ offices are, pursuant to R.C. 3319.19, to be used by the county board of education when it is in session, and because the board’s meetings are required by R.C. 121.22 to be open to the public, the duty of the board of county commissioners to provide and equip offices includes the duty to provide some type of conference facility.

- 80-083 A county central committee of a political party is a public body and its members are public officials for purposes of R.C. 121.22; convening the committee pursuant to R.C. 305.02 is a meeting as defined by R.C. 121.22(B)(2), even when the number of members present is fewer than the majority of the total membership; the committee may discuss appointment of a person pursuant to its duties under R.C. 305.02 in executive session under R.C. 121.22(G), however, final voting on such appointment must be held in a public meeting; convening the committee for conducting purely internal party affairs unrelated to the committee's duties of making appointments to vacant public offices is not a meeting as defined by R.C. 121.22(B)(2).
- 79-110 The Safety Codes Committee, created by resolution of the Industrial Commission for the purpose of reviewing safety code requirements and drafting revisions for consideration by the Industrial Commission, is not a public body for the purposes of R.C. 121.22.
- 79-061 The governing board of a community improvement corporation, organized in the manner provided in R.C. 1702.04 and R.C. 1724.01 to R.C. 1724.09, inclusive, does not constitute a public body for the purposes of R.C. 121.22 unless designated an agency of a county, municipal corporation, or any combination thereof pursuant to R.C. 1724.10.
- 78-059 The Internal Security Committee, established by the Industrial Commission and the Bureau of Workers' Compensation pursuant to R.C. 4121.22(D), is a public body for purposes of R.C. 121.22.
- 77-075 Pursuant to R.C. 4112.05(B), the Ohio Civil Rights Commission may not reveal the final terms of conciliation, written or unwritten, to members of the general public who are not parties to the matters conciliated.



APPENDIX G

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