Protecting ★ the ★ Unprotected

Ohio Sunshine Laws

2025 An Open Government Resource Manual

Dave Yost
Ohio Attorney General

OHIO SUNSHINE LAWS
2025
An Open Government
Resource Manual

My Fellow Ohioans,

Transparency and accountability are essential elements of good governance.

As citizens, we all have a right to know what our elected officials are doing and where our tax dollars are going. Ohio's Sunshine Laws serve as the pathway to public scrutiny — and that openness, in turn, helps discourage corruption and fraud.

That's why I look forward each year to the release of the Ohio Sunshine Laws Manual, an invaluable resource for Ohioans and their elected officials alike. The 2025 edition of the manual, like previous versions, details both the rights of citizens to oversee their elected officials and the duty of those officials to operate openly.

The manual, compiled by my office's Public Records Unit, covers both the Ohio Public Records Act and the Ohio Open Meetings Act, including law changes and legal decisions made since the previous edition.

In addition to producing the manual, the Public Records Unit partners with the Ohio Auditor's Office to provide free Sunshine Laws training statewide. Ohio law mandates that public officials (or an official's designee) complete this training at least once per elected term.

New in the 2025 Sunshine Laws Manual are some notable changes to the Public Records Act approved by the General Assembly since the release of last year's guidebook. Effective April 9, 2025, those changes center on the enforcement provisions of the act, new exemptions to public-records disclosure, and a provision that gives law enforcement agencies the leeway to charge for producing video records.

Also new are some formatting updates to the online version of the annual. Recognizing that Ohioans increasingly rely on the online guidebook, we introduced endnotes that are easier to read and navigate and made the online manual searchable, so you can more easily find the information you need.

I have long believed in the democratic tenet of government belonging to the people. That means public records must remain open and accessible.

No public servant should want it any other way.

Yours,

Dave Yost
Attorney General

Readers may find the latest edition of this publication and the most updated public records and open meetings laws by visiting the following web sites. To request additional paper copies of this publication, contact:

Ohio Attorney General
Public Records Unit
Re: Sunshine Manual Request
30 E. Broad St., 16th Floor
Columbus, Ohio 43215
(800) 282-0515 or (614) 466-2872
www.OhioAttorneyGeneral.gov/Sunshine-Laws

or

Ohio Auditor of State
Open Government Unit
Legal Division
88 E. Broad St., 9th Floor
Columbus, Ohio 43215
(800) 282-0370 or (614) 466-4514
www.OhioAuditor.gov

We welcome your comments and suggestions.

Acknowledgments

Warm thanks to the employees of the Ohio Attorney General whose contributions have made this publication possible over the years, with special recognition to the authors and editors of this edition:

Ohio Attorney General's Public Records Unit

Heather L. Buchanan
Director of Open Government

Byers B. Emmerling, Mark D. Tucker, Michael A. Walton, and Ann Yackshaw
Assistant Attorneys General

MacKenzie S. Clayton
Administrative Staff

Nathan Owens
Senior Records Manager

TABLE OF CONTENTS

OVERVIEW OF THE OHIO PUBLIC RECORDS ACT 1

I. CHAPTER ONE: PUBLIC RECORDS DEFINED 1

A. WHAT ARE "RECORDS"? 1
1. Statutory definition – R.C. 149.011(G) 1
2. Records and non-records 1
3. The effect of "actual use" 3
4. "Is this item a record?" – common applications 3
B. WHEN IS A RECORD "KEPT BY" A PUBLIC OFFICE? 4
C. WHAT IS A "PUBLIC OFFICE"? 5
1. Statutory definition – R.C. 149.011(A) 5
2. Quasi-agency: a private entity can be "a person responsible for public records" 5
3. Functional equivalent: a private entity can be a "public office" 6
4. Public office is responsible for its own records 6

II. CHAPTER TWO: REQUESTING PUBLIC RECORDS 14

A. WHAT ARE "RECORDS"? 14
1. A public office has a duty to organize and maintain its public records 14
2. "Any person" may make a request 14
3. Unless a specific law states otherwise, requests can be made for any reason and made in any way 14
4. The request must be for the public office's existing records 15
5. A request must be specific enough for the public office to reasonably identify responsive records 15
6. Denying and clarifying an ambiguous or overly broad request 16
7. Optional negotiation when knowing the identity or purpose of a request, or having the request in writing, would assist the office in responding 16
8. Requester can choose media on which copies are made 16
9. Requester can choose pick-up, delivery, or transmission of copies; public office may charge delivery costs 16
10. Prompt inspection, or provide copies within a reasonable period of time 17
11. Inspection at no cost during regular business hours 17
12. Copies, and delivery or transmission, "at cost" 17
13. Cost for law enforcement video recordings 18
14. What responsive records can the public office withhold? 18
15. Denial of a request, redaction, and a public office's duties of notice 19
B. STATUTES THAT MODIFY GENERAL RIGHTS AND DUTIES 20
1. Modified access to specific records 20
2. Modified access for specific public offices 20
3. Modified access to certain public offices' records 21
4. Modified access for specific requesters 21
C. GO "ABOVE AND BEYOND" AND NEGOTIATE 25
1. Think outside the box – go above and beyond your duties 25
2. How to find a win-win solution: negotiate 25

III. CHAPTER THREE: EXEMPTIONS TO RELEASE OF PUBLIC RECORDS 32

A. EXEMPTIONS CANNOT BE CREATED IN A CONTRACT 32
B. CATEGORIES OF EXEMPTIONS 32
1. Mandatory exemptions: public office must not release 32

2. *Discretionary exemptions: public office may choose to release or withhold* ... *33*
C. WAIVER OF A DISCRETIONARY EXEMPTION ... 33
D. APPLYING EXEMPTIONS ... 33
E. EXEMPTIONS LISTED IN THE PUBLIC RECORDS ACT ... 33
F. CATEGORIES OF EXEMPTIONS CREATED IN OTHER LAWS ... 43
1. *Exemptions affecting personal privacy* ... *43*
2. *Juvenile records* ... *46*
3. *Student records under the Family Education Rights and Privacy Act* ... *46*
4. *Public safety and public office security* ... *47*
5. *Exemptions related to litigation* ... *48*
6. *Intellectual property* ... *51*
7. *Records of inmates* ... *52*

IV. CHAPTER FOUR: LAW ENFORCEMENT RECORDS ... 63

A. CLEIRS: CONFIDENTIAL LAW ENFORCEMENT INVESTIGATORY RECORDS EXEMPTION ... 63
1. *Step one: pertains to "a law enforcement matter"* ... *63*
2. *Step two: high probability of disclosing certain information* ... *64*
3. *Expiration of CLEIRs exemption* ... *66*
4. *Law enforcement records not covered by CLEIRs* ... *66*
B. OTHER EXEMPTIONS COMMON IN LAW ENFORCEMENT ... 67
1. *Body-worn and dashboard camera recordings* ... *67*
2. *EMS run sheets* ... *69*
3. *Juvenile law enforcement records* ... *69*
4. *Other exemptions* ... *69*
C. EXEMPTIONS APPLICABLE TO LAW ENFORCEMENT OFFICERS ... 71
1. *Background investigations, evaluations, and disciplinary records* ... *71*
2. *Medical records* ... *72*
3. *Physical fitness, psychiatric, and polygraph examinations* ... *72*
4. *Bargaining agreements* ... *72*
5. *Residential and familial information of covered professions* ... *73*
6. *Constitutional right to privacy* ... *74*
D. EXEMPTIONS APPLICABLE TO VICTIMS AND WITNESSES ... 74
1. *Examples of exemptions applicable to victims and witnesses* ... *74*
2. *Marsy's Law* ... *75*
E. MODIFIED ACCESS TO RECORDS FOR PRISON INMATES ... 77

V. CHAPTER FIVE: OTHER CATEGORIES OF RECORDS ... 86

A. EMPLOYMENT RECORDS ... 86
1. *Non-records* ... *86*
2. *Names of public officials and employees* ... *86*
3. *Resumes and application materials* ... *86*
4. *Background investigations* ... *87*
5. *Evaluations and disciplinary records* ... *87*
6. *Employee assistance program (EAP) records* ... *87*
7. *Physical fitness, psychiatric, and polygraph examinations* ... *87*
8. *Medical records* ... *87*
9. *Student records under the Family Education Rights and Privacy Act* ... *87*
10. *Social security numbers and taxpayer records* ... *88*

11. Designated public service workers ... *88*
12. Bargaining agreement provisions ... *88*
13. Employee ID numbers ... *88*
PERSONNEL FILES ... *89*
B. COURT RECORDS ... 90
1. Courts' supervisory power over their own records ... *90*
2. Application of Rules of Superintendence and Public Records Act to Court Records ... *91*
3. Rules of court procedure ... *91*
4. Sealing statutes ... *91*
5. Restricting public access to a case document ... *92*
6. General court records retention ... *92*
C. HIPAA AND HITECH ... 92
1. HIPAA definitions ... *92*
2. HIPAA does not apply when the Public Records Act requires release ... *93*
D. OHIO PERSONAL INFORMATION SYSTEMS ACT ... 93
1. Definitions that apply to the information covered by PISA ... *94*
2. Sanctions for violations of PISA ... *94*

VI. CHAPTER SIX: ENFORCEMENT AND LIABILITIES ... 100

A. PRE-FILING COMPLAINT MUST BE SERVED ON PUBLIC OFFICE ... 100
B. MANDAMUS LAWSUIT ... 101
1. Parties ... *101*
2. Where to file ... *101*
3. When to file ... *101*
4. Discovery ... *101*
5. Requirements to prevail ... *102*
6. Liabilities of the public office ... *102*
C. COURT OF CLAIMS PROCEDURE ... 104
1. Filing procedure and initial review ... *105*
2. Mediation ... *105*
3. Expedited briefing ... *105*
4. Requirements to prevail ... *106*
5. Appeals from the Court of Claims ... *106*
D. LIABILITIES APPLICABLE TO EITHER PARTY ... 107
E. VEXATIOUS LITIGATORS ... 107

VII. CHAPTER SEVEN: OTHER OBLIGATIONS OF A PUBLIC OFFICE ... 114

A. RECORDS MANAGEMENT ... 114
1. Records management programs ... *115*
2. Records retention and disposition ... *116*
3. Liability for unauthorized destruction, damage, or disposal of records ... *116*
B. RECORDS MANAGEMENT – PRACTICAL POINTERS ... 117
1. Fundamentals ... *117*
2. Managing records ... *118*
C. HELPFUL RESOURCES FOR LOCAL GOVERNMENT OFFICES: OHIO HISTORY CONNECTION/STATE ARCHIVES – LOCAL GOVERNMENT RECORDS PROGRAM ... 120
D. HELPFUL RESOURCES FOR STATE GOVERNMENT OFFICES ... 120
1. Ohio Department of Administrative Services records management program ... *120*

2. *The Ohio History Connection, State Archives* *120*
E. HELPFUL RESOURCES FOR ALL GOVERNMENT OFFICES 121
1. *Ohio Electronic Records Committee* *121*
2. *Statements on Maintaining Digitally Imaged Records Permanently* *121*
F. PUBLIC RECORDS POLICY 121
G. REQUIRED PUBLIC RECORDS TRAINING FOR ELECTED OFFICIALS 122

OVERVIEW OF THE OHIO OPEN MEETINGS ACT 126

WHAT IS A "PUBLIC BODY"? 126

THE OHIO OPEN MEETINGS ACT 127

VIII. CHAPTER EIGHT: "PUBLIC BODY" AND "MEETING" DEFINED 128

A. "PUBLIC BODY" 128
1. *Statutory definition – R.C. 121.22(B)(1)* *128*
2. *Identifying public bodies* *128*
3. *Applying the definition of "public body"* *128*
4. *Public bodies that are never subject to the Open Meetings Act:* *129*
5. *Public bodies that are sometimes subject to the Open Meetings Act:* *129*
B. "MEETING" 130
1. *Definition* *130*
2. *Applying the definition of "meeting"* *133*

IX. CHAPTER NINE: DUTIES OF A PUBLIC BODY 141

A. OPENNESS 141
1. *Where meetings may be held* *141*
2. *Method of voting* *141*
3. *Right to hear but not to be heard or to disrupt* *141*
4. *Audio and video recording* *142*
B. NOTICE 142
1. *Types of meetings and notice requirements* *142*
2. *Rules for giving notice* *143*
3. *Notice by publication* *143*
C. MINUTES 143
1. *Content of minutes* *143*
2. *Making minutes available "promptly" as a public record* *144*
3. *Medium on which minutes are kept* *144*
D. MODIFIED DUTIES OF PUBLIC BODIES UNDER SPECIAL CIRCUMSTANCES 144
1. *Declared emergency* *144*
2. *Municipal charters* *144*

X. CHAPTER TEN: EXECUTIVE SESSION 150

EXECUTIVE SESSION OVERVIEW 150
A. GENERAL PRINCIPLES 150
B. PERMISSIBLE DISCUSSION TOPICS IN EXECUTIVE SESSION 151
1. *Certain personnel matters when particularly named in motion* *151*
2. *Purchase or sale of property* *152*
3. *Pending or imminent court action* *152*
4. *Collective bargaining matters* *152*

5. *Matters required to be kept confidential* ... *152*
6. *Security matters* ... *152*
7. *Hospital trade secrets* ... *152*
8. *Confidential business information of an applicant for economic development assistance* ... *152*
9. *Veterans Service Commission applications* ... *153*

C. PROPER PROCEDURES FOR EXECUTIVE SESSION ... 153
1. *The motion* ... *153*
2. *The roll call vote* ... *153*

XI. CHAPTER ELEVEN: ENFORCEMENT AND REMEDIES ... 157

A. ENFORCEMENT ... 157
1. *Injunction* ... *157*
2. *Mandamus* ... *158*
3. *Quo warranto* ... *158*

B. REMEDIES ... 158
1. *Invalidity* ... *158*
2. *Mandatory civil forfeiture* ... *159*
3. *Court costs and attorney fees* ... *159*

GLOSSARY ... 164

HELPFUL RESOURCES ... 165

Overview of the Ohio Public Records Act

Since it was passed in 1963, the Public Records Act has enshrined in Ohio law the ideals of transparent and open government. Through access to state and local government records, the Act ensures that citizens can see and know what their elected officials and government offices are doing. This Manual is an in-depth guide to the Public Records Act and explains how the important principles of transparent government work in action.

Ohio's Public Records Act defines what makes a record a "public record," the obligations of a public office, and the rights and obligations of a public records requester. The Act itemizes certain records that are exempt from disclosure and incorporates exemptions that exist in other state and federal statutes.[1] Last, the Act details how a requester can challenge a public office's response to a public records request.

Any person can request to inspect or obtain copies of public records from a public office that keeps those records. Unless a specific law states otherwise, a requester does not have to provide a reason for wanting records, provide their name, or make the request in writing. However, the request has to be clear and specific enough for the public office to reasonably identify what public records to produce. A public office can deny a request if it is not reasonably clear but must explain to the requester how it organizes and maintains its records so the requester can revise the request. When it receives a proper public records request, unless all or part of a record is exempt from release, a public office must promptly provide inspection of the requested records or copies of the records (at cost or no cost) within a reasonable period of time. There is not a set time by which a public office must respond to a request.

A public office must organize and maintain its records in a way that meets its duty to respond to public records requests. A component of satisfying this requirement is having records retention schedules that cover all records of the office and having the schedules readily available to the public. A public office can properly deny a request if the office no longer keeps the records pursuant to its records retention schedules.

There are many exemptions that allow — or sometimes require — a public office to withhold a record or redact a portion of a record. Some exemptions are in the Public Records Act, others come from state or federal laws. When a public office invokes one of these exemptions, the office may only withhold a record or part of a record that is clearly covered by the exemption. The public office must also tell the requester the legal basis — statutory or case law authority — of the exemption.

If a requester believes that a public office violated the Public Records Act, the person can file a lawsuit against the office, either on his or her own or through a private attorney. Before filing a lawsuit, a requester must first serve a complaint on the public office or person responsible for public records on a form prescribed by the Clerk of the Court of Claims.[2] The public can cure or otherwise resolve the complaint within three days; if it fails to do so, the requester can proceed with a lawsuit. The requester may choose to either (1) file a complaint in the Court of Claims, where there is an expedited procedure for resolving public records disputes; or (2) file a mandamus action in a court of common pleas, court of appeals, or the Supreme Court of Ohio. An action in the Court of Claims involves (1) filing a specific complaint form with a $25 fee, (2) attaching the original request and any written responses, (3) mediation, and (4) if mediation is unsuccessful, a "fast track" litigation process that is overseen by a special master. The litigation process has a short briefing schedule and limited evidence.

---

[1] Ohio's state and local government offices follow Ohio's Public Records Act, R.C. 149.43. The federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, does not apply to state and local offices. *See State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-115, ¶ 38. However, some federal statutes contain exemptions that apply to public records of state and local governments in Ohio.
[2] R.C. 149.43(C)(1), effective as of April 9, 2025.

I. Chapter One: Public Records Defined

The Public Records Act applies *only* to "public records," which are defined as "records kept by any public office."[3] When making or responding to a public records request, it is important to first determine whether the requested information comes under the definition of "public records," and if so, whether it is "kept by" an organization that meets the definition of a "public office." This Chapter is about these key terms and definitions and how courts apply them.

A. What Are "Records"?

1. Statutory definition – R.C. 149.011(G)

The term "records" includes "any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in [R.C. 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."

2. Records and non-records

If information in a document or other medium does not meet all three parts of the definition of a "record," then it is a non-record and is *not* subject to the Public Records Act or Ohio's records retention requirements. The next paragraphs explain how items in a public office might meet or fail to meet the three parts of the definition of a record in R.C. 149.011(G).[4]

Part 1: "[A]ny document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code . . ."

This first element of the definition of a record focuses on the existence of a recording medium; in other words, something that contains information in fixed form. The physical form of an item does not matter so long as it can record information. A paper or electronic document, email,[5] video,[6] map, blueprint, photograph, voicemail message, text message,[7] or any other reproducible storage medium could be a record or have record information on it. This element is broad and with the exemption of one's thoughts and unrecorded conversations, most public office information is stored on a fixed medium of some sort. A request for unrecorded or not-currently-recorded information (a request for advice, interpretation, referral, or research)[8] made to a public office, rather than a request for a specific, existing document or other medium containing such information, would fail this part of the definition of a "record."[9] A public office has discretion to determine the form in which it will keep its records.[10] The Public Records Act requires only that a public office provide "copies" of requested records at cost and within a reasonable time; it does not require a public office to provide certified copies.[11]

Part 2: ". . . created or received by or coming under the jurisdiction of any public office . . ."

It is usually clear when items are created or received by a public office. However, even if an item is not in the public office's physical possession, it may still be considered a "record" of that office.[12] If records are held or created by another entity that is performing a public function for a public office, those records may be "under the jurisdiction of any public office."[13]

Part 3: "… which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

In addition to obvious non-records such as junk mail and electronic "spam," some items in the possession of a public office do not meet the definition of a record because they do not "document the activities of a public office."[14] It is the information or content, not the medium on which it exists, that makes a document a record of a public office.[15] The Supreme Court of Ohio has explained that "disclosure [of non-records] would not help to monitor the conduct of state government."[16]

The following are examples of information that courts have held does not document the activities of a public office:

- Public employee home addresses kept by the employer solely for administrative (i.e., management) convenience,[17]
- Retired municipal government employee home addresses kept by the municipal retirement system,[18]
- Personal calendars and appointment books,[19]
- Juror contact information and other juror questionnaire responses,[20]
- Personal information about children who use public recreational facilities,[21]
- Personal identifying information in housing authority lead-poisoning documents[22]
- Non-record items and information contained in employee personnel files,[23]
- Mailing and email addresses and telephone numbers of a university's athletic season ticketholders,[24] and
- Personal correspondence.[25]

Proprietary software needed to access stored records on magnetic tapes, or other similar format, is a means to provide access, but is not itself a record because it does not document the activities, etc., of a public office.[26] The Attorney General has opined that a piece of physical evidence in the hands of a prosecuting attorney (e.g., a cigarette butt) is not a record of that office.[27]

Courts have held, however, that the following information does document the activities of the office, and thus meets the definition of a public record:

- A public office's newsletter email and mail distribution lists,[28]
- Employee survey results,[29] and
- The names and contact information of some licensees,[30] contractors,[31] lessees,[32] customers,[33] and other non-employees of a public office.[34] However, that a commercial transaction between a public office and a person — such as when a person buys a ticket to a football game at a university — does not, alone, make the person's personal information public record.[35]

These examples are not exclusive, and whether information documents the activities of the public office for purposes of the Public Records Act will depend on the facts and circumstances of each situation.

3. The effect of "actual use"

An item received by a public office is not automatically a record because the office *could* use the item to carry out its duties and responsibilities.[36] Rather, if the public office *actually* uses the item, it may document its activities and become a record.[37] For example, when a school board invited job applicants to send applications to a post office box, applications sent to the post office box did not become records of the office until the board retrieved and reviewed them, or otherwise used and relied on them.[38] How an office uses information may transform non-record information into a public record. For example, personal correspondence that an office uses to discipline an employee qualifies as a "record."[39]

4. "Is this item a record?" – common applications

a. Email

As electronic documents, emails are items containing information stored on a fixed medium (the first part of the definition). If an email is received by, created by, or comes under the jurisdiction of a public office (the second part of the definition), then its status as a record depends on the content of the message. If an email created by, received by, or coming under the jurisdiction of a public office also serves to document the activities of the public office, then it meets all three parts of the definition of a record.[40]

The Court of Claims held that communications of public employees to or from private email accounts are subject to the Public Records Act.[41] The issue is analogous to mailing a record from one's home, versus mailing it from the office — the location from which the item is sent does not change its status as a record.

Records transmitted via email, like all other records, must be maintained in accordance with the office's relevant records retention schedules, based on content.[42]

b. Text messages

Like email messages, a text message may be a public record if the content or information in the message documents the activities of the public office.[43] The Ohio Court of Claims held that text messages on public employees' personal phones were public records because the content of the messages documented the activities of the office.[44]

c. Notes

Not every piece of paper on which a public official or employee writes something meets the definition of a record.[45] Personal notes generally do not constitute records.[46] Employee notes are not public records if kept as personal papers, not official records; kept for the employee's own convenience (for example, to help recall events); and other employees did not use or have access to the notes.[47]

Such personal notes do not meet the third part of the definition of a record because they do not document the activities, etc., of the public office. The Supreme Court has held in several cases that, in the context of a public court hearing or administrative proceeding, personal notes that meet the above criteria need not be retained as records because no information will be lost to the public.[48] However, if any one of these factors does not apply (for instance, if the notes are shared or used to create official minutes), then the notes are likely considered a record.[49]

d. Drafts

A document does not have to be in "final" form to be a "public record." Rather, if a draft document that is kept by a public office meets the three-part definition of a record, it can be a public record.[50] For example, the Supreme Court of Ohio held that a written draft of an oral collective bargaining agreement submitted to a city council for its approval documented the city's version of the oral agreement, and therefore, met the definition of a record.[51] A public office can manage how long it must keep drafts through its records retention schedules.[52]

e. Electronic databases

A database is an organized collection of related data. The Public Records Act does not require a public office to search a database for information and compile or summarize it to create new records.[53] However, if the public office already uses a computer program that can perform the search and produce the compilation or summary described by the requester, the output already "exists" as a record for the purposes of the Public Records Act.[54] In contrast, where the public office would have to reprogram its computer system to produce the requested output, the public office does not have that output as an existing record of the office.[55]

f. Metadata

Metadata is "[s]econdary data that organize, manage, and facilitate the use and understanding of primary data."[56] Some examples of metadata include author, date, version, and GPS information in an electronic document.[57] Metadata information can be considered a "public record" if it otherwise meets the definition of a record.[58] A public office is not required to produce metadata unless the requester specifically asks for it. [59] However, a public office must provide unaltered records, which means that the office cannot deliberately impair records by stripping the metadata.[60] An otherwise identical record may not be considered the same or a duplication if it contains additional metadata information.[61]

B. When is a Record "Kept By" a Public Office?

A record is only a public record if it is "kept by" a public office.[62] Records that do not yet exist – for example, future minutes of a meeting that has not yet taken place — are not records, much less public records, until they exist and are "kept by" the public office.[63] A public office has no duty to furnish records that are not in its possession or control.[64] Similarly, if the office kept a record in the past, but has properly disposed of the record, then it is no longer a record of that office.[65] For example, where a school board first received and then returned superintendent candidates' application materials to the applicants, those materials were no longer "public records" responsive to a newspaper's request.[66] But "'so long as a public record is kept by a government agency, it can never lose its status as a public record.'"[67] Merely attaching a document to a public record does not automatically incorporate that document into the public record — the document must be affirmatively incorporated by making a notation on it referring to the public record to which it is attached.[68]

Emails or text messages stored on personal accounts or devices may be considered "kept by" the public office if the content or information in the messages document the activities of the public office.[69] The Ohio Court of Claims held that text messages stored on public employees' personal phones were "kept by" the public office and subject to disclosure because the content of the messages documented the activities of the office.[70]

C. What Is a "Public Office"?

1. Statutory definition – R.C. 149.011(A)

R.C. 149.011(A) defines a "public office" as "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."[71] If any entity meets this definition, it must make its records available under the Public Records Act.[72] An organization that meets the statutory definition of a "public body" under the Open Meetings Act (*see* Chapter Eight: A., "Public Body") does not automatically meet the definition of a "public office" for purposes of the Public Records Act.[73]

This definition includes all state and local government offices, as well as many agencies not directly operated by a political subdivision, such as police departments operated by private universities.[74] Examples of entities that previously have been determined to be "public offices" (prior to the *Oriana House*[75] decision) include:

- Certain public hospitals and health care providers[76]
- Private non-profit water corporations supported by public money[77]
- Private non-profit PASSPORT administrative agencies[78]
- Private equity funds that receive public money and are essentially owned by a state agency[79]
- Non-profit corporations that receive and solicit gifts for a public university and receive support from taxation[80]
- Private non-profit county ombudsman offices[81] and
- County emergency medical services organizations.[82]

2. Quasi-agency: a private entity can be "a person responsible for public records"

The Public Records Act may apply to private entities under two different scenarios. First, the Public Records Act applies to a private entity when that entity is considered a "person responsible for public records."[83]

When a public office contracts with a private entity to perform government work, the records related to that work may be public records, even if they are solely in the possession of the private entity.[84] Traditionally, these records were considered public records when three conditions were 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.[85]

More recently, the Supreme Court of Ohio has given greater weight to the first prong of the quasi-agency test, holding that adequate proof of the first prong satisfies the requester's burden to establish that documents relating to the delegated functions are public records.[86] Under these circumstances, the public office is subject to requests for the public records under its jurisdiction, and the private entity itself may be a "person[87] responsible for public records"[88] for purposes of the Public Records Act.[89] For example, a public office's obligation to produce application materials and resumes extends to records of private search firms the public office used in the hiring process.[90] The public office may

be obligated to get the requested records from the private entity and disclose them to the requester.[91] Even if the public office does not have control over or access to such records, the records may still be public.[92]

However, a public office may not be responsible for records of a private entity that performs related functions that are not activities of the public office.[93] A person who works in a governmental subdivision and discusses a request is not thereby a "person responsible" for records outside of his or her own public office within the governmental subdivision.[94] Requesters are entitled to records if they can show "the records sought are related to a delegated governmental function."[95]

3. Functional equivalent: a private entity can be a "public office"

When, as addressed above, a private entity is considered a "person responsible" for public records, the entity is subject to the Public Records Act only for purposes of those specific records.[96] The entire private entity (not just certain records it produces) may be subject to the Public Records Act if the entity is considered the "functional equivalent" of a public office.

The "functional equivalence" theory applies if a private entity is performing a traditionally governmental function.[97] Under the functional-equivalency test, a court must analyze: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government to avoid the requirements of the Public Records Act.[98] The functional-equivalency test "is best suited to the overriding purpose of the Public Records Act, which is 'to allow public scrutiny of public offices, not of all entities that receive funds that at one time were controlled by the government.'"[99] In general, the more it can be shown that a private entity is performing a government function, as well as the extent to which the entity is funded, controlled, regulated, and/or created by the government, the more likely a court will determine that it is a "public institution," and therefore, a "public office" subject to the Public Records Act.

4. Public office is responsible for its own records

Only a public office or person responsible for the records sought is responsible for providing inspection or copies.[100] When statutes impose a duty on a particular official to oversee records, that official is the "person responsible" within the meaning of the Public Records Act.[101] A requester may wish to avoid any delay by initially asking a public office to whom in the office they should make the public records request, but the courts will construe the Public Records Act liberally in favor of broad access when, for example, the request is served on any member of a committee from which the requester seeks records.[102] The same document may be kept as a record by more than one public office.[103] However, "a public office complies with the Public Records Act when an employee or independent contractor of the office who is not responsible for a public record directs the requester to the proper records custodian or to where the record may be located."[104] One appellate court held that one public office may provide responsive documents on behalf of several related public offices that receive the same request and are keeping identical documents as records.[105]

State agencies are the custodians of their own records and considered to be in possession, custody, or control of their own records.[106] And, except for the records of the Office of the Ohio Attorney General, the records of each state agency are not in possession, custody, or control of the Attorney General.[107]

Notes:

---

[3] R.C. 149.43(A)(1).

[4] *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 2012-Ohio-753, ¶ 28-41 (detailing application of the definition of “records” to the electronic records of one public office).

[5] *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 21 (email messages constitute electronic records under R.C. 1306.01(G)); *Sinclair Media III, Inc. v. City of Cincinnati*, 2019-Ohio-2624, ¶ 14 (“Ohio courts routinely treat text messages and emails sent by public officials and employees in the same manner as any other records, regardless of whether messages and emails are on publicly-issued or privately-owned devices.”), *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).

[6] *State ex rel. Harmon v. Bender*, 25 Ohio St.3d 15, 17 (1986).

[7] *Sinclair Media III, Inc. v. City of Cincinnati,* 2019-Ohio-2624, ¶ 14, *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).; *Cincinnati Enquirer v. City of Cincinnati,* 2019-Ohio-1613 (Ct. of Cl.).

[8] *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273 (1998) (names and documents of a class of persons who were enrolled in the State Teachers Retirement System did not exist in record form); *State ex rel. Lanham v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 425, 427 (1997) (inmate’s request for “qualifications of APA members” was a request for information not for specific records); *Wilhelm v. Jerusalem Twp. Zoning,* 2020-Ohio-5283, ¶ 11, *adopted,* 2020-Ohio-5282 (Ct. of Cl.) (requester’s questions about a township’s records did not identify any specific records); *State ex rel. Griffin v. Sehlmeyer,* 2022-Ohio-2189, ¶ 11 (inmate’s request for “documented records” showing COVID-19 funding was a request for information; requester was specifying the type of information sought not the records he wanted to review).

[9] *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999) (when records of peremptory strikes during requester’s trial did not exist, the court had no obligation to create responsive records); *Capers v. White*, 2002 Ohio App. LEXIS 1962 (8th Dist. Apr. 17, 2002) (requests for information are not enforceable in a public records mandamus action).

[10] *State ex rel. Recodat Co. v. Buchanan*, 46 Ohio St.3d 163, 164 (1989); *State ex rel. Bardwell v. City of Cleveland,* 2010-Ohio-3267, ¶ 4; *State ex rel. Mitchell v. Byrd,* 2022-Ohio-2700, ¶ 14 (8th Dist.) (requiring a county clerk of court to provide information and to create new records by searching for and compiling information from existing records is not enforceable in a public records mandamus action).

[11] *State ex rel. Mobley v. LaRose*, 2024-Ohio-1909, ¶ 14-15 (public office not required to produce certified copies of a record; “the Public Records Act requires only that the public office provide the requester with ‘copies’ of requested records at cost and within a reasonable time”).

[12] *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 660 (2001) (records of costs to build stadium were within county board’s jurisdiction and thus public records even though in the possession of private construction companies).

[13] *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654 (2001).

[14] *State ex rel. Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 29; *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188 (1993) (“To the extent that any item … is not a ‘record,’ *i.e.*, does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed.”).

[15] *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St.3d 456, 461 (1992); *Sinclair Media III, Inc. v. City of Cincinnati,* 2019-Ohio-2624, ¶ 14, *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).

[16] *State ex rel. Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 27, citing *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365 (2000) (names, addresses, and other personal information kept by city parks and recreation department on children who used city’s recreational facilities not public records).

[17] *State ex rel. Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384 (home addresses of employees generally do not document activities of the office but may in certain circumstances).

[18] *State ex rel. DeGroot v. Tilsley*, 2011-Ohio-231, ¶ 6-8.

[19] *Internatl. Union, United Auto., Aerospace & Agricultural Implement Workers v. Voinovich*, 100 Ohio App.3d 372, 378 (10th Dist. 1995). However, work-related calendar entries are information that documents the functions, operations, or other activities of the office, and thus records. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 2012-Ohio-4246, ¶ 33.

[20] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 2002-Ohio-7117, ¶ 51; *State v. Carr,* 2019-Ohio-3802, ¶ 22 (2d Dist.) (jury verdict forms that contain names of jurors are not public records).

[21] *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365 (2000); R.C. 149.43(A)(1)(r).

[22] *State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-115, ¶ 36 (personal identifying information in lead-poisoning documents, such names of parents and guardians, social security and telephone numbers, children's names and birth dates, and names and places of employment of occupants, did not document the housing authority's functions or other activities).

[23] *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188 (1993); *State ex rel. Louisville Edn. Assn v. Louisville City School Dist. Bd. of Edn.*, 2017-Ohio-5564, ¶ 4-9 (5th Dist.) (tax records showing "deductions for tax sheltered accounts, charitable contributions, and the amount of taxes withheld" does not document the organization or function of the agency and is not public information subject to disclosure); *State ex rel. Community Press v. City of Blue Ash*, 2018-Ohio-2506, ¶ 2, 12 (1st Dist.) (requested peer assessments of managers were only used for "individual development" and not "used" by public office to carry out its duties and responsibilities and accordingly non-records); *Mohr v. Colerain Twp.*, 2018-Ohio-5015, ¶ 11 (requested records documented optional health insurance choices made by employees and did not reveal the agency's activities), *modified on other grounds and adopted,* 2019-Ohio-474 (Ct. of Cl.).

[24] *Doe v. Ohio State Univ*., 2024-Ohio-5891, ¶ 31 (10th Dist.) (university athletic ticketholders' mailing addresses, email addresses, and telephone numbers not public records because they provide no information about or insight into the university's ticketing organization, functions, etc.)

[25] 2014 Ohio Atty.Gen.Ops. No. 029; *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37 (1998); *Brown v. City of Cleveland,* 2019-Ohio-2627, ¶ 8-10 (Ct. of Cl.) (home addresses of attendees who were invited to a city councilmember's meeting were public because only residents of particular street were invited to attend the meeting and vote; residents' phone numbers and email addresses were not public records because they were only used for administrative purposes).

[26] *State ex rel. Recodat Co. v. Buchanan*, 46 Ohio St.3d 163, 165 (1989); *State ex rel. Gambill v. Opperman*, 2013-Ohio-761, ¶ 21-25 (data "inextricably intertwined" with exempt proprietary software need not be disclosed).

[27] 2007 Ohio Atty.Gen.Ops. No. 034.

[28] *Hicks v. Union Twp. Clermont Cty. Bd. Of Trustees*, 2024-Ohio-5449, ¶ 17.

[29] *State ex rel. Ames v. Crestwood Local School Dist. Bd. Of Edn.*, 2024-Ohio-4889, ¶ 17-20.

[30] *State ex rel. Cincinnati Enquirer v. Jones-Kelly*, 2008-Ohio-1770, ¶ 7 (requiring release of names and addresses of persons certified as foster caregivers). An exemption for this information was later created through R.C. 5101.29(D), R.C. 149.43(A)(1)(y).

[31] *State ex rel. Carr v. City of Akron*, 2006-Ohio-6714, ¶ 41-43 (names of fire captain promotional candidates; names, ranks, addresses, and telephone numbers of firefighter assessors; and all documents on subject-matter experts were records, although a [since-repealed] statutory exemption applied).

[32] *State ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 2014-Ohio-1222, ¶ 4 (5th Dist.) (relating to names and addresses of persons leasing property from the Watershed District for any purpose).

[33] 2002 Ohio Atty.Gen.Ops. No. 030, pp. 9-10 (relating to names and address of a county sewer district's customers). A partial exemption was later created through R.C. 149.43(A)(1)(aa) for "[u]sage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility."

[34] *State ex rel. Cincinnati Enquirer v. Daniels*, 2006-Ohio-1215, ¶ 14-17 (relating to notices to owners of property as residence of a child [with no information identifying the child] whose blood test indicates an elevated lead level); *Brown v. City of Cleveland,* 2019-Ohio-2627, ¶ 8-10 (Ct. of Cl.) (home addresses of

attendees who were invited to a city councilmember's meeting were public because only residents of particular streets were invited to attend the meeting and vote; residents' phone numbers and email addresses were not public records because they were only used for administrative purposes).

[35] *Doe v. Ohio State Univ.*, 2024-Ohio-5891, ¶ 36 (10th Dist.).

[36] *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63 (1998); *State ex rel. Community Press v. City of Blue Ash*, 2018-Ohio-2506, ¶ 2, 12 (1st Dist.) (requested peer assessments of managers were only used for "individual development" and not by public office to carry out its duties and responsibilities, and thus non-records); *Bollinger v. River Valley Local School Dist.,* 2020-Ohio-6637, ¶ 10 (Ct. of Cl.) ("[i]tems gathered during an investigation, but never used to document any aspect of the investigation, do not qualify as 'records'").

[37] *State ex rel. WBNS TV, Inc. v. Dues*, 2004-Ohio-1497, ¶ 27 (noting judge's use of redacted information to decide whether to approve settlement); *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61 (1998)(when judge read unsolicited letters but did not rely on them in sentencing defendant, letters did not serve to document any activity of the public office); *State ex rel. Sensel v. Leone*, 85 Ohio St.3d 152 (1999) (unsolicited letters alleging inappropriate behavior of coach not records); *State ex rel. Rhodes v. City of Chillicothe*, 2013-Ohio-1858, ¶ 28 (4th Dist.) (images that were not forwarded to city by vendor not public records because city did not use them in performing a governmental function); *Chernin v. Geauga Park Dist.*, 2018-Ohio-1579, ¶ 17 (constituent's letters shared by board member during public meeting were public records because they were used "to carry out both the board meeting's function as a forum for public input . . . and to discuss meeting policies and procedures"), *adopted,* 2018-Ohio-1717 (Ct. of Cl.); *Brown v. City of Cleveland,* 2019-Ohio-2627, ¶ 8-10 (Ct. of Cl.) (home addresses of attendees who were invited to a city councilmember's meeting to be public records because only residents of a particular street were invited to attend the meeting and vote; residents' phone numbers and email addresses were not public records because they were only used for administrative purposes); *State ex rel. Wellin v. City of Hamilton,* 2022-Ohio-2661, ¶ 9 (records involving hydroelectric projects were not records of the city without a showing that particular records actually document its operation), *adopted,* 2022-Ohio-2660 (Ct. of Cl.).

[38] *State ex rel. Cincinnati Enquirer v. Ronan*, 2010-Ohio-5680, ¶ 15-16.

[39] *State ex rel. Bowman v. Jackson City School Dist.*, 2011-Ohio-2228 (4th Dist.).

[40] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253; *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-4228, ¶ 28-32; *State ex rel. Bowman v. Jackson City School Dist.*, 2011-Ohio-2228 (4th Dist.) (personal emails on public office's email system are "records" when relied on to discipline employee).

[41] *State ex rel. Sinclair Media III, Inc. v. City of Cincinnati,* 2019-Ohio-2624, ¶ 5-12, *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).

[42] *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 24, fn. 1 ("Our decision in no way restricts a public office from disposing of items, including transient and other documents (*e.g.*, email messages) that are no longer of administrative value and are not otherwise required to be kept, in accordance with the office's properly adopted policy for records retention and disposal. *See* R.C. 149.351. Nor does our decision suggest that the Public Records Act prohibits a public office from determining the period of time after which its email messages can be routinely deleted as part of the duly adopted records-retention policy.").

[43] *State ex rel. Sinclair Media III, Inc. v. City of Cincinnati,* 2019-Ohio-2624, ¶ 5-12, *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).

[44] *State ex rel. Sinclair Media III, Inc. v. City of Cincinnati,* 2019-Ohio-2624, ¶ 5-12 (text messages between city council members were public records because the messages discussed firing city manager), *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).

[45] *Internatl. Union, United Auto., Aerospace & Agricultural Implement v. Voinovich*, 100 Ohio App.3d 372, 376 (10th Dist. 1995) (governor's personal logs, journals, calendars, and appointment books not "records"); *State ex rel. Doe v. Tetrault*, 2012-Ohio-3879, ¶ 4, 28, 35-38 (12th Dist.) (scrap paper used by one person to track his hours for purposes of entering his hours into report were personal notes and not a record); *State ex rel. Essi v. City of Lakewood*, 2018-Ohio-5027, ¶ 41 (8th Dist.) (redaction of personal and family

appointments before release of work calendar was appropriate); *Neilsen v. Scioto Cty. Pros.*, 2024-Ohio-2996 (Ct. of Cl.) (prosecutor's notes, spreadsheets, memoranda, and other analytical documents created during an investigation are personal notes and do not constitute public records).

46 *Hunter v. Ohio Bur. of Workers' Comp.*, 2014-Ohio-5660, ¶ 16-17, 23-35 (10th Dist.) (investigators' handwritten notes, used to convey information for oral or written reports and then disposed of, were not public records); *State ex rel. Doe v. Tetrault*, 2012-Ohio-3879, ¶ 38 (12th Dist.); *State ex rel. Santefort v. Wayne Twp. Bd. of Trustees*, 2015-Ohio-2009, ¶ 13, 15 (12th Dist.) (handwritten notes township fiscal officer took for her own convenience "to serve as a reminder when compiling the official record" were not subject to disclosure even though officer is required by statute to "keep an accurate record" of board proceedings); *M.F. v. Perry Cty. Children Servs.,* 2019-Ohio-5435, ¶ 47 (5th Dist.) (caseworker's personal notes that she shredded when a case closed and which were not entered into agency's database because it would have been duplicate information were not subject to disclosure); *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 62-67 (handwritten notes maintained by prosecuting attorney are personal notes and therefore "outside the scope of the Public Records Act"); *Nolan v, Wetzel,* 2022-Ohio-4382, ¶ 20 (5th Dist.) (judge's personal, handwritten notes made during course of trial are not public records).

47 *Barnes v. Columbus.*, 2011-Ohio-2808 (10th Dist.) (relating to police promotional exam assessors' notes); *M.F. v. Perry Cty. Children Servs.,* 2019-Ohio-5435, ¶ 47 (5th Dist.); *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 65-66 (law enforcement officer's personal notes properly withheld and not required to be maintained when kept for his own personal use).

48 *State ex rel. Cranford v. Cleveland*, 2004-Ohio-4884, ¶ 19; *State ex rel. Steffan v. Kraft*, 67 Ohio St.3d 439, 440 (1993).

49 *State ex rel. Verhovec v. Marietta*, 2013-Ohio-5415, ¶ 30 (4th Dist.) (handwritten notes that are later transcribed are records because city clerk used them not merely as personal notes, but to prepare official minutes in clerk's official capacity).

50 *Kish v. City of Akron*, 2006-Ohio-1244, ¶ 20 (a "document need not be in final form to meet the statutory definition of 'record'"); *State ex rel. Cincinnati Enquirer v. Dupuis*, 2002-Ohio-7041, ¶ 20 ("[E]ven if a record is not in final form, it may still constitute a 'record' for purposes of R.C. 149.43" if it documents the activities of the office); *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St.3d 50, 53 (1998) (granting access to preliminary, unnumbered accident reports not yet processed into final form); *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170 (1988) (granting access to preliminary work product that was not in final form).

51 *State ex rel. Calvary v. City of Upper Arlington*, 89 Ohio St.3d 229 (2000).

52 Refer to Chapter Seven: B. "Records Management – Practical Pointers," for more discussion of records retention.

53 *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999); see *also State ex rel. Margolius v. Cleveland*, 62 Ohio St.3d 456 665 (1992); *Kovach v. Geauga Cty. Auditor's Office,* 2019-Ohio-5455, ¶ 10 (auditor properly denied requests seeking explanations or reasons for the execution of public functions and asking for admissions or denials of certain facts), *adopted*, 2020-Ohio-641 (Ct. of Cl.); *Isreal v. Franklin Cty. Commrs.,* 2019-Ohio-5457, ¶ 8-9 (Ct. of Cl.), *aff'd*, 2021-Ohio-3824 (10th Dist.).

54 *State ex rel. Scanlon v. Deters*, 45 Ohio St.3d 376, 379 (1989), *overruled on other grounds by State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420 (1994).

55 *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 275 (1998) (agency would have had to reprogram its computers to create the requested names and addresses of a described class of members); *but see Diebert v. Lafferty,* 2022-Ohio-2919, ¶ 29 (rejecting the public office's argument that to comply with the public records request would mean the Village would have to purchase new software because the public office is under a statutory duty to organize and employ its staff in a way that makes public records available for inspection and to provide copies within a reasonable time), *adopted*, 2022-Ohio-3052 (Ct. of Cl.) A public office, however, is not required to give requesters direct access to electronic databases to inspect records. *State ex rel. Gilreath v. Cuyahoga Job & Family Servs*., 2024-Ohio-103, ¶ 21.

[56] *State ex rel. McCaffrey v. Mahoning County Prosecutor's Office*, 2012-Ohio-4246, ¶ 19, quoting Black's Law Dictionary 1080 (9th Ed. 2009).

[57] *Parks v. Webb*, 2018-Ohio-1578, ¶ 13, *adopted*, 2018-Ohio-1716 (Ct. of Cl.).

[58] *See., e.g., Morrison v. Law Dir. of Mt. Vernon*, 2022-Ohio-1617, ¶ 7, *adopted*, 2022-Ohio-2662 (Ct. of Cl.).

[59] *State ex rel. McCaffrey v. Mahoning County Prosecutor's Office*, 2012-Ohio-4246, ¶ 19-21.

[60] *Parks v. Webb*, 2018-Ohio-1578, ¶ 14-17 (Ct. of Cl.).

[61] *Bello v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-4559, ¶ 9, *adopted*, 2020-Ohio-4907 (Ct. of Cl.).

[62] *State ex rel. Hubbard v. Fuerst*, 2010-Ohio-2489 (8th Dist.) (records custodian not required to furnish records not in his possession or control); *State ex rel. Cordell v. Paden*, 2019-Ohio-1216, ¶ 9-10 (no duty to provide access to nonexistent records); *State ex rel. Sinclair Media III, Inc. v. City of Cincinnati*, 2019-Ohio-2624, ¶ 16 (text messages kept on city councilmembers' personal and privately-paid-for-devices were "kept by" the public office for purposes of responding to public records request because they were used to conduct public business), *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).

[63] *State ex rel. Gambill v. Opperman*, 2013-Ohio-761, ¶ 16 (county engineer's office has no duty to create requested copies of maps and aerial photographs because the office generates such records by inputting search terms into program).

[64] *State ex rel. Striker v. Smith*, 2011-Ohio-2878, ¶ 28; *State ex rel. Sinkfield v. Rocco*, 2014-Ohio-5555, ¶ 6-7 (8th Dist.).

[65] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253, ¶ 21-23.

[66] *State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 2003-Ohio-2260, ¶ 12 (materials related to superintendent search not public records when neither board nor search agency kept such materials); *State ex rel. Johnson v. Oberlin City School Dist. Bd. of Edn.*, 2009-Ohio-3526 (9th Dist.) (individual evaluations used by board president to prepare a composite evaluation but not kept thereafter were not public records).

[67] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253, ¶ 28.

[68] *State ex rel. Fluty v. Raiff*, 2023-Ohio-3285, ¶ 19.

[69] *State ex rel. Sinclair Media III, Inc. v. City of Cincinnati*, 2019-Ohio-2624, *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).

[70] *State ex rel. Sinclair Media III, Inc. v. City of Cincinnati*, 2019-Ohio-2624 (texts messages on public employees' personal phones considered "kept by" the public office when content of messages documents the activities of the office), *modified in part on other grounds and adopted*, 2019-Ohio-2623 (Ct. of Cl.).

[71] R.C. 149.011(A). To clarify, a function of government need not be a "historically government function." *State ex rel. Fair Hous. Opportunities of Nw. Ohio v. Ohio Fair Plan*, 2023-Ohio-2667, ¶ 17. JobsOhio, a non-profit corporation formed under R.C. 187.01, is not a public office for purposes of the Public Records Act, pursuant to R.C. 187.03(A) and R.C. 149.011(A).

[72] *State ex rel. Fair Hous. Opportunities of Nw. Ohio v. Ohio Fair Plan*, 2023-Ohio-2667, ¶ 14-29 (Ohio Fair Plan Underwriting Association is a public office because its board of governors, purpose, operation, and regulations were established by statute, showing a legislative intent that it be considered a public office).

[73] *State ex rel. ACLU of Ohio v. Cuyahoga Cty. Bd. of Commrs.*, 2011-Ohio-625, ¶ 35-38.

[74] *State ex rel. Schiffbauer v. Banaszak*, 2015-Ohio-1854, ¶ 12 (Otterbein University police department is a public office because it "is performing a function that is historically a government function").

[75] *State ex rel. Oriana House, Inc. v. Montgomery*, 2006-Ohio-4854. Similar private entities today should be evaluated based on the functional-equivalency test adopted in *Oriana House*.

[76] *State ex rel. Dist. 1199, Health Care & Social Serv. Union v. Lawrence Cty. Gen. Hosp.*, 83 Ohio St.3d 351 (1998). *But see State ex rel. Stys v. Parma Community Gen. Hosp.*, 93 Ohio St.3d 438 (2001) (particular hospital not a "public office"); *State ex rel. Farley v. McIntosh*, 134 Ohio App.3d 531 (2d Dist. 1998) (court-appointed psychologist not a "public office").

[77] *Sabo v. Hollister Water Assn.*, 1994 Ohio App. LEXIS 33 (4th Dist. Jan. 12, 1994).

[78] 1995 Ohio Atty.Gen.Ops. No. 001.

[79] *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers' Comp*., 2005-Ohio-3549 (limited-liability companies organized to receive state-agency contributions were public offices); *State ex rel. Repository v. Nova Behavioral Health, Inc.*, 2006-Ohio-6713, ¶ 42.

[80] *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found*., 65 Ohio St.3d 258, 266 (1992).

[81] *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155 (1997).

[82] 1999 Ohio Atty.Gen.Ops. No. 006.

[83] *State ex rel. Oriana House, Inc. v. Montgomery*, 2006-Ohio-4854, paragraph one of the syllabus; *State ex rel. Fair Hous. Opportunities of Nw. Ohio v. Ohio Fair Plan*, 2023-Ohio-2667, ¶ 14-29 (Ohio Fair Plan Underwriting Association is a public office because its board of governors, purpose, operation, and regulations were established by statute, showing a legislative intent that it be considered a public office).

[84] *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 660 (2001); *State ex rel. Gannett Satellite Info. Network v. Shirey*, 76 Ohio St.3d 1224 (1996); *State ex rel. Armatas v. Plain Twp.*, 2021-Ohio-1176, ¶ 14 (applying quasi-agency test to hold that private law firm to which township delegated legal work was a "person responsible" for public records).

[85] *State ex rel. Carr v. City of Akron*, 2006-Ohio-6714, ¶ 37 (firefighter promotional examinations kept by testing contractor were still public records); *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 657 (2001). *But see State ex rel. Am. Civ. Liberties Union of Ohio v. Cuyahoga Cty. Bd. Commrs.*, 2011-Ohio-625, ¶ 52-54 (quasi-agency test did not apply when private citizen group submitted recommendations but owed no duty to government office to do so).

[86] *State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews*, 12022-Ohio-3990, ¶ 7 (under a modified quasi-agency test, when a requester proved the first prong of the test, the requester met his burden of proving that a delegated public duty establishes that the documents relating to the delegated functions are public records); *State ex rel. Armatas v. Plain Twp. Bd. of Trustees*, 2021-Ohio-1176, ¶ 16.

[87] The definition of "person" "includes an individual, corporation, business trust, estate, trust, partnership, and association. R.C. 1.59(C).

[88] *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers' Comp.*, 2005-Ohio-3549, ¶ 20 ("R.C. 149.43(C) permits a mandamus action against either 'a public office or the person responsible for the public record' to compel compliance with the Public Records Act. This provision 'manifests an intent to afford access to public records, even when a private entity is responsible for the records.'"); *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 658 (2001); *State ex rel. Dist. Eight Regional Org. Comm. v. Cincinnati-Hamilton Cty. Cmty. Action Agency*, 2011-Ohio-312 (1st Dist.) (home weatherization program administered by private non-profit community action agency is not a person responsible for public records); *State ex rel. Doe v. Tetrault*, 2012-Ohio-3879, ¶ 26 (12th Dist.) (township employee who tracked hours on online management website and then submitted those hours was not "particular official" charged with duty to oversee public records and cannot be the "'person responsible' for the records requested under R.C. 149.43"); *State ex rel. Am. Ctr. for Econ. Equal. v. Jackson*, 2015-Ohio-4981, ¶ 33 (8th Dist.) (private company that contracted with city to conduct study and make recommendations to ensure equal opportunities for minorities is a person responsible for records); *State ex rel. Sheil v. Horton*, 2018-Ohio-5240, ¶ 17-42 (8th Dist.) (community college foundation met the elements to qualify as a "person responsible for records" of community college, but concluded this issue moot).

[89] *See, e.g.*, R.C. 149.43(B)(1)-(9), (C)(1), (C)(2).

[90] *State ex rel. Gannett Satellite Info. Network v. Shirey*, 78 Ohio St.3d 400, 403-404 (1997); *State ex rel. Carr v Akron*, 2006-Ohio-6714, ¶ 36-37. Refer to Chapter Five: A. "Employment Records," for more discussion of resume and application records.

[91] *State ex rel. Brown v. Columbiana Cty. Jail*, 2024-Ohio-4969, ¶ 21.

[92] *State ex rel. Gannett Satellite Info. Network v. Shirey*, 78 Ohio St.3d 400, 402-03 (1997) (resumes were public records despite lack of proof of public office's ability to access search firm's records or monitor performance).

[93] *State ex rel. Rittner v. Foley*, 2009-Ohio-520 (6th Dist.) (school system not responsible for alumni rosters kept only by private alumni organizations); *State ex rel. Hurt v. Liberty Twp.*, 2017-Ohio-7820, ¶ 51 (5th Dist.) (investigator was a person responsible for records because he was performing a governmental

function and was even paid by the township with public tax dollars); *Newman v. Greater Columbus Arts Council*, 2025-Ohio-734, ¶ 19 (Ct. of Cl.) (when non-profit organization receives both public and private funds, the records related to the funds from private sources are not public records).

[94] *State ex rel. Keating v. Skeldon*, 2009-Ohio-2052 (6th Dist.) (assistant prosecutor and county public affairs liaison not persons responsible for records of county dog warden).

[95] *Geauga Cty. Prosecutor's Office v. Munson Fire Dept.*, 2023-Ohio-3958, ¶ 34, *modified on other grounds and adopted,* 2023-Ohio-4437 (Ct. of Cl.) (quasi-agency test satisfied when nonprofit corporation contracted with township to perform fire protection and emergency services and documents pertaining to the compensation to individuals who provide fire protection, relate to a government function).

[96] *Newman v. Greater Columbus Arts Council*, 2025-Ohio-734, ¶ 19 (Ct. of Cl.) (when non-profit organization receives both public and private funds, the records related to the funds from private sources are not public records).

[97] *State ex rel. Oriana House, Inc. v. Montgomery*, 2006-Ohio-4854, paragraph one of the syllabus; *State ex rel. ACLU of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 2011-Ohio-625, ¶ 51 (private groups were not functional equivalent of public office when groups were comprised of unpaid, unguided county leaders and citizens, not created by governmental agency, and submitted recommendations as coalitions of private citizens); *Sheil v. Horton*, 2018-Ohio-5240, ¶ 17-42 (8th Dist.) (community college foundation is the functional equivalent of a public office because fundraising is a traditional function of the office); *State ex rel. WTOL Television, L.L.C. v. Cedar Fair, L.P.*, 2023-Ohio-4593 (Cedar Point Police Department is the functional equivalent of a public office; although it receives little or no government funding, law enforcement and police protection services are government functions and city regulates and is involved with the department; *but see State ex rel. Fair Hous. Opportunities of Nw. Ohio v. Ohio Fair Plan*, 2023-Ohio-2667, ¶ 14-29 (Ohio Fair Plan Underwriting Association is a public office because its board of governors, purpose, operation, and regulations were established by statute, showing a legislative intent that it be considered a public office).

[98] *State ex rel. Oriana House, Inc. v. Montgomery*, 2006-Ohio-4854, paragraphs one and two of the syllabus.

[99] *State ex rel. Repository v. Nova Behavioral Health, Inc.*, 2006-Ohio-6713, ¶ 24; *State ex rel. Oriana House, Inc. v. Montgomery*, 2006-Ohio-4854, ¶ 36 ("It ought to be difficult for someone to compel a private entity to adhere to the dictates of the Public Records Act, which was designed by the General Assembly to allow public scrutiny of public offices, not of all entities that receive funds that at one time were controlled by the government."); *State ex rel. Bell v. Brooks*, 2011-Ohio-4897, ¶ 15-29 (joint self-insurance pool for counties and county governments is not the functional equivalent of a public office); *State ex rel. Dist. Eight Regional Org. Comm. v. Cincinnati-Hamilton Cty. Cmty. Action Agency*, 2011-Ohio-312 (1st Dist.) (home weatherization program administered by private non-profit community action agency is not the functional equivalent of public office); *State ex rel. Luken v. Corp. for Findlay Mkt. of Cincinnati*, 2012-Ohio-2074, ¶ 27 (1st Dist.) (non-profit corporation that manages the operation of a public market is not the functional equivalent of a public office); *State ex rel. Hurt v. Liberty Twp.,* 2017-Ohio-7820, ¶ 42 (5th Dist.) (investigator was the functional equivalent of a public office because he was performing a governmental function and was paid by the township with public tax dollars); *State ex rel. Schutte v. Gorman Heritage Found.,* 2019-Ohio-1611 (foundation that operated a working farm not functional equivalent of a public office; it performed a combination of government and non-government functions — operating as a park and a farm — and received "significant" government funding, but the village had little control over the foundation's operations; under quasi-agency theory, however, foundation had to produce financial records reflecting government funding), *adopted*, 2019-Ohio-1818 (Ct. of Cl.).

[100] *Cvijetinovic v. Cuyahoga Cty. Aud.*, 2011-Ohio-1754 (8th Dist.).

[101] *State ex rel. MADD v. Gosser*, 20 Ohio St.3d 30 (1985), paragraph two of the syllabus.

[102] *State ex rel. ACLU of Ohio v. Cuyahoga Cty. Bd. Commrs.*, 2011-Ohio-625, ¶ 33-34.

[103] *State v. Sanchez*, 79 Ohio App.3d 133, 136 (6th Dist. 1992).

[104] *State ex rel. Ware v. Dept. of Rehab. & Corr.*, 2024-Ohio-1015, ¶ 33.

[105] *State ex rel. Cushion v. Massillon*, 2011-Ohio-4749, ¶ 81-86 (5th Dist.).

[106] R.C. 9.59(B)(1).

[107] R.C. 9.59(B)(2).

II. Chapter Two: Requesting Public Records

The Public Records Act establishes procedures, limits, and requirements that are designed to maximize requester success in obtaining public records and to minimize the burden on public offices when possible. Both requesters and public offices should be familiar with these statutory provisions to achieve a cooperative, efficient, and satisfactory outcome.

A. Rights and Obligations of Public Records Requesters and Public Offices

1. A public office has a duty to organize and maintain its public records

Every public office must organize and maintain public records in a way that they can be made available in response to public records requests.[108] The public office does not violate this duty if it uses an organizational system that is different from, or inconsistent with, how a request is framed.[109] For example, if a person requests copies of all police service calls for a particular geographical area identified by street names, but the office does not maintain its service call records according to geographical area or street name, the office does not have a duty to fulfill that request.[110] The Public Records Act does not require a public office or person responsible for public records to post its public records on the office's website[111] (but doing so may reduce the number of public records requests the office receives for posted records).

A public office must have copies of its current records retention schedules at a location readily available to the public.[112] It may be helpful for a requester to review a public office's records retention schedules before making a public records request. Retention schedules explain how an office organizes its records, as well as the type of records it maintains and how the office is structured. Referring requesters to retention schedules can also be a useful way for public offices to explain how the office organizes and maintains its records.

2. "Any person" may make a request

Any person can make a public records request. The requesting "person" need not be an Ohio or United States resident. Foreign individuals and entities domiciled in a foreign country are entitled to inspect and copy public records.[113] The requester need not be an individual, but can be a media outlet, corporation, trust, or other public office or government agency.[114]

3. Unless a specific law states otherwise, requests can be made for any reason and made in any way

In most circumstances, the Public Records Act does not require a requester to state the reason for the request.[115] Nor does a requester have to identify him or herself.[116] Any requirement by the public office that the requester discloses his or her identity or the intended use of the requested records constitutes a denial of the request.[117]

A requester can make a request in any way he or she chooses and does not have to use specific words or language.[118] A requester can ask for records by phone, in person, in an email, or a written letter, among other possible options. Some public offices have online forms through which a request can be made, but the office cannot require a requester to use such a form.

4. The request must be for the public office's existing records

The Public Records Act provides access to existing records of a public office.[119] The records must exist at the time of the request, and a request may be invalid even if the records may be created or received by the office later.[120] This is true even if the requester believes that the records *should exist.*[121] Records may not exist if the public office properly disposed of the records pursuant to a records retention schedule.[122]

The office need not conduct a search for and retrieve records that contain described information that is of interest to the requester.[123] A public office is also 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.[124] For example, if a person asks a public office for a list of court 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.[125]

5. A request must be specific enough for the public office to reasonably identify responsive records

A requester must identify the records he or she is seeking "with reasonable clarity,"[126] so that the public office can identify responsive records based on the way it ordinarily maintains and accesses records.[127] The request must fairly and specifically describe what the requester is seeking.[128] A court will not compel a public office to produce public records when the underlying request is ambiguous or overly broad, or the requester has difficulty making a request such that the public office cannot reasonably identify what public records are being requested.[129]

If a requester does not describe the records he or she is seeking "with reasonable clarity," the request might be considered overly broad or ambiguous, and the public office can deny the request. A request can be overly broad if it is so over-inclusive that the public office is unable to identify the records sought based on the way the office routinely organizes and accesses records. An ambiguous request is one that lacks the clarity a public office needs to determine what the requester is seeking and where to look for records that might be responsive, and/or when the wording of the request is vague or subject to interpretation.

Whether a request is overly broad depends on the facts and circumstances of the request and must be analyzed on a case-by-case basis.[130] For example, a request for, "all emails of a public office" may be overly broad, but a request for "all emails" within a certain timeframe, or "all emails" with certain keywords may be proper.[131] A public office cannot categorically deny a request for "all emails" between two employees because the requester did not provide search terms.[132]

Examples of requests that courts have found to be overly broad include:

- All records containing certain names or words;[133]
- A complete duplication of all records having to do with a particular topic, or all records of a particular type;[134]
- Every report filed with the public office for a particular period (if the office does not organize records in that way);[135] and
- Discovery-style requests that seek all records relating to or reflecting certain types of information.[136]

If, in its first response to a requester, a public office does not deny the request as overly broad, the public office waives its ability to assert an overly broad denial in litigation.[137]

6. Denying and clarifying an ambiguous or overly broad request

A public office may deny any part of a public records request that is ambiguous or overly broad. However, the Public Records Act requires the public office to give the requester the opportunity to revise the denied request, by informing the requester how the office ordinarily maintains and accesses its records.[138] In this way, the Public Records Act expressly promotes cooperation between public offices and requesters.

A public office can inform the requester how it ordinarily maintains and accesses records through a verbal or written explanation.[139] Giving the requester copies of the office's relevant records retention schedules can be a helpful starting point in explaining the office's records organization.[140] Retention schedules categorize records based on how they are used and the purpose they serve, and well-drafted schedules provide details of record subcategories, content, and duration, all of which can help a requester revise and narrow the request. Retention schedules also show how the office is organized and the type of records the office keeps. Ohio courts look favorably at an office's invitation to discuss revising an overly broad request as evidence supporting compliance with the Public Records Act.[141]

7. Optional negotiation when knowing the identity or purpose of a request, or having the request in writing, would help the office in responding

If a public office believes that (1) having a request in writing, (2) knowing the intended use of the information, or (3) knowing the requester's identity would help the public office identify, locate, or deliver the requested records, the public office may ask the requester if he or she is willing to provide that information.[142] However, the public office must first tell the requester that giving this information is not mandatory and that he or she may decline to share the information. As with the negotiation required for an ambiguous or overly broad request, this optional negotiation tool can promote cooperation and efficiency.

8. Requester can choose media on which copies are made

A requester may specify whether he or she would like to inspect the records or obtain copies.[143] If the requester asks for copies, he or she can choose the copy medium (paper, film, electronic file, etc.).[144] The requester can choose to have the record copied: (1) on paper, (2) in the same medium as the public office keeps them,[145] or (3) on any medium upon which the record "reasonably can be duplicated as an integral part of the normal operations of the public office."[146]

9. Requester can choose pick-up, delivery, or transmission of copies; public office may charge delivery costs

A requester may personally pick up copies of requested public records or may send a designee.[147] Upon request, a public office must transmit copies of public records via the U.S. mail "or by any other means of delivery or transmission," at the choice of the requester.[148] Although a public office has no duty to post public records online, if a requester states that posting on the office's website as a satisfactory alternative to providing copies, then the public office has complied when it posts the requested records online.[149] Posting records online, however, does not satisfy a request for copies of those records.[150] The public office may require prepayment of postage or other actual delivery costs, as well as the actual cost of supplies used in mailing, delivery, or transmission.[151]

10. Prompt inspection, or provide copies within a reasonable period of time

There is no specific time by which a public office must respond to a request. The Public Records Act says that an office must respond to a request to inspect records "promptly," and must respond to a request for copies of records "within a reasonable period of time."[152] These terms do not mean "immediately" or "without a moment's delay."[153] Some courts have interpreted "promptly" to mean "without delay" and "with reasonable speed."[154] However, when a request to inspect records unreasonably interferes with the discharge of the public office's duties, the office may not be obligated to comply.[155] For example, public offices are not required to permit in-person inspection of public records if the requester is an inmate and doing so would "create[] security issues, unreasonably interfere[] with the officials' discharge of their duties, and violate[] prison rules."[156]

Any number of facts and circumstances may be relevant to whether a public office responded "promptly" or "within a reasonable period of time," such as the type of record that is requested,[157] whether redactions or legal review is necessary,[158] and the volume of records that must be reviewed.[159] The Public Records Act specifies that when a law enforcement agency responds to a request for video records, the timeliness of the office's response must take into account the time it took the office to retrieve, download, review, redact, seek legal advice, and produce the video record, in addition to other facts and circumstances.[160]

The cases in footnote 161 highlight the fact-specific analysis courts undertake when deciding whether a public office responded "promptly" or "within a reasonable period of time."[161]

The Supreme Court of Ohio has cautioned that "[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 office] to evade the public's right to inspect and obtain a copy of public records within a reasonable time."[162]

11. Inspection at no cost during regular business hours

A public office must make its public records available for inspection at all reasonable times during regular business hours.[163] "Regular business hours" means established business hours.[164] When a public office operates twenty-four hours a day, such as a police department, the office may adopt hours that approximate normal administrative hours during which inspection may be provided.[165] Generally, public offices may not charge requesters for inspection of public records.[166] Requesters are not required to inspect the records themselves; they may designate someone to inspect the requested records.[167]

A public office is required to make its records available for inspection only at the place where they are stored.[168] A request to inspect records does not give the requester a right to directly access the public office's computer systems or databases. Rather, a public office may prepare the records for inspection outside their native electronic format.[169] Posting records online is one way to provide them for inspection — the public office may not charge a fee just because a person could use their own equipment to print or otherwise download a record posted online.[170]

12. Copies, and delivery or transmission, "at cost"

A public office may charge for copies and/or for delivery or transmission, and it may require payment of both costs in advance.[171] "At cost" means the actual cost of making copies,[172] packaging, postage, and any other costs of the method of delivery or transmission chosen by the requester.[173] The cost of employee time cannot be included in the cost of copies or of delivery.[174] A public office may choose to employ the services, and charge the requester the costs of, a private contractor to copy public records so long as the decision to do so is reasonable.[175]

There is no obligation to provide free copies to someone who indicates an inability or unwillingness to pay for requested records.[176] However, before a public office is permitted to deny a request for failure to pay the actual cost of the copies, the public office must first inform the requester of the amount that must be paid.[177] The Public Records Act neither requires a public office to allow those seeking a copy of the public record to make copies with their own equipment[178] nor prohibits the public office from allowing this.

Specific exceptions to "at cost" exist for certain types of records. For example, the Ohio Bureau of Motor Vehicles is authorized to charge a non-refundable fee of four dollars for each highway patrol accident report for which it receives a request,[179] and a coroner's office may charge a record retrieval and copying fee of twenty-five cents per page, with a minimum charge of one dollar.[180] And, as addressed below, law enforcement agencies can charge up to $75 an hour, up to a maximum of $750, for costs incurred in producing video recordings.[181]

When a statute sets the cost of certain records or for certain requesters, the specific statute takes precedence over the general, and the requester must pay the cost set by the statute.[182] For example, because R.C. 2301.24 requires that parties to a common pleas court action must pay court reporters the compensation rate set by the judges for court transcripts, a requester who is a party to the action may not use the generally applicable language of R.C. 149.43(B)(1) to obtain copies of the transcript at the actual cost of duplication.[183] However, when a statute sets a fee for certified copies of an otherwise public record, and the requester does not request that the copies be certified, the office may only charge actual cost.[184] Similarly, when a statute sets a fee for "photocopies" and the request is for electronic copies rather than photocopies, the office may only charge actual cost.[185]

13. Cost for law enforcement video recordings

State and local law enforcement agencies may charge the "actual cost" incurred to review, blur or otherwise obscure, redact, upload, or produce requested video recordings, at a rate of $75 per hour, not to exceed $750 in total costs.[186] The cost metric applies to requests for inspection and requests for copies of video recordings.

A law enforcement agency shall provide a requester with an estimated actual cost within five business days of submitting the request. The agency must notify the requester if the final actual cost is more than the estimated actual cost. The requester may be required to pay the difference between the actual cost and the estimated cost if (1) the requester is notified in advance that the actual cost is more than the estimated actual cost; and (2) the actual cost is less than twenty per cent more than the estimated actual cost.

Refer to Chapter Four: B. 1. "Body-Worn and Dashboard Camera Recordings" for more discussion of this cost provision.

14. What responsive records can the public office withhold?

a. Records subject to an exemption

As discussed in more detail in Chapter Three, "Exemptions to the Required Release of Public Records," there are many exemptions in the law that either prohibit the release of public records (mandatory exemptions) or give the public office the option to either withhold or release the record (discretionary exemptions).

b. No duty to release non-records

Items are "public records" if they document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office.[187] If an item does not meet that definition, it is not a "record" that the public office must disclose.[188] The public office must actually use the item for it to be a record; an item is not a record simply because the office *could* use the item.[189] The Public Records Act does not *restrict* a public office from releasing non-records, but other laws may prohibit a public office from releasing certain information in non-records.[190]

15. Denial of a request, redaction, and a public office's duties of notice

Both the withholding of an entire record and the redaction of any part of a record are considered a denial of the request to inspect or copy the record.[191] Any requirement by the public office that the requester discloses the requester's identity, or the intended use of the requested public record also constitutes a denial of the request.[192]

a. Redaction – statutory definition

"Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record."[193] For paper records, redaction is the blacking out or whiting out of non-public information in an otherwise public document.[194] A public office may redact audio, video, and other electronic records by processes that obscure or delete specific content.

b. Withholding records or producing records with redactions

"If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt."[195] Thus, an office may redact only that part of a record subject to an exemption or other valid basis for withholding.

An office may withhold an entire record when exempted information is "inextricably intertwined" with the entire content of a particular record such that redaction cannot protect the exempted information.[196] Whether a record has exempted information that is "inextricably intertwined" with non-exempted information must be determined on a record-by-record basis.[197]

c. Requirement to notify and explain redactions and withholding of records

Public offices must either "notify the requester of any redaction or make the redaction plainly visible."[198] In addition, if an office denies a request in part or in whole, the public office must "provide the requester with an explanation, including legal authority, setting forth why the request was denied."[199] If the requester made the initial request in writing, the office must also provide its explanation for the denial in writing.[200]

d. No obligation to respond to duplicate request

If a public office responds to a request and the requester later requests the same records, the public office is not required to provide an additional response.[201]

e. No waiver of unasserted, applicable exemptions except claim that request is overly broad or ambiguous

If the requester later files a mandamus action against the public office, the public office is not limited to the explanation(s) previously given for denial but may rely on additional reasons or

legal authority in defending the action.[202] This rule does not apply to overly broad requests, however. That is, a public office cannot assert that a request is overly broad for the first time in litigation.[203]

B. Statutes that Modify General Rights and Duties

The above rights and duties may be modified by statutes for specific records, public offices, or requesters, or in specific situations. Below are a few examples of such modifications to the general rules.

1. Modified access to specific records

- Although most DNA records kept by the Ohio Bureau of Criminal Identification and Investigation (BCI) are protected from disclosure by exemptions,[204] the results of DNA testing of an inmate who obtains post-conviction testing must be disclosed to any requester,[205] which would include results of testing conducted by BCI.
- Certain sex offender records must be posted on a public website without waiting for an individual public records request.[206]
- A public office's release of an "infrastructure record" or "security record" to a private business for certain purposes does not waive these exemptions,[207] despite the general rule that voluntary release to a member of the public waives any exemption(s).[208]
- Contracts and financial records of money spent on services provided under those contracts to federal, state, or local government by another governmental entity or agency, or by most nonprofit corporations or associations, are public records, except as otherwise provided by R.C. 149.431.[209]
- Directory information concerning public school students may not be released if the intended use is for a profit-making plan or activity.[210]

2. Modified access for specific public offices

- The Ohio Bureau of Motor Vehicles can charge a non-refundable fee of $4 to produce a highway patrol accident report.[211]
- A coroner's office can charge a record retrieval and copying fee of $.25 per page, with a minimum charge of $1.[212]
- A state or local law enforcement agency can charge the "actual cost" associated with preparing a video record for inspection or production, not to exceed $75 per hour of video production with a maximum charge not to exceed $750.[213]
- Case records and administrative records of courts of common pleas, courts of appeals, and the Supreme Court of Ohio, are subject to the Rules of Superintendence of the Courts of Ohio, not the Public Records Act.[214]
- Information in a competitive sealed proposal and bid submitted to a county contracting authority becomes a public record only *after* the contract is awarded. After the bid is opened by the contracting authority, any information that is subject to an exemption set out in the Public Records Act may be redacted by the contracting authority before the record is made public.[215]

3. Modified access to certain public offices' records

a. Bulk commercial requests from the Ohio Bureau of Motor Vehicles

"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 percent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law."[216] The statute sets out definitions of "actual cost," "bulk commercial extraction request," "commercial," "special extraction costs," and "surveys, marketing, solicitation, or resale for commercial purposes."[217]

b. Copies of coroner's records

Generally, all records of a coroner's office are public records subject to inspection by the public.[218] A coroner's office may provide copies to a requester upon a written request and payment by the requester of a statutory fee.[219] However, the following are not public records: preliminary autopsy and investigative notes and findings; photographs of a decedent made by the coroner's office; suicide notes; medical and psychiatric records of the decedent provided to the coroner; records of a deceased individual that are part of a confidential law enforcement investigatory record; and laboratory reports generated from analysis of physical evidence by the coroner's laboratory that is discoverable under Ohio Criminal Rule 16.[220]

The following three classes of requesters may request some or all of the records that are otherwise exempted from disclosure: (1) next of kin of the decedent or the representative of the decedent's estate (copy of full records),[221] (2) a coroner "may" grant a journalist's limited request to view records before the final autopsy and final death certificate are complete; but after the final autopsy and death certificate are complete, the coroner "shall" grant a journalist's limited right to inspect),[222] and (3) insurers (copy of full records).[223] The coroner may notify the decedent's next of kin if a journalist or insurer made a request.[224]

4. Modified access for specific requesters

The rights and obligations of the following types of requesters differ from the general rules in the Public Records Act. Some are required to disclose the intended use of the records or motive behind the request. Others may be required to provide more information or make the request in a specific way. Some requesters are given greater access to records than other requesters, and some are more restricted.

a. Prison inmates

Prison inmates must follow a statutorily mandated process if requesting records concerning any criminal investigation or prosecution, or a juvenile delinquency investigation that otherwise would be a criminal investigation or prosecution if the subject were an adult.[225] The inmate must obtain from the judge who sentenced or otherwise adjudicated the inmate's case, a finding that the information sought is necessary to support what appears to be a justiciable claim.[226] If an inmate requesting public records concerning a criminal prosecution does not follow these requirements, a public office is not required to produce these records and any suit to enforce his or her request will be dismissed.[227] Criminal investigation records subject to this requirement include the personnel files and payroll and attendance records of designated public service workers.[228] However, when

an inmate seeks other types of records that do not relate to a criminal investigation or prosecution, public offices must treat inmates like any other type of requester.[229]

Refer to Chapter Four: F. "Modified Access to Records for Prison Inmates," for more discussion of this requirement.

b. Vexatious litigators[230]

A person who has been declared vexatious by a court cannot request public records "without first receiving both leave to proceed from the court of common pleas as described in this section and an accompanying order from the court that specifies with particularity what public records the person may request from the public office or person responsible for public records."[231] If a public office receives an anonymous public records request and, "knows or has reasonable cause to believe that a person who is a vexatious litigator has submitted a public records request, or if, based upon the requester's listed name, the public office or person responsible for public records may require that the person present an acceptable form of identification prior to responding to the public records request."[232]

Refer to Chapter Six: E. "Vexatious Litigators," for more discussion of this provision.

c. Commercial requesters

Unless a specific statute provides otherwise,[233] it is irrelevant whether the intended use of requested records is for commercial purposes.[234] However, if an individual or entity is making public records requests for commercial purposes, the public office can limit the number of records "that the office will physically deliver by United States mail or by another delivery service to ten per month."[235]

The term "commercial purposes"[236] must be narrowly construed and does not include the following activities: 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.[237]

d. Journalists

Several statutes grant "journalists"[238] enhanced access to certain records that are not available to other requesters. This enhanced access is sometimes conditioned on the journalist providing information or representations not normally required of a requester. The journalist must: (1) make the request in writing and sign the request; (2) identify himself or herself by name, title, and his or her employer's name and address; and (3) state that disclosure of the information sought would be in the public interest.[239]

The chart below lists the types of records that journalists have special access to.

Type of Records	ORC Section
Actual personal residential address of a "designated public service worker," which includes: A peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the Bureau of Criminal Identification and Investigation, emergency service telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.	149.43(B)(9)(a) Journalists can inspect or copy records
The past, current, and future work schedules of designated public service workers.[240]	149.43(B)(9)(a) Journalists can inspect or copy records
Employer name and address, if the employer is a public office, of a spouse, former spouse, or child of a "designated public service worker" (see definition above).	149.43(B)(9)(a) Journalists can inspect or copy records
Customer information maintained by a municipally owned or operated public utility, other than: • Social security numbers; • Private financial information such as credit reports, payment methods, credit card numbers, and bank account information.	149.43(B)(9)(b)(i) Journalists can inspect or copy records
Information about minors involved in a school vehicle accident, other than personal information as defined in R.C. 149.45.	149.43(B)(9)(b)(ii) Journalists can inspect or copy records
Records of the past, current, and future work schedules of a designated public service worker, other than the docket of a court, judge, or magistrate.	149.43(B)(9)(a) Journalists can inspect or copy records
Requests made by designated public service workers for redaction of the workers' residential and familial information.	149.43(B)(9)(b)(iii) Journalists can inspect or copy records

Type of Records	ORC Section
Affidavits or letters submitted to county auditors under R.C. 319.28 for redaction of designated public service workers' names from records made available online or in accessible databases.	149.43(B)(9)(b)(iv) Journalists can inspect or copy records
Coroner records, including: • Preliminary autopsy and investigative notes, but not records of a deceased individual that are "confidential law enforcement investigatory records" as defined in R.C. 149.43; • Suicide notes; and • Photographs of the decedent made by the coroner or those directed or supervised by the coroner. • A coroner has the option to grant a journalist's request to view records prior to the final completion of the autopsy report and final death certificate. After the final autopsy and death certificate are complete, a coroner must grant a journalist's request to view records.[241]	313.10(D) Journalists can inspect records but cannot copy them or take notes
Workers' Compensation initial filings, including addresses and telephone numbers of claimants, regardless of whether their claims are active or closed, and the dependents of those claimants. But disclosure is not permitted if the disclosure would reveal that the claim is for a condition that arose from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.	4123.88(D)(1) and (G) Journalists can inspect or copy records
Actual confidential personal residential address of a: • Public children services agency employee; • Private child placing agency employee; • Juvenile court employee; • Law enforcement agency employee. The journalist must adequately identify the person whose address is being sought and must make the request to the agency by which the individual is employed or to the agency that has custody of the records.	2151.142(D) Journalists can inspect or copy records

C. Go “Above and Beyond” and Negotiate

1. Think outside the box – go above and beyond your duties

Requesters may become impatient with the time a response is taking, and public offices are often concerned with the resources required to process a large or complex request and either may believe that the other is pushing the limits of the public records laws. These problems can be minimized if one or both parties go above and beyond their duties in search of a result that works for both. Some examples include:

- If a request is made for paper copies, and the office keeps the records electronically, the office might offer to email digital copies instead (particularly if this is easier for the office). The requester may not know that the records are kept electronically and that sending them by email is cheaper and faster for the requester. The worst thing that can happen is the requester declines.
- If a requester tells the public office that one part of a request is very urgent for them and the rest can wait, then the office might agree to expedite that part in exchange for relaxed timing for the rest.
- If a township fiscal officer’s ability to copy 500 pages of paper records is limited to a slow ink-jet copier, then either the fiscal officer or the requester might suggest taking the documents to a copy store, where the copying will be faster and cheaper.

2. How to find a win-win solution: negotiate

The Public Records Act requires negotiated clarification when an ambiguous or overly broad request is denied and offers optional negotiation when a public office believes that sharing the reason for the request or the identity of the requester would help the office identify, locate, or deliver the records. But negotiation is not limited to these circumstances. If you have a concern or creative idea, remember that “it never hurts to ask.” If the other party appears frustrated or burdened, ask them, “Is there another way to do this that works better for you?”

Notes:

---

[108] R.C. 149.43(B)(2).

[109] *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-4228, ¶ 30 (the Public Records Act "does not expressly require public offices to maintain e-mail records so that they can be retrieved based on sender and recipient status"); *State ex rel. Bardwell v. City of Cleveland*, 2010-Ohio-3267, ¶ 5 (when police department kept pawnbroker reports on 3x5 notecards, there was no requirement to adopt a more efficient or updated system).

[110] *State ex rel. Evans v. City of Parma*, 2003-Ohio-1159, ¶ 15 (8th Dist.).

[111] *State ex rel. Patton v. Rhodes*, 2011-Ohio-3093, ¶ 15-17.

[112] R.C. 149.43(B)(2). Refer to Chapter Seven: A. "Records Management" for more discussion of records maintenance requirements.

[113] 2006 Ohio Atty.Gen.Ops. No. 038.

[114] R.C. 1.59(C); 1990 Ohio Atty.Gen.Ops. No. 050.

[115] R.C. 149.43(B)(4); *see also State ex rel. Gilbert v. Summit Cty.*, 2004-Ohio-7108, ¶ 10 ("[A] person may inspect and copy a 'public record' . . . irrespective of his or her purpose for doing so."); *State ex rel. Consumer News Servs., v. Worthington City Bd. of Edn.*, 2002-Ohio-5311, ¶ 45 (noting that purpose behind request to "inspect and copy public records is irrelevant"). *But see State ex rel. Keller v. Cox*, 1999-Ohio-264 (police officer's personal information was properly withheld from a criminal defendant who might use the information for "nefarious ends," implicating constitutional right of privacy).

[116] R.C. 149.43(B)(4), (5); *Bruno v. Ohio Auditor of State's Office*, 2024-Ohio-5312, ¶ 6-8 (Ct. of Cl.) (while a person can request public records anonymously, the requester must show that he or she is the person who made the request to establish standing to sue a public office).

[117] R.C. 149.43(B)(4).

[118] *State ex rel. Ware v. Ohio Dept. of Rehab. & Correction,* 2024-Ohio-1015, ¶ 16 ("The Public Records Act contains no provision requiring that a requester formally label a public records request as a 'formal public records request.'").

[119] *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 2012-Ohio-4246, ¶ 22-26.

[120] *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 389-90 (1999) (no duty to provide records that do not exist); *State ex rel. Gooden v. Kagel*, 2014-Ohio-869, ¶ 5, 8-9 (respondent denied that records had been filed with her, and relator provided no evidence to the contrary); *State ex rel. Mobley v. Bates*, 2024-Ohio-2827, ¶ 9 (the existence of a particular public records retention schedule itself is not evidence that the public office has records encompassed by that schedule).

[121] *Lerussi v. Calcutta Volunteer Fire Dept.*, 2023-Ohio-626, ¶ 5 (Ct. of Cl.).

[122] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. Of Commrs.,* 2008-Ohio-6253, ¶ 23 (when "public records . . . are properly disposed of in accordance with a duly adopted records retention policy, there is no entitlement to these records").

[123] *State ex rel. Kesterson v. Kent State Univ.*, 2018-Ohio-5110, ¶ 28-30 (request for all records regarding employee's departure from university and restrictions or limitations placed on employee after her departure impermissibly seek information, not specific records); *State ex rel. Griffin v. Sehlmeyer*, 2022-Ohio-2189, ¶ 3, 11-12 (request for "documented records and or filed on the actual amount of state and/or federal funding that [the public office] has approved to . . . fight COVID-19, at the prison[,]" was a request for information and not a request for specific, existing records).

[124] *State ex rel. Cioffi v. Stuard*, 2010-Ohio-829, ¶ 21-23 (11th Dist.) (no violation of the Public Records Act when clerk of courts failed to provide a hearing transcript that had never been created); *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999) (a public office has no duty "to create new records by searching for and compiling information from existing records"); *State ex rel. Copley Ohio Newspapers, Inc. v. City of Akron*, 2024-Ohio-5677, ¶ 15 (public records requests for the personnel files, disciplinary records, and internal investigations of unidentified offices was "tantamount to a request for information").

[125] *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197, 198 (1991) (no duty to create documents to respond to request); *State ex rel. Welden v. Ohio State Med. Bd.*, 2011-Ohio-6560, ¶ 9 (10th Dist.) (because requested list of addresses of every licensed physician did not exist, there was no clear legal duty to create such a record).
[126] *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 17.
[127] *State ex rel. Morgan v. Strickland*, 2009-Ohio-1901, ¶ 18.
[128] *State ex rel. Kesterson v. Kent State Univ.*, 2018-Ohio-5110, ¶ 23-30.
[129] R.C. 149.43(B)(2); *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 19; *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-4228, ¶ 27, 32.
[130] *Paramount Advantage v. Ohio Dept. of Medicaid*, 2021-Ohio-4180, ¶ 19, 21-22 (Ct. of Cl.) (request for documents "reflecting" communications between individuals was an overly broad discovery-style request).
[131] *State ex rel. Kesterson v. Kent State Univ.*, 2018-Ohio-5110, ¶ 25-26.
[132] *State ex rel. Cleveland Assn. of Rescue Employees. v. City of Cleveland*, 2023-Ohio-3112, ¶ 24-25.
[133] *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 314-15 (2001) (request for all records "containing any reference whatsoever" to requester was overly broad); *Kanter v. City of Cleveland Hts.*, 2018-Ohio-4592, ¶ 8-12 (Ct. of Cl.) (request for "all" "communications, messages, schedules, logs, and documents shared" between city and a newspaper "regarding" requester was overly broad).
[134] *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-4228, ¶ 20-32 (request for all litigation files and all grievance files for a period over six years, and for all emails between two employees during joint employment); *State ex rel. Dehler v. Spatny*, 2010-Ohio-5711, ¶ 1-3 (request for prison quartermaster's orders and receipts for clothing over seven years); *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 19 (request for all work-related emails, texts, and correspondence of an elected official during six months in office).
[135] *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 755 (10th Dist. 1989).
[136] *Paramount Advantage v. Ohio Dept. of Medicaid*, 2021-Ohio-4180, ¶ 19, 21-22 (Ct. of Cl.) (request for documents "reflecting" communications between individuals was an overly broad discovery-style request).
[137] *State ex rel. Summers v. Fox,* 2020-Ohio-5585, ¶ 74 ("[P]ermitting a public official to oppose a request as overbroad for the first time in litigation would enable the official to avoid the duty" to negotiate with the requester.).
[138] R.C. 149.43(B)(2); *State ex rel. ESPN v. Ohio State Univ.*, 2012-Ohio-2690, ¶ 11; *State ex rel. Huth v. Animal Welfare League of Trumbull Cty., Inc.,* 2022-Ohio-3583, ¶ 11-12 (while a public office must inform a requester how it maintains and accesses its records, the office is not required to explain its software and databases to requester); *Wellin v. City of Hamilton,* 2022-Ohio-2661, ¶ 17 (Ct. of Cl) (public office failed to inform requester how the office maintained and accessed its records when it merely offered to requester to "contact" the office "[i]f you would like to clarify or revise your request").
[139] *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-4228, ¶ 13-16, 33-38 (noting a requester may also possess preexisting knowledge of the public office's records organization, which helps satisfy this requirement).
[140] *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-4228, ¶ 15, 26, 36-37.
[141] *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-4228, ¶ 40; *Ziegler v. Ohio Dept. of Pub. Safety*, 2015-Ohio-139, ¶ 10 (11th Dist.) ("Although repeatedly encouraged by respondent…, relator never revised her request to clarify any of the ambiguities.").
[142] R.C. 149.43(B)(5).
[143] R.C. 149.43(B)(1).
[144] R.C. 149.43(B)(6); *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 2005-Ohio-685, ¶ 12-13 (public office did not fulfill its duty to provide copies of records by allowing requester to listen to 911 tapes).
[145] *State v. Court of Common Pleas*, 2007-Ohio-6433, ¶ 30-31 (7th Dist.) (although direct copies could not be made because the original recording device was no longer available, requester is still entitled to copies in available alternative format); *State ex rel. Slager v. Trelka*, 2024-Ohio-5125, ¶ 27-30 (prison officials can refuse to provide inmate with copies of records on disc, which is considered contraband under prison policy); *State ex rel. Mobley v. LaRose*, 2024-Ohio-1909, ¶ 15 (R.C. 149.43(B)(1) does not require that a public office must provide certified copies of public records).

[146] R.C. 149.43(B)(6); *State ex rel. Reese v. Ohio Dept. Rehab. & Corr. Legal Dept.,* 2022-Ohio-2105, ¶ 15-17 (when public office did not keep requested video footage "in photo clip form," office was not required to produce records in that format).

[147] *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458, 459 (2000).

[148] R.C. 149.43(B)(7).

[149] *State ex rel. Patton v Rhodes*, 2011-Ohio-3093, ¶ 15-20; 2014 Ohio Atty.Gen.Ops. No. 009.

[150] 2014 Ohio Atty.Gen.Ops. No. 009.

[151] R.C. 149.43(B)(7).

[152] R.C. 149.43(B)(1).

[153] *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 2006-Ohio-662, ¶ 10.

[154] *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 2002-Ohio-5311, ¶ 37; *see also State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53 (1997).

[155] *State ex rel. Dehler v. Mohr*, 2011-Ohio-959, ¶ 2 (allowing inmate to personally inspect records in another prison "would have created security issues, unreasonably interfered with the official's discharge of their duties, and violated prison rules"); *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 623 (1994) (an "unreasonabl[e] interfere[nce] with the discharge of the duties of the officer having custody" of public records creates an exemption to the rule that public records should be generally available to the public).

[156] *State ex rel. Dehler v. Mohr,* 2011-Ohio-959, ¶ 2.

[157] *State ex rel. Consumer News Serv., Inc v. Worthington City Bd. of Edn.*, 2002-Ohio-5311, ¶ 38-47 (six-days to respond to request for candidate resumes was unreasonable).

[158] *State ex rel. v. Montgomery Cty. Pub. Defender v. Siroki*, 2006-Ohio-662, ¶ 17 (affording clerk of courts time to redact social security numbers from requested records).

[159] *State ex rel. Strothers v. Norton*, 2012-Ohio-1007, ¶ 23 (45 days was reasonable when records responsive to multiple requests were voluminous).

[160] R.C. 149.43(B)(1).

[161] **Offices' response time was reasonable under the facts and circumstances:** *Strothers v. Norton*, 2012-Ohio-1007, ¶ 23 (45 days was reasonable when records responsive to multiple requests were voluminous); *State ex rel. Davis v. Metzger*, 2014-Ohio-2329, ¶ 12 (three days was reasonable to respond to request for personnel files of six employees); *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 2017-Ohio-8988, ¶ 59 (two months to produce redacted autopsy reports of homicide victims was reasonable given "the magnitude of the investigation into the murders and the corresponding need to redact the reports with care"); *State ex rel. Patituce & Assocs., LLC v. City of Cleveland*, 2017-Ohio-300, ¶ 10 (8th Dist.) (three months to respond to request for personnel files of police officers and other records was reasonable based on the number and type of redactions required); *Easton Telecom Servs., L.L.C. v. Woodmere*, 2019-Ohio-3282 (8th Dist.) (two months was reasonable to respond to broad requests for records of several departments, spanning two years; several part-time employees had to locate, retrieve, and send records to office counsel, who had to review, analyze, redact, and copy the records); *State ex rel. Util. Supervisors Emps. Assn. v. Cleveland*, 2023-Ohio-463, ¶ 19 (8th Dist.) (four months was reasonable to prepare and produce 2,705 pages of records responsive to a broadly worded request that covered five years); *State ex rel. Anderson v. Warrensville Hts*., 2024-Ohio-1882, ¶ 15-19 (8th Dist.) (response in 22 days and 18 days to requester's two requests was reasonable because office had to search through ten years of 35-year-old employment records).

Offices' response time was unreasonable under the facts and circumstances: *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 2002-Ohio-5311, ¶ 38-47 (six days was unreasonable to produce candidate resumes, records that require few redactions); *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.*, 2009-Ohio-442 (10th Dist.) (37 days was unreasonable to respond to request for contracts and related materials between a prison and supplier); *State ex rel. DiFranco v. S. Euclid*, 2015-Ohio-4914, ¶ 16, 18 (eight months was unreasonable when delay was caused by the office's inadvertent omission of records from its production); *State ex rel. Kesterson v. Kent State Univ.*, 2018-Ohio-5108, ¶ 14-20 (23 days was reasonable to produce over 700 pages of responsive records, but over eight-month delay to produce other responsive records was unreasonable); *State ex rel. Hogan Lovells U.S., LLP v. Dept. of Rehab. & Corr.*, 2018-Ohio-5133, ¶ 33 (ten months was unreasonable when office's only explanation was inadvertence); *Crenshaw v. Cleveland Law Dept*., 2020-Ohio-921 (8th Dist.) (76 days was unreasonable to respond to request for one police officer's record for one year); *State ex rel. Mobley v. Powers*,

2024-Ohio-3315, ¶ 10 (three months was unreasonable to respond to request for a small set of records that did not require redactions).

[162] *State ex rel. Beacon Journal Pub. Co. v. Andrews*, 48 Ohio St.2d 283, 289 (1976).

[163] R.C. 149.43(B)(1).

[164] *State ex rel. Butler Cty. Bar Assn. v. Robb*, 62 Ohio App.3d 298, 300 (12th Dist. 1990) (rejecting requester's demand that a clerk work certain hours different from the clerk's regularly scheduled hours).

[165] *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 622 (1994) (allowing records requests during all hours of the entire police department's operations is unreasonable).

[166] *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 624 (1994); *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253, ¶ 37 ("The right of inspection, as opposed to the right to request copies, is not conditioned on the payment of any fee under R.C. 149.43.").

[167] *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458, 459 (2000).

[168] *Gupta v. City of Cleveland*, 2018-Ohio-3475, ¶ 10 (Ct. of Cl.) ("When a requester asks only to inspect records, the public office has no duty to deliver the records to the requester's doorstep."); *State ex rel. Penland v. Ohio Dept of Corr.,* 2019-Ohio-4130, ¶ 14 ("[the requester] has not shown that R.C. 149.43(B)(1) establishes a clear duty to transmit [the record] for inspection at a location other than the business office where it is maintained").

[169] *State ex rel. Gilreath v. Cuyahoga Job & Family Servs*., 2024-Ohio-103, ¶ 21.

[170] 2014 Ohio Atty.Gen.Ops. No. 009.

[171] R.C. 149.43(B)(6), (B)(7); *State ex rel. Watson v. Mohr*, 2012-Ohio-1006, ¶ 2; *State ex rel. Dehler v. Mohr*, 2011-Ohio-959, ¶ 3 (requester was not entitled to copies of requested records because he refused to submit prepayment); *State ex rel. Ware v. City of Akron,* 2021-Ohio-624, ¶ 13-15 (office complied with its obligations when it identified the cost of copies and offered to provide copies upon the payment of costs).

[172] R.C. 149.43(B)(1); *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 625-26, 640 (1994) (public office cannot charge $5 for initial page or for employee labor, but only for "actual cost" of final copies).

[173] R.C. 149.43(B)(7); *State ex rel. Call v. Fragale*, 2004-Ohio-6589, ¶ 2-8.

[174] *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 626 (1994).

[175] *State ex rel. Gibbs v. Concord Twp. Trustees*, 2003-Ohio-1586, ¶ 31 (11th Dist.); *State ex rel. Gambill v. Opperman*, 2013-Ohio-761, ¶ 29 (if the decision to hire a private contractor is reasonable, a public office may charge requester the actual cost to extract requested electronic raw data from a copyrighted database).

[176] *State ex rel. Call v. Fragale*, 2004-Ohio-6589, ¶ 6.

[177] *State ex rel. Ware v. City of Akron,* 2021-Ohio-624, ¶ 13-15 (office complied its obligations when it identified the cost of copies and offered to provide copies upon the payment of costs).

[178] R.C. 149.43(B)(6).

[179] R.C. 5502.12 (other agencies that submit such reports may charge requesters who claim an interest arising out of a motor vehicle accident a non-refundable fee up to $4).

[180] R.C. 313.10(B).

[181] R.C. 149.43 (B)(1).

[182] R.C. 1.51 (outlining the rules of statutory construction); *State ex rel. Motor Carrier Serv., Inc. v. Rankin*, 2013-Ohio-1505, ¶ 26-32; *State ex rel. Slagle v. Rogers*, 2004-Ohio-4354, ¶ 5-15.

[183] *State ex rel. Slagle v. Rogers*, 2004-Ohio-4354, ¶ 15. For another example, see R.C. 5502.12(A) (Department of Public Safety may charge $4 for each accident report copy).

[184] *State ex rel. Call v. Fragale*, 2004-Ohio-6589, ¶ 8 (court offered uncertified records at actual cost but may charge up to $1 per page for certified copies pursuant to R.C. 2303.20).

[185] *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 2012-Ohio-753, ¶ 42-62.

[186] R.C. 149.43(B)(1).

[187] R.C. 149.011(G).

[188] *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37, 41 (1998) (emails with racial slurs sent between public employees not "records" when the requested emails were not used to conduct the business of the public office); *Doe v. Ohio State Univ.*, 2024-Ohio-5891, ¶ 37 (10th Dist.) (personal information of OSU ticket purchasers is not "record" information because the school "uses the ticketholders' personal information to administer the sales of tickets, not to determine how [it] will organize, function, operate, or act, or to shape

policies, decisions, or procedures"); *Neilsen v. Scioto Cty. Prosecutor*, 2024-Ohio-2996, ¶ 7 (Ct. of Cl.) (even if relied upon, notes, spreadsheets, memoranda, or other analytical documents created and used by a prosecutor to recall his investigation are personal notes not subject to disclosure).

[189] *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63 (1998) (because judge read unsolicited letters but did not rely on them in sentencing, letters did not serve to document any activity of the public office and were not "records").

[190] *See, e.g.*, R.C. 1347, et seq. (Ohio Personal Information Systems Act).

[191] R.C. 149.43(B)(1).

[192] R.C. 149.43(B)(4).

[193] R.C. 149.43(A)(13).

[194] *State ex rel. Culgan v. Jefferson Cty. Clerk of Courts*, 2024-Ohio-5699, ¶ 23 (if the nature and extent of redactions are clear, an office has discretion to make redactions in black or white).

[195] R.C. 149.43(B)(1).

[196] *State ex rel. Master v. Cleveland*, 76 Ohio St. 3d 340, 342 (1996).

[197] *State ex rel. Hogan-Lovells U.S., LLP v. Ohio Dept. of Rehab. & Corr.*, 2021-Ohio-1762, ¶ 16-30 (conducting a document-by-document review to decide if the office correctly withheld privileged documents in their entirety in lieu of producing redacted versions).

[198] R.C. 149.43(B)(1).

[199] R.C. 149.43(B)(3).

[200] R.C. 149.43(B)(3).

[201] *State ex rel. Laborers Internatl. Union of N. Am., Local UNo. 500 v. Summerville*, 2009-Ohio-4090, ¶ 6.

[202] R.C. 149.43(B)(3).

[203] *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 74 (if a public office or official can "oppose a request as overbroad for the first time in litigation" the office evades the duty to negotiate with the requester).

[204] R.C. 109.573(D), (E), (G)(1); R.C. 149.43(A)(1)(j).

[205] R.C. 2953.81(B).

[206] R.C. 2950.08(A) (BCI sex offender registry and notification (SORN) information, not open to the public). *But see* R.C. 2950.13(A)(11) (providing that certain SORN information must be posted as a database on the internet and is a public record under R.C. 149.43).

[207] R.C. 149.433(D).

[208] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 2002-Ohio-7041, ¶ 22 ("Voluntarily disclosing the requested record can waive any right to claim an exemption to disclosure.").

[209] R.C. 149.431; *State ex rel. Bell v. Brooks*, 2011-Ohio-4897, ¶ 30-40.

[210] R.C. 3319.321(A) (schools can require a requester to disclose his or her identity or intended use of directory information to determine if the "information is for use in a profit-making plan or activity").

[211] R.C. 5502.12 (other agencies that submit such reports may charge requesters who claim an interest arising out of a motor vehicle accident a non-refundable fee up to $4).

[212] R.C. 313.10(B).

[213] R.C. 149.43(B)(1).

[214] Rules of Superintendence for the Courts of Ohio; *State ex rel. Bey v. Byrd,* 2020-Ohio-2766, ¶ 11. Refer to Chapter Five: B. "Court Records" for more discussion of court records and the Rules of Superintendence.

[215] R.C. 307.862(C); 2012 Ohio Atty.Gen.Ops. No. 036.

[216] R.C. 149.43(F)(1).

[217] These definitions are set forth at R.C. 149.43(F)(2) (a)-(d), (F)(3).

[218] R.C. 313.10(A).

[219] R.C. 313.10(B).

[220] R.C. 313.10(A)(2)(a)-(f).

[221] A next-of-kin is entitled to a complete autopsy report even though the next-of-kin is incarcerated for murdering the subject of the autopsy report and the provisions of the Public Records Act regarding inmates do not apply. *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner's Office*, 2017-Ohio 8714, ¶ 37-38.

[222] R.C. 313.10(D).

[223] R.C. 313.10(E).

[224] R.C. 313.10(F).

[225] R.C. 149.43(B)(8); *State ex rel. Papa v. Starkey*, 2014-Ohio-2989, ¶ 7-9 (5th Dist.) (the statutory process applies to an incarcerated criminal offender who seeks records relating to *any* criminal prosecution, not just of the inmate's own criminal case).

[226] R.C. 149.43(B)(8); *McCain v. Huffman*, 2017-Ohio-9241, ¶ 12 (denying an inmate request when the requested records would be "of no legal consequence"); *State v. Dowell*, 2015-Ohio-3237, ¶ 8 (8th Dist.) (denying inmate request for records when inmate "did not identify any pending proceeding for which the requested records would be material"); *State v. Wilson*, 2011-Ohio-4195 (2d Dist.) (application for clemency is not a "justiciable claim").

[227] *State ex rel. Russell v. Thornton*, 2006-Ohio-5858, ¶ 16-17.

[228] R.C. 149.43(B)(8), effective as of April 9, 2025.

[229] *State ex rel. Ware v. Parikh*, 2023-Ohio-759, ¶ 9-13 (inmate was entitled to records relating to a mandamus action and awarding statutory damages); *State ex rel. Gregory v. City of Toledo*, 2023-Ohio-651, ¶ 10-16 (even when part of a request is barred by R.C. 149.43(B)(8), public offices may not ignore portions of inmate requests that do not relate to a criminal proceeding).

[230] R.C. 2323.52(J)(1)-(2), effective as of April 9, 2025. A "vexatious litigator" is "any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions." R.C. 2323.52(A)(3). Refer to Chapter Six. E. for more discussion of vexatious litigators.

[231] R.C. 2323.52(J)(1).

[232] R.C. 2323.52(J)(1)-(2).

[233] *See, e.g.*, R.C. 3319.321(A) (prohibiting schools from releasing student directory information "to any person or group for use in a profit-making plan or activity").

[234] 1990 Ohio Atty.Gen.Ops. No. 050; *see also* R.C. 149.43(B)(4).

[235] R.C. 149.43(B)(7)(c)(i) (exception when "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"); *Schaffer v. Ohio State Univ.*, 2025-Ohio-735 (Ct. of Cl.) (university could enforce provision in its public records policy limiting a requester to 10 records a month unless requester certifies that he or she is not requesting records for commercial purposes; university properly denied request when requester only said that he would use the records for other purposes).

[236] R.C. 149.43(B)(7)(c)(iii).

[237] R.C. 149.43(B)(7)(c)(iii).

[238] R.C. 149.43(B)(9)(c) ("As used in division (B)(9) of [R.C. 149.43], '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.").

[239] R.C. 149.43(B)(9)(a), (b).

[240] R.C. 149.43(B)(9)(a).

[241] R.C. 313.10(D).

III. Chapter Three: Exemptions to Release of Public Records

While the Public Records Act presumes public access to government records, Ohio and federal laws provide limited exemptions[242] that protect certain records and information from release. These laws can include constitutional provisions,[243] statutes,[244] common law,[245] or properly authorized administrative codes and regulations.[246] If a record does not clearly fit into one of the exemptions listed in the Public Records Act and is not otherwise exempt from disclosure by another state or federal law, it must be disclosed.

The federal Freedom of Information Act (FOIA)[247] and its exemptions do not apply to Ohio public offices.[248] Requests for records and information from state or local agencies in Ohio are governed by the Public Records Act, but requests for records and information from federal agencies located in Ohio are governed by FOIA.

A. Exemptions Cannot be Created in a Contract

Exemptions can only be created through the legal authority discussed above: constitutional provisions, statutes, common law, or properly authorized administrative codes and regulations. An exemption cannot be created in a contract. A public office cannot contract out of its obligations under the Public Records Act and thus cannot agree to nullify or restrict the public's access to public records.[249] Parties to a public contract, including settlement agreements, memoranda of understanding,[250] and collective bargaining agreements,[251] cannot nullify public records obligations by agreeing that records will be confidential or protected.[252] Nor can an employee handbook confidentiality provision change the status of public records.[253] Absent a statutory exemption, a "public entity cannot enter into enforceable promises of confidentiality regarding public records."[254]

B. Categories of Exemptions

There are two types of public records exemptions: 1) those that mandate that public offices cannot release records or information; and 2) those that give public offices discretion to release records or information.

Many records are subject to more than one exemption. Some may be subject to both a discretionary exemption (giving the public office the choice to withhold) and a mandatory exemption (prohibiting release).

1. Mandatory exemptions: public office must not release

A "mandatory" exemption prohibits a public office from releasing specific records or information to the public, sometimes under civil or criminal penalties. Such records are prohibited from being released in response to a public records request, and the public office has no choice but to redact or withhold the information or record. The Public Records Act expressly includes these mandatory restrictions in R.C. 149.43(A)(1)(v), often referred to as the "catch-all" exemption: "records the release of which is prohibited by state or federal law."

A few mandatory exemptions apply to public offices on behalf of, and are subject to the decisions of, another person. For example, the attorney-client or physician-patient privilege may restrict a public, legal, or medical office from releasing certain records of its clients or patients.[255] In such cases, if the client or patient chooses to waive the privilege, the otherwise mandatory exemption would not apply and, in the absence of some other exemption, release of the records would be required.[256]

2. Discretionary exemptions: public office may choose to release or withhold

A "discretionary" exemption gives a public office the choice to either withhold or release specific records, often by excluding certain records from the definition of public records.[257] This means that the public office does not have to disclose these records in response to a public records request, it may choose to do so without fear of punishment under the law. Discretionary exemptions are typically found in state or federal statutes. Some laws have ambiguous titles or text such as "confidential" or "private." But the test to determine whether the exemption is mandatory or discretionary is whether a law applied to records or information *prohibits* release or gives the public office the *choice* to withhold or redact.

C. Waiver of a Discretionary Exemption

If a discretionary exemption applies to a record or information, but the public office voluntarily discloses it, the office is deemed to have waived[258] (abandoned) that exemption for that specific record or information, especially if the disclosure was to a person whose interests are antagonistic to those of the public office.[259] However, "waiver does not necessarily occur when the public office that possesses the information makes limited disclosures [to other public officials] to carry out its business."[260] Under such circumstances, the information has never been disclosed to the public.[261]

D. Applying Exemptions

Public records belong to the people, not to the government officials or offices holding the records. Accordingly, public records laws must be liberally interpreted in favor of disclosure to the public, and any exemptions in the law that permit certain types of records to be withheld from disclosure must be narrowly construed against the public records custodian.[262] The public office has the burden of establishing that an exemption applies; the public office fails to meet that burden if it does not prove that the requested records fall squarely within a valid exemption.[263] The Supreme Court of Ohio has stated that "in enumerating very narrow, specific exceptions to the public records statute, the General Assembly has already weighed and balanced the competing public policy considerations between the public's right to know how its state agencies make decisions and the potential harm, inconvenience or burden imposed on the agency by disclosure."[264] Under this rationale, the Supreme Court of Ohio has not authorized courts or other records custodians to create new exemptions based on a balancing of interests or generalized privacy concerns.[265]

Thus, public offices must apply exemptions narrowly and only to the specific record or information in a record that falls squarely within the exemption. If only a single word is covered by an exemption, only that word can be redacted. If a statute expressly says that specific records are public, it does *not* mean that records of that office are exempt from disclosure when they do not fall within the statute.[266] The Public Records Act still applies to all records of the office and records are only exempt from disclosure when there is a specific and applicable exemption.

When an office can show that non-exempt records are "inextricably intertwined" with exempt records, the non-exempt records can be withheld from disclosure but only to the extent they are inseparable.[267]

A public office has no duty to produce a "privilege log" to preserve a claimed exemption.[268]

E. Exemptions Listed in the Public Records Act

The Public Records Act has a list of records and types of information removed from the definition of "public record."[269] The full list is under R.C. 149.43(A)(1). These exemptions are listed below in brief summaries. Although the language of R.C. 149.43(A)(1) — "'*Public record' does not mean any of the following"* — gives

the public office the *choice* to withhold or release these records, many of these same records are also subject to other laws that *prohibit* their release.

Type of Record(s)	Subsection	Description
Medical records	(a)	Medical records are defined as any document or combination of documents that: 1) pertains to a patient's medical history, diagnosis, prognosis, or medical condition; and 2) was generated and maintained in the process of medical treatment.[270] Records meeting this definition need not be disclosed.[271] Birth, death, and hospital admission or discharge records are not considered medical records for purposes of Ohio's public records law and should be disclosed.[272] Reports generated for reasons other than medical diagnosis or treatment, such as for employment or litigation purposes, are not "medical records" exempt from disclosure under the Public Records Act.[273] However, other statutes or federal constitutional rights may prohibit disclosure,[274] in which case the records or information are not public records under the "catch-all exemption," R.C. 149.43(A)(1)(v).
Probation/parole/post-release control	(b)	Records pertaining to probation and parole proceedings or proceedings related to the imposition of community control sanctions,[275] post-release control sanctions,[276] or to proceedings related to determinations under R.C. 2967.271 regarding the release or continued incarceration of an offender to whom that section applies. Examples of records covered by this exemption include pre-sentence investigation reports;[277] records relied on to compile a pre-sentence investigation report;[278] documents reviewed by the Parole Board in preparation for a parole hearing;[279] and records of parole proceedings.[280]
Juvenile abortion proceedings	(c)	All records associated with the statutory process through which unmarried and unemancipated minors may obtain judicial approval for abortion procedures in lieu of parental consent. This exemption includes records from both trial- and appellate-level proceedings.[281]

Type of Record(s)	Subsection	Description
Adoption proceedings	(d), (e), and (f)	These three exemptions all relate to the confidentiality of adoption proceedings. Documents removed from the definition of "public record" include records pertaining to adoption proceedings;[282] contents of an adoption file maintained by the Department of Health;[283] a putative father registry;[284] and an original birth record after a new birth record has been issued.[285] In limited circumstances, release of adoption records and proceedings may be appropriate. For example, the Department of Job and Family Services may release a putative father's registration forms to the mother of the minor or to the agency or attorney who is attempting to arrange the minor's adoption.[286] Forms pertaining to the social and medical histories of the biological parents may be inspected by an adopted person who has reached majority or to the adoptive parents of a minor.[287] An adopted person at least 18 years old may be entitled to the release of identifying information or access to their adoption file.[288]
Trial preparation	(g)	"Trial preparation record" is defined as "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."[289] Documents that a public office obtains through discovery during litigation are considered trial preparation records.[290] Material compiled for a public attorney's personal trial preparation may also constitute a trial preparation record.[291] The exemption does not apply to settlement agreements or settlement proposals,[292] or when there is insufficient evidence that litigation is reasonably anticipated at the time the records were prepared.[293]

Type of Record(s)	Subsection	Description
Confidential law enforcement investigatory records (CLEIRs)	(h)	CLEIRs are defined[294] as records that (1) pertain to a law enforcement matter, and (2) have a high probability of disclosing any of the following: (1) The identity of an uncharged suspect; (2) The identity of an information source or witness to whom confidentiality has been reasonably promised, as well as any information provided by that source or witness that would tend to reveal the identity of the source or witness; (3) Specific confidential investigatory techniques or procedures or specific investigatory work product; or (4) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source. Refer to Chapter Four: A. "CLEIRs: Confidential Law Enforcement Investigatory Records Exemption," for more discussion of this exemption.
Mediation	(i)	Records containing confidential "mediation communications" (R.C. 2710.03) or records of the Ohio Civil Rights Commission made confidential under R.C. 4112.05.[295]
DNA	(j)	DNA records stored in the state DNA database, pursuant to R.C. 109.573.[296]
Inmate records	(k)	Inmate records released by the Department of Rehabilitation and Correction (DRC) to the Department of Youth Services (DYS) or a court of record, pursuant to R.C. 5120.21(E).[297]
Department of Youth Services	(l)	Records regarding children in DYS custody that are released for the limited purpose of carrying out the duties of DRC.[298]
Intellectual property records	(m)	While this exemption seems broad, it has a specific definition for the purposes of the Public Records Act, and is limited to those non-financial and non-administrative records that are produced or collected: (1) by or for state university faculty or staff; (2) in relation to studies or research on an education, commercial, scientific, artistic, technical, or scholarly issue; and (3) which have not been publicly released, published, or patented.[299]

Type of Record(s)	Subsection	Description
Donor profile records	(n)	"Donor profile records" have a specific, limited definition for the purposes of the Public Records Act. First, it only applies to records about donors or potential donors to public colleges and universities.[300] Second, the names and reported addresses of all donors and the date, amount, and condition of their donation(s) are all public information.[301] The exemption applies only to all other records about a donor or potential donor.
Ohio Department of Job and Family Services	(o)	Records maintained by the Ohio Department of Job and Family Services on statutory employer reports of new hires.[302]
Designated public service workers	(p)	Residential and familial information of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, EMS medical director or member of a cooperating physician advisory board, board of pharmacy employee, BCI investigator, emergency service telecommunicator, forensic mental health or mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.[303] Refer to Chapter Four: C.5. "Residential and familial information of covered professions," for more discussion of this exemption.
Hospital trade secrets	(q)	Trade secrets of certain county and municipal hospitals.[304] "Trade secrets" are defined at R.C. 1333.61(D), the definitional section of Ohio's Uniform Trade Secrets Act.
Recreational activities of minors	(r)	Information pertaining to the recreational activities of a person under the age of 18. This includes any information that would reveal the person's: (1) Address or telephone number, or that of the person's guardian, custodian, or emergency contact person; (2) Social security number, birth date, or photographic image; (3) Medical records, history, or information; or (4) Information sought or required for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or obtain admission privileges to any recreational facility owned or operated by a public office.[305]

Type of Record(s)	Subsection	Description
Child fatality review board	(s)	Listed records of a child fatality review board (except for the annual reports the boards are required by statute to submit to the Ohio Department of Health).[306] The listed records are also prohibited from unauthorized release by R.C. 307.629.
Death of minor	(t)	Records and information provided to the executive director of a public children services agency or prosecutor regarding the death of a minor from possible abuse, neglect, or other criminal conduct.[307]
Nursing home administrator licensing	(u)	Nursing home administrator licensing test materials, examinations, or evaluation tools.[308]
Catch-all exemption	(v)	Records the release of which is prohibited by state or federal law, often called the "catch-all" exemption.[309] Although state and federal statutes can create both mandatory and discretionary exemptions, this provision also incorporates statutes or administrative codes that prohibit the release of specific records. A state or federal agency rule designating specific records as confidential that is properly promulgated by the agency will constitute a valid exemption because such rules have the effect of law.[310] But, if the rule was promulgated outside the authority statutorily granted to the agency, the rule is invalid and will not constitute an exemption from disclosure.[311]
Ohio Venture Capital Authority	(w)	Proprietary information of or relating to any person that is submitted to or compiled by the Ohio Venture Capital Authority.[312]
Ohio Housing Finance Agency	(x)	Financial statements or 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.[313]
Foster care/childcare centers	(y)	Records and information relating to foster care givers and children housed in foster care, as well as children enrolled in licensed, certified, or registered childcare centers. This exemption applies only to records held by county agencies or the Ohio Department of Job and Family Services.[314]

Type of Record(s)	Subsection	Description
Military discharges	(z)	Military discharges recorded with a county recorder.[315]
Public utility usage information	(aa)	Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility.[316]
JobsOhio	(bb)	Records described in R.C. 187.04(C) (relating to JobsOhio) that are not designated to be made available to the public as provided in that division.[317]
Lethal injection	(cc)	Information and records concerning drugs used for lethal injections under R.C. 2949.221(B) and (C).[318]
Personal information	(dd)	"Personal information," as defined in R.C. 149.45, includes an individual's social security number; state or federal tax identification number; driver's license number or state identification number; checking account number, savings account number, credit card number, or debit card number; and demand deposit number, money market account number, mutual fund account number, or any other financial or medical account number.[319]
Secretary of State's address confidentiality program	(ee)	The confidential name, address, and other personally identifiable information of a program participant in the Secretary of State's Address Confidentiality Program established under R.C. 111.41 to R.C. 111.47, including records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state.[320]
Military orders	(ff)	Orders for active military service of an individual serving or with previous service in the U.S. armed forces, including a reserve component, or the Ohio organized militia.[321]
Minors involved in school vehicle accidents	(gg)	"The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident."[322]

Type of Record(s)	Subsection	Description
Claims for payment for health care	(hh)	“Protected health information,” as defined in 45 C.F.R. 160.103, the HIPAA Privacy Rule, that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual’s identity.[323]
Depictions of victims	(ii)	Depictions by photograph, film, videotape, or printed or digital image of either “a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim’s expectation of bodily privacy and integrity” or “captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.”[324]
Restricted portions of dashboard camera and body camera	(jj)	A portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following: (1) The image or identity of a child or information that could lead to the identification of a child who is the primary subject of the recording; 2) The death of a person or deceased person’s body, unless the death was caused by a correctional employee, youth services employee, or peace officer or under certain other circumstances; (3) The death of a correctional employee, youth services employee, peace officer or first responder that occurs when the decedent was performing official duties; (4) Grievous bodily harm unless the injury was effected by a correctional employee, youth services employee, or a peace officer; (5) An act of severe violence against a person that results in serious physical harm unless the injury was effected by a correctional employee, youth services employee, or peace officer; (6) Grievous bodily harm to, or an act of severe violence resulting in serious physical harm, against a correctional employee, youth services employee, or peace officer or first responder while the injured person was performing official duties; (7) A person’s nude body; (8) Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter; *(continued on next page)*

Type of Record(s)	Subsection	Description
Restricted portions of dashboard camera and body camera	(jj)	(9) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence; (10) Information that does not qualify as a confidential law enforcement investigatory record that could identify a confidential source if disclosure of the source or the information provided could reasonably be expected to threaten or endanger a person's safety or property; (11) A person's personal information who is not arrested, charged, or issued a written warning; (12) Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety; *(continued on next page)* (13) Personal conversations between peace officers unrelated to work; (14) Conversations between peace officers and members of the public that do not concern law enforcement activities; (15) The interior of a residence unless it is the location of an adversarial encounter with, or use of force by, a peace officer; or (16) The interior of a private business not open to the public unless it is the location of an adversarial encounter with, or use of force by, a peace officer.[325] (17) Restricted portions of camera recordings depicting death, grievous bodily harm, acts of severe violence resulting in serious physical harm, and nudity may be released with the consent of the injured person, the decedent's executor or administrator or the person/person's guardian if the recording will not be used in connection with any probably or pending criminal proceeding or the recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probably or pending criminal proceedings.[326] If a person has been denied access to a restricted portion of a body-worn camera or dashboard camera recording, that person may file a mandamus action or a complaint with the clerk of the Court of Claims, seeking an order to release the recording. The court shall order the release of the recording if it determines that the public interest in the recording substantially outweighs privacy and other interests asserted to deny release.[327] Refer to Chapter Four: B.1. "Body-worn and dashboard camera recordings," for more discussion of this exemption.

Type of Record(s)	Subsection	Description
Fetal-infant mortality review board	(kk)	Records and information submitted to a fetal-mortality review board, as well as the board's statements and work product.[328]
Pregnancy-associated mortality review board	(ll)	Records and information submitted to a pregnancy-associated mortality review board, as well as the board's statements and work product.[329]
Crime victim telephone numbers	(mm)	Telephone numbers of victims and witnesses to a crime listed on a law enforcement record or report.[330]
Preneed funeral contracts	(nn)	Information and records contained in a report submitted to the board of embalmers and funeral directors.[331]
Motor vehicle accident telephone numbers	(oo)	Telephone numbers of parties to a motor vehicle accident listed on a law enforcement record or report within 30 days of the accident.[332]
Ohio school safety and crisis center records	(pp)	Records of individuals who have completed training offered by the Ohio school safety and crisis center.[333]
Domestic violence fatality review board	(qq)	Records presented to a domestic violence fatality review board, as well as the board's statements and work product.[334]
Victim's rights request form under Marsy's Law	(rr)	The victim's rights request form as provided in Marsy's Law under R.C. 2930.04, and identifying information of a victim or victim's representative contained in "case documents" pursuant to R.C. 2930.07.[335] Refer to Chapter Four: E. 2. "Marsy's Law," for more discussion of Marsy's Law.
Special improvement districts	(ss)	Certain records of nonprofit corporation that creates a special improvement district under Chapter 1710 of the Revised Code.[336]
Educational support services data	(tt)	Data on individuals associated with programs administered by a board of education or contracted entity that are designed to eliminate disparities and advance equities in educational achievement.[337]
Work schedules	(uu)	Records of the past, current, and future work schedules of a designated public service worker other than the docket of a court, judge, or magistrate.[338]
Redaction requests	(vv)	Requests made by designated public service workers for redaction of the workers' residential and familial information.[339]

Type of Record(s)	Subsection	Description
County auditor redaction requests	(ww)	Affidavits or letters submitted to county auditors under R.C. 319.28 for redaction of designated public service workers' names from records made available online or in accessible databases.[340]
State medical board	(xx)	License applications and supporting documentation submitted to the state medical board regarding an inability to practice due to medical condition.[341]

Records excluded from the definition of a public record under R.C. 149.43(A)(1) that are, under law, permanently retained, become public records 75 years after the date they were created, except for attorney-client privileged records, trial preparation records, records protected by statements prohibiting the release of identifying information in adoption files signed under R.C. 3107.083, records protected by a denial of release form filed by the birth parent of an adopted child pursuant to R.C. 3107.46, or security and infrastructure records exempt from release by R.C. 149.433. Birth certificates where the biological parent's name has been redacted pursuant to R.C. 3107.391 must still be redacted before release. Work schedules that are not public records become public records three years after the date of creation. If any other section of the Revised Code shows a conflicting time period for disclosure, the other section controls.

F. Categories of Exemptions Created in Other Laws

Below are examples of exemptions that are created in laws other than the Public Records Act. These exemptions apply to specific types of records, in specific circumstances, and sometimes only to specific public offices. Local government offices and officials should consult their designated attorney and/or conduct independent legal research to determine if these exemptions apply or to determine if there are other applicable exemptions in Ohio or federal law.

Refer to Chapter Four, "Law Enforcement Records," for discussion of other exemptions applicable to law enforcement officials, victims, and witnesses. Chapter 5, "Employment Records," addresses exemptions that apply to the personnel records maintained by public offices. A full list of exemptions that are in Ohio statutes outside the Public Records Act is available on the Ohio Attorney General's website.

1. Exemptions affecting personal privacy

There is not a general "privacy exemption" to the Public Records Act, and Ohio does not have a privacy law comparable to the federal Privacy Act.[342] However, a public office is obligated to protect certain *non-public record* personal information from unauthorized dissemination.[343] Though many of the exemptions to the Public Records Act apply to information people consider "private," this section focuses specifically on records and information that are protected by: (1) the right to privacy found in the United States Constitution; and (2) R.C. 149.45 and R.C. 319.28(B), which are statutes designed to protect personal information on the internet.

a. Constitutional right to privacy

The U.S. Supreme Court recognizes a constitutional right to informational privacy under the Fourteenth Amendment's Due Process Clause. This right protects people's "interest in avoiding divulgence of highly personal information,"[344] but must be balanced against the public interest in

the information.[345] Such information cannot be disclosed unless disclosure "narrowly serves a compelling state interest."[346]

In Ohio, the U.S. Court of Appeals for the Sixth Circuit limited this right to informational privacy to interests that rise to the level of "constitutional dimension" and implicate "fundamental" rights or rights "implicit in the concept of ordered liberty."[347]

The Supreme Court of Ohio has "not authorized courts or other records custodians to create new exceptions to R.C. 149.43 based on a balancing of interests or generalized privacy concerns."[348] In matters that do not rise to fundamental constitutional levels, state statutes address privacy rights, and court defers to "the role of the General Assembly to balance the competing concerns of the public's right to know and individual citizens' right to keep private certain information that becomes part of the records of public offices."[349] Cases finding a new or expanded constitutional right of privacy affecting public records are infrequent.

In *Kallstrom v. Columbus*, a federal case from the U.S. Court of Appeals for the Sixth Circuit, police officers sued the city for releasing their unredacted personnel files to an attorney representing members of a criminal gang against whom the officers were testifying in a major drug case. The personnel files contained the addresses and phone numbers of the officers and their family members, as well as banking information, social security numbers, and photo IDs.[350] The court held that, because release of the information could lead to the gang members causing the officers bodily harm, the officers' fundamental constitutional rights to personal security and bodily integrity were implicated.[351] The court described this constitutional right as a person's "'interest in preserving [one's] life.'"[352] The court found that the Public Records Act did not require release of the files because the disclosure did not "narrowly serve[] the state's interest in ensuring accountable governance."[353] The Sixth Circuit has similarly held that names, addresses, and dates of birth of adult cabaret license applicants are exempted from the Public Records Act because their release to the public poses serious risk to their personal security.[354]

Based on *Kallstrom*, the Supreme Court of Ohio subsequently held that police officers have a constitutional right to privacy in their personal information if release of that information would create a substantial risk of serious bodily harm, and possibly even death, from a perceived likely threat.[355] The Court also suggested that the constitutional right to privacy of minors may be implicated when "release of personal information … creates an unacceptable risk that a child could be victimized."[356] The Court of Claims applied the constitutional right to privacy to permit redaction of an inmate's nude body and underwear from video taken by officers' body-worn cameras.[357]

However, neither the Supreme Court of Ohio nor the Sixth Circuit has applied the constitutional right to privacy to the Public Records Act broadly. Public offices and individuals should be aware of this potential protection but know that it is limited to circumstances involving fundamental rights and that most personal information is not protected by it.[358]

b. Personal information listed online

The Public Records Act exempts specific personal information from disclosure.[359] Additionally, R.C. 149.45 requires public offices to redact, and permits certain individuals to request redaction of, that personal information from any records made available to the general public on the internet.[360] A person must make this request in writing on a form developed by the Attorney General, specifying the information to be redacted and providing any information that identifies the location of that personal information.[361] Certain designated public service workers, including

former designated public service workers,[362] can also request the redaction of their actual residential address from records public offices make available to the general public on the internet.[363] When a public office receives a request for redaction, it must act in accordance with the request within five business days, if practicable.[364] If the public office determines that redaction is not practicable, it must explain to the individual why the redaction is impracticable within five business days.[365]

R.C. 149.45 separately requires all public offices to redact, encrypt, or truncate the social security numbers of individuals from any documents made available to the public on the internet.[366] If a public office becomes aware that an individual's social security number was not redacted, the office must redact the social security number within a reasonable period of time.[367]

The statute provides that a public office is not liable in a civil action for any alleged harm that results from the failure to redact personal information or addresses on records made available on the internet to the public, unless the office acted with a malicious purpose, in bad faith, or in a wanton or reckless manner.[368]

In addition to the protections listed above, R.C. 319.28 allows a "designated public service worker"[369] or former designated public service worker[370] to submit a request, by affidavit, to remove his or her name from the general tax list of real and public utility property and insert initials instead.[371] Upon receiving such a request, the county auditor must act within five days in accordance with the request.[372] If removal is not practicable, the auditor's office must explain to the individual why the removal and insertion is impracticable within five business days.[373]

c. Social security numbers

Social security numbers (SSNs) must be redacted before the disclosure of public records, including court records.[374]

Under the federal Privacy Act, any federal, state, or local government agency that asks individuals to disclose their SSNs must advise the person: (1) whether disclosure is mandatory or voluntary and, if mandatory, under what authority the SSN is solicited; and (2) how it will be used.[375] In short, a SSN can only be disclosed if an individual has been given prior notice that their SSN will be publicly available.

d. Driver's privacy protection

An authorized recipient of personal information about an individual that the Bureau of Motor Vehicles obtained in connection with a motor vehicle record may re-disclose the personal information only for certain purposes.[376]

e. Income tax returns

Generally, information obtained through municipal and state income tax returns, investigations, hearings, or verifications is confidential and may only be disclosed as permitted by law.[377] Ohio's municipal tax code provides that tax information may be disclosed only (1) in accordance with a judicial order; (2) in connection with the performance of official duties; or (3) in connection with authorized official business of the municipal corporation.[378]

One Attorney General Opinion concluded that W-2 federal tax forms prepared and maintained by a township as an employer are public records, but that W-2 forms filed as part of a municipal income tax return are confidential.[379] Federal tax returns and "return information" are also confidential.[380]

f. Protected health information

State law makes "protected health information" confidential.[381] This includes information that "describes an individual's past, present, or future physical or mental status or condition, receipt of treatment or care, or purchase of health products" when the information either does reveal or could reveal the identity of the individual.[382] Cause-of-death determinations on death certificates are "protected health information" because they reveal both an individual's identity and the individual's physical health status just before death.[383]

2. Juvenile records

There is not a law that categorically exempts all juvenile records from disclosure.[384] As with any other record, a public office must identify a specific law that requires or permits a record regarding a juvenile to be withheld; otherwise, it must be released.[385]

Records maintained by the juvenile court and parties for certain proceedings are not available for public inspection and copying.[386] Although the juvenile court may exclude the public from most hearings, serious youthful offender proceedings and their transcripts are open to the public unless the court orders a hearing closed.[387] The closure hearing notice, proceedings, and decision must themselves be public.[388] Records of social, mental, and physical examinations conducted pursuant to a juvenile court order,[389] records of juvenile probation,[390] and records of juveniles held in custody by the Department of Youth Services are not public records.[391] Sealed or expunged juvenile adjudication records must be withheld.[392]

Records prepared and kept by a public children services agency of investigations of families, children, and foster homes, and of the care of and treatment afforded children, and of other records required by the department of job and family services, are required to be kept confidential by the agency.[393] These records shall be open to inspection by the agency, certain listed officials, an adult who has formerly placed in foster care, and to other persons upon the written permission of the executive director when it is determined that "good cause" exists to access the records (except as otherwise limited by R.C. 3107.17).[394]

Other exemptions that relate to juvenile records include: (1) reports regarding allegations of child abuse;[395] (2) individually identifiable student records; (3) certain foster care and day care information;[396] and (4) information pertaining to the recreational activities of juveniles.[397]

Refer to Chapter Four: B.3. "Juvenile law enforcement records" for discussion of juvenile law enforcement records.

3. Student records under the Family Education Rights and Privacy Act

The federal Family Education Rights and Privacy Act (FERPA)[398] prohibits educational institutions from releasing a student's "education records" without the written consent of the eligible student[399] or his or her parents, except as permitted by the Act.[400] "Education records" are records directly related to a student that are maintained by an educational agency, or institution or by a party acting for the agency or institution.[401] The term encompasses records such as school transcripts, attendance records, and student disciplinary records.[402] "Education records" covered by FERPA are not limited to "academic performance, financial aid, or scholastic performance."[403] However, "education records" do not include records of an agency or institution's law enforcement unit.[404]

A record is "directly related" to a student if it has "personally identifiable information." The latter term is defined broadly and covers not only obvious identifiers, such as student and family member names, addresses, and social security numbers, but also personal characteristics or other information that

would make the student's identity easily linkable.[405] In evaluating records for release, an agency or institution must consider what the requester already knows about the student to determine if that knowledge, together with the information to be disclosed, would allow the requester to ascertain the student's identity.

FERPA applies to all students, regardless of grade level. In addition, Ohio adopted laws specifically applicable to public school students in grades kindergarten through 12.[406] Those laws provide that, unless otherwise authorized by law, no public school employee is permitted to release or permit access to personally identifiable information – other than directory information – concerning a public school student without written consent of the student's parent, guardian, or custodian if the student is under 18, or the consent of the student if the student is 18 or older.[407]

"Directory information" is one of several exemptions to the requirement that an institution obtain written consent prior to disclosure. "Directory information" is "'information…' that would not generally be considered harmful or an invasion of privacy if disclosed."[408] It includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, date of graduation, and awards received.[409] Pursuant to federal law, post-secondary institutions designate what they will unilaterally release as directory information. For grades kindergarten through 12, Ohio law leaves that designation to each school district board of education. Institutions at all levels must notify parents and eligible students and give them an opportunity to opt out of disclosure of their directory information.[410]

Ohio law prohibits the release of directory information to any person or group for use in a profit-making plan or activity.[411] A public office may require disclosure of the requester's identity or the intended use of directory information to ascertain whether it will be used in a profit-making plan or activity.[412]

Although the release of FERPA-protected records is prohibited by law, a public office or school should redact a student's personal identifying information instead of withholding an entire record, when possible.[413]

4. Public safety and public office security

a. Security records

The security records and infrastructure records exemptions are defined in the same statute but there are two separate exemptions that apply differently.

A "security record" is 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."[414] Protecting a public office includes protecting the employees, officers, and agents who work in that office.[415] For example, a prison's shift-assignment duty rosters that showed where guards are posted, which guards are assigned to a particular post, and how many will be there at a given time, were exempt as security records. The court said that knowing where and when guards would be posted could be used to plan an escape or attack, or to smuggle contraband into the prison.[416]

The office invoking the security record exemption "must provide evidence establishing that the record clearly contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage," unless it is otherwise obvious from the content of the record.[417] For example, the Supreme Court of Ohio held that the public office failed to show that video depicting the shooting of a judge was a security record because there was no

evidence that the footage contained information that was directly used for protecting or maintaining the security of the office against attack, interference, or sabotage.[418] In another case, the Supreme Court held that records regarding the travel and expenses for State Highway Patrol troopers attending the Super Bowl with the Governor fell within the security records exemption. The public office submitted extensive evidence showing how "releasing records containing information about the Governor's security detail would reveal patterns, techniques, or information relevant to the size, scope, or nature of the security and protection provided to the Governor . . . [and] could be used to attack, interfere, or sabotage the Governor or his security detail."[419]

Security records may be disclosed for purposes of construction, renovation, or remodeling of a public office without waiving the exempt status of that record.[420]

b. Infrastructure records

An "infrastructure record" is any record that discloses the configuration of a public office's "critical systems," such as its communications, computer, electrical, mechanical, ventilation, water, plumbing, or security systems.[421] In a case regarding a prison's shift-assignment duty rosters, the court held that the rosters were not infrastructure records because guard assignments and locations are not "systems" like a mechanical or electrical system, and the assignment of guards in the prison does not relate to the structural configuration of a building.[422]

Floor plans or records showing the spatial relationship of the public office are not infrastructure records.[423] The Supreme Court of Ohio held that security camera footage that documented a use-of-force incident at the prison was not an infrastructure record because the video showed no more than what could be learned from a floor plan.[424] The footage did not show the location of fire or other alarms, where officers are posted, or the configuration of any other critical system.

Like security records, infrastructure records may be disclosed for purposes of construction, renovation, or remodeling of a public office without waiving the exempt status of that record.[425]

c. Records related to the security of computer or telecommunications devices

R.C. 1306.23 creates an exemption for "[r]ecords that would disclose or may lead to the disclosure of records or information that would jeopardize the state's continued use or security of any computer or telecommunications devices or services associated with electronic signatures, electronic records, or electronic transactions are not public records for purposes of" the Public Records Act.[426] The Court of Claims applied this exemption to employee ID numbers because employees use the numbers for various purposes, including logging in to office computer systems, online timekeeping systems, and online employee benefits systems.[427]

5. Exemptions related to litigation

a. Attorney-client privilege

The attorney-client privilege, one of the oldest recognized privileges for confidential communications, applies to communications made in confidence between an attorney — or the attorney's agent, such as a paralegal — and a client, when legal advice is conveyed or sought.[428] The privilege belongs to the client, which means that only the client can waive the privilege.[429] When the privilege applies to public records, and the privilege has not been waived, the records or information in the records are exempt from release by the "catch-all" exemption to the Public Records Act.[430] Records or information that meet those criteria must be withheld or redacted to preserve attorney-client privilege.[431]

The attorney-client privilege applies to records of communications between public office clients and their attorneys in the same way that it does for private clients and their attorneys.[432] Communications between a client and an attorney's agent (for example, a paralegal) may also be subject to the attorney-client privilege.[433] The privilege also applies to "documents containing communications between members of the public entity represented about the legal advice given."[434] For example, the narrative portions of itemized attorney billing statements to a public office that contain descriptions of work performed may be protected by the attorney-client privilege, although the portions that reflect dates, hours, rates, and the amount billed are usually not protected.[435]

Like any other exemption, a public office must show that a record fits squarely within the attorney-client privilege. If challenged in court, attorney-client privilege redactions may need to be supported with specific evidence showing that legal advice was sought or received, especially if this is not apparent from the face of the records.[436]

b. Mediation privilege

Mediation[437] is used in many courts and in many types of cases to help parties resolve disputes and avoid litigation. Mediation is frequently used in public records cases, including cases in the Supreme Court of Ohio[438] and in the Court of Claims.[439] "Mediation communications"[440] are included in the exemptions listed in the Public Records Act[441] and separately exempt under the confidentiality provision of the Uniform Mediation Act.[442] The mediation privilege may only be waived if it is expressly agreed to by all parties.[443]

c. Criminal discovery

Criminal defendants may use the Public Records Act to obtain otherwise public records in a pending criminal proceeding.[444] However, Criminal Rule 16 is the "preferred mechanism to obtain discovery from the state."[445] When a criminal defendant makes a public records request, either directly or indirectly, it "shall be treated as a demand for discovery in a criminal case if, and only if, the request is made to an agency involved in the prosecution or investigation of that case."[446]

When a prosecutor discloses materials to a criminal defendant pursuant to the Criminal Rules, that disclosure does not mean those records automatically become available for public disclosure.[447] The prosecutor does not waive applicable exemptions, such as trial preparation records or confidential law enforcement records, simply by complying with discovery rules.[448]

d. Civil discovery

A civil litigant can use the Public Records Act in addition to civil discovery mechanisms to obtain documents or information.[449] The exemptions in the Public Records Act do not protect documents from discovery in civil actions.[450] The nature of a request as either discovery or a request for public records will determine any available enforcement mechanisms.[451]

The Ohio Rules of Evidence govern the use of public records as evidence in litigation.[452] Justice Stratton's concurring opinion in the case *Gilbert v. Summit County* noted that "[t]rial courts have discretion to admit or exclude evidence," and "even though a party may effectively circumvent a discovery deadline by acquiring a document through a public records request, it is the trial court that ultimately determines whether those records will be admitted in the pending litigation."[453]

d. Trial preparation records

"Trial preparation records" are records that contain information "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."[454] Trial preparation records need not exist solely for the purpose of litigation; they can also serve the regular functions of a public office.[455] Documents that a public office obtains as a litigant through discovery will ordinarily qualify as "trial preparation records" throughout the discovery phase of the litigation.[456]

Attorney trial notes and legal research are "trial preparation records" that may be withheld from disclosure.[457] Although records in a prosecutor's file often can be classified as trial preparation records, "the presence of a record in a prosecutor's file does not, in and of itself, turn something into a trial preparation record."[458] For example, fact-finding investigations and routine offense and incident reports are subject to release while a criminal case is active, including those reports in the files of the prosecutor.[459] Once an attorney has filed documents in a court case, any trial preparation exemption is waived, and the public office must produce those documents in response to subsequent records requests.[460]

While trial preparation records and attorney work product are similar, the attorney work-product doctrine is not an independent basis for exempting records from disclosure under the Public Records Act.[461] Attorney work product is a discovery privilege incorporated into Rule 26 of the Ohio Rules of Civil Procedure.[462] According to the Supreme Court of Ohio, the "Public Records Act contains no exception for attorney work product except insofar as attorney work product constitutes trial-preparation records."[463]

e. Protective orders and sealed or expunged court records

When the release of court records would prejudice the rights of the parties in an ongoing criminal or civil proceeding,[464] court rules may permit a protective order prohibiting release of the records.[465] Similarly, when court records relating to criminal convictions have been properly expunged or sealed, they are no longer public records.[466] The criminal sealing statute does not apply to the sealing of pleadings in related civil cases.[467] However, when a responsive record is sealed, the public office must provide the explanation for withholding, including the legal authority under which the record was sealed.[468]

Even absent statutory authority, trial courts have the inherent authority to seal court records, but it is a "limited power."[469] The judicial power to seal criminal records is narrowly limited to cases in which the accused has been acquitted or exonerated in some way and protection of the accused's privacy interest is paramount to prevent injustice.[470] The grant of a pardon under Article III, Section 11 of the Ohio Constitution does not automatically entitle the recipient to have the record of the pardoned conviction sealed[471] or give the trial court the authority to seal the conviction outside of the statutory sealing process.[472]

Refer to Chapter Five: B. "Court Records" for more discussion of this topic.

f. Grand jury records

Criminal Rule 6(E) provides that "[d]eliberations of the grand jury and the vote of any grand juror shall not be disclosed," and provides for the withholding of other specific grand jury matters by certain persons under specific circumstances.[473] Materials covered by Criminal Rule 6 include transcripts, voting records, subpoenas, and the witness book.[474] In contrast to those items that

document the deliberations and vote of a grand jury, evidentiary documents submitted to the grand jury that would otherwise be public records remain public records.[475]

Criminal Rule 6 does not exempt from disclosure the names of grand jury witnesses, witness subpoenas, and documents produced in response to a witness subpoena.[476]

g. Settlement agreements and other contracts

A public office cannot contract out of its obligations under the Public Records Act, including in settlement agreements.[477] But the parties are entitled to redact any information within the settlement agreement that is subject to the attorney-client privilege.[478] Further, the Ohio Board of Professional Conduct advised that attorneys are not ethically allowed to offer or accept a settlement agreement that includes a provision that an attorney is prohibited from disclosing information that would otherwise be subject to mandatory disclosures under a public records request.[479]

When a public office is a party to a settlement, the trial preparation records exemption does not apply to the settlement agreement.[480]

6. Intellectual property

a. Trade secrets

Trade secret law is underpinned by "[t]he protection of competitive advantage in private, not public, business."[481] However, the Supreme Court of Ohio held that certain governmental entities could have trade secrets in limited situations.[482]

Trade secrets are defined in R.C. 1333.61(D) as "information, including … any business information or plans, financial information, or listing of names" that: (1) derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[483]

Like most other exemptions, identifying trade secret information is a facts and circumstances inquiry.[484] "An entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy."[485]

The Supreme Court of Ohio adopted the following factors in analyzing a trade secret claim:

(1) The extent to which the information is known outside the business;

(2) The extent to which it is known to those inside the business, i.e., by the employees;

(3) The precautions taken by the holder of the trade secret to guard the secrecy of the information;

(4) The savings effected and the value to the holder in having the information as against competitors;

(5) The amount of effort or money expended in obtaining and developing the information; and

(6) The amount of time and expense it would take for others to acquire and duplicate the information.[486]

The maintenance of secrecy is important but does not require that a trade secret be entirely unknown to the public. If parts of a trade secret are in the public domain, but the value of the trade secret derives from the parts being taken together with other secret information, then the trade secret is still protected under Ohio law.[487]

Signed non-disclosure agreements do not create trade secret status for otherwise publicly disclosable documents.[488] As with all other types of contracts, non-disclosure agreements cannot nullify public records obligations.[489]

b. Copyright

Federal copyright law is designed to protect "original works of authorship," which may exist in one of several specified categories:[490] (1) literary works; (2) musical works (including any accompanying words); (3) dramatic works (including any accompanying music); (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.[491]

Federal copyright law provides certain copyright owners with the exclusive right of reproduction,[492] which means public offices could expose themselves to legal liability if they reproduce copyrighted public records in response to a public records request. If a public record is copyrighted material that the public office does not have the right to reproduce or copy via a copyright ownership or license, the public office is not typically authorized to make copies of this material under federal copyright law. However, there are some exemptions to this rule. For example, in certain situations, copying part of copyrighted work may be allowed.[493]

Note that copyright law only prohibits unauthorized *copying* and should not affect a public records request for *inspection*.

Because of the complexity of copyright law and the fact-specific nature of this area, public offices are encouraged to consult with their offices' legal counsel on these issues.

7. Records of inmates

The Department of Rehabilitation and Correction (DRC) is required to keep records showing the name, residence, sex, age, nativity, occupation, condition, and date of commitment of every inmate in DRC's custody, as well as special records for inmate deaths or injuries and medical records.[494] By statute, these records are not public records.[495] This exemption only applies to the records that DRC is specifically required to keep by statute; DRC is not permitted to withhold records simply because the records may relate to inmates.[496]

Notes:

---

[242] "Exemption" is used in this Manual to describe laws authorizing the withholding of records from public records requests. The term "exception" is also often used in public records law and court cases.

[243] *See, e.g., State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 282 (1999).

[244] *See, e.g., State ex rel. Beacon Journal Publishing Co. v. Akron*, 2004-Ohio-6557, ¶ 56 (applying R.C. 2151.421).

[245] An example is the common law attorney-client privilege. *See State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 2005-Ohio-1508, ¶ 27.

[246] *See, e.g., State ex rel. Lindsay v. Dwyer*, 108 Ohio App.3d 462, 467 (10th Dist. 1996) (State Teacher Retirement System properly denied access to beneficiary form pursuant to Ohio Administrative Code); 2000 Ohio Atty.Gen.Ops. No. 036 (determining that federal regulation prohibits release of service member's discharge certificate without service member's written consent); *but see State ex rel. Gallon & Takacs Co., L.P.A. v. Conrad*, 123 Ohio App.3d 554, 561 (10th Dist. 1997) (if regulation was promulgated outside of agency's statutory authority, the invalid rule will not constitute an exemption to the Public Records Act).

[247] 5 U.S.C. 552.

[248] *State ex rel. WBNS TV, Inc. v. Dues,* 2004-Ohio-1497, ¶ 35; *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis,* 2002-Ohio-7041, ¶ 32.

[249] *State ex rel. Gannett Satellite Info. Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997) (contract provision designating as confidential applications and resumes for city position could not alter public nature of information); *State ex rel. Clough v. Franklin Cty. Children Servs.,* 2015-Ohio-3425, ¶ 16 (a written policy of permitting the clients of a public office to see their files does not create a legally enforceable obligation on the public office to provide access when access to requested files is prohibited by law); *Teodecki v. Litchfield Twp.,* 2015-Ohio-2309, ¶ 25 (9th Dist.) (confidentiality clause prohibiting disclosure of an investigative report about a public official's actions was unenforceable and invalid).

[250] *State ex rel. Beacon Journal Publishing Co. v. Akron*, 2004-Ohio-6557, ¶ 40-41.

[251] *State ex rel. Gannett Satellite Info. Network v. Shirey,* 78 Ohio St.3d 400, 403 (1997) (contract provision designating as confidential applications and resumes for city position could not alter public nature of information); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384 (1985) (provision in collective bargaining agreement between city and its police force requiring city to ensure confidentiality of officers' personnel records is invalid; otherwise, "private citizens would be empowered to alter legal relationships between a government and the public at large").

[252] *Keller v. Columbus,* 2003-Ohio-5599, ¶ 23 ("[A]ny provision in a collective bargaining agreement that establishes a schedule for the destruction of public records is unenforceable if it conflicts with or fails to comport with all of the dictates of the Public Records Act.").

[253] *State ex rel. Russell v. Thomas*, 85 Ohio St.3d 83, 85 (1999).

[254] *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 137 (1997); *see also State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 82 Ohio App.3d 202, 212-13 (8th Dist. 1992) (agreement between the city and police union to keep officers' home addresses and telephone numbers confidential was unenforceable).

[255] *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379 (1998).

[256] *State ex rel. Dreamer v. Mason*, 2007-Ohio-4789 (illustrating the interplay of attorney-client privilege, waiver, public records law, and criminal discovery).

[257] 2000 Ohio Atty.Gen.Ops. No. 021 ("R.C. 149.43 does not expressly prohibit the disclosure of items that are excluded from the definition of public record, but merely provides that their disclosure is not mandated."); *see also* 2001 Ohio Atty.Gen.Ops. No. 041.

[258] *State ex rel. Wallace v. State Med. Bd. of Ohio*, 89 Ohio St.3d 431, 435 (2000) ("'Waiver' is defined as a voluntary relinquishment of a known right.").

[259] *See, e.g., State ex rel. Hicks v. Fraley,* 2021-Ohio-2724, ¶ 23 (county auditor waived attorney-client privilege by voluntarily disclosing opinion letter to special prosecutor); *State ex rel. Cincinnati Enquirer, Div.*

of Gannett Satellite Information Network, Inc. v. Dupuis, 2002-Ohio-7041, ¶ 22; *Aire-Ride, Inc. v. DHL Express (USA) Inc.*, 2008-Ohio-5669, ¶ 17-30 (12th Dist.) (attorney-client privilege was waived when counsel had reviewed, marked confidential, and inadvertently produced documents during discovery).

[260] *State ex rel. Cincinnati Enquirer, Div. of Gannet Satellite Information Network, Inc. v. Sharp*, 2003-Ohio-1186, ¶ 14 (1st Dist.) (statutory confidentiality of documents submitted to municipal port authority not waived when port authority shares documents with county commissioners); *State ex rel. Musial v. N. Olmsted*, 2005-Ohio-5521, ¶ 37 (forwarding police investigation records to city's ethics commission did not constitute waiver).

[261] *State ex rel. Musial v. N. Olmsted*, 2005-Ohio-5521, ¶ 35-39.

[262] See*, e.g.*, *State ex rel. Pietrangelo v. Avon Lake,* 2016-Ohio-2974, ¶ 9.

[263] *State ex rel. Rocker v. Guernsey Cty. Sheriff's Office*, 2010-Ohio-3288, ¶ 7.

[264] *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 172 (1994).

[265] *See State ex rel. WBNS TV, Inc. v. Dues*, 2004-Ohio-1497, ¶ 31.

[266] *Franklin Cty. Sheriff's Dept. v. State Emp. Relations Bd.*, 63 Ohio St.3d 498, 502 (1992) (while categories of records designated in R.C. 4117.17 clearly are public records, all other records must still be analyzed under the Public Records Act).

[267] *State ex rel. Gambill v. Opperman*, 2013-Ohio-761, ¶ 21-25; *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 2011-Ohio-6009, ¶ 29.

[268] *State ex rel. Lanham v. DeWine*, 2013-Ohio-199, ¶ 24.

[269] R.C. 149.43(A)(1)(a)-(tt).

[270] R.C. 149.43(A)(1)(a) (applying Public Records Act definition of "medical records" at R.C. 149.43(A)(3)).

[271] R.C. 149.43(A)(3); *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158 (1997); 1999 Ohio Atty.Gen.Ops. No. 06.

[272] R.C. 149.43(A)(3).

[273] See *State ex rel. O'Shea & Assocs. L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-115, ¶ 41-43 (questionnaires and release authorizations generated to address lead exposure in city-owned housing not "medical records" despite touching on children's medical histories); *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 144-45 (1995) (police psychologist report obtained to assist in the police hiring process not a medical record).

[274] See*, e.g.,* 42 U.S.C. 12101 et seq. (1990) (Americans with Disabilities Act); 29 U.S.C. 2601 et seq. (1993) (Family and Medical Leave Act).

[275] R.C. 149.43(A)(11) ("Community control sanction" has the same meaning as in R.C. 2929.01).

[276] R.C. 149.43(A)(1)(b); R.C. 149.43(A)(12) ("Post-release control sanction" has the same meaning as in R.C. 2967.01).

[277] *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St.3d 30, 32, fn.2 (1985).

[278] *State ex rel. Hadlock v. Polito*, 74 Ohio App.3d 764, 766 (8th Dist. 1991).

[279] *State ex rel. Lipschutz v. Shoemaker*, 49 Ohio St.3d 88, 90 (1990).

[280] *State ex rel. Gaines v. Adult Parole Auth.*, 5 Ohio St.3d 104 (1983).

[281] R.C. 149.43(A)(1)(c) (referencing R.C. 2151.85 and 2919.121(C)).

[282] R.C. 149.43(A)(1)(d); R.C. 149.43(A)(1)(f) (referencing R.C. 3107.52(A)).

[283] R.C. 149.43(A)(1)(d) (referencing R.C. 3705.12 to 3705.124).

[284] R.C. 149.43(A)(1)(e) (referencing R.C. 3107.062 and R.C. 3111.69).

[285] R.C. 3705.12.

[286] R.C. 3107.063.

[287] R.C. 3107.17(D).

[288] R.C. 149.43(A)(1)(f); R.C. 3107.38(B), (C).

[289] R.C. 149.43(A)(4).

[290] *Cleveland Clinic Found. v. Levin*, 2008-Ohio-6197, ¶ 10.

[291] *State ex rel. Summers v. Fox,* 2020-Ohio-5585, ¶ 46-51.

[292] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 2002-Ohio-7041, ¶ 16-21.

[293] *State ex rel. O'Shea & Assocs. v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-115, ¶ 44; *Betkowski v. Trafis*, 2015-Ohio-5139, ¶ 27 (8th Dist.) (trial preparation records exemption is inapplicable to records of a police investigation when the police had closed the investigation, no crime was charged or even contemplated, and thus trial was not reasonably anticipated).

[294] R.C. 149.43(A)(2).

[295] R.C. 149.43(A)(1)(i).

[296] R.C. 149.43(A)(1)(j).

[297] R.C. 149.43(A)(1)(k).

[298] R.C. 149.43(A)(1)(l); R.C. 5139.05(D)(1). *See* R.C. 5139.05(D) for all records maintained by DYS of children in its custody.

[299] R.C. 149.43(A)(1)(m); R.C. 149.43(A)(5); *see also Zamlen-Spotts v. Cleveland State Univ.,* 2021-Ohio-2704, ¶ 9-18, *adopted by* 2021-Ohio-3128 (Ct. of Cl.) (individual questionnaire responses to a university-conducted survey are exempted intellectual property records); *State ex rel. Physicians Commt. for Responsible Medicine v. Bd. of Trustees of Ohio State Univ.*, 2006-Ohio-903, ¶ 33 (university's research records constituted intellectual property because the limited sharing of the records with other researchers did not mean that the records had been "publicly released"); *Citak v. Ohio State Univ.,* 2022-Ohio-1195, ¶ 2, 11 (individual results of university-administered COVID survey qualified as intellectual property records because they were compiled as part of scholarly research), *adopted,* 2022-Ohio-1616 (Ct. of Cl).

[300] R.C. 149.43(A)(6).

[301] R.C. 149.43(A)(6).

[302] R.C. 149.43(A)(1)(o) (referencing R.C. 3121.894).

[303] R.C. 149.43(A)(1)(p); R.C. 149.43(A)(7)-(8).

[304] R.C. 149.43(A)(1)(q).

[305] R.C. 149.43(A)(1)(r); R.C. 149.43(A)(10).

[306] R.C. 149.43(A)(1)(s) (referencing R.C. 307.621 - 629).

[307] R.C. 149.43(A)(1)(t) (referencing R.C. 5153.171).

[308] R.C. 149.43(A)(1)(u) (referencing R.C. 4751.15).

[309] R.C. 149.43(A)(1)(v).

[310] *See, e.g. State ex rel. Lindsay v. Dwyer*, 108 Ohio App.3d 462, 466-467 (10th Dist. 1996) (State Teachers Retirement System properly denied access to beneficiary form pursuant to Ohio Administrative Code); 2000 Ohio Atty.Gen.Ops. No. 036 (federal regulation prohibits Governor's Office of Veterans Affairs from releasing service member's discharge certificate prohibited from release without service member's consent).

[311] *State ex rel. Gallon & Takacs Co., L.P.A. v. Conrad*, 123 Ohio App.3d 554, 560-61 (10th Dist. 1997) (Bureau of Workers' Compensation administrative rule prohibiting release of managed care organization applications was unauthorized attempt to create exemption).

[312] R.C. 149.43(A)(1)(w) (referencing R.C. 150.01).

[313] R.C. 149.43(A)(1)(x).

[314] R.C. 149.43(A)(1)(y) (referencing R.C. 5101.29).

[315] R.C. 149.43(A)(1)(z) (referencing R.C. 317.24).

[316] R.C. 149.43(A)(1)(aa).

[317] R.C. 149.43(A)(1)(bb).

[318] R.C. 149.43(A)(1)(cc) (referencing R.C. 2949.221); *see also State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab & Corr.*, 2018-Ohio-5133, ¶ 13-24 (applying R.C. 2949.221).

[319] R.C. 149.43(A)(1)(dd) (referencing R.C. 149.45).

[320] R.C. 149.43(A)(1)(ee).

[321] R.C. 149.43(A)(1)(ff).

[322] R.C. 149.43(A)(1)(gg).
[323] R.C. 149.43(A)(1)(hh).
[324] R.C. 149.43(A)(1)(ii).
[325] R.C. 149.43(A)(1)(jj), (A)(17).
[326] R.C. 149.43(A)(17)(a)-(q), (H).
[327] R.C. 149.43(H)(2).
[328] R.C. 149.43(A)(1)(kk).
[329] R.C. 149.43(A)(1)(ll).
[330] R.C. 149.43(A)(1)(mm).
[331] R.C. 149.43(A)(1)(nn).
[332] R.C. 149.43(A)(1)(oo).
[333] R.C. 149.43(A)(1)(pp) (referencing R.C. 5502.703). Note, however, that boards of education must notify the public if the board has authorized any persons to go armed within a school. *See* R.C. 2923.122(D)(1)(d); R.C. 149.433(B)(4).
[334] R.C. 149.43(A)(1)(qq).
[335] R.C. 149.43(A)(1)(rr).
[336] R.C. 149.43(A)(1)(ss).
[337] R.C. 149.43(A)(1)(tt) (referencing R.C. 3319.325(B))
[338] R.C. 149.43(A)(1)(uu). Journalists may inspect or copy these records upon written request. R.C. 149.43(B)(9)(a).
[339] R.C. 149.43(A)(1)(vv). Journalists may inspect or copy these records upon written request. R.C. 149.43(B)(9)(b)(iii).
[340] R.C. 149.43(A)(1)(ww). Journalists may inspect or copy these records upon written request. R.C. 149.43(B)(9)(b)(iv).
[341] R.C. 149.43(A)(1)(xx).
[342] 5 U.S.C. 552a.
[343] Ohio's Personal Information Systems Act (PISA) (R.C. Chapter 1347) only applies when the Public Records Act does not apply. That is, PISA does not apply to public records but only applies to records that have been determined to be non-public and information that is not a "record" as defined by the Public Records Act. Public offices can find more detailed guidance at https://infosec.ohio.gov/Government.aspx. *See also Fischer v. Kent State Univ.*, 2015-Ohio-3569, ¶ 15 (10th Dist.) (legal brief written by state university's attorneys in response to retired professor's Equal Employment Opportunity Commission claims constituted a public record; even though the brief contained stored personal information from professor's employment records, it was not exempt from disclosure pursuant to Ohio's PISA Act). Refer to Chapter 5: D. for more discussion of PISA.
[344] *Kallstrom v. Columbus*, 136 F.3d 1055, 1061 (6th Cir. 1998).
[345] *Kallstrom v. Columbus*, 136 F.3d 1055, 1061 (6th Cir. 1998).
[346] *Kallstrom v. Columbus*, 136 F.3d 1055, 1059 (6th Cir. 1998).
[347] *Kallstrom v. Columbus*, 136 F.3d 1055, 1062 (6th Cir. 1998).
[348] *State ex rel. WBNS TV v. Dues*, 2004-Ohio-1497, ¶ 30-31, 36-37.
[349] *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found*., 65 Ohio St.3d 258, 266 (1992).
[350] *Kallstrom v. Columbus*, 136 F.3d 1055, 1059 (6th Cir. 1998). NOTE: This case preceded enactment of exemptions that now protect much of the information at issue in *Kallstrom*, such as social security numbers.
[351] *Kallstrom v. Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998).
[352] *Kallstrom v. Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998).
[353] *Kallstrom v. Columbus*, 136 F.3d 1055, 1065 (6th Cir. 1998).
[354] *Deja Vu of Cincinnati, LLC v. Union Twp. Bd. of Trustees*, 411 F.3d 777, 793-794 (6th Cir. 2005) (en banc).

[355] *State ex rel. Cincinnati Enquirer v. Craig*, 2012-Ohio-1999, ¶ 13-23 (identities of officers involved in fatal accident with motorcycle club exempt based on constitutional right of privacy when release would create threat of serious bodily harm or death). *But see State ex rel. Copley Ohio Newspapers, Inc. v. City of Akron*, 2024-Ohio-5677, ¶ 24 (refusing to apply the *Kallstrom* exemption to identities of police officers when officers received isolated threats that were not deemed serious).

[356] *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 372 (2000); *but see Sengstock v. City of Twinsburg*, 2021-Ohio-4438, ¶ 23, *adopted by* 2022-Ohio-314 (Ct. of Cl.) (denying application of the constitutional right to privacy in the names of juvenile public employees).

[357] *Shaffer v. Budish,* 2018-Ohio-1539, ¶ 41-46, (Ct. of Cl.). NOTE: this case preceded the enactment of R.C. 149.43(A)(1)(jj), which creates exemptions for certain types of body-worn camera video recordings. Refer to Chapter Four: B.1. "Body-worn and dashboard camera recordings."

[358] *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 2013-Ohio-4481, ¶ 3 (8th Dist.) (ordering public office to release replacement teachers' names because public office did not establish that threats and violent acts continued after strike), aff'd 2015-Ohio-1083, ¶ 25-28.

[359] "Personal information" is defined as an individual's: social security number, federal or state tax identification number, driver's license or state identification number, checking account number, savings account number, credit card number, debit card number, or any other financial or medical account number. R.C. 149.43(A)(1)(dd); R.C. 149.45.

[360] R.C. 149.45(C)(1).

[361] This form is available at www.OhioAttorneyGeneral.gov/Sunshine. NOTE: this section does not apply to county auditor offices. *See* R.C. 149.45(D)(1).

[362] R.C. 149.45(A)(3), (D), effective as of April 9, 2025.

[363] R.C. 149.45(A)(2); R.C. 149.43(A)(7)-(8).

[364] R.C. 149.45(C)(2), (D)(2).

[365] R.C. 149.45(C)(2), (D)(2). A public office may explain the impracticability of redaction either verbally or in writing.

[366] R.C. 149.45(B)(1), (2). A public office must redact social security numbers from records that were posted before the effective date of R.C. 149.45.

[367] R.C. 149.45(E)(1).

[368] R.C. 149.45(E)(2).

[369] R.C. 319.28(A), citing R.C. 149.43(A)(7), effective as of April 9, 2025.

[370] R.C. 319.28(A), (C) .

[371] R.C. 319.28(C)(1).

[372] R.C. 319.28(C)(2).

[373] R.C. 319.28(C)(2).

[374] R.C. 149.43(A)(1)(dd); *see also State ex rel. Beacon Journal Publishing Co. v. Bond*, 2002-Ohio-7117, ¶ 25 (personal information of jurors was used only to verify identification not to determine competency to serve on the jury, and social security numbers, telephone numbers, and driver's license numbers may be redacted).

[375] Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

[376] 18 U.S.C. 2721 et seq. (Driver's Privacy Protection Act); R.C. 4501.27; O.A.C. 4501:1-12-01; 2014 Ohio Atty.Gen.Ops. No. 007; *see also State ex rel. Motor Carrier Serv. v. Williams*, 2012-Ohio-2590, ¶ 23 (10th Dist.) (requester motor carrier service not entitled to unredacted copies of an employee's driving record from the BMV when requester did not comply with statutory requirements for access).

[377] R.C. 5747.18; R.C. 718.13(A). Several statutes refer to the confidentiality of information contained in tax filings, not the record itself. *Myers v. Dept. of Taxation,* 2019-Ohio-2760, ¶ 21 (Ct. of Cl.). But the Court of Claims has held that the Department of Taxation need not produce tax returns with the protected information redacted; it may withhold tax returns. *Id.* at ¶ 26.

[378] R.C. 718.13; *see also Cincinnati ex rel. Cosgrove v. Grogan*, 141 Ohio App.3d 733, 755 (1st Dist. 2001) (under Cincinnati Municipal Code, the city's use of tax information in a nuisance-abatement action was an official purpose for which disclosure is permitted).

[379] 1992 Ohio Atty.Gen.Ops. No. 005. There is no prohibition on publishing or disclosing tax statistics that do not disclose information about specific taxpayers. R.C. 718.13(B).

[380] 26 U.S.C. 6103(a).

[381] R.C. 3701.17(B).

[382] R.C. 3701.17(A)(2).

[383] *Ludlow v. Ohio Dept. of Health*, 2024-Ohio-1399, ¶ 1.

[384] 1990 Ohio Atty.Gen.Ops. No. 101; *see also Sengstock v. City of Twinsburg*, 2021-Ohio-4438, ¶ 13 (juvenile employee names in a payroll record do not fall under any exemption), *adopted*, 2022-Ohio-314 (Ct. of Cl.).

[385] 1990 Ohio Atty.Gen.Ops. No. 101. Refer to Chapter Two: A.15.c. "Requirements to notify of and explain redactions and withholding of records," for more discussion of this requirement.

[386] Juv. R. 27 and 37(B); 1990 Ohio Atty.Gen.Ops. No. 101 (clarified by 2017 Ohio Atty.Gen.Ops. No 042).

[387] *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas*, 73 Ohio St.3d 19, 21-22 (1995) (the release of a transcript of a juvenile contempt proceeding was required when proceedings were open to the public).

[388] *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 2006-Ohio-4437, ¶ 44-52.

[389] Juv.R. 32(B).

[390] R.C. 2151.14 (B).

[391] R.C. 5139.05(D).

[392] R.C. 2151.355-.358; *see State ex rel. Doe v. Smith*, 2009-Ohio-4149, ¶ 6, 9, 38, 43 (when records were sealed pursuant to R.C. 2151.356, the response, "There is no information available," was a violation of the R.C. 149.43(B)(3) requirement to provide a sufficient explanation, with legal authority, for the denial). Refer to Chapter Five: B. "Court Records," for more discussion of court records.

[393] R.C. 5153.17(B); *State ex rel. Edinger v. Cuyahoga Cty. Dept. of Children & Family Serv.*, 2005-Ohio-5453, ¶ 6-7 (8th Dist.).

[394] R.C. 5153.17; 1991 Ohio Atty.Gen.Ops. No. 003.

[395] R.C. 2151.421(I); *State ex rel. Clough v. Franklin Cty. Children Servs.*, 2015-Ohio-3425, ¶ 19 (report of a child-abuse allegation and the investigation of that allegation is confidential under R.C. 2151.421); *State ex rel. Beacon Journal Publishing Co. v. Akron*, 2004-Ohio-6557, ¶ 44-45.

[396] R.C. 149.43(A)(1)(y), citing R.C. 5101.29.

[397] R.C. 149.43(A)(1)(r); *see also State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365 (2000).

[398] 20 U.S.C. 1232g.

[399] 34 C.F.R. 99.3 ("eligible student" means a student who has reached 18 years of age or is attending an institution of post-secondary education).

[400] 20 U.S.C. 1232g; 34 C.F.R. 99.3.

[401] 34 C.F.R. 99.3; *State ex rel. School Choice Ohio, Inc. v. Cincinnati Public School Dist.*, 2016-Ohio-5026, ¶ 20 (under FERPA a school district could not change the categories that fit within the term "directory information" through a policy treating "directory information" as "personally identifiable information" not subject to release without parental consent).

[402] *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 2012-Ohio-2690, ¶ 28-30 (university disciplinary records are education records); *see also United States v. Miami Univ.*, 294 F.3d 797, 802-03 (6th Cir. 2002).

[403] *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 2012-Ohio-2690, ¶ 30.

[404] 34 C.F.R. 99.8; *Cincinnati Enquirer v. Univ. of Cincinnati*, 2020-Ohio-4958, ¶ 31.) ("FERPA neither requires nor prohibits the disclosure by an educational institution of its law enforcement unit records."), *adopted,* 2020-Ohio-5279 (Ct. of Cl.).

[405] 34 C.F.R. 99.3.

[406] R.C. 3319.321.

[407] R.C. 3319.321(B). The consent requirement does not end upon the student's death. *State ex. rel. Cable News Network, Inc. v. Bellbrook-Sugarcreek Local Schs.,* 2020-Ohio-5149, ¶ 18 (deceased mass shooter's school records not public absent consent).
[408] 34 C.F.R. 99.3.
[409] R.C. 3319.321(B)(1).
[410] 34 C.F.R. 99.37.
[411] *State ex rel. School Choice Ohio, Inc. v. Cincinnati Public School Dist.*, 2016-Ohio-5026, ¶ 31-34 (release of student directory information to nonprofit organization that informs parents about alternative educational opportunities is not prohibited by state law).
[412] 34 C.F.R. 99.3, R.C. 3319.321(A).
[413] *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 2012-Ohio-2690, ¶ 34.
[414] R.C. 149.433(A)(1)-(2).
[415] *State ex rel. Plunderbund Media v. Born*, 2014-Ohio-3679, ¶ 20.
[416] *McDougald v. Greene*, 2020-Ohio-4268, ¶ 9.
[417] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 2020-Ohio-5371, ¶ 51.
[418] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 2020-Ohio-5371.
[419] *State ex rel. Cincinnati Enquirer v. Wilson*, 2024-Ohio-182, ¶ 4.
[420] R.C. 149.433(D).
[421] R.C. 149.433(A).
[422] *McDougald v. Greene*, 2020-Ohio-4268, ¶ 8.
[423] R.C. 149.433(A); *State ex rel. Rogers v. Dept. of Rehab. and Corr.*, 2018-Ohio-5111, ¶ 11-13 (prison security video was not an infrastructure record because it only revealed the "spatial relationship" of building features similar to a floor plan); *State ex rel. Ohio Republican Party v. FitzGerald*, 2015-Ohio-5056, ¶ 26 (key-card-swipe data of a county executive official that reveals the location of nonpublic, secured entrances is not exempt as an infrastructure record).
[424] *State ex rel. Rogers v. Dept. of Rehab. & Correction*, 2018-Ohio-5111, ¶ 11-13.
[425] R.C. 149.433(D).
[426] R.C. 1306.23.
[427] *Jones v. Dept. of Youth Servs*., 2024-Ohio-815, ¶ 10 (Ct. of Cl.).
[428] *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 2005-Ohio-1508, ¶ 19.
[429] *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 2005-Ohio-1508, ¶ 18. The Ohio Board of Professional Conduct opined that a lawyer who sends a records request to a public agency must notify the agency if the lawyer knows or reasonably knows the agency's response includes information related to representation of a client that was inadvertently sent to the lawyer. There is no ethical obligation for the lawyer to refrain from reviewing the inadvertently sent information, sharing the information with the lawyer's client, or communicating with the lawyer's client about the receipt of the information. Ohio Board of Professional Conduct Op. No. 2024-05.
[430] R.C. 149.43(A)(1)(v).
[431] *State ex rel. Lanham v. DeWine*, 2013-Ohio-199, ¶ 26-31.
[432] *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 2005-Ohio-1508, ¶ 23 (attorney-client privilege applied to communications between state agency personnel and its in-house counsel); *Morgan v. Butler*, 2017-Ohio-816, ¶ 24 (10th Dist.) (emails between attorneys and their state government clients pertaining to the attorneys' legal advice are exempt from disclosure).
[433] *State ex rel. Toledo Blade v. Toledo-Lucas Cty. Port Auth.*, 2009-Ohio-1767, ¶ 20-34 (attorney's fact investigation may invoke the attorney-client privilege).
[434] *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245, 251 (1994); *Assn. of Cleveland Firefighters IAFF Local 93 v. City of Cleveland,* 2021-Ohio-3602, ¶ 43-45 (8th Dist.) (communication that would facilitate legal advice is protected, but simply copying an attorney on a communication does not render the communication privileged).

[435] *State ex rel. Anderson v. Vermilion*, 2012-Ohio-5320, ¶ 13-15.

[436] *See Hinners v. Huron*, 2018-Ohio-3652, ¶ 10, *adopted by* 2018-Ohio 4362 (Ct. of Cl.) (general assertions do not meet the burden of proving the elements of attorney-client privilege).

[437] "'Mediation' means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute." R.C. 2710.01(A).

[438] S.Ct.Prac.R. 19.01(A) (the court may, on its own or on motion by a party, refer cases to mediation; unless otherwise ordered court, all filing deadlines stayed). Other courts may also refer cases to mediation to facilitate settlement or resolution.

[439] R.C. 2743.75(E)(1).

[440] "'Mediation communication' means a statement, whether oral, in a record, verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator." R.C. 2710.03(A).

[441] R.C. 149.43(A)(1)(i) ("public records" does not mean records containing mediation communications).

[442] R.C. 2710.03.

[443] R.C. 2710.04.

[444] *State v. Athon*, 2013-Ohio-1956, ¶ 16 ("[O]ur decision in *Steckman* does not bar an accused from obtaining public records that are otherwise available to the public. Although R.C. 149.43 provides an independent basis for obtaining information potentially relevant to a criminal proceeding, it is not a substitute for and does not supersede the requirements of criminal discovery pursuant to Crim.R. 16."). However, the Public Records Act may not be used to obtain copies of court transcripts of criminal proceedings without complying with the procedure in R.C. 2301.24.

[445] *State v. Athon*, 2013-Ohio-1956, ¶ 18-19 (when a criminal defendant makes a public records request for information that could be obtained from the prosecutor through discovery, this request triggers a reciprocal duty on the part of the defendant to provide discovery as contemplated by Crim.R. 16).

[446] Crim.R. 16(H).

[447] *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 355 (1997).

[448] *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 354-55 (1997).

[449] *Gilbert v. Summit Cty.*, 2004-Ohio-7108, ¶ 5, 11.

[450] *Cockshutt v. Ohio Dept. of Rehab. & Corr.*, 2013 U.S. Dist. LEXIS 113293, at *13 (S.D.Ohio Aug. 9, 2013).

[451] *State ex rel. TP Mech. Contractors, Inc. v. Franklin Cty. Bd. of Commrs.*, 2009-Ohio-3614, ¶ 13 (10th Dist.).

[452] Evid.R. 803(8); *State v. Scurti*, 2003-Ohio-3286, ¶ 15 (7th Dist.).

[453] *Gilbert v. Summit Cty.*, 2004-Ohio-7108, ¶ 13-14 (Stratton, J. concurring).

[454] R.C. 149.43(A)(4).

[455] *Frank R. Recker & Assocs. Co. LPA, v. Ohio State Dental Bd.,* 2019-Ohio-3268, ¶ 13 (surveys created with the help of counsel and in reasonable anticipation of litigation qualified as trial preparation records even though the public office also used them for non-litigation purposes), *adopted,* 2019-Ohio-3678 (Ct. of Cl.).

[456] *Cleveland Clinic Found. v. Levin*, 2008-Ohio-6197, ¶ 10.

[457] *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379, 384-85 (1998).

[458] *State ex rel. Summers v. Fox,* 2020-Ohio-5585, ¶ 47.

[459] *State ex rel. Summers v. Fox,* 2020-Ohio-5585, ¶ 49 (interviews conducted before the filing of a criminal complaint were not trial preparation records); *see also Bentkowski v. Trafis*, 2015-Ohio-5139, ¶ 27 (8th Dist.) (trial preparation records exemption did not apply to records of police investigation when the police had closed the investigation; no crime was charged or even contemplated, and thus trial was not reasonably anticipated).

[460] *Hodge v. Montgomery Cty. Prosecutor's Office,* 2020-Ohio-4520, ¶ 13, *adopted,* 2020-Ohio-4904 (Ct. of Cl.).

[461] *State ex rel. Summers v. Fox,* 2020-Ohio-5585, ¶ 55.

[462] *State ex rel. Summers v. Fox,* 2020-Ohio-5585, ¶ 53; Civ.R. 26(B)(4).

[463] *State ex rel. Summers v. Fox,* 2020-Ohio-5585, ¶ 55.

[464] *State ex rel. Vindicator Printing Co. v. Watkins*, 66 Ohio St.3d 129, 137-38 (1993) (prohibiting disclosure of pretrial court records prejudicing rights of criminal defendant); *Adams v. Metallica, Inc.*, 143 Ohio App.3d 482, 493-95 (1st Dist. 2001) (applying balancing test to determine whether prejudicial record should be released when filed with the court); *but see State ex rel. Highlander v. Rudduck*, 2004-Ohio-4952, ¶ 9-20 (pending appeal from court order unsealing divorce records does not preclude writ of mandamus claim).

[465] *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App.3d 725, 730-33 (1st Dist. 2001) (trial judge had to determine whether release of records would jeopardize defendant's right to a fair trial).

[466] R.C. 2953.32; R.C. 2953.33; R.C. 2953.34; *State ex rel. Cincinnati Enquirer v. Winkler*, 2004-Ohio-1581, ¶ 4-13 (rejecting claim that sealing statute violates the public's constitutional right to access public records).

[467] *Mayfield Hts. v. M.T.S.*, 2014-Ohio-4088, ¶ 8 (8th Dist.).

[468] *State ex rel. Frank v. Clermont Cty. Prosecutor,* 2021-Ohio-623, ¶ 21 (prosecutor's response, "This does not preclude the possibility of unlisted arrests, expunged/sealed records or criminal investigation information with this or other departments" was sufficient when denying public records request); *State ex rel. Doe v. Smith*, 2009-Ohio-4149, ¶ 6, 9, 38, 43 (response, "There is no information available" was a violation of the R.C. 149.43(B)(3) requirement to provide a sufficient explanation, with legal authority, for the denial); *but see* R.C. 2953.36(F)(2) ("upon any inquiry" for expunged records of human trafficking victims, the court "*shall* reply that no record exists").

[469] *State v. Radcliff,* 2015-Ohio-235, ¶ 27; *but see State ex rel. Highlander v. Rudduck*, 2004-Ohio-4952, ¶ 1 (divorce records were not properly sealed when an order results from "unwritten and informal court policy").

[470] *State v. Radcliff*, 2015-Ohio-235, ¶ 27; *Dream Fields, LLC v. Bogart*, 2008-Ohio-152, ¶ 5-6 (1st Dist.) (unless a court record contains information that is exempt as a public record, it shall not be sealed and shall be available for public inspection; "[j]ust because the parties have agreed that they want the record sealed is not enough to justify the sealing").

[471] *State v. Boykin*, 2013-Ohio-4582, syllabus.

[472] *State v. Radcliff*, 2015-Ohio-235, ¶ 37.

[473] Crim.R. 6(E).

[474] *State ex rel. Beacon Journal v. Waters*, 67 Ohio St.3d 321, 327 (1993); Crim.R. 6.

[475] *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 2005-Ohio-685, ¶ 5; *State ex rel. Gannett Satellite Information Network, Inc. v. Petro*, 80 Ohio St.3d 261, 267 (1997).

[476] *Krouse v. Ohio State Univ.*, 2018-Ohio-5014, ¶ 9, *adopted,* 2018-Ohio-5013 (Ct. of Cl.).

[477] *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 136-37 (1997).

[478] *State ex rel. Sun Newspapers v. Westlake Bd. of Edn.*, 76 Ohio App.3d 170, 173 (8th Dist. 1991); *Smith v. Ohio State Univ. Office of Compliance & Integrity,* 2022-Ohio-2657, ¶ 20-22 (Ct. of Cl.) (ordering production of settlement agreement between university and victims, but not privileged communications relating to implementation of the agreement).

[479] Prof. Cond. Adv. Op. 2013-13.

[480] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 2002-Ohio-7041, ¶ 11-21; *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 663 (8th Dist. 1990).

[481] *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St.3d 258, 264 (1992).

[482] See*, e.g.*, *State ex rel. Besser v. Ohio State Univ.*, 87 Ohio St.3d 535, 543 (2000) (public entity can have its own trade secrets); *State ex rel. Perrea v. Cincinnati Pub. Schools,* 2009-Ohio-4762, ¶ 32-33 (public school established that certain semester examination records exempt as trade secrets); *State ex rel. Am. Ctr. for Economic Equality v. Jackson*, 2015-Ohio-4981, ¶ 41-48 (8th Dist.) (document with list of names and email addresses was exempt as trade secrets); *Salemi v. Cleveland Metroparks*, 2014-Ohio-3914, ¶ 12, 14-23 (8th Dist.) (customer lists and marketing plan of public golf course exempt from disclosure as trade secrets).

[483] R.C. 1333.61(D) (adopting the Uniform Trade Secrets Act).

[484] *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 181 (1999) (time, effort, or money expended in developing law firm's client list, as well as amount of time and expense it would take for others

to acquire and duplicate it, may be among factfinder's considerations in determining if that information qualifies as a trade secret).

[485] *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 400 (2000).

[486] *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399-400 (2000); *State ex rel. Luken v. Corp. for Findlay Market*, 2013-Ohio-1532, ¶ 19-25 (information met the two requirements of *Besser* because sublease rental terms had independent economic value and corporation made reasonable efforts to maintain secrecy of information); *Salemi v. Cleveland Metroparks*, 2016-Ohio-1192, ¶ 27-30 (applying the *Besser* factors, customer lists and marketing plan of Metroparks' public golf course were trade secrets because: (1) the information was not available to the public or contractual partners, (2) the golf course took measures to protect the list from disclosure and limited employee access, (3) the customer list was of economic value to the golf course, and (4) the golf course spent money and effort in collecting and maintaining the information).

[487] *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399-400 (2000).

[488] *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 527 (1997).

[489] *See, e.g.*, *State ex rel. Gannett Satellite Info. Network v. Shirey*, 78 Ohio St.3d 400 (1997) (contract provision between city and outside search firm making resumes and application materials confidential void as a matter of law).

[490] 17 U.S.C. 102(a).

[491] 17 U.S.C. 102(a)(1)-(8).

[492] 17 U.S.C. 102(a).

[493] 17 U.S.C. 107; *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 560-61 (1985) (in determining whether the intended use of the protected work is "fair use," a court must consider these facts, which are not exclusive: (1) the purpose and character of the use, including whether the intended use is commercial or for non-profit educational purposes; (2) the nature of the protected work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the most important factor — the effect of the intended use upon the market for or value of the protected work); *State ex rel. Gambill v. Opperman*, 2013-Ohio-761, ¶ 25 (because engineer's office cannot separate requested raw data from copyrighted and exempt software, nonexempt records are not subject to disclosure to the extent they are inseparable from copyrighted software).

[494] R.C. 5120.21 (A)-(C).

[495] R.C. 5120.21(F); *State ex rel. Mobley v. Ohio Dept. of Rehab. & Corr.,* 2022-Ohio-1765, ¶ 17-22.

[496] *State ex rel. Mobley v. Ohio Dept. of Rehab. & Corr.,* 2022-Ohio-1765, ¶ 16-23; *State ex rel. Sultaana v. Mansfield Corr. Inst.*, 2023-Ohio-1177, ¶ 32 (incident and conduct reports did not fall under any category in R.C. 5120.21 and not exempt).

IV. Chapter Four: Law Enforcement Records

This Chapter is about issues and exemptions that apply to law enforcement related records and to law enforcement officers, as well as issues and exemptions that apply to crime victims or witnesses. The Chapter also addresses the unique issues involved in public records requests made by inmates. Unless otherwise noted, the general principles of public records obligations and enforcement discussed in this Manual apply to these records as they do to all other types of records.

A. CLEIRs: Confidential Law Enforcement Investigatory Records Exemption

The Confidential Law Enforcement Investigatory Records exemption, commonly known as "CLEIRs," is a discretionary exemption that law enforcement offices invoke often. CLEIRs applies to (1) records that pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, *and* (2) when disclosure of the records would reveal one of five categories of information.[497] Each element involves a separate analysis, and *both* must be satisfied for the exemption to apply.

1. Step one: pertains to "a law enforcement matter"

The first step to decide if the CLEIRs exemption applies is whether the record pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature. An investigation is only considered a "law enforcement matter" if it meets each prong of the following three-part test:

a. Has an investigation been initiated upon specific suspicion of wrongdoing?

To pertain to a law enforcement matter, records must be generated in response to specific alleged misconduct. Thus, records that offices routinely generate, such as personnel records, are generally not considered investigation records that pertain to a law enforcement matter.[498] Use-of-force reports are not categorically treated as investigation records for purposes of CLEIRs because law enforcement offices must create these reports for every use-of-force incident, even if the office does not suspect misconduct.[499] However, if there is evidence of "specific suspicion of criminal wrongdoing" related to a use-of-force incident, the use-of-force report may qualify as an investigation record pertaining to a law enforcement matter.[500]

b. Does the alleged conduct violate criminal, quasi-criminal, civil, or administrative law?

Records involving criminal conduct clearly pertain to a law enforcement matter. But in addition to criminal law enforcement matters, CLEIRs applies to quasi-criminal, civil, and administrative law enforcement matters when there is statutory authority to enforce a law.[501] To satisfy this element the matter must directly relate to "the enforcement of the law, and not to employment or personnel matters ancillary to law enforcement matters."[502] Thus, disciplinary investigations of alleged violations of internal office policies or procedures, including disciplinary actions against law enforcement officers, are *not* law enforcement matters.[503]

c. Does the public office have the authority to investigate or enforce the law allegedly violated?

The public office must have legally-mandated investigative[504] or enforcement authority over the alleged violation of the law for the records it holds to pertain to a "law enforcement matter."[505]

For example, if an investigating law enforcement agency obtains a copy of an otherwise public record of another public office as part of an investigation, the original record remaining in the hands of the other public office is not covered by the CLEIRs exemption.[506]

2. Step two: high probability of disclosing certain information

If step one is satisfied — the investigative record pertains to a "law enforcement matter" — the second step asks whether releasing the record would create a high probability of disclosing one or more of five types of information.[507] The five types of information are:

a. Identity of an uncharged suspect in connection with the investigated conduct

An "uncharged suspect" is a person who at some point in the public office's investigation was believed to have committed a crime or offense but was not arrested or charged for the offense to which the investigative record pertains.[508] This exemption protects the rights of individuals to be free from unwarranted adverse publicity and prevents enforcement investigations from being compromised.[509]

Only the particular information that has a high probability of revealing the identity of an uncharged suspect can be redacted from otherwise non-exempt records prior to the records' release.[510] When the contents of a record are so "inextricably intertwined" with the suspect's identity that redacting will fail to protect the person's identity, the entire record may be withheld.[511] However, the application of this exemption to some records does not automatically create a blanket exemption covering all other records in an investigation file; the public office must release any investigative records that do not individually have a high probability of revealing the uncharged suspect's identity.[512] This exemption does not categorically cover police officer use-of-force reports; rather, a case-by-case assessment should be made to determine if the exemption applies.[513]

The uncharged suspect exemption may apply even if time has passed since the investigation was closed,[514] the suspect has been accurately identified in media coverage,[515] or the uncharged suspect is the person requesting the information.[516]

b. Identity of a confidential source or witness

For purposes of the CLEIRs exemption, confidential sources or witnesses are those who have been "reasonably promised" confidentiality.[517] A promise of confidentiality is considered reasonable if it was made on the basis of the law enforcement investigator's determination that the promise is necessary to obtain the information.[518] When possible, it is advisable — though not required — that the investigator document the specific reasons why promising confidentiality was necessary to further the investigation.[519] Promises of confidentiality contained in policy statements or given as a matter of course during routine administrative procedures are not "reasonable" promises of confidentiality for purposes of the CLEIRs exemption.[520]

This exemption applies to protect the identity of the information source, not the information he or she provides.[521] However, when the contents of a record are so inextricably intertwined with the confidential source's identity that redacting will fail to protect the person's identity in connection with the investigated conduct, the identifying material within a record, or even the entire record, may be withheld.[522]

c. Specific confidential investigatory techniques or procedures

The exemption for specific confidential investigatory techniques or procedures primarily applies to forensic laboratory testing and results, such as trace metal tests.[523] One purpose of the exemption is to avoid compromising the effectiveness of proprietary and confidential investigative methods.[524]

As with other types of exemptions, the office asserting this exemption has the burden to show that the information fits squarely within the exemption. This means that the office must show why the techniques or procedures are unique or require protection. For example, the Supreme Court of Ohio held that this exemption did not apply to witness interviews in an assault prosecution.[525] The prosecutors asserted that interviewing assault victims is a "sensitive issue" that "requires special techniques" to understand the victim's mindset. However, the prosecutors did not articulate the specific technique at issue or explain why such a technique must remain confidential.

Similarly, the Supreme Court held that the exemption did not apply to a map that officers made that showed gang territories and where certain gangs operated in the area.[526] The Court said that the deciding issue is whether the map itself revealed confidential investigatory techniques or procedures, not necessarily the officers' thought process that went into making the map.

d. Investigatory work product

"Investigatory work product" is defined as information, including notes, working papers, memoranda, or similar materials, assembled in connection with a probable or pending criminal proceeding.[527]

A criminal proceeding is probable or highly probable if it's clear that a crime was committed.[528] In one case the Supreme Court of Ohio held that only 90 seconds from over two hours of dashboard camera recordings was covered as investigatory work product.[529] The Court explained that the department policy required troopers to record all pursuits and traffic stops, regardless if a criminal prosecution may follow. Thus, most of the recording was routine, not assembled in connection with an actual or highly probably criminal case. However, the 90 seconds showing a patrol officer taking the suspect to the patrol car, reading his Miranda rights, and questioning him, constituted investigatory work product. By informing the suspect of his Miranda rights, the officer intended to secure admissible statements to use in a criminal prosecution.

Investigatory work product may include copies of records from other public offices that are assembled by a law enforcement agency in connection with a criminal proceeding, even when the records would be public in the hands of the other public office.[530] Also included in the investigatory work product exemption are records used in connection with a criminal proceeding that also appear in a law enforcement office's file — say, a personnel file — other than the investigative file for that criminal proceeding.[531] But when a law enforcement office uses its own public records in a subsequent criminal proceeding, those records do not lose the public records "cloak." In other words, a public office cannot shield a public record from disclosure simply by placing it into an investigative file and calling it investigatory work product. For example, a city's routine employment records do not become investigatory work product when the city later starts a criminal investigation and the employment records become part of the investigative file.[532]

Information in a prosecutor's file may have records or information that are considered investigatory work product. However, simply because a document or record is kept in a prosecutor's file does not

mean the document or record is covered by the investigatory work product exemption. For example, courts have held that the following are not covered by the investigatory work product exemption even though they were kept in the prosecutor's files: copies of newspaper articles and statutes;[533] copies of an indictment, transcripts of a plea hearing, and a campaign committee finance report filed with the board of elections.[534] The investigatory work product exemption does not cover attorney work product. Rather, attorney work product is only protected to the extent it constitutes trial preparation records as defined in R.C. 149.43(A)(4).[535] Also, the investigatory work product exemption is not waived when a criminal defendant is provided with discovery materials as required by law.[536]

Information that *initiates* an investigation does not qualify for the investigatory work product exemption. Accordingly, law enforcement offices must pay careful attention to the information in routine offense and incident reports, and narratives that may be attached to the reports. Generally, routine offense and incident reports are not considered part of an investigation and thus not covered under CLEIRs. Refer to section 4.a below for more discussion of incident reports.

Importantly, the investigatory work product exemption is *time limited*. When a law enforcement matter ends, the exemption ends.[537]

e. Information that would endanger life or physical safety if released

Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential informant, may be exempt under CLEIRs.[538] The threat to safety need not be specified within the four corners of the investigative file; but bare allegations or assumed conclusions that a person's physical safety is threatened are insufficient reasons to redact information.[539] Alleging that disclosing the information would infringe on a person's privacy does not justify a denial of release under this exemption.[540]

3. Expiration of CLEIRs exemption

The CLEIRs exemption may expire. The Supreme Court of Ohio held that the investigatory work product exemption does not extend past the end of the trial for which the information was gathered.[541]However, courts have held that investigatory records that continue to fall under the uncharged suspect,[542] confidential source or witness,[543] confidential investigatory technique,[544] and information threatening physical safety[545] exemptions, apply *despite* the passage of time.

4. Law enforcement records not covered by CLEIRs

a. Routine offense and incident reports

Routine offense and incident reports are generally not considered part of an investigation and thus not covered under CLEIRs. These are typically "form reports in which the law enforcement officer completing the form enters information in the spaces provided."[546] When an officer is completing an offense or incident report, he or she is gathering information that may *initiate* an investigation, but the investigation itself has not started.[547] The Supreme Court of Ohio characterized this information as "incident information," which may include information such as an officer's initial observations or witness interviews.[548]

"Incident information" is not exempt under CLEIRs no matter where it appears in an officer's report. In deciding what information qualifies as "incident information," law enforcement offices must look at the content of the information, not the title of the report in which the information appears. For example, supplemental narratives containing "incident information" such as initial

observations or initial witness interviews, may be considered part of an initial incident report and subject to disclosure depending on the nature of the content and when it was created.[549] However, information that's collected after an investigation is underway may be withheld under CLEIRs as investigatory work product.

This analysis will turn on the facts and circumstances of each case. Offices should carefully assess the type of information in each part of a report and when it was created to decide what information may be exempt as investigatory work product. But even if an offense or incident report does not qualify as investigatory work product under CLEIRs, information within the report that is otherwise exempt from disclosure under state or federal law may be redacted.[550] This could include social security numbers, information referred from a children services agency, or information subject to other independently applicable exemptions.[551]

Finally, not all reports used by law enforcement are considered "offense" or "incident" reports. In some circumstances, use-of-force reports may not be incident reports and may be covered by the CLEIRS exemption.[552]

b. 911 call records

The CLEIRs exemption does not apply to 911 transcripts and recordings. The Supreme Court of Ohio explained that 911 operators are not investigating; they are taking information to assess the proper emergency service provider response.[553] Although 911 callers cannot expect any information in a 911 call to be private, some information can still be redacted. For example, information in 911 calls by mandatory reporters of child abuse or neglect may be withheld because callers are statutorily required to report child abuse confidentially.[554] Further, information concerning telephone numbers, addresses, or names obtained from a 911 database maintained pursuant to R.C. 128.96 may not be disclosed or used for any purpose other than as permitted in that section.[555]

B. Other Exemptions Common in Law Enforcement

Numerous exemptions may apply to law enforcement related records. The exemptions discussed below are examples that law enforcement offices apply often. This list is not exhaustive. Refer to Chapter Three, "Exemptions to Release of Public Records," and Chapter Five, "Other Categories of Records," for discussion of other examples, as well as the Ohio Attorney General's Office's list of statutory exemptions.

1. Body-worn and dashboard camera recordings

Footage from body-worn and dashboard cameras are public records. If a law enforcement office receives a request for body-worn or dashboard camera recordings, the office must conduct a careful review of the footage to decide if any of the footage is exempt from disclosure. In one case the Supreme Court of Ohio held that only 90 seconds from over two hours of dashboard camera recordings could be redacted before release.[556]

The Public Records Act lists 17 types of information that are considered "restricted portions" of body-worn or dashboard camera footage that can be withheld or redacted before disclosure.[557] The restricted portions of the footage are any visual or audio portion of the recording that "shows, communicates or discloses" one or more of the following:[558]

(1) The image or identity of a child or information that could lead to the identification of a child who is the primary subject of the recording;

(2) The death of a person or deceased person's body, unless the death was caused by a correctional employee, youth services employee, or peace officer or under certain other circumstances;

(3) The death of a correctional employee, youth services employee, peace officer or first responder that occurs when the decedent was performing official duties;

(4) Grievous bodily harm unless the injury was effected by a correctional employee, youth services employee, or a peace officer;

(5) An act of severe violence against a person that results in serious physical harm unless the injury was effected by a correctional employee, youth services employee, or peace officer;

(6) Grievous bodily harm to a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder while the injured person was performing official duties;

(7) An act of severe violence that results in serious physical harm against a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties;

(8) A person's nude body;

(9) Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;

(10) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;

(11) Information that does not qualify as a confidential law enforcement investigatory record that could identify a confidential source if disclosure of the source or the information provided could reasonably be expected to threaten or endanger a person's safety or property;

(12) A person's personal information who is not arrested, charged, or issued a written warning;

(13) Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;

(14) Personal conversations between peace officers unrelated to work;

(15) Conversations between peace officers and members of the public that do not concern law enforcement activities;

(16) The interior of a residence unless it is the location of an adversarial encounter with, or use of force by, a peace officer; or

(17) The interior of a private business closed to the public unless it is the location of an adversarial encounter with, or use of force by, a peace officer.

Restricted portions of body-worn or dashboard camera recordings described in numbers (2)-(8) above may be released with the consent of the injured person, the decedent's executor or administrator or the person/person's guardian if the recording will not be used in connection with any probable or pending criminal proceeding or the recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probably or pending criminal proceedings.[559]

If a person has been denied access to a restricted portion of a body-worn or dashboard camera recording, that person may file a mandamus action or a complaint with the clerk of the Court of Claims for an order to release the recording. The court shall order the release if it decides that the public interest in the recording substantially outweighs privacy and other interests asserted to deny release.[560]

Law enforcement agencies may charge requesters the actual cost, up to $75 per hour of video footage (not to exceed $750 total), to prepare body-worn or dashboard camera footage for inspection or production.[561] Public offices may include in their public records policies a requirement that the requester pay these costs before the public office begins to prepare the footage for inspection or production. If such a policy is in place, a public office must provide the requester with the estimated total cost within five business days. Only when the requester pays the estimated cost in full does the public office have an obligation to prepare the footage for inspection or production.

The Attorney General's Office has developed a model policy that law enforcement agencies can use to help establish rules and guidelines on charging requesters for preparing video records for production or inspection. The model policy can be found on the Attorney General's website.

Refer to Chapter Two for more discussion of charging for production or inspection of video recordings.

2. EMS run sheets

When a run sheet created and maintained by a county emergency medical services (EMS) organization documents treatment of a living patient, the EMS organization may redact information that pertains to the patient's medical history, diagnosis, prognosis, or medical condition.[562] However, a patient's name, address, and other non-medical personal information does not fall under the "medical records" exemption in R.C. 149.43(A)(1)(a) and may not be redacted unless some other exemption applies to that information.[563] Accordingly, each run sheet must be examined to determine whether it falls, in whole or in part, within the "medical records" exemption, the physician-patient privilege, or any other exemption for information the release of which is prohibited by law.[564]

3. Juvenile law enforcement records

As addressed in Chapter Three: F.2., "Juvenile records," there is no exemption that protects all juvenile records from public records disclosure. Juvenile offender investigation records maintained by law enforcement agencies, in general, are treated no differently than adult records, including records identifying a juvenile suspect, victim, or witness in an initial incident report.[565] Specific exemptions apply to: (1) fingerprints, photographs, and related information in connection with specified juvenile arrest or custody;[566] (2) certain information forwarded from a children's services agency;[567] and (3) sealed or expunged juvenile records.[568] Most information held by local law enforcement offices may be shared with other law enforcement agencies and some may be shared with a board of education upon request.[569]

Federal law similarly prohibits disclosing specified records associated with federal juvenile delinquency proceedings.[570] Federal law also restricts disclosing 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 were prosecuted as an adult.[571]

4. Other exemptions

Type of Record(s)	Authority	Description
Ohio Law Enforcement Gateway (OHLEG)	R.C. 109.57(D)(1)(b)	Information, data, statistics, and search audit trails obtained from the Ohio Law Enforcement Gateway (OHLEG) database.
Law Enforcement Agencies Databased Systems (LEADS)	R.C. 109.57	Information or documents obtained through LEADS.

Type of Record(s)	Authority	Description
Fingerprints	R.C. 109.57(D)	Fingerprints, fingerprint impressions, and fingerprint cards.
Fingerprint database	R.C. 109.5721(E)	Information in the Retained Applicant Fingerprint Database maintained by BCI.
Certain information BCI receives	R.C. 109.573(E), (G)	Certain DNA-related records, fingerprints, photographs, and personal information BCI receives.
Lethal injection	R.C. 149.43(A)(1)(cc)	Information and records concerning drugs used for lethal injections under R.C. 2949.221(B) and (C).
Military orders	R.C. 149.43(A)(1)(ff)	Orders for active military service of an individual serving or with previous service in the U.S. armed forces, including a reserve component, or the Ohio organized militia.
Victim and witness telephone numbers	R.C. 149.43(A)(1)(mm)	Telephone numbers of victims and witnesses to a crime listed on a law enforcement record or report.
Motor vehicle accident telephone numbers	R.C. 149.43(A)(1)(oo)	Telephone numbers of parties to a motor vehicle accident on a law enforcement record or report within 30 days of the accident.
Photographs of undercover officers	R.C. 149.43(A)(7)(g)	Photographs of peace officers with undercover or plain clothes positions or assignments.
Security records	R.C. 149.433(A)(1)-(2)	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. Refer to Chapter Three: F.4.a. "Security records," for more discussion of this exemption.
Infrastructure records	R.C. 149.433(B)(2)-(3)	Information that discloses the configuration of a public office's critical systems. Refer to Chapter Three: F.4.b. "Infrastructure records," for more discussion of this exemption.
Autopsy photos	R.C. 313.10(D)	Autopsy photos of the decedent. NOTE: a coroner can allow a journalist (upon a written request) to inspect these records but not copy them.
Security of electronic records	R.C. 1306.23	Information that would jeopardize the state's continued use or security of any computer or telecommunications devices or services associated with electronic signatures, electronic records, or electronic transactions.
Name of person making report of abuse	R.C. 2151.421(I)(1)	Report made by someone with knowledge of child abuse or neglect to either the public children services agency or a peace officer in the county in which the child resides; includes the name of the person who made the report.

Type of Record(s)	Authority	Description
Disclosure of officer's home address in pending criminal case	R.C. 2921.24(A)	Home addresses of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in a pending criminal case.
Disclosure of officer's home address during examination in court	R.C. 2921.25(A)	A peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee cannot be required to disclose their home address during examination in a criminal court case, unless court determines defendant has a right to the disclosure.
Sealed court records	R.C. 2953.33	Court records relating to criminal convictions that have been properly expunged or sealed.
Ohio Automated Rx Reporting System (OARRS)	R.C. 4729.80(C)	Information on, or obtained from, the drug database established by the State Board of Pharmacy.
State Highway Patrol accident reports	R.C. 5502.12	State Highway Patrol reports, statements, and photographs related to accidents it investigates until all criminal prosecution concludes.
Grand Jury records	Crim.R. 6(E)	Deliberations of grand jury and vote of a grand juror.
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) trace reports	Consolidated Appropriations Act of 2005, Pub. L. No. 108-477, 118 Stat. 2809, 2859 (2004); Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, 121 Stat. 2859 (2004)	ATF firearms trace reports. *See also Higgins v. U.S. Dept. of Justice*, 919 F.Supp.2d 131, 144-45 (D.D.C. 2013).

C. Exemptions Applicable to Law Enforcement Officers

Below are examples of exemptions that may apply to law enforcement officers and other covered professionals. Many of these exemptions may apply to records in employee personnel files. These exemptions are not exclusive to law enforcement and can apply to other public officials and employees.

This list is not exhaustive. Refer to Chapter Five: A. "Employment Records," for discussion of other exemptions that apply to employment records and personnel files.

1. Background investigations, evaluations, and disciplinary records

There is not an exemption for background investigation records. Specific statutes may exempt defined background investigation materials kept by specific public offices.[572] For example, criminal history "rap sheets" obtained from the federal National Crime Information Center system (NCIC) or through the state Law Enforcement Automated Data System (LEADS) are subject to several statutory exemptions.[573]

There is also not an exemption for evaluations and disciplinary records. The CLEIRs exemption does not apply to routine law enforcement discipline or personnel matters, even when such matters are the subject of an internal investigation within a law enforcement agency.[574]

2. Medical records

The exemption for medical records only applies to records generated and maintained in the process of medical treatment.[575] However, a separate exemption applies to "medical information" pertaining to those professionals covered under R.C. 149.43(A)(7).[576]

The federal Health Insurance Portability and Accountability Act (HIPAA) does not apply to records in employer personnel files, but the federal Family and Medical Leave Act (FMLA) or the Americans with Disabilities Act (ADA) may apply to medical-related information in personnel files.

3. Physical fitness, psychiatric, and polygraph examinations

Many law enforcement offices conduct physical fitness examinations, psychiatric or psychological examinations, or polygraph examinations of prospective or current employees. Because the exemption in the Public Records Act for "medical records" is limited to records generated and maintained in the process of medical *treatment*, these types of records generally are not covered by this exemption. Accordingly, records of examinations performed for the purpose of determining fitness for hiring or for continued employment, including psychiatric[577] and psychological[578] examinations, are not exempt from disclosure as "medical records." Similarly, polygraph, or "lie detector" examinations are not "medical records," and do not fall under the CLEIRs exemption when performed in connection with hiring.[579]

However, federal law may exempt some examinations from disclosure. The federal Americans With Disabilities Act (ADA) and its implementing regulations[580] permit employers to require employees and applicants to whom they have offered employment to undergo medical examination and/or inquiry into their ability to perform job-related functions.[581] Information regarding medical condition or history must be collected and kept on separate forms and in separate medical files and must be treated as confidential, except as otherwise provided by the ADA.[582] These records may be exempted from disclosure under the so-called "catch-all" provision of the Public Records Act as "records the release of which is prohibited by state or federal law."[583] As non-public records, the examinations may constitute "confidential personal information" under Ohio's Personal Information Systems Act.[584]

4. Bargaining agreements

Collective bargaining agreements are public records. Like other contracts and agreements, parties cannot include provisions in collective bargaining agreements that make public records confidential or otherwise contract around public records obligations. Any such provision in a collective bargaining agreement will be invalid.[585] For example, the Supreme Court of Ohio invalidated a provision of a collective bargaining agreement between a city and its police force that required the city to ensure confidentiality of officers' personnel records.[586]

5. Residential and familial information of covered professions

The Public Records Act exempts from disclosure "residential and familial information" of certain professionals or employees identified in the Act.[587] For purposes of this section, "covered professions" or "covered employee" describe all persons covered under the exemption. The covered professions and employees include:

- Peace officers[588]
- Correctional employees[589]
- Firefighters[590]
- Emergency service telecommunicators[591]
- County or multicounty corrections officers[593]
- Forensic mental health providers[595]
- Mental health evaluation providers[596]
- Protective services workers[597]
- Investigators of the Bureau of Identification and Investigation[599]
- Medical directors or members of a cooperating physician advisory board of an emergency medical service organization
- Parole officers and probation officers
- Bailiffs
- Prosecutors and assistant prosecutors
- Regional psychiatric hospital employees[592]
- Designated Ohio national guard members[594]
- Judges and magistrates
- State Board of Pharmacy employees
- Federal law enforcement officers[598]
- Community-based correctional facility and youth services employees[600]
- Emergency medical technicians[601]

"Residential and familial information" means information that discloses any of the following about a covered profession or covered employee:

- Address of the covered employee's actual personal residence, except for state or political subdivision.[602]
- Residential phone number and emergency phone number of the covered employee or the spouse, former spouse, or child[603] of a covered employee.[604]
- Any information of a covered employee that is compiled from referral to or participation in an employee assistance program.[605]
- Any medical information of a covered employee.[606]
- The name of any beneficiary of employment benefits of a covered employee, including, but not limited to, life insurance benefits.[607]
- The identity and amount of any charitable or employment benefit deduction of a covered employee.[608]
- A photograph of a peace officer who holds a position that may include undercover or plain clothes positions or assignments.[609]
- Social security numbers and numbers for bank accounts and debit and credit cards.[610] This exemption applies to *both* a covered employee and their spouse, former spouse, and children.
- Name, residential address, name of employer, and address of employer.[611] This exemption *only* applies to a covered employee's spouse, former spouse, and children.
- Past, current, and future work schedules.[612]

The Attorney General has opined that this exemption applies only to records that both 1) contain the information listed in the statute and 2) disclose the relationship of the information to a peace officer or a spouse, former spouse, or child of the peace officer. Further, the exemption applies only to information contained in a record that presents a reasonable expectation of privacy; it does not extend to records kept by a county recorder or other public official for 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.[613]

Individuals in these covered professions, including individuals who previously served in a covered profession,[614] can also request redaction of their actual residential address from any records made available by public offices to the public on the internet. A person must make this request in writing on a form developed by the Attorney General.[615] Redaction requests sent to public offices are themselves exempt from disclosure.[616]

Refer to Chapter Three: F.1.b., "Personal information listed online," for more discussion of this provision.

6. Constitutional right to privacy

A constitutional right of privacy is not a categorical exemption to disclosure of law enforcement officers' identity or information. As explained in more detail in Chapter Three: F.1, "Exemptions affecting personal privacy," courts have recognized an officer's constitutional right to privacy in limited and narrow circumstances. In *Kallstrom v. Columbus*, the U.S. Court of Appeals for the Sixth Circuit recognized the officers' fundamental constitutional rights to personal security and bodily integrity when it held that the Public Records Act did not require disclosure of the officers' personnel files to an attorney representing members of a criminal gang.[617] Following *Kallstrom*, the Supreme Court of Ohio affirmed a public office's decision to deny the request of a criminal defendant who asked for the personal information of a police officer based on the officer's constitutional right to privacy.[618]

D. Exemptions Applicable to Victims and Witnesses

There is no general exemption to public records disclosure for information relating to crime witnesses. Rather, there are exemptions that apply to specific information relating to witnesses. Records relating to crime victims receive added protection. Not only are there specific statutory exemptions that apply to crime victims, but Marsy's Law enacts confidentiality provisions for certain victims' information in "case documents."

1. Examples of exemptions applicable to victims and witnesses

Type of Record(s)	Authority	Description
Sexual assault examination kits	R.C. 109.68(F)	Information contained in the statewide sexual assault examination kit tracking system.
Death of minor	R.C. 149.43(A)(1)(t)	Records and information provided to executive director of a public children services agency or prosecutor regarding the death of a minor from possible abuse, neglect, or other criminal conduct.

Type of Record(s)	Authority	Description
Secretary of State's address confidentiality program	R.C. 149.43(A)(1)(ee)	Name, address, and other personally identifiable information of a participant in the Secretary of State's Address Confidentiality Program under R.C. 111.41-R.C. 111.47.
Depictions of victims by photograph, film, videotape, or printed or digital image	R.C. 149.43(A)(1)(ii)	Depictions by photograph, film, videotape, or printed or digital image of either "a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity" or "captures or depicts the victim of a sexually oriented offense, as defined in section R.C. 2950.01, at the actual occurrence of that offense."
Victim and witness telephone numbers	R.C. 149.43(A)(1)(mm)	Telephone numbers of victims and witnesses to a crime listed on a law enforcement record or report.
Marsy's Law	R.C. 149.43(A)(1)(rr)	Records, documents, and information protected under Marsy's Law under R.C. 2930.04 and R.C. 2930.07.
Address of petitioner for protective order	R.C. 3113.31(E)(8)(b)	The address of a person who petitions for a civil protective order or agreement, if requested by that person.
Domestic violence shelters	R.C. 3113.36(A)(5)	Information that would identify individuals served by a domestic violence shelter.

2. Marsy's Law

The "Marsy's Law Amendment" to the Ohio Constitution was passed in 2017. The Amendment enshrines certain rights for crime victims and ensures that victims are "treated with fairness and respect for the victim's safety, dignity, and privacy."[619] In 2023, the General Assembly codified Marsy's Law to include provisions that affect confidentiality of victim names, addresses, and other identifying information. The law also specified the types of information that may be redacted from some public records. These provisions apply in specific circumstances and to specific records.

a. Victims under Marsy's Law

Under Marsy's Law a victim is "a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act."[620] The victim may designate any person to act as his or her representative for purposes of exercising rights under Marsy's Law.[621] If the victim is a victim of murder, manslaughter, or homicide, a member of the deceased victim's family, a victim advocate, or another person designated by a member of the deceased victim's family, may exercise the victim's rights under Marsy's Law.[622] If the victim is incapacitated, incompetent, or deceased, and no member of the victim's family or victim advocate comes forward to act as a representative, a court may appoint a victim advocate or other person the court determines to be appropriate to act as the victim's representative.[623]

b. The victim's rights form

Marsy's Law requires that the victim or victim's representative be given or be notified about a victim's rights form. This form has important information for the victim, as well as for law enforcement, prosecutors, and courts that will use the form throughout the criminal process. The victim's rights form is not a public record under the Public Records Act.[624]

The victim's rights form tells the victim or victim's representative what rights they are automatically entitled to under Marsy's Law and what rights they must request.[625] The victim or victim's representative can choose to exercise all, some, or none of these rights, and can change their decision any time.[626]

The victim's rights form must include:

(1) A statement that the form itself is not a public record under the Public Records Act;[627]

(2) A section that allows the victim or victim's representative to request that his or her name, address, or other identifying information be redacted from "case documents;"[628]

(3) A section that explains that if a victim of "violating a protection order, an offense of violence, or a sexually oriented offense" does not complete the form or request applicable rights at the first contact with law enforcement, it is considered an assertion of the victim's rights until: (1) the victim completes the form or requests applicable rights, or (2) the prosecutor contacts the victim;[629]

(4) A section that explains that the victim must make a separate request to the Department of Public Safety for redaction of identifying information in motor vehicle accident reports;[630] and

(5) Information about the address confidentiality program administered by the Secretary of State.[631]

c. When a victim's identifying information must be redacted from "case documents"

The victim's identifying information must be redacted from "case documents" if:

(1) The victim or victim's representative made a written request for the victim's name, address, or other identifying information to be redacted from "case documents";[632]

(2) The victim of violating a protection order, an offense of violence, or a sexually oriented offense, or victim's representative, was unable to complete the victim's rights form at the first contact with law enforcement until the victim or victim's representative has initial contact with the prosecutor;[633] or

(3) The victim or victim's representative uses the victim's rights form to request redaction of the victim's identifying information.[634]

Under any of these scenarios, a law enforcement agency, prosecutor's office, or court is prohibited from releasing unredacted "case documents" in response to a public records request. [635]

These redaction provisions do not "apply to any disclosure of the name, address, or other identifying information of a victim of a criminal offense or delinquent act that resulted in the death of the victim."[636]

d. Case documents

A "case document" is a "document or information in a document, or audio or video recording of a victim of violating a protection order, an offense of violence, or a sexually oriented offense, regarding a case that is submitted to a court, a law enforcement agency or officer, or a prosecutor or filed with a clerk of court[.]"[637] This includes, but is not limited to, "pleadings, motions, exhibits, transcripts, orders, and judgments, or any documentation, including audio or video recordings of a victim of violating a protection order, an offense of violence, or a sexually oriented offense, prepared or created by a court, clerk of court, or law enforcement agency or officer, or a prosecutor regarding a case."[638]

A "case document" does not include materials that are subject to the work product doctrine, privilege, or confidentiality, or otherwise protected or prohibited from disclosure by state or federal law.[639]

The Ohio Attorney General has opined that the definition of "case documents" does not include purely civil matters. But case documents from criminal or delinquency proceedings that subsequently become part of civil proceedings must be redacted. Under this rationale, the redaction requirement does not apply to a civil protection order unless and until the protection order is violated and a criminal or delinquent case is instituted.[640]

e. Obligations of public offices and public officials

Any public office or official charged with the responsibility of knowing the name, address, or other identifying information of the victim or the victim's representative as part of the office's or official's duties, has full and complete access to the victim's information. The public office or official must take measures to prevent public disclosure of the identifying information of the victim or victim's representative, through the redaction provisions identified above.[641]

A public agency may maintain unredacted records of the victim or the victim's representative for its own records and use and may allow another public office or official to access the unredacted records.[642] The victim, victim's representative, or victim's attorney may also access any unredacted "case documents" with the victim's name, contact information, and identifying information.[643]

A criminal defendant may include necessary information about the victim in filings with a court. The victim's name and identifying information in the filings are not a public record if the victim requested that his or her identifying information be redacted from public records.[644]

E. Modified Access to Records for Prison Inmates

As explained in Chapter Two: B. "Statutes that Modify General Rights and Duties," there are several statutes that modify the rights of some requesters to access records. Prison inmates must follow a statutorily mandated process if requesting records concerning any criminal investigation or prosecution, or a juvenile delinquency investigation that otherwise would be a criminal investigation or prosecution if the subject were an adult.[645] This process applies to both state and federal inmates.[646]

An inmate may not designate a person to make a public records request on his or her behalf if the inmate would be prohibited from making the request directly.[647] However, courts should not presume a designee relationship between an inmate and requester merely because the requester is seeking records to benefit the inmate, or because the requester and inmate are related.[648] Rather, whether a designee relationship exists must be shown with direct evidence.[649]

A public office is not required to produce records concerning a criminal investigation or prosecution in response to an inmate request unless the inmate first obtains a finding from the judge who sentenced or otherwise adjudicated the inmate's case that the information sought is necessary to support what appears to be a justiciable claim, i.e., a pending proceeding with respect to which the requested documents would be material.[650] The inmate's request must be filed in the inmate's original criminal action, not in a separate, subsequent forfeiture action involving the inmate.[651] If an inmate requesting public records concerning a criminal prosecution does not follow these requirements, any suit to enforce his or her request will be dismissed.[652] The appropriate remedy for an inmate who is denied this order is an appeal of the sentencing judge's findings, not a mandamus action.[653]

The criminal investigation records subject to this process when requested by an inmate are broader than those defined under the CLEIRs exemption, and include offense and incident reports,[654] as well as the personnel files and payroll and attendance records of designated public service workers.[655] However, when an inmate seeks other types of records that do not relate to a criminal investigation or prosecution, public offices should treat inmates like any other type of requester.[656] Inmates may be required to exhaust inmate grievance procedures before filing a mandamus action to enforce public records requests when those requests concern aspects of institutional life that directly and personally affect the inmate.[657]

Notes:

---

[497] R.C. 149.43(A)(2).

[498] Compare *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143, (1995) (polygraph test results, questionnaires, and other materials gathered during a police department's hiring process were not "law enforcement matters" for purposes of CLEIRs) with *State ex rel. Oriana House, Inc. v. Montgomery*, 2005-Ohio-3377, ¶ 77 (10th Dist.), *rev'd on other grounds*, 2006-Ohio 4854 (redacted portions of audit records were directed to specific misconduct and were not simply part of routine monitoring).

[499] *State ex rel. Standifer v. City of Cleveland*, 2022-Ohio-3711, ¶ 21 (use of force reports are not categorically considered investigation records for purposes of CLEIRs).

[500] *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 83 (1988) (CLEIRs exemption does not cover law enforcement investigations routinely conducted in every use of force incident, absent evidence of "specific suspicion of criminal wrongdoing").

[501] *State ex rel. Oriana House, Inc. v. Montgomery*, 2005-Ohio-3377, ¶ 76 (10th Dist.), *rev'd on other grounds,* 2006-Ohio-4854 (special audit conducted by the Auditor of State qualifies as both a "law enforcement matter of a … civil, or administrative nature" and a "law enforcement matter of a criminal [or] quasi-criminal" matter); *In re Fisher*, 39 Ohio St.2d 71, 75-76 (1974) (juvenile delinquency is an example of a "quasi-criminal" matter); *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53 (1990) (anti-fraud and anti-corruption investigations are the types of criminal, quasi-criminal or administrative matters to which the CLEIRs exemption may apply because the "records are compiled by the committee in order to investigate matters prohibited by state law and administrative rule"); *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 2010-Ohio-5995, ¶ 29 (that four types of law enforcement matters – criminal, quasi-criminal, civil, and administrative – are in the CLEIRs exemption "evidences a clear statutory intention to include investigative activities of state licensing boards").

[502] *State ex rel. Freedom Communications, Inc. v. Elida Community Fire Co*., 82 Ohio St.3d 578, 581 (1998).

[503] *State ex rel. Morgan v. City of New Lexington*, 2006-Ohio-6365, ¶ 49.

[504] *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 2017-Ohio-8988, ¶ 34-38 (a coroner may be a law enforcement officer for purposes of CLEIRs because "the nature of the coroner's work in a homicide-related autopsy is investigative and pertains to law enforcement").

[505] *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158 (1997) (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).

[506] *State ex rel. Morgan v. New Lexington*, 2006-Ohio-6365, ¶ 51 ("records made in the routine course of public employment before" an investigation began were not covered by CLEIRs); *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 316 (2001) (street repair records of city's public works superintendent not covered under CLEIRs simply because the records may become relevant to a criminal case); *State ex rel. Cincinnati Enquirer v. Hamilton Cty*., 75 Ohio St.3d 374, 378 (1996) (a public record that "subsequently came into the possession and/or control of a prosecutor, other law enforcement officials, or even the grand jury has no significance" because "[o]nce clothed with the public records cloak, the records cannot be defrocked of their status").

[507] R.C. 149.43(A)(2).

[508] *State ex rel. Musial v. N. Olmsted*, 2005-Ohio-5521, ¶ 23-24 (a "charge" is a "formal accusation of an offense as a preliminary step to prosecution" and "[a] formal accusation of an offense requires a charging instrument, i.e., an indictment, information, or criminal complaint"); *see also* Crim.R. 7.

[509] *State ex rel. Master v. Cleveland*, 76 Ohio St.3d 340, 343 (1996) (citing "avoidance of subjecting persons to adverse publicity where they may otherwise never have been identified with the matter under investigation" and a law enforcement interest in not "compromising subsequent efforts to reopen and solve inactive cases" as two of the purposes of the uncharged suspect exemption).

[510] *State ex rel. Rocker v. Guernsey Cty. Sheriff's Office*, 2010-Ohio-3288, ¶ 11 (the uncharged suspect "exception applies only to those portions of records that, if released, would create a high probability of disclosure of the suspect's identity").

[511] *State ex rel. Master v. Cleveland*, 76 Ohio St.3d 340, 342 (1996) (records fall under the uncharged suspect exemption when "the protected identities of uncharged suspects are inextricably intertwined with the investigatory records").

[512] *State ex rel. Copley Ohio Newspapers, Inc. v. Akron*, 2024-Ohio-5677, ¶ 22 (differentiating between police officers who were criminally investigated for officer-involved shooting and officers who were not and ordering Akron to redact only the names of the officers who were investigated); *State ex rel. Rocker v. Guernsey Cty. Sheriff's Office*, 2010-Ohio-3288, ¶ 15 (court of appeals erred in concluding that all records at issue were covered by a "blanket uncharged-suspect exemption"); *Narciso v. Powell Police Dept.*, 2018-Ohio-4590, ¶ 29-30 (Ct. of Cl.) (uncharged suspect exemption "does not exempt investigatory information about the facts alleged, evidence obtained, investigator activities, and determinations, or any other item that does not disclose the identity of the suspect" or allow a public office to "deny access to the entire investigatory file merely because the request identifies the investigation by the name of the suspect or other person involved").

[513] *State ex rel. Standifer v. City of Cleveland,* 2022-Ohio-3711, ¶ 21.

[514] *State ex rel. Musial v. N. Olmsted*, 2005-Ohio-5521, ¶ 28.

[515] *State ex rel. Rocker v. Guernsey Cty. Sheriff's Office*, 2010-Ohio-3288, ¶ 10; *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 447 (2000).

[516] *State ex rel. Musial v. N. Olmsted*, 2005-Ohio-5521, ¶ 21-29.

[517] R.C. 149.43(A)(2)(b).

[518] *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9 (C.P. 1990).

[519] *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9 (C.P. 1990); *see also State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 156-57 (1993) (to trigger exemption a promise of confidentiality or a threat to physical safety need not be within the "four corners" of a document).

[520] *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 8-9 (C.P. 1990).

[521] *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9 (C.P. 1990).

[522] *State ex rel. Beacon Journal Publishing Co. v. Kent State Univ.*, 68 Ohio St.3d 40, 44 (1993), *overruled on other grounds*, 70 Ohio St.3d 420 (1994); *State ex rel. Strothers v. McFaul*, 122 Ohio App.3d 327, 332 (8th Dist.1997).

[523] *State ex rel. Walker v. Balraj*, 2000 Ohio App. LEXIS 3620, *3 (8th Dist., Aug. 2, 2000) (results of "trace metal test" are exempt as specific investigatory work product).

[524] *State ex rel. Broom v. Cleveland*, 1992 Ohio App. LEXIS 4548, *39 (8th Dist., Aug. 27, 1992) (city properly redacted portions of records that "mention confidential investigatory techniques, the effectiveness of which could be compromised by disclosure," to ensure "continued effectiveness of these techniques"); *State ex rel. Toledo Blade Co. v. Toledo*, 2013-Ohio-3094, ¶ 10 (6th Dist.) (release of a gang territory map created by police department would not reveal any specific confidential investigatory technique, procedure, source of information, or location being surveilled).

[525] *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 44 (law enforcement interviews of assault victims not exempt under CLEIRs as specific investigatory techniques or procedures).

[526] *State ex rel. Toledo Blade Co. v. Toledo*, 2013-Ohio-3094, ¶ 10 (6th Dist.) (release of a gang territory map created by police department would not reveal any specific confidential investigatory technique, procedure, source of information, or location being surveilled).

[527] R.C. 149.43(A)(2)(c); *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 19.

[528] *State ex rel. Myers v. Meyers*, 2022-Ohio-1915, ¶ 32.

[529] *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Public Safety*, 2016-Ohio-7987, ¶ 45-50.

[530] *State ex rel. Community Journal v. Reed*, 2014-Ohio-5745, ¶ 35-42 (12th Dist.) (copies of public records documenting the activities of a victim agency, when compiled and assembled by a separate investigating agency, were "specific investigative work product" in the hands of the investigating agency).

[531] *State ex rel. Mahajan v. State Med. Bd. Of Ohio*, 2010-Ohio-5995, ¶ 51-52 (regarding investigatory work product incidentally contained in chief enforcement attorney's general personnel file).
[532] *State ex rel. Morgan v. New Lexington*, 2006-Ohio-6365, ¶ 50-51.
[533] *State ex rel. Mahajan v. State Med. Bd. Of Ohio*, 2010-Ohio-5995, ¶ 51-52 (regarding investigatory work product incidentally contained in chief enforcement attorney's general personnel file).
[534] *State ex rel. WLWT – TV5 v. Leis*, 77 Ohio St.3d 357, 361 (1997), *overruled on other grounds by State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 47.
2016-Ohio-8394, ¶ 47.
[535] *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 55.
[536] *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 355 (1997).
[537] *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 47.
[538] R.C. 149.43(A)(2)(d); *State ex rel. Cleveland Police Patrolmen's Assn. v. Cleveland*, 122 Ohio App.3d 696, 701 (8th Dist. 1997) (a "strike plan" and related records prepared in connection with possible teachers' strike were exempt because release could endanger lives of police personnel).
[539] *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 156 (1993) (a document does not need to specify within its four corners the promise of confidentiality or threat to physical safety).
[540] *See, e.g., State ex rel. Johnson v. Cleveland*, 65 Ohio St.3d 331, 333-34 (1992), *overruled on other grounds by State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420 (1994).
[541] *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 47.
[542] *State ex rel. Musial v. City of N. Olmstead*, 2005-Ohio-5521, ¶ 26-28.
[543] *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 54 (1990) (the purpose of the exemption is to protect a confidential informant, which would be subverted "simply because a period of time had elapsed with no enforcement action").
[544] *State ex rel. Broom v. Cleveland*, 1992 Ohio App. LEXIS 4548, at *39 (8th Dist. Aug. 27, 1992).
[545] *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 157 (1993).
[546] *State ex rel. Lanham v. Smith*, 2007-Ohio-609, ¶ 13 (referring to an "Ohio Uniform Incident Form").
[547] *State ex rel. Myers v. Meyers*, 2022-Ohio-1915, ¶ 40.
[548] *State ex rel. Myers v. Meyers*, 2022-Ohio-1915, ¶ 44.
[549] *State ex rel. Myers v. Meyers*, 2022-Ohio-1915, ¶ 45.
[550] *State ex rel. Beacon Journal Publishing Co. v. Akron*, 2004-Ohio-6557, ¶ 55 (declining to "adopt a per se rule that all police offense-and-incident reports are subject to disclosure notwithstanding the applicability of any exemption"); *State ex rel. Cincinnati Enquirer v. Ohio DOC, Div. of State Fire Marshall*, 2019-Ohio-4009, ¶ 27 (10th Dist.) (formatted fill-in-the-blank pages of fire incident report were subject to disclosure but narrative "Cause Determination" that contained investigator's conclusions on cause of the fire qualified as investigatory work product).
[551] *State ex rel. Beacon Journal Publishing Co. v. Akron*, 2004-Ohio-6557, ¶ 44-45 (information referred from a children services agency as potentially criminal may be redacted from police files, including the incident report, pursuant to R.C. 2151.421(H)).
[552] *State ex rel. Standifer v. City of Cleveland*, 2022-Ohio-3711, ¶ 21 (in some cases a use-of-force report could be exempt from disclosure to protect the identity of the subject officer as an uncharged suspect).
[553] *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 2005-Ohio-685, ¶ 7-8.
[554] *Smith v. Wooster-Ashland Regional Council of Governments*, 2024-Ohio-1402, ¶ 16-20 (9th Dist.).
[555] R.C. 128.99 establishes criminal penalties for violation of R.C. 128.96(H).
[556] *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Public Safety*, 2016-Ohio-7987, ¶ 45-50.
[557] R.C. 149.43(A)(1)(jj).
[558] R.C. 149.43(A)(17)(a)-(q).
[559] R.C. 149.43(H)(1)(a)-(b).
[560] R.C. 149.43(H)(2).

[561] R.C. 149.43(B)(1).

[562] 2001 Ohio Atty.Gen.Ops. No. 041; 1999 Ohio Atty.Gen.Ops. No. 006; *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 82 Ohio App.3d 202, 214 (8th Dist. 1992).

[563] 2001 Ohio Atty.Gen.Ops. No. 041; 1999 Ohio Atty.Gen.Ops. No. 006.

[564] 2001 Ohio Atty.Gen.Ops. No. 041.

[565] 1990 Ohio Atty.Gen.Ops. No. 101.

[566] R.C. 2151.313; *State ex rel. Carpenter v. Chief of Police*, 1992 Ohio App. LEXIS 5055 (8th Dist., Sep. 17, 1992) (noting that "other records" relating to a juvenile's arrest or custody under R.C. 2151.313 may include the juvenile's statement or an investigator's report if they would identify the juvenile); *but see* R.C. 2151.313(A)(3) ("This section does not apply to a child to whom either of the following applies: (a) The child has been arrested or otherwise taken into custody for committing, or has been adjudicated a delinquent child for committing, an act that would be a felony if committed by an adult or has been convicted of or pleaded guilty to committing a felony. (b) There is probable cause to believe that the child may have committed an act that would be a felony if committed by an adult."). NOTE: this statute does not apply to records of a juvenile arrest or custody that were not the reason for taking fingerprints and photographs.

[567] R.C. 2151.421(I).

[568] R.C. 2151.355-.358.

[569] R.C. 2151.14(D)(1)(e).

[570] 18 U.S.C. 5038(a), 5038(e) of the Federal Juvenile Delinquency Act (18 U.S.C. 5031-5042) (providing that these records can be accessed by authorized persons and law enforcement agencies).

[571] 18 U.S.C. 5038(d).

[572] *See, e.g.*, R.C. 113.041(E) (criminal history checks of employees of the state treasurer); R.C. 109.5721(E) (information of arrest or conviction received by a public office from BCI that is retained in the applicant fingerprint database); R.C. 2151.86(E) (criminal history checks of children's day care employees); R.C. 3319.39(D) (criminal history check of teachers). Some statutes may also require dissemination of notice of an employee's or volunteer's conviction.

[573] R.C. 109.57(D), (H); 34 U.S.C. 10231; 28 C.F.R. 20.33.

[574] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142 (1995) (records of police officer's disciplinary action are not "law enforcement matters" for purposes of CLEIRs); *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland,* 38 Ohio St.3d 79, 83 (1988) (CLEIRs exemption does not cover law enforcement investigations routinely conducted in every use of force incident, absent evidence of "specific suspicion of criminal wrongdoing").

[575] R.C. 149.43(A)(1)(a). "'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." R.C. 149.43(A)(3).

[576] R.C. 149.43(A)(8)(c).

[577] *State v. Hall*, 141 Ohio App.3d 561, 568 (4th Dist. 2001) (psychiatric reports compiled solely to assist the court with "competency to stand trial determination" were not medical records); *State v. Rohrer*, 2015-Ohio-5333, ¶ 52-57 (4th Dist.) (psychiatric reports generated "for purposes of the continued commitment proceedings" were not medical records).

[578] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 144-145 (1995) (police psychologist report obtained to aid the police hiring process is not a medical record).

[579] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143 (1995).

[580] 42 U.S.C. 12112; 29 C.F.R. 1630.14(b)(1), (c)(1).

[581] 29 C.F.R. 1630.14(c); *see also* *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 2010-Ohio-5995, ¶ 44, 47 (employer's questions of court reporter and opposing counsel properly redacted as inquiry into whether employee was able to perform job-related functions; pertinent ADA provision does not limit the confidential nature of such inquiries to questions directed to employees or medical personnel).

[582] 29 C.F.R. 1630.14(b)(1), (c)(1).

[583] R.C. 149.43(A)(1)(v).
[584] R.C. 1347.15(A)(1).
[585] *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384 (1985) (invalidating provision in collective bargaining agreement requiring city to ensure confidentiality of officers' personnel records); *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 40-43 (2000) (Fraternal Order of Police could not legally bar the production of available public records through a records disposition provision in a collective bargaining agreement).
[586] *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384 (1985).
[587] R.C. 149.43(A)(1)(p), (A)(7)-(8).
[588] R.C. 149.43(A)(9) ("Peace officer" has the same meaning defined in R.C. 109.71 and 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.")
[589] R.C. 149.43(A)(9) ("'Correctional employee' means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.").
[590] R.C. 149.43(A)(9) ("'Firefighter' means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.").
[591] R.C. 149.43(A)(9) ("Emergency service telecommunicator" has the meaning defined R.C. 128.01).
[592] R.C. 149.43(A)(9) ("'Regional psychiatric hospital employee' means any employee of the department of mental health and addiction services who, in the course of performing the employee's duties, has contact with patients committed to the department of mental health and addiction services by a court order pursuant to" R.C. 2945.38, 2945.39, 2945.40, or 2945.402.).
[593] R.C. 149.43(A)(9) ("'County or multicounty corrections officer' means any corrections officer employed by any county or multicounty correctional facility.").
[594] R.C. 149.43 (A)(9) ("'Designated Ohio national guard member' means a member of the Ohio national guard who is participating in duties related to remotely piloted aircraft, including, but not limited to, pilots, sensor operators, and mission intelligence personnel, duties related to special forces operations, or duties related to cybersecurity, and is designated by the adjutant general as a designated public service worker for those purposes.").
[595] R.C. 149.43(A)(9) ("'Forensic mental health provider' means any employee of a community mental health service provider or local alcohol, drug addiction, and mental health services board who, in the course of the employee's duties, has contact with persons committed to local alcohol, drug addiction, and mental health services board by a court order pursuant to" R.C. 2945.38, 2945.39, 2945.40, or 2945.402.).
[596] R.C. 149.43(A)(9) ("'Mental health evaluation provider' means an individual who, under Chapter 5122 of the Revised Code, examines a respondent who is alleged to be a mentally ill person subject to court order, as defined in section 5122.01 of the Revised Code, and reports to the probate court the respondent's mental condition.").
[597] R.C. 149.43(A)(9) ("'Protective services worker' means any employee of a county agency who is responsible for child protective services, child support services, or adult protective services.").
[598] R.C. 149.43(A)(9) ("Federal law enforcement officer" has the meaning defined in R.C. 9.88).
[599] R.C. 149.43(A)(9) ("Investigator of the Bureau of Criminal Identification and Investigation" has the meaning defined in R.C. 2903.11).
[600] R.C. 149.43(A)(9) ("'Youth services employee' means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.").
[601] R.C. 149.43(A)(9) ("'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 meanings" defined in R.C. 4765.01).
[602] R.C. 149.43(A)(8)(a).

[603] For purposes of this exemption, a child of a covered employee includes a natural or adopted child, a stepchild, and a minor or adult child. *See* 2000 Ohio Atty.Gen.Ops. No. 021.
[604] R.C. 149.43(A)(8)(c) and (f).
[605] R.C. 149.43(A)(8)(b).
[606] R.C. 149.43(A)(8)(c).
[607] R.C. 149.43(A)(8)(d).
[608] R.C. 149.43(A)(8)(e).
[609] R.C. 149.43(A)(8)(g).
[610] R.C. 149.43(A)(8)(c) and (f).
[611] R.C. 149.43(A)(8)(f).
[612] R.C. 149.43(A)(1)(uu).
[613] 2000 Ohio Atty.Gen.Ops. No. 021.
[614] R.C. 149.45(A)(3).
[615] R.C. 149.45(D)(1). The form to make this request is available at http://www.OhioAttorneyGeneral.gov/Sunshine.
[616] R.C. 149.43(A)(1)(vv).
[617] *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1062-63 (6th Cir. 1998).
[618] *State ex rel. Keller v. Cox*, 85 Ohio St. 3d 279, 282 (1999); *see also State ex rel. Cincinnati Enquirer v. Craig*, 2012-Ohio-1999, ¶ 23 (city properly denied a public records request for the identities of two police officers based on constitutionally protected privacy concerns).
[619] Ohio Constitution, Article I, Section 10a(A)(1).
[620] Ohio Constitution, Article I, Section 10a(D); R.C. 2930.01(H).
[621] R.C. 2930.02(A)(1)(a).
[622] R.C. 2930.02(A)(1)(b).
[623] R.C. 2930.02(A)(2).
[624] R.C. 2930.04(C)(1).
[625] R.C. 2930.04(B)(1)(a)-(b).
[626] R.C. 2930.04(B)(1)(c).
[627] R.C. 2930.04(B)(1)(p).
[628] R.C. 2930.04(B)(1)(q).
[629] R.C. 2930.04(B)(1)(k).
[630] R.C. 2930.04(B)(1)(q)(ii).
[631] R.C. 2930.04(B)(1)(v).
[632] R.C. 2930.07(D)(1)(a)(i).
[633] R.C. 2930.07(D)(1)(a)(ii); R.C. 2930.04(E)(2)(a).
[634] R.C. 2930.07(D)(1)(b).
[635] R.C. 2930.07(C), (D)(1)(a)(ii); R.C. 149.43(A)(1)(v).
[636] R.C. 2930.07(F)(2).
[637] R.C. 2930.07(A)(1)(a).
[638] R.C. 2930.07(A)(1)(a).
[639] R.C. 2930.07(A)(1)(b).
[640] 2024 Ohio Atty.Gen.Ops. No. 2024-007.
[641] R.C. 2930.07(C).
[642] R.C. 2930.07(C).
[643] R.C. 2930.07(F)(3).
[644] R.C. 2930.07(F)(5).

[645] R.C. 149.43(B)(8); *State ex rel. Papa v. Starkey*, 2014-Ohio-2989, ¶ 7-9 (5th Dist.) (the statutory process applies to an incarcerated criminal offender who seeks records relating to *any* criminal prosecution, not just of the inmate's own criminal case).

[646] *State ex rel. Bristow v. Chief of Police, Cedar Point Police Dept*., 2016-Ohio-3084, ¶ 10 (6th Dist.).

[647] *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 2011-Ohio-1914, ¶ 1.

[648] *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 35.

[649] *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 34-36.

[650] R.C. 149.43(B)(8); *McCain v. Huffman*, 2017-Ohio-9241, ¶ 12 (denying an inmate request when the requested records would be "of no legal consequence"); *State v. Dowell*, 2015-Ohio-3237, ¶ 8 (8th Dist.) (denying inmate request for records when inmate "did not identify any pending proceeding for which the requested records would be material"); *State v. Wilson*, 2011-Ohio-4195 (2d Dist.) (application for clemency is not a "justiciable claim").

[651] *State v. Lather,* 2009-Ohio-3215, ¶ 13 (6th Dist.); *State v. Chatfield*, 2010-Ohio-4261, ¶ 14 (5th Dist.) (inmate may file R.C. 149.43(B)(8) motion pro se, even if currently represented by criminal counsel in the original action).

[652] *State ex rel. Russell v. Thornton*, 2006-Ohio-5858, ¶ 16-17.

[653] *State v. Heid*, 2014-Ohio-4714, ¶ 3-5 (4th Dist.) (denial of inmate's request for order under R.C.149.43(B)(8) is a final appealable order); *State v. Thornton*, 2009-Ohio-5049, ¶ 8 (2d Dist.); *State v. Armengau*, 2016-Ohio-5534, ¶ 12 (10th Dist.).

[654] *State ex rel. Russell v. Thornton*, 2006-Ohio-5858, ¶ 4-18.

[655] R.C. 149.43(B)(8).

[656] *State ex rel. Ware v. Parikh*, 2023-Ohio-759, ¶ 9-13 (inmate was entitled to records relating to a mandamus action and awarding statutory damages); *State ex rel. Gregory v. City of Toledo*, 2023-Ohio-651, ¶ 10-16 (even when part of a request is barred by R.C. 149.43(B)(8), public offices may not ignore portions of inmate requests that do not relate to a criminal proceeding).

[657] *State ex rel. Bloodworth v. Bogan*, 2017-Ohio-7810, ¶ 26 (12th Dist.).

V. Chapter Five: Other Categories of Records

A. Employment Records

Public employee personnel records are generally considered public records.[658] However, if any item contained within a personnel file or other employment record[659] is not a "record" of the office, or is subject to an exemption, it may be withheld. We recommend that Human Resource officers prepare a list of information and records in the office's personnel files that are subject to withholding, including the explanation and legal authority for each item. The office can use this list for prompt and consistent responses to public records requests. A sample list can be found on Page 89.

The categories addressed in this section are not exhaustive, and there may be other exemptions or types of employment records that are not addressed here.

1. Non-records

If an item or information contained in a personnel file does not document the organization, operations, etc., of the public office, it is not a public record and need not be disclosed.[660] The Supreme Court of Ohio has held that in most instances the home addresses of public employees kept by their employers solely for administrative convenience are not "records" of the office.[661] Home and personal cell phone numbers, emergency contact information, employee banking information, insurance beneficiary designations, personal email addresses, and similar items may be maintained only for administrative convenience and do not document the formal duties and activities of the office; a public office should evaluate these types of records carefully. Non-record items or information may be redacted from materials that are otherwise records, such as a civil service application form.

2. Names of public officials and employees

Under R.C. 149.434(A), "[e]ach public office or person responsible for public records shall maintain a database or a list that includes the name of all public officials and employees elected to or employed by that public office. The database or list is a public record and shall be made available upon a request made pursuant to section 149.43 of the Revised Code."[662] Like other employee names, juvenile employee names are required to be disclosed under R.C. 149.434(A) and do not fall under any exemption.[663]

3. Resumes and application materials

There is not an exemption that generally protects resumes and application materials obtained by public offices in the hiring process. The Supreme Court of Ohio has held that "[t]he public has an unquestioned public interest in the qualifications of potential applicants for positions of authority in public employment."[664] For example, when a city board of education used a private search firm to help hire a new treasurer, it was required to disclose the names and resumes of the interviewees; that it promised confidentiality to applicants was irrelevant.[665]

A public office's obligation to produce application materials and resumes extends to records in the sole possession of private search firms used in the hiring process.[666] However, application materials may not be public records if they are not "kept by" the office at the time of the request. For example, when a school board returned application materials to the candidates for a superintendent position, the court held that the materials had never been "kept" by the board.[667]

4. Background investigations

There is not public for exemption for background investigations,[668] although specific statutes may exempt defined background investigation materials kept by specific public offices.[669] Criminal history "rap sheets" obtained from the federal National Crime Information Center system (NCIC) or through the state Law Enforcement Automated Data System (LEADS) are subject to several statutory exemptions.[670]

5. Evaluations and disciplinary records

There is not an exemption that applies to employee evaluations or records of disciplinary actions. The CLEIRs exemption does not apply to routine law enforcement discipline or personnel matters,[671] even when such matters are the subject of an internal investigation within a law enforcement agency.[672]

6. Employee assistance program (EAP) records

Records of the identity, diagnosis, prognosis, or treatment of any person that are maintained in connection with an EAP are not public records.[673] Use and release of these records is strictly limited.

7. Physical fitness, psychiatric, and polygraph examinations

The exemption in the Public Records Act for "medical records" is limited to records generated and maintained in the process of medical *treatment,* these types of records generally are not covered by this exemption. Accordingly, records of examinations performed to determine fitness for hiring or for continued employment, including psychiatric[674] and psychological[675] examinations, are not exempt from disclosure as "medical records." Similarly, polygraph or "lie detector" examinations are not "medical records," and do not fall under the CLEIRs exemption when performed for hiring purposes.[676]

However, federal law may exempt some examinations from disclosure. The federal Americans With Disabilities Act (ADA) and its implementing regulations[677] permit employers to require employees and applicants to whom they have offered employment to undergo medical examination and/or inquiry into their ability to perform job-related functions.[678] Information regarding medical condition or history must be collected and kept on separate forms and in separate medical files and must be treated as confidential, except as otherwise provided by the ADA.[679] These records may be exempted from disclosure under the so-called "catch-all" provision of the Public Records Act as "records the release of which is prohibited by state or federal law."[680] As non-public records, the examinations may constitute "confidential personal information" under Ohio's Personal Information Systems Act (PISA).[681] Refer to Section D in this chapter for more information on PISA.

8. Medical records

"Medical records" are not public records,[682] and a public office may withhold any medical records in a personnel file.[683] "Medical records" are those generated and maintained in the process of medical treatment.[684] Note that the federal Health Insurance Portability and Accountability Act (HIPAA),[685] does not apply to records in employer personnel files. However, the federal Family and Medical Leave Act (FMLA)[686] or the Americans with Disabilities Act (ADA)[687] may apply to medical-related information in personnel files.

9. Student records under the Family Education Rights and Privacy Act

Ohio law and the federal Family Educational Rights and Privacy Act (FERPA) generally prohibit schools from releasing education records that are maintained by the school and that are directly related to a student.[688] Examples of such records include transcripts, attendance records, and discipline records

as well as personally identifiable information from education records. However, when a student or former student provides such records directly to a public office, those records are not protected by FERPA and are considered public records.

10. Social security numbers and taxpayer records

Social security numbers should be redacted from public records before disclosure.[689] Ohio statutes or administrative codes may provide other exemptions for social security numbers and other information for specific employees,[690] when posted in specific locations,[691] and/or upon request.[692]

Information obtained from municipal tax returns is confidential.[693] One Attorney General Opinion concluded that copies of W-2 federal tax forms prepared and maintained by a township as an employer are public records.[694] However, W-2 forms filed as part of a municipal income tax return are confidential.[695] Federal law makes "returns" and "return information" confidential.[696] The term "return information" is interpreted broadly to include any information gathered by the IRS with respect to a taxpayer's liability under the Internal Revenue Code.[697]

As to Ohio income tax records, any information gained as the result of returns, investigations, hearings, or verifications required or authorized by R.C. Chapter 5747 is confidential.[698]

11. Designated public service workers

The "residential and familial information" of professionals or employees identified as "designated public service workers" is exempt from disclosure.[699] The records of the "past, current, and future work schedules" of designated public service workers are also exempt.[700] of certain designated public service workers may be withheld from disclosure.[701]

Refer to Chapter Four C.5. for more information on these provisions.

12. Bargaining agreement provisions

Courts have held that collective bargaining agreements concerning the confidentiality of records cannot prevail over the Public Records Act. For example, a union may not legally bar the production of available public records through a provision in a collective bargaining agreement.[702]

13. Employee ID numbers

R.C. 1306.23 creates an exemption for "[r]ecords that would disclose or may lead to the disclosure of records or information that would jeopardize the state's continued use or security of any computer or telecommunications devices or services associated with electronic signatures, electronic records, or electronic transactions are not public records for purposes of" the Public Records Act.[703] The Court of Claims applied this exemption to employee ID numbers because employees use the numbers for various purposes, including logging in to office computer systems, online timekeeping systems, and online employee benefits systems.[704]

PERSONNEL FILES

The following lists are intended as a starting point for public offices when compiling lists appropriate to their employee records. The lists are not exhaustive, and public offices should consult with their legal counsel or conduct independent legal research to decide if these exemptions, or other exemptions, apply.

Information in Personnel Files Subject to Release with Appropriate Redaction

- Payroll records
- Timesheets
- Employment application forms
- Resumes
- Training course certificates
- Position descriptions
- Performance evaluations
- Leave conversion forms
- Letters of support or complaint
- Forms documenting receipt of office policies, directives, etc.
- Forms documenting hiring, promotions, job classification changes, separation, etc.
- Background checks, *other than* information or throughput from Law Enforcement Automated Data System (LEADS), the National Crime Information Center system (NCIC), and Computerized Criminal History (CCH)
- Disciplinary investigation/action records, unless exempt from disclosure by law
- Limited access files

Information in Personnel Files that May or Must Be Withheld

- Social security numbers (R.C. 149.43(A)(1)(dd), 149.45(A)(1)(a))
- Public employee home addresses, phone numbers, and personal email addresses, generally (as non-record)
- Residential and familial information of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the Bureau of Criminal Identification and Investigation, emergency service telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer, other than actual personal residence address of a prosecuting attorney or judge (R.C. 149.43(A)(1)(p) and (A)(7)-(8))
- State employee ID numbers pursuant to R.C. 1306.23 [ID numbers of other public employees may be exempt as “security records” under R.C. 149.433(B)(1) if that definition applies]

- Charitable deductions and employment benefit deductions such as health insurance (as non-records)
- Beneficiary information (as non-record)
- Federal tax returns and "return information" filed under the jurisdiction of the IRS (26 U.S.C. 6103)
- Personal history information of state retirement contributors (R.C. 145.27(A); R.C. 742.41(B); R.C. 3307.20(B); R.C. 3309.22(A); R.C. 5505.04(C))
- Taxpayer records maintained by Ohio Department of Taxation and by municipal corporations (R.C. 5747.18; R.C. 718.13)
- "Medical records" that are generated and maintained in the process of medical treatment (R.C. 149.43(A)(1)(a) and (A)(3))
- LEADS, NCIC, or CCH criminal record information (34 U.S.C. 10231; 28 C.F.R. 20.21, 20.33(a)(3); R.C. 109.57(D)-(E), (H))
- Information regarding an employee's medical condition or history compiled as a result of a medical examination required by employer to ensure employee's ability to perform job related functions (29 C.F.R. 1630.14(c)(1))
- Information gathered by employer who conducts voluntary medical examination of employee as part of an employee health program (29 C.F.R. 1630.14(d)(4))
- Verification of employment, typically for mortgage loans (as non-record)
- Bank account numbers (R.C. 149.43(A)(1)(dd); R.C. 149.45)
- Employee assistance program records (R.C. 124.88(B))

B. Court Records

Although records kept by Ohio courts otherwise meet the definition of public records under the Public Records Act,[705] access to most court records is governed by a separate set of rules, the Rules of Superintendence for the Courts of Ohio. Rules 44 through 47 of the Rules of Superintendence govern public access to "court records" and expressly apply to all Ohio courts of appeal, courts of common pleas, municipal courts, county courts, and the Supreme Court of Ohio.[706] The public access rules of the Rules of Superintendence (Rules 44 through 47) do not apply to "court records" of the Ohio Court of Claims.

1. Courts' supervisory power over their own records

Ohio courts[707] are subject to the Rules of Superintendence, adopted by the Supreme Court of Ohio. The Rules of Superintendence establish rights and duties regarding public access to administrative and court case documents.[708] Therefore, a requester wishing to obtain records from the judicial branch must generally submit the request under the Rules of Superintendence.[709] While similar to the Public Records Act, the Rules of Superintendence contain some additional or different provisions, including:

- For internet records, allowing courts to announce that an attachment or exhibit was not scanned but is available by direct access.[710]
- Establishing definitions of "court record," "case document," "administrative document," "case file," and other terms.[711]

- Identifying a process for restricting public access to part or all of a case document, including a process for any person to request access to a case document or information that has been granted limited public access.[712]
- Requiring that documents filed with the court omit or redact personal identifiers. The personal identifiers would instead be submitted on a separate standard form submitted only to the court, clerk of courts, and parties.[713]

In addition, unlike the Public Records Act, the Rules of Superintendence do not authorize statutory damages for litigants who sue over a violation of the Rules.[714]

2. Application of Rules of Superintendence and Public Records Act to Court Records

Rules 44 through 47 of the Rules of Superintendence apply to "court records," which are categorized as "case document[s] and … administrative document[s] regardless of physical form or characteristic, manner of creation, or method of storage."[715] "'Case document' means a document and information in a document submitted to a court or filed with a clerk of court in a judicial action or proceeding, including exhibits, pleadings, motions, orders, and judgments, and any documentation prepared by the court or clerk in the judicial action or proceeding, such as journals, dockets, and indices."[716] "'Administrative document' means a document . . . created . . . or maintained by a court that serves to record the administrative, fiscal, personnel, or management functions, policies, decisions, procedures, operations, organization, or other activities of the court[.]"[717]

The Rules of Superintendence only apply to "case documents" in actions commenced on or after July 1, 2009.[718] The Public Records Act will apply to "case documents" in actions commenced before July 1, 2009.[719] However, Rules 44 through 47 of the Rules of Superintendence apply to all "administrative documents," regardless of when the action commenced.[720] Sup.R. 44(C)(2)(h), which restricts public access to certain domestic relations and juvenile court case documents, applies only to case documents in actions commenced on or after January 1, 2016.[721]

3. Rules of court procedure

Rules of court procedure, such as the Ohio Rules of Civil Procedure and the Ohio Rules of Criminal Procedure, which are also adopted through the Supreme Court of Ohio, can create exemptions from public records disclosure.[722] Examples include certain records related to grand jury proceedings[723] and certain juvenile court records.[724]

4. Sealing statutes

Court records that have been properly expunged or sealed are not available for public disclosure.[725] However, unless the statute providing the authority for sealing the record states otherwise, the public office must provide the explanation for withholding, including the legal authority under which the record was sealed.[726] Even absent statutory authority, the Supreme Court of Ohio has found that trial courts have the inherent authority to seal court records in unusual and exceptional circumstances.[727] That inherent authority, however, is limited.[728]

For example, the Supreme Court of Ohio held that there is no such authority "when the offender has been convicted and is not a first-time offender."[729] In such cases, the only authority to seal is statutory.[730] The Supreme Court also held that courts do not have inherent authority to unseal records and may only unseal records when statutorily authorized. People convicted of certain crimes may seek to have records related to their conviction expunged, when they were previously only able to have the records sealed.[731]

5. Restricting public access to a case document

Sup.R. 45(E) provides a procedure for courts to restrict public access to all or part of a case document. Any party to a judicial action may, by written motion, request that the court restrict public access to all or part of a case document.[732] The court may also restrict public access upon its own order.[733]

Under this Rule, a court shall restrict public access "if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering" certain factors.[734] The court should consider whether public policy is served by restricting access, whether there is a law that exempts the record from public access, and whether there is a risk of injury or other harm if the record is public.[735]

Further, when a court restricts public access, it must use "the least restrictive means available."[736] The Supreme Court of Ohio has ordered courts to unseal records after finding that there was not clear and convincing evidence to warrant restricting access,[737] or if the court failed to use the least restrictive means to do so.[738]

6. General court records retention

Specific Rules of Superintendence provide the rules and procedures for courts' retention of records. Sup.R. 26 governs Court Records Management and Retention, and Sup.R. 26.01 through 26.05 set records retention schedules for each type of court.

C. HIPAA and HITECH

The Health Insurance Portability and Accountability Act ("HIPAA") governs the privacy of individual health records. Among the regulations written to implement HIPAA was the "Privacy Rule," which is a collection of federal regulations aimed at maintaining the confidentiality of individually identifiable health information.[739]

The Health Information Technology Economic Clinical Health Act ("HITECH") addresses the privacy and security concerns associated with the electronic transmission of health information and materially affects the privacy and security of protected health information.[740] For some public offices, the Privacy Rule and HITECH affect the way they respond to public records requests. Amendments to HIPAA and HITECH are reflected in the *Federal Register* publication, "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules," 78 Fed. Reg. 5565 (Jan. 25, 2013) (codified at 45 C.F.R. 160 and 164).

1. HIPAA definitions

The Privacy Rule protects all individually identifiable health information, which is called "protected health information" or "PHI."[741] PHI is information that could reasonably lead to the identification of an individual, either by itself or in combination with other reasonably available information.[742] The HIPAA regulations apply to the three "covered entities"[743] listed below:

- **Healthcare provider**: any entity providing mental or health services that electronically transmits health information for any financial or administrative purpose subject to HIPAA.
- **A health plan**: an individual or group plan that provides or pays the cost of medical care, such as an HMO.
- **Health care clearinghouse**: any entity that processes health information from one format into another for specific reasons, such as a billing service.

2. HIPAA does not apply when the Public Records Act requires release

The Privacy Rule permits a covered entity to use and disclose protected health information as required by other law, including state law.[744] For this purpose, the Public Records Act only mandates disclosure when no other exemption applies.

This means that when the public records law only permits, but does not mandate, the disclosure of protected health information, such disclosures are not "required by law" and would not fall within the Privacy Rule. For example, if state public records law includes an exemption that gives a state agency discretion not to disclose medical[745] or other information, the disclosure of such records is not required by the public records law; and therefore, the Privacy Rule would cover those records.[746] In such cases, a covered entity only would be able to make the disclosure if permitted by another provision of the Privacy Rule. The Supreme Court of Ohio has held that HIPAA did not supersede state disclosure requirements, even if requested records had protected health information.[747] Specifically, the Supreme Court held that "[a] review of HIPAA reveals a 'required by law' exception to the prohibition against disclosure of protected health information. With respect to this position, Section 164.512(a)(1), Title 45, C.F.R., provides, 'A covered entity may … disclose protected health information to the extent that such … disclosure is *required* by law[.]'"[748] However, the "Public Records Act requires disclosure of records unless the disclosure or release is prohibited by federal law."[749] While the court found the interaction of the federal and state law somewhat "circular," the Court resolved it in favor of disclosure under the Public Records Act.[750]

D. Ohio Personal Information Systems Act

Ohio's Personal Information Systems Act (PISA) generally regulates the maintenance and use of personal information systems (collections of information that describe individuals) by state and local agencies.[751] PISA applies to those items to which the Public Records Act does not apply — that is, records that have been determined to be non-public, and items and information that are not "records" as defined by the Public Records Act.[752] Because PISA concerns the treatment of non-records and non-public records, it is not set out in detail in this Sunshine Laws Manual. Public offices should consult with their legal counsel for further guidance about this law.

Through the following provisions the General Assembly has made clear that PISA is not designed to deprive the public of otherwise public information:

- State and local agencies whose principal activities are to enforce the criminal laws are exempt from PISA.[753]
- "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 [the Public Records Act], 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 [the Open Meetings Act]."[754]
- "The disclosure to members of the general public of personal information contained in a public record, as defined in [the Public Records Act], is not an improper use of personal information under this chapter."[755]
- As used in the PISA, "'confidential personal information' means personal information that is *not* a public record for purposes of [the Public Records Act]."[756]

1. Definitions that apply to the information covered by PISA

"Personal information" under PISA means any information that:

- Describes anything about a person; or
- Indicates actions done by or to a person; or
- Indicates that a person possesses certain personal characteristics; and
- Contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person.[757]

"'Confidential personal information' means personal information that is *not* a public record for purposes of [the Public Records Act]."[758]

A personal information "system" is:

- Any collection or group of related records that are kept in an organized manner and 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; including
- Records that are stored manually and electronically.[759]
- The following are not "systems" for purposes of PISA:
- Collected archival records in the custody of or administered under the authority of the Ohio History Connection;
- Published directories, reference materials, newsletters; or
- Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.[760]

PISA generally requires accurate maintenance and prompt deletion of inaccurate personal information from "personal information systems" maintained by public offices, and protects personal information from unauthorized dissemination.[761] State agencies[762] must adopt rules under Chapter 119 of the Revised Code regulating access to confidential personal information the agency keeps, whether electronically or on paper.[763] No person shall knowingly access "confidential personal information" in violation of these rules,[764] and no person shall knowingly use or disclose "confidential personal information" in a way that is prohibited by law.[765] A state agency may not employ persons who have violated access, use, or disclosure laws regarding confidential personal information.[766] In general, state and local agencies must "[t]ake reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure."[767]

2. Sanctions for violations of PISA

The enforcement provisions of PISA can include injunctive relief, civil damages, and/or criminal penalties, depending on the nature of the violation(s).[768]

Notes:

---

[658] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143 (1995); *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 444 (2000) (addressing police personnel records); 2007 Ohio Atty.Gen.Ops. No. 026.

[659] The term "personnel file" is not defined in public records law. *See State ex rel. Morgan v. New Lexington*, 2006-Ohio-6365, ¶ 57 (inferring that "records that are the functional equivalent of personnel files exist and are in the custody of the city" when a respondent claimed that no personnel files designated by the respondent existed); *Cwynar v. Jackson Twp. Bd. of Trustees*, 2008-Ohio-5011, ¶ 31 (5th Dist.) (when the requester asked only the complete personnel file and not all the records relating to an individual's employment, "[i]t is the responsibility of the person making the public records request to identify the records with reasonable clarity").

[660] *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 367, 2000-Ohio-345 (2000); *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188 (1993) ("To the extent that any item contained in a personnel file is not a 'record,' i.e., does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed.").

[661] *But see State ex rel. Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 39 (an employee's home address may constitute a "record" when it documents an office policy or practice, as when the employee's work address is also the employee's home address); *State ex rel. Davis v Metzger*, 2014-Ohio-2329, ¶ 10 ("[P]ersonnel files require careful review to redact sensitive personal information about employees that does not document that organization or function of the agency.").

[662] R.C. 149.434(A).

[663] *Sengstock v. City of Twinsburg,* 2021-Ohio-4438, ¶ 13, *adopted,* 2022-Ohio-314 (Ct. of Cl.) (juvenile employee names in payroll record do not fall under any exemption and must be disclosed under R.C. 149.434).

[664] *State ex rel. Consumer News Servs. v. Worthington City Bd. of Edn.*, 2002-Ohio-5311, ¶ 53.

[665] *State ex rel. Consumer News Servs. v. Worthington City Bd. of Edn.*, 2002-Ohio-5311, ¶ 46.

[666] *State ex rel. Gannett Satellite Info. Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997).

[667] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Cincinnati Bd. of Edn.*, 2003-Ohio-2260, ¶ 11-15.

[668] *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 445 (2000), citing *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142-45 (1995) (addressing all personnel, background, and investigation reports for police recruit class).

[669] *See, e.g.*, R.C. 113.041(E) (criminal history checks of employees of the state treasurer); R.C. 109.5721(E) (information of arrest or conviction received by a public office from BCI that is retained in the applicant fingerprint database); R.C. 2151.86(E) (results of criminal history checks of children's day care employees); R.C. 3319.39(D) (results of criminal history check of teachers). Statutes may also require dissemination of notice of an employee's or volunteer's conviction. *See, e.g.*, R.C. 109.576 (notice of a volunteer's conviction when the volunteer has unsupervised access to a child).

[670] R.C. 109.57(D), (H); 34 U.S.C. 10231; 28 C.F.R. 20.33.

[671] *State ex rel. Freedom Communications, Inc. v. Elida Community Fire Co.*, 82 Ohio St.3d 578, 581-82 (1998) (an investigation of an alleged sexual assault conducted internally as a personnel matter is not a law enforcement matter).

[672] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142 (1995) (records of police officer's disciplinary action not exempt as confidential law enforcement investigatory records).

[673] R.C. 124.88(B).

[674] *State v. Hall,* 141 Ohio App.3d 561, 568 (4th Dist. 2001) (psychiatric reports compiled solely to assist the court with "competency to stand trial determination" were not medical records); *State v. Rohrer,* 2015-Ohio-5333, ¶ 52-57 (4th Dist.) (psychiatric reports generated "for purposes of the continued commitment proceedings" were not medical records).

[675] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143 (1995) (police psychologist report obtained to aid the police hiring process is not a medical record).

[676] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143 (1995).

[677] 42 U.S.C. 12112; 29 C.F.R. 1630.14(b)(1), (c)(1).

[678] 29 C.F.R. 1630.14(c); *see also* *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 2010-Ohio-5995, ¶ 44-47 (employer's questioning of court reporter and opposing counsel was properly redacted as inquiry into whether employee was able to perform job-related functions; pertinent ADA provision does not limit the confidential nature of such inquiries to questions directed to employees or medical personnel).

[679] 29 C.F.R. 1630.14(b)(1), (c)(1).

[680] R.C. 149,43(A)(1)(v).

[681] R.C. 1347.15(A)(1).

[682] R.C. 149.43(A)(1)(a), (A)(3).

[683] *State ex rel. Gatehouse Media Ohio Holdings II, Inc. v. Stark Cty. Health Dept.,* 2025-Ohio-230 (5th Dist.) (the identities of animal bite victims are exempt from disclosure as "protected health information under" R.C. 3707.17, but the identities of the owners of pets involved in animal bites are not).

[684] R.C. 149.43(A)(3) ("medical record" means "any document…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"); *see also* *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158 (1997) (emphasizing that both parts of this conjunctive definition must be met: "a record must pertain to a medical diagnosis *and* be generated and maintained in the process of medical treatment").

[685] 45 C.F.R. 160.101, *et seq.*; 45 C.F.R. 164.102, *et seq.*

[686] 29 U.S.C. 2601, *et seq.*; 29 C.F.R. 825.500(g).

[687] 42 U.S.C. 12101 *et seq.*

[688] R.C. 3319.321; 20 U.S.C. 1232g. Refer to Chapter Three: F.3. "Student Records under the Family Education Rights and Privacy Act," for more information on these provisions.

[689] R.C. 149.43(A)(1)(dd), 149.45(A)(1)(a). Refer to Chapter Three: F.1.c. "Social security numbers," for more information on these exemptions.

[690] *See, e.g.*, R.C. 149.43(A)(1)(p), (A)(8) (protecting residential and familial information of certain covered professionals). *See also* R.C. 149.45(D)(1).

[691] R.C. 149.45(B)(1) ("[n]o public office or person responsible for a public office's public records shall make available to the general public on the internet any document that contains an individual's social security number without otherwise redacting, encrypting, or truncating the social security number").

[692] R.C. 149.45(C)(1) ("[a]n individual may request that a public office or a person responsible for a public office's public records redact personal information of that individual from any record made available to the general public on the internet").

[693] R.C. 718.13. Refer to Chapter Three: F.1.e. "Income tax returns," for more information on these exemptions.

[694] 1992 Ohio Atty.Gen.Ops. No. 005.

[695] 1992 Ohio Atty.Gen.Ops. No. 005.

[696] 26 U.S.C. § 6103.

[697] *Patel v. United States,* 2021 U.S. Dist. LEXIS 66308, *7 (N.D.Ohio, Apr.6, 2021).

[698] R.C. 5747.18.

[699] R.C. 149.43(A)(1)(p), (A)(7)-(8).

[700] R.C. 149.43(A)(1)(p), (A)(8).

[701] R.C. 149.43(A)(1)(p), (A)(7).

[702] *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 40-43 (2000) (FOP could not legally bar the production of available public records through a records disposition provision in a collective bargaining agreement); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384 (1985)

(invalidating provision in collective bargaining agreement requiring city to ensure confidentiality to officers' personnel records).

703 R.C. 1306.23.

704 *Jones v. Dept. of Youth Servs*., 2024-Ohio-815, ¶ 10 (Ct. of Cl.).

705 *State ex rel. Cincinnati Enquirer v. Winkler*, 2004-Ohio-1581, ¶ 5 ("[I]t is apparent that court records fall within the broad definition of a 'public record' ….").

706 *See generally* Sup.R. 44-47; Sup.R. 1(A).

707 Sup.R. 2(C) (a "court" is a county court, municipal court, court of common pleas, or court of appeals). The Supreme Court of Ohio has held that "[g]enerally, if the records requested are held by or were created for the judicial branch, then the party seeking to obtain the records must submit a request pursuant to [the Rules of Superintendence]." *State ex rel. Parisi v. Dayton Bar Assn. Certified Griev. Commt*., 2019-Ohio-5157, ¶ 21. Another court has concluded that "[a]ll public records requests made to a court or an arm thereof, such as a probation department, must be made pursuant to the Rules of Superintendence." *State ex rel. Yambrisak v. Richland Cty. Adult Court*, 2016-Ohio-4622, ¶ 9. *But see Fairley v. Cuyahoga Cty. Prosecutor,* 2020-Ohio-1425, ¶ 17 (Ct. of Cl.) (Sup.R. 44 through 47 do not "purport to control access to copies of court records as kept by parties to litigation, including non-court public offices," such as a prosecutor's office).

708 Sup.R. 45(A); *see also State ex rel. Vindicator Printing Co. v. Wolff*, 2012-Ohio-3328, ¶ 27 (Rules of Superintendence do not require that a document be used by court in a decision to be entitled to presumption of public access specified in Sup.R. 45(A), but that the "document or information contained in a document must merely be submitted to a court or filed with a clerk of court in a judicial action or proceeding and not be subject to the specified exclusions").

709 *State ex rel. Parisi v. Dayton Bar Assn. Certified Griev. Commt.,* 2019-Ohio-5157, ¶ 20 ("[T]he Rules of Superintendence are the sole vehicle by which a party may seek to obtain such [court]records"); *State ex rel. Bey v. Byrd,* 2020-Ohio-2766, ¶ 14 (while the Rules of Superintendence apply to case documents created on or after July 1, 2009, "[g]enerally it is not necessary to cite a particular rule or statute in support of a records request until the requester attempts to satisfy the more demanding standard applicable when claiming that he is entitled to a writ of mandamus to compel compliance with the request").

710 Sup.R. 45(C)(1).

711 Sup.R. 44(B)-(M).

712 Sup.R. 44(C)(2); Sup.R. 45(E).

713 Sup.R. 45(E).

714 *State ex rel. Harris v. Pureval,* 2018-Ohio-4718, ¶ 11.

715 Sup.R. 44(B).

716 Sup.R. 44(C)(1).

717 Sup.R. 44(G)(1). Sup.R. 44(G)(1) applies to administrative documents "of [a] court," not to other offices, even if those offices otherwise have some court records. *See State ex rel. Ware v. Kurt,* 2022-Ohio-1627, ¶ 15 (where requester sought the policies, schedules, manuals, and employee information from the clerk of courts, the Public Records Act, not the Rules of Superintendence, applied).

718 Sup.R. 47(A)(1), (2); Sup.R. 99(KK); *State ex rel. Village of Richfield v. Laria,* 2014-Ohio-243, ¶ 8 (Rules 44 through 47 of the Rules of Superintendence "are the sole vehicle for obtaining [court] records in actions commenced after July 1, 2009."); *see also State ex rel. Bey v. Byrd,* 2020-Ohio-2766, ¶ 15 (while the Rules of Superintendence apply to case documents created on or after July 1, 2009, "[g]enerally it is not necessary to cite a particular rule or statute in support of a records request until the requester attempts to satisfy the more demanding standard applicable when claiming that he is entitled to a writ of mandamus to compel compliance with the request").

719 Sup.R.47(A)(1); *State ex rel. Village of Richfield v. Laria,* 2014-Ohio-243, ¶ 8 ("Sup.R. 44 through 47 deal specifically with the procedures regulating public access to court records and are the sole vehicle for obtaining such records in actions commenced after July 1, 2009."); *see also State ex rel. Ware v. Walsh,* 2021-Ohio-4585, ¶ 7-8 (9th Dist.) (because relator's criminal case commenced before July 1, 2009, Sup.R. 44-47 were inapplicable to his request for personnel files, a serology report from his criminal case, his arrest report, and his direct indictment information sheet).

[720] Sup.R. 47(A)(2).

[721] Sup.R. 47(A)(3).

[722] *State ex rel. Beacon Journal Publishing Co. v. Waters*, 67 Ohio St.3d 321, 323-24 (1993).

[723] Crim.R. 6(E); *State ex rel. Beacon Journal Publishing Co. v. Waters*, 67 Ohio St.3d 321, 323-25 (1993).

[724] Juv.R. 37(B); *State ex rel. Cincinnati Enquirer v. Hunter*, 2013-Ohio-4459, ¶ 11 (1st Dist.).

[725] *State ex rel. Cincinnati Enquirer v. Winkler*, 2004-Ohio-1581, ¶ 12-13 (affirming the trial court's sealing order per R.C. 2953.52 [renumbered R.C. 2953.33] and concluding sealed records not subject to release).

[726] *State ex rel. Doe v. Smith*, 2009-Ohio-4149, ¶ 6, 9 (the response, "[t]here is no information available," was a violation of R.C. 149.43(B)(3) requirement to provide a sufficient explanation, with legal authority, for the denial); *Woyt v. Woyt,* 2019-Ohio-3758, ¶ 67 (8th Dist.) ("It should only be in the rarest circumstances that a court seals a case from public scrutiny."). *But see* R.C. 2953.36(F)(2) (for expunged records of human trafficking victims, "upon any inquiry" the court "shall reply that no record exists").

[727] *Schussheim v. Schussheim*, 2013-Ohio-4529, ¶ 3 (trial court may exercise inherent authority to seal records relating to a dissolved civil protection order without express statutory authority).

[728] *State ex rel. Highlander v. Rudduck*, 2004-Ohio-4952, ¶ 11 (divorce records are not properly sealed when the order results from an agreed judgment entry and are not exempt from disclosure).

[729] *State v. Radcliff*, 2015-Ohio-235, ¶27.

[730] *State v. Radcliff*, 2015-Ohio-235.

[731] R.C. 2953.32.

[732] Sup.R. 45(E)(1).

[733] Sup.R. 45(E)(1).

[734] Sup.R. 45(E)(2).

[735] Sup.R. 45(E)(2)(a)-(c).

[736] Sup.R. 45(E)(3).

[737] *State ex rel. Vindicator Printing Co. v. Wolff*, 2012-Ohio-3328, ¶ 34 (trial court improperly restricted public access to certain case documents because there was not clear and convincing evidence to establish the prejudicial effect of potential pre-trial publicity); *State ex rel. Cincinnati Enquirer v. Hunter*, 2013-Ohio-4459, ¶ 11-12 (1st Dist.) (Rules of Superintendence do not allow a court to substitute initials for the full names of juveniles in delinquency cases; judge failed to present requisite clear and convincing evidence to justify substitution); *Woyt v. Woyt,* 2019-Ohio-3758, ¶ 66 (8th Dist.) ("trial court failed to identify any specific case document or part thereof and conduct a meaningful analysis as required by Sup.R 45(E)(2)" in divorce case); *State ex rel. Cincinnati Enquirer v, Shanahan,* 2022-Ohio-448, ¶ 25-26 (judge improperly sealed a party's affidavit because the sealing order was not supported by clear and convincing evidence of risk of injury to person, individual privacy rights and interest, or public safety); *State ex rel. Cincinnati Enquirer v. Forsthoefel,* 2022-Ohio-3580, ¶ 15, 17 (judge improperly sealed case documents because there was no evidence to support the decision; the judge "simply announced, without any analysis," that the moving party's motion was "well-taken").

[738] *Woyt v. Woyt,* 2019-Ohio-3758, ¶ 66 (8th Dist.) ("by sealing the entire case file, the court failed to use the lease restrictive means available as required by Sup.R. 45 (E)(3)"); *State ex rel. Cincinnati Enquirer v. Forsthoefel,* 170 Ohio St.3d 292, 2022-Ohio-3580, ¶ 15, 17 (with no evidence in support of the decision, judge erred in sweepingly sealing numerous case documents instead of using a less restrictive means of limiting public access).

[739] 45 C.F.R. 160 *et seq.*; 45 C.F.R. 164 *et seq.*

[740] Public Law No. 111-5, Division A, Title XIII, Subtitle D (2009). For more information see http://www.hhs.gov/hipaa/for-professionals/special-topics/health-information-technology/index.html

[741] 45 C.F.R. 160.103.

[742] 45 C.F.R. 160.103.

[743] 45 C.F.R. 160.103.

[744] 45 C.F.R. 164.512(a).

[745] *E.g.,* R.C. 149.43(A)(1)(a) (providing for an exemption for "medical records").

[746] 45 C.F.R. 164.512(a).

[747] *State ex rel. Cincinnati Enquirer v. Daniels,* 2006-Ohio-1215, ¶ 25. *But see Cuyahoga Cty. Bd. of Health v. Lipson O'Shea Legal Group,* 2016-Ohio-556, ¶ 9 (noting that the public records request in *Daniels* was not "inextricably linked to 'protected health information.'").

[748] *State ex rel. Cincinnati Enquirer v. Daniels*, 2006-Ohio-1215, ¶ 25.

[749] R.C. 149.43(a)(1)(v); *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶ 25.

[750] *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶ 26, 34.

[751] R.C. 1347.05.

[752] R.C. 149.011(G).

[753] R.C. 1347.04(A)(1)(a).

[754] R.C. 1347.04(B).

[755] R.C. 1347.04(B).

[756] R.C. 1347.15(A)(1) (emphasis added).

[757] R.C. 1347.01(E).

[758] R.C. 1347.15(A)(1) (emphasis added).

[759] R.C. 1347.01(F).

[760] R.C. 1347.01(F).

[761] R.C. 1347.01 *et seq.*

[762] R.C. 1347.15(A)(2) (excluding from definition of "state agency" courts or any judicial agency, any state-assisted institution of higher education, or any local agency); 2010 Ohio Atty.Gen.Ops. No. 016 (concluding that the Ohio Board of Tax Appeals is a "judicial agency" for purposes of R.C. 1347.15).

[763] R.C. 1347.15(B).

[764] R.C. 1347.15(H)(1).

[765] R.C. 1347.15(H)(2).

[766] R.C. 1347.15(H)(3).

[767] R.C. 1347.05(G).

[768] R.C. 1347.10, 1347.15, 1347.99.

VI. Chapter Six: Enforcement and Liabilities

The Ohio General Assembly enacted the Public Records Act as a "self-help" statute, which means that the people enforce the law themselves. If a person believes that a public office violated the Public Records Act, the person can file a lawsuit against the office, either on his or her own or through a private attorney.[769] There is no public entity — including the Ohio Attorney General's Office — that has the authority to enforce the Public Records Act.

There are two enforcement/litigation routes available to requesters to challenge a public office's response to a request: (1) a lawsuit in the Ohio Court of Claims, where there is a litigation process specific to public records cases; or (2) a mandamus action in a court of common pleas, court of appeals, or the Supreme Court of Ohio. This Chapter is about the basic aspects of these procedures, along with the types of relief available.

Note on the mandatory pre-filing complaint process effective April 9, 2025

Starting on April 9, 2025, requesters must complete a mandatory prerequisite before filing a mandamus action or action in the Court of Claims.[770] This requirement is addressed in more detail below, but in short, before a requester can sue a public office for an alleged violation of the Public Records Act, he or she must serve on the public office a complaint that states the violation. The Court of Claims provides a standard complaint form for this process. After it is properly served the public office has three business days to "cure or otherwise address" the alleged violation. If the public office does not address the issue, and after the three-business-day cure period has expired, the requester can file a complaint in the Court of Claims or a mandamus action. The requester, however, must file an affirmation stating that he or she served the pre-filing complaint on the public office at least three business days before filing the lawsuit. A case will be automatically dismissed if the requester does not file this affirmation.

A. Pre-filing Complaint Must Be Served on Public Office

Before a requester can sue a public office for an alleged violation of the Public Records Act, he or she must follow a mandatory pre-filing process.[771] Requesters must follow this process before filing a complaint in either the Court of Claims,[772] or a mandamus action in a court of common pleas, court of appeals, or the Supreme Court of Ohio. The pre-filing process involves the following:

- Requesters must first serve a complaint on the public office or person responsible for public records that states the alleged violation of the Public Records Act. The Court of Claims provides a standard complaint form that requesters use for this process.[773] The complaint must be served in accordance with Rule 4 of the Ohio Rules of Civil Procedure.[774]
- After the public office is properly served with the complaint the public office or person responsible for public records has three business days to "cure of otherwise address" the alleged violation.
- If the public office does not address the alleged violation described in the pre-filing complaint, requesters may file either a mandamus action or a complaint in the Court of Claims after the three-business-day period has expired.
- Along with filing a complaint to initiate a lawsuit, requesters must file an affirmation stating that they followed each step of the pre-filing complaint process. Requesters must affirm that they properly served the pre-filing complaint on the public office, the pre-filing complaint was served at least three

business days before they filed the lawsuit, and the public office did not resolve the alleged violation.[775] Failure to file this affirmation will result in automatic dismissal of the lawsuit.

B. Mandamus Lawsuit

The are two litigation routes available to requesters to enforce the Public Records Act: (1) a mandamus action filed in a court of common pleas, court of appeals, or the Supreme Court of Ohio; or (2) a complaint file in the Ohio Court of Claims, where there is a litigation process specific to public records cases. Requesters can only use one of these options, however.[776] Before filing *either* a mandamus action or a complaint in the Court of Claims, requesters must fully follow the pre-filing requirements discussed in Section A. above.[777]

1. Parties

A person allegedly "aggrieved by" a public office's failure to comply with division (B) of the Public Records Act may file an action in mandamus[778] against the public office or any person responsible for the office's public records.[779] A person may file a public records mandamus action regardless of pending related actions[780] but may not seek compliance with a public records request in an action for other types of relief, like an injunction or declaratory judgment.[781] The person who files the suit is called the "relator," and the named public office or person responsible for the records is called the "respondent."

2. Where to file

The relator can file the mandamus action in any one of three courts: the common pleas court of the county where the alleged violation occurred, the court of appeals for the appellate district where the alleged violation occurred, or the Supreme Court of Ohio.[782] If a relator files in the Supreme Court, the Court may refer the case to mediation counsel for a settlement conference.[783] The other courts frequently refer cases to mediation, as well.

3. When to file

When an official responsible for records has denied a public records request, no administrative appeal to the official's supervisor is necessary before filing a mandamus action in court.[784] The likely statute of limitations for filing a public records mandamus action is within ten years after the cause of action accrues.[785] However, the defense of laches may apply if the respondent can show that unreasonable and inexcusable delay in asserting a known right caused material prejudice to the respondent.[786]

4. Discovery

In general, the Ohio Rules of Civil Procedure govern discovery in a public records mandamus case, as in any other civil lawsuit.[787] While discovery procedures are designed to ensure the free flow of accessible information,[788] in a public records case, it is often the access to requested records that is in dispute. Instead of allowing a party to access the withheld records through discovery, the court will usually conduct an *in camera* inspection of the disputed records.[789] An *in camera* inspection allows the court to view the unredacted records in private[790] to determine whether the claimed exemption was appropriately applied. Not allowing the relator to view the unredacted records does not violate the relator's due process rights.[791] Attorneys must prepare a log of the documents subject to the attorney-client privilege during discovery,[792] but a public office is not required to provide such a log during the initial response to a public records request.[793]

5. Requirements to prevail

A person is not entitled to file a mandamus action unless the person previously made a request for records has already been made.[794] Only those records that were requested from the public office can be litigated in the mandamus action.[795]

To be entitled to a writ of mandamus, the relator must prove that he or she has a clear legal right to the requested relief and that the respondent had a clear legal duty to perform the requested act.[796] In a public records mandamus lawsuit, this usually includes specifying in the mandamus action the records withheld or other failure to comply with R.C. 149.43(B) and showing that, when the requester made the request, he or she specifically described the records being sought.[797] Unlike most mandamus actions, a relator in a public records mandamus action need not prove the lack of an adequate remedy at law.[798]

If these requirements are met, the respondent public office then has the burden to prove that any items withheld are exempt from disclosure[799] and of countering any other alleged violations of R.C. 149.43(B). In defending the action, the public office may rely on any applicable legal authority for withholding or redacting, even if the public office did not rely on that authority in response to the request.[800] However, the public office cannot claim that a request is ambiguous or overly broad for the first time in litigation. This is because when a public office claims a request is overly broad or ambiguous, a public office must give the requester a chance to revise the request by informing the requester of how the office's records are maintained and accessed.[801]

If necessary, the court will review *in camera* the materials that were withheld or redacted.[802] To the extent any doubt or ambiguity exists as to the applicability of an exemption, the public records law will be liberally interpreted in favor of disclosure.[803]

If a respondent provides requested records to the relator after the filing of a public records mandamus action, all or part of the case may be rendered moot or concluded.[804] Even if the case is rendered moot, the relator may still be entitled to statutory damages and attorney fees.[805] Further, a court may still decide the merits of the case if the issue is capable of repetition yet evading review.[806]

6. Liabilities of the public office

If a court decides that the public office or the person responsible for public records did not comply with an obligation in R.C. 149.43(B) and issues a writ of mandamus, the relator shall be entitled to an award of all court costs and may receive an award of attorney fees and/or statutory damages, as detailed below.[807]

a. Attorney fees

Any award of attorney fees is within the discretion of the court.[808] A court may award reasonable attorney fees to a relator if:

(1) The court orders the public office to comply with R.C. 149.43(B);[809]

(2) The court determines that the public office failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under R.C. 149.43(B);[810]

(3) The court determines that the public office promised to permit inspection or deliver copies within a specified period of time but failed to fulfill that promise;[811] or

(4) The court determines that the public office acted in bad faith when it voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action but before the court issued any order.[812]

In the last scenario, the relator may not conduct discovery on the issue of bad faith and the court may not presume bad faith by the public office.[813]

An award of fees is considered remedial rather than punitive[814] and may be reduced or eliminated at the discretion of the court. A court may decline to award attorney fees if doing so is disproportionate to the case.[815] A court may also reduce an award of attorney fees if it decides that, given the facts of the specific case, an alternative means should have been pursued to resolve the public records dispute more effectively and efficiently.[816]

Only those attorney fees directly associated with the mandamus action may be awarded.[817] The relator is entitled to fees only insofar as the requests have merit.[818] Reasonable attorney fees also include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.[819] The attorney fees award shall not exceed the fees incurred before the public record was made available to the relator and the reasonable fees incurred to demonstrate entitlement to fees.[820]

A court shall *not* award any attorney fees if it decides both of the following:[821]

(1) Based on the law as it existed at the time, a well-informed person responsible for the requested public records reasonably would have believed that the conduct of the respondent did not constitute a failure to comply with an obligation of R.C. 149.43(B);[822]

and

(2) A well-informed person responsible for the requested public records reasonably would have believed that the conduct of the public office would serve the public policy that underlies the authority that it asserted as permitting that conduct.[823]

The opportunity to collect attorney fees does not apply when the relator appears before the court *pro se* (without an attorney), even if the *pro se* relator is an attorney.[824] Neither the wages of in-house counsel[825] nor contingency fees are recoverable.[826]

A relator may waive a claim for attorney fees (and statutory damages) by not including any argument in support of an award of fees in its merit brief.[827]

b. Statutory damages

A person (other than an inmate in a state or federal institution[828]) who transmits a valid written request for public records by hand delivery, electronic submission, or certified mail[829] is entitled to receive statutory damages if a court finds that the public office failed to comply with its obligations under R.C. 149.43(B).[830] To be entitled to statutory damages, a requester must establish by clear and convincing evidence that the requester transmitted the request by hand delivery, electronic submission, or certified mail.[831]

An award of statutory damages is not considered a penalty; it is intended to compensate the requester for the injury from lost use of the requested information.[832] The existence of such an injury shall be presumed. Merely failing to organize and maintain records does not alone support an award of statutory damages.[833] Because statutory damages are intended to compensate for lost use, they are available when a public office fails to timely produce a public record.[834]

Statutory damages are fixed at $100 for each business day the respondent fails to comply with R.C. 149.43(B), beginning with the day on which the relator files a mandamus action to recover statutory damages, up to a maximum of $1,000.[835] The Act "does not permit stacking of statutory damages based on what is essentially the same records request."[836]

A court shall *not* award statutory damages if it decides both of the following:

(1) Based on the law as it exists at the time, a well-informed person responsible for the requested public records reasonably would have believed that the conduct of the respondent did not constitute a failure to comply with an obligation of R.C. 149.43(B);[837]

and

(2) A well-informed person responsible for the requested public records reasonably would have believed that the conduct of the public office would serve the public policy that underlies the authority that it asserted as permitting that conduct.[838]

Statutory damages are not available to inmates in a state or federal institution, even if those requesters prevail in a case.[839] Many of the cases on statutory damages cited in this manual involve requests by inmates. Although these cases are still good law on the specific issue of statutory damages for which they are cited, public offices should not take these cases to mean that inmates are entitled to statutory damages.

c. Court costs

An award of court costs is mandatory if the court orders the public office or the person responsible for the public records to comply with R.C. 149.43(B).[840] Court costs shall also be awarded when a court determines that the public office or person responsible for public records acted in bad faith when making the requested records available after a mandamus action was filed but before the court ordered the production of the records.[841] Like an award of attorney fees, an award of court costs is considered remedial rather than punitive.[842] Litigation expenses, other than court costs, are not recoverable at all.[843]

d. Recovery of deleted email records

The Supreme Court of Ohio has determined that if evidence shows that records in email format have been deleted in violation of a public office's records retention schedule, the public office has a duty to recover the contents of deleted emails and to provide access to them.[844] The courts will consider the relief available to the requester based on several factors, including whether: emails were improperly destroyed; forensic recovery of emails might be successful; and the proposed recovery efforts were reasonable.[845]

C. Court of Claims Procedure

The other option available to requesters to resolve public records disputes is to file a complaint in the Ohio Court of Claims.[846] R.C. 2743.75 provides a special statutory procedure for requesters to resolve public records disputes arising under the Public Records Act[847] in an expedited and economical way.[848] A requester can pursue *either* a mandamus action or resolution in the Court of Claims, but not both.[849] The Court of Claims does not have jurisdiction in mandamus.[850]

1. Filing procedure and initial review

A requester may file a complaint in the Court of Claims on a form prescribed by the clerk of the Court of Claims, in either the common pleas court in the county where the public office is located or directly with the Court of Claims.[851] The requester must attach to the complaint copies of the records request in dispute and any written responses or other communications about the request from the public office.[852] Beginning April 2025, the requester must also attach a written affirmation stating that the person served a pre-filing complaint on the public office at least three business days before the complaint.[853] While a requester may make a request anonymously, the person must show that he or she made the request to have standing to sue for a public records violation.[854]

The filing fee is $25.[855] If the requester files the complaint in a common pleas court, the clerk of that court will serve the complaint on the public office and then forward it to the Court of Claims for all further proceedings.[856]

When the Court of Claims receives a public records complaint, it will assign the complaint to a special master for review.[857] A special master is an attorney who serves as a judicial officer in the Court of Claims; his or her recommended decisions are reviewed by a judge of the Court of Claims.[858] The Court of Claims is able to dismiss the complaint on its own authority, if recommended by the special master.[859] The requester may also voluntarily dismiss his or her complaint at any time.[860] If the Court of Claims determines that the complaint constitutes a case of first impression that involves an issue of substantial public interest, the Court must dismiss the complaint and direct the requester to file a mandamus action in the appropriate court of appeals.[861]

2. Mediation

Once the complaint is served on the public office, the special master will refer most cases to mediation.[862] While in mediation, the case is stayed — that is, action in the case is suspended until mediation concludes.[863] Mediation may occur by telephone or any other electronic means.[864] If mediation fully resolves the dispute between the parties, the case is dismissed.[865] The special master can also determine, in consideration of the particular circumstances of the case and the interests of justice, that the case should not be referred to mediation at all.[866] If mediation does not fully resolve the dispute, the mediation stay ends, and the case proceeds.[867]

3. Expedited briefing

After mediation ends and the stay is lifted, the public office has ten business days to file a response to the complaint.[868] The public office may also file a motion to dismiss, if applicable.[869] No other motions or pleadings — other than the complaint, response, and/or motion to dismiss — will be accepted by the Court of Claims in the matter.[870] The special master may direct the parties in writing to file additional motions, pleadings, information, or documentation, if needed.[871] No discovery is permitted, and the parties may support their pleadings with affidavits.[872] Unless the special master orders otherwise, the parties must provide all evidence with their pleadings.[873]

The Court of Claims can only resolve disputes related to the public records request identified in the complaint. Thus, the Court of Claims does not have jurisdiction to adjudicate disputes related to a new request during mediation or made any time after filing the complaint.[874]

4. Requirements to prevail

Proceedings in the Court of Claims generally follow the burden of proof standards in public records mandamus actions.[875] That is, the requester must plead and prove facts showing that they sought public records and the public office or records custodian did not make the records available.[876] The requester must establish entitlement to relief by clear and convincing evidence.[877] The public office or person responsible for the records has the burden of establishing that an exemption applies.[878] The public office or person responsible fails to meet that burden if it does not prove that the requested records fall squarely within the exemption.[879] A public office or person responsible for the records must produce competent, admissible evidence to support the exemption claimed by the public office.[880]

Within seven business days of receiving the public office's response to the complaint or motion to dismiss, the special master must submit a report and recommendation to the Court of Claims.[881] A report and recommendation is a written statement of findings by the special master and a proposal for the Court of Claims about how the case should be resolved.[882] The parties have seven business days after receipt of the report and recommendation to file written objections.[883] The objection must be specific and state with particularity all grounds for the objection, and must be served on the opposing party via certified mail, return receipt requested.[884] If a party objects, the other party may file a response to the objection within seven business days and serve the response on the opposing party via certified mail, return receipt requested.[885]

If neither party timely objects, the Court of Claims must issue an order adopting the report and recommendation unless there is an error evident on its face.[886] There can be no appeal from this decision unless the Court of Claims materially altered the report and recommendation.[887] If one or more of the parties objected to the report and recommendation, the Court of Claims must issue a final order within seven business days after the final response(s) to the objection(s) is received.[888]

If no appeal is taken and the Court of Claims determines that the public office denied access to public records in violation of R.C. 149.43(B), the Court of Claims must order the public office to permit access to the public records, and to reimburse the requester for the $25 filing fee and any other costs associated with the action that were incurred by the requester.[889] The requester is not entitled to recover attorney fees or other monetary relief.[890]

5. Appeals from the Court of Claims

Either party may appeal the final order from the Court of Claims to the court of appeals for the appellate district where the public office is located.[891] Any appeal must be given precedence to ensure a prompt decision.[892]

If the appellate court finds that the public office obviously filed an appeal with the intent to delay compliance with R.C. 149.43(B) or to unduly harass the requester, the court of appeals may award reasonable attorney fees to the requester pursuant to R.C. 149.43(C).[893] No discovery can be taken on this issue, and the court is not to presume that the appeal was filed with intent to delay or harass.[894]

D. Liabilities applicable to either party

The following are other remedies that may be available against a party in public records litigation. These are applicable if a requester represents him or herself ("*pro se*") or is represented by counsel.

1. Frivolous conduct

If the court does not issue a writ of mandamus and the court determines that bringing the mandamus action was frivolous conduct as defined in R.C. 2323.51(A) and S.Ct.Prac.R. 4.03(A), the court may award to the public office all court costs, expenses, and reasonable attorney fees, as determined by the court.[895]

Any party adversely affected by the frivolous conduct of another party may file a motion with the court, not more than 30 days after the entry of final judgment,[896] for an award of court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with the lawsuit or appeal.[897] When a court determines that the accused party has engaged in frivolous conduct, a party adversely affected by the conduct may recover the full amount of the reasonable attorney fees incurred, even fees paid or in the process of being paid, or in the process of being paid by an insurance carrier.[898]

2. Civil Rule 11

Civil Rule 11 provides, in part:

> The signature of an attorney or *pro se* party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay . . . For a willful violation of this rule, an attorney or *pro se* party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule.

Courts have found sanctionable conduct under Civil Rule 11 in public records cases.[899] Any Civil Rule 11 motion must be filed within a reasonable period of time following the final judgment.[900]

E. Vexatious Litigators[901]

There are two types of vexatious litigators: people declared vexatious litigators under the statutory process in R.C. 2323.52 and persons declared to be vexatious litigators under the Supreme Court's Rules of Practice. Under the statutory process, anyone who habitually, persistently, and groundlessly engages in litigation-related "vexatious conduct" may be declared a vexatious litigator.[902] A person declared to be a vexatious litigator may not bring a lawsuit in the court of claims or in a court of common pleas without first obtaining leave of the court that declared the person vexatious.[903] This includes any claim brought under the Public Records Act in the court of claims or court of common pleas. The Supreme Court of Ohio publishes a list of people declared to be vexatious litigators under R.C. 2323.52.[904]

The Supreme Court of Ohio has an independent vexatious-litigator process and may impose a range of restrictions on people declared to be vexatious litigators under this process.[905] One common restriction is a prohibition on bringing actions in the Supreme Court without first obtaining leave. The Supreme Court of Ohio publishes a list of people declared to be vexatious litigators under its Rules of Practice.[906]

Anyone declared to be a vexatious litigator may not request public records from a public office without first obtaining leave of court.[907]

Notes:

---

[769] When an individual represents themselves in court, essentially acting as their own legal counsel, it is called "pro se." Courts will generally treat pro se litigants the same as litigants who are represented by counsel in that "pro se litigants are expected to possess knowledge of the law and legal procedures and, accordingly, are held to the same standard as litigants who have legal representation." *In re Application of Black Fork Wind Energy*, L.L.C., 2013- Ohio-5478, ¶ 22.

[770] R.C. 149.43(C)(1), effective as of April 9, 2025.

[771] R.C. 149.43(C)(1).

[772] R.C. 2743.75(A) (a requester can only file in the Court of Claims "upon the expiration of the three-day period in which a public office or person responsible for public records may cure or address an alleged violation pursuant to" R.C. 149.43(C)(1)).

[773] The standard complaint form provided by the Court of Claims. http://ohiocourtofclaims.gov/public-records/

[774] R.C. 149.43(C)(1).

[775] Civ.R. 4.

[776] R.C. 149.43(C)(1)(a)-(b).

[777] R.C. 149.43(C)(1).

[778] R.C. 149.43(C)(1)(b); *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 12 ("Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act."). "Mandamus" is a court command to a governmental office to correctly perform a mandatory function. Black's Law Dictionary (10th ed. 2014).

[779] *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170, 174 (1988) (mandamus need not be brought against the person who actually withheld the records or committed the violation; it can be brought against any "person responsible" for public records in the public office); *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St.3d 30 (1985), paragraph two of the syllabus ("When statutes impose a duty on a particular official to oversee records, that official is the 'person responsible' under [the Public Records Act]."); *State ex rel. Doe v. Tetrault*, 2012-Ohio-3879, ¶ 23-26 (12th Dist.) (employee who created and disposed of requested notes was not the "particular official" charged with the duty to oversee records); *see also* Chapter One: C. 2. "Quasi-agency: a private entity can be 'a person responsible for public records.'"

[780] *State ex rel. Highlander v. Rudduck*, 2004-Ohio-4952, ¶ 18.

[781] *Davis v. Cincinnati Enquirer*, 2005-Ohio-5719, ¶ 8-17; *Reeves v. Chief of Police*, 2015-Ohio-3075, ¶ 7-8 (6th Dist.) (affirming dismissal of a public records case brought as a declaratory judgment action); *State ex rel. Meadows v. Louisville City Council*, 2015-Ohio-4126, ¶ 26-29 (5th Dist.).

[782] R.C. 149.43(C)(1)(b).

[783] S.Ct.Prac.R. 19.01(A) (the court may, on its own or on motion by a party, refer cases to mediation; unless otherwise ordered court, all filing deadlines stayed). Other courts may also refer cases to mediation to facilitate settlement or resolution.

[784] *State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St.3d 41, 42 (1990).

[785] R.C. 2305.14.

[786] *State ex rel. Clinton v. MetroHealth Sys.*, 2014-Ohio-4469, ¶ 38-41 (8th Dist.) (three-year delay in filing action to enforce public records request untimely).

[787] *See* Civ.R. 26-37, 45.

[788] *Vaught v. Cleveland Clinic Found.*, 2003-Ohio-2181, ¶ 25.

[789] *State ex rel. Lanham v. DeWine*, 2013-Ohio-199, ¶ 22; *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. and Corr.*, 2018-Ohio-5133, ¶ 6. *But see State ex rel. Plunderbund v. Born*, 2014-Ohio-3679, ¶ 31 (*in camera* review was unnecessary when testimonial evidence sufficiently showed all withheld records were subject to the claimed exemption).

[790] Black's Law Dictionary (10th ed. 2014) (defining "in camera inspection" as "[a] trial judge's private consideration of evidence").

[791] *State ex rel. Lanham v. DeWine*, 2013-Ohio-199, ¶ 23.

[792] Civ.R. 26(B)(6); *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 2003-Ohio-7257, ¶ 10.

[793] *State ex rel. Lanham v. DeWine*, 2013-Ohio-199, ¶ 24.

[794] *Strothers v. Norton*, 2012-Ohio-1007, ¶ 14.

[795] *State ex rel. Lanham v. Smith*, 2007-Ohio-609, ¶ 14 ("R.C. 149.43(C) requires a prior request as a prerequisite to a mandamus action.").

[796] *State ex rel. Van Gundy v. Indus. Comm.*, 2006-Ohio-5854, ¶ 13 (discussing mandamus requirements).

[797] *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 17; *State ex rel. Morgan v. New Lexington*, 2006-Ohio-6365, ¶ 29 ("[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.").

[798] *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 580 (2001).

[799] *Gilbert v. Summit Cty.*, 2004-Ohio-7108, ¶ 6.

[800] R.C. 149.43(B)(3).

[801] *State ex rel. Summers v. Fox*, 2020-Ohio-5585, ¶ 74 (public office violated the Public Records Act when it raised overbreadth of request for the first time in litigation because the requester was not given the opportunity to revise the request). Refer to Chapter Two: A.6. "Denying and clarifying an ambiguous or overly broad request," for more information on this issue.

[802] *State ex rel. Seballos v. School Emp. Retirement Sys.*, 70 Ohio St.3d 667, 671 (1994); *State ex rel. Lanham v. DeWine*, 2013-Ohio-199, ¶ 21-22. *But see State ex rel. Plunderbund v. Born*, 2014-Ohio-3679, ¶ 29-31 (denying motion to submit documents *in camera* when respondents showed that all withheld documents were "security records" under R.C. 149.433).

[803] *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 2010-Ohio-5073, ¶ 10.

[804] *State ex rel. Pietrangelo v. Avon Lake*, 2016-Ohio-5725, ¶ 15-22.

[805] R.C. 149.43(C)(3) (statutory damages); R.C. 149.43(C)(4)(b).

[806] *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Public Safety*, 2016-Ohio-7987, ¶ 29-31.

[807] Public offices may still be liable for the content of public records they release, *e.g.*, in a defamation action against an office. *See Mehta v. Ohio Univ.*, 2011-Ohio-3484, ¶ 63 (10th Dist.) ("[T]here is no legal authority in Ohio providing for blanket immunity from defamation for any and all content included within a public record.").

[808] R.C. 149.43(C)(4)(b).

[809] R.C. 149.43(C)(4)(b).

[810] R.C. 149.43(C)(4)(b)(i); *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 49-51 (awarding attorney fees because public office failed to respond to request); *Cleveland Assn. of Rescue Employees/ILA Local 1975 v. City of Cleveland*, 2018-Ohio-4602, ¶ 4, 19 (8th Dist.) (awarding attorney fees because request went unanswered until mandamus action was filed, and the public office's two-month delay in responding to part of the request and a five-month delay to answer the entire request were unreasonable).

[811] R.C. 149.43(C)(4)(b)(ii).

[812] R.C. 149.43(C)(4)(b)(iii).

[813] R.C. 149.43(C)(4)(b)(iii).

[814] R.C. 149.43(C)(5)(a); R.C. 149.43(C)(4)(a)(i).

[815] *State ex rel. Pool v. City of Sheffield Lake*, 2023-Ohio-1204, ¶ 31-32 (declining to award fees claimed for the public office's three-day delay in making a supplemental production of records because "any harm or inconvenience [the requester] suffered…presumably represents a small fraction of the total fees and expenses he incurred throughout this litigation" and would be disproportionate); *State ex rel. Gilreath v. Cuyahoga Job & Family Servs.*, 2024-Ohio-103, ¶ 50 (declining to award fees because, even after the public office produced all responsive records and informed requester that it had no additional records, requester "proceeded to conduct extensive discovery in the case by propounding numerous interrogatories, requests for admissions, and requests for production of documents and by deposing three [public office] employees").

[816] R.C. 149.43(C)(5)(d).

[817] *State ex rel. Gannett Satellite Information Network v. Petro*, 81 Ohio St.3d 1234, 1236 (1998) (determining that fees incurred as a result of other efforts to obtain the same records were not related to the mandamus action and were excluded from the award); *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 2013-Ohio-4481, ¶ 10-11 (8th Dist.) (reducing attorney fees award because counsel billed for time that did not advance public records case or was extraneous to the case).

[818] *State ex rel. Cranford v. Cleveland*, 2004-Ohio-4884, ¶ 25 (denying relator attorney fees based on "meritless request").

[819] R.C. 149.43(C)(5)(c); *State ex rel. Miller v. Brady*, 2009-Ohio-4942, ¶ 19.

[820] R.C. 149.43(C)(5)(b)-(c).

[821] R.C. 149.43(C)(4)(c); *see State ex rel. Cincinnati Enquirer v. Ronan*, 2010-Ohio-5680, ¶ 17 (even if court had found denial of request contrary to statute, requester would not have been entitled to attorney fees because the public office's conduct was reasonable); *State ex rel. Cincinnati Enquirer v. Sage*, 2015-Ohio-974, ¶ 37 (courts first decide whether to award attorney fees and then conduct analysis of factors outlined in statute to determine amount of fees).

[822] *State ex rel. Anderson v. Vermilion*, 2012-Ohio-5320, ¶ 26; *State ex rel. Doe v. Smith*, 2009-Ohio-4149, ¶ 39; *State ex rel. Hicks v. Fraley*, 2021-Ohio-2724, ¶ 27 (denying award of attorney fees because a well-informed public official would have believed the letter at issue was protected under attorney-client privilege).

[823] *State ex rel. Rogers v. Dept. of Rehab. and Corr.*, 2018-Ohio-5111, ¶ 36 (attorney fees awarded because withholding security-camera video documenting guard-prisoner interaction was unreasonable and release of records benefits the public by allowing public to "receive at least some information about prisoner behavior and prisoners' treatment"); *State ex rel. Doe v. Smith*, 2009-Ohio-4149, ¶ 40.

[824] *State ex rel. O'Shea & Assocs. Co., L.P.A v. Cuyahoga Metro. Hous. Auth.*, 2012-Ohio-115, ¶ 45.

[825] *State ex rel. Beacon Journal Publishing Co. v. Akron*, 2004-Ohio-6557, ¶ 62; *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 2013-Ohio-5219, ¶ 46 (10th Dist.) (award of attorney fees not available to relator law firm when no evidence that the firm paid or was obligated to pay any attorney to pursue the public records action).

[826] *State ex rel. Hous. Advocates, Inc. v. Cleveland*, 2012-Ohio-1187, ¶ 6-7 (8th Dist.) (in-house counsel taking case on contingent fee basis not entitled to award of attorney fees).

[827] *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 2012-Ohio-753, ¶ 69.

[828] R.C. 149.43(C)(3), effective as of April 9, 2025.

[829] *State ex rel. Pietrangelo v. Avon Lake*, 2016-Ohio-5725, ¶ 23-27 (examining evidence of hand delivery); *see also State ex rel. Petranek v. Cleveland*, 2012-Ohio-2396, ¶ 8 (8th Dist.) (later repeat request by certified mail does not trigger entitlement to statutory damages); *State ex rel. Summers v. Fox*, 2021-Ohio-2061, ¶ 24 (letter sent by certified mail that only generally described previous requests was not a qualifying communication for purposes of statutory damages); *State ex rel. Sultaana v. Mansfield Corr. Inst.*, 2023-Ohio-1177, ¶ 49 (delivery by fax is not an authorized method of delivery for purposes of statutory damages).

[830] R.C. 149.43(C)(2). Compare *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 52 (awarding statutory damages) with *State ex rel. Ware v. DeWine*, 2020-Ohio-5148, ¶ 24-25 (upholding denial of statutory damages when evidence showed that public office satisfied duty to make records available by mailing them to relator in correctional institution; relator's claim that he did not receive the records was beyond control of the public office and not a basis for awarding statutory damages).

[831] *State ex rel. McDougald v. Greene*, 2020-Ohio-3686, ¶ 27; *State ex rel. Ware v. Walsh*, 2021-Ohio-4585, ¶ 21 (9th Dist.) (requester not entitled to statutory damages because he did not show, by clear and convincing evidence, that he sent request by certified mail; time stamp on certified mail receipt did not match date of mailing and there was no evidence of a signed return receipt).

[832] R.C. 149.43(C)(3); *State ex rel. Ware v. City of Akron*, 2021-Ohio-624, ¶ 19 (requester does not have to show an actual injury connected to the loss of records to be awarded statutory damages; "requiring a requester to make even a minimal showing of actual injury would be contrary to the statutory command that injury is conclusively presumed").

[833] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2023-Ohio-3382, ¶ 42.

[834] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.,* 2023-Ohio-3382, ¶ 41; *State ex rel. Clark v. Dept. of Rehab. & Correction,* 2024-Ohio-770, ¶ 15 (presumption by the public office that the requester wanted his request denied is not a defense against the award of statutory damages); *but see State ex rel. Mobley v. LaRose*, 2024-Ohio-1909, ¶ 14 (statutory damages not awarded when the requester asked for certified copies because failure to timely produce certified copies is not a violation of R.C. 149.43(B)).

[835] R.C. 149.43(C)(3); *see also State ex rel. Miller v. Ohio Dept. of Edn.*, 2016-Ohio-8534, ¶ 9-13 (10th Dist.) (statutory damages begin accruing on day mandamus action is filed but does not include day records are provided).

[836] *State ex rel. Dehler v. Kelly*, 2010-Ohio-5724, ¶ 4; *State ex rel. Ware v. Parikh,* 2023-Ohio-2536, ¶ 31 (eight requests submitted by the same requester on the same day were a single request for purposes of statutory damages); *State ex rel. Bristow v. Baxter,* 2019-Ohio-214, ¶ 43 (6th Dist.) (while the Public Records Act does not permit stacking of statutory damages based on what is essentially the same records request, relator was entitled to the maximum award of $1,000 per category of requested records — personnel files, time-off requests, and public records policy — for a total statutory damages award of $3,000).

[837] *State ex rel. Ware v. O'Malley*, 2024-Ohio-5242, ¶ 20-21.

[838] R.C. 149.43(C)(3), effective as of April 9, 2025; *State ex rel. Rogers v. Dept. of Rehab. and Corr.*, 2018-Ohio-5111, ¶ 25 (declining to reduce statutory damages award, in part because "there was no statutory or precedential force behind [public office's] arguments that the security footage was an exception to the definition of a 'public record'"); *State ex rel. Hicks v. Fraley*, 2021-Ohio-2724, ¶ 28 (denying award of statutory damages because a well-informed public official would have believed the letter at issue was protected by attorney-client privilege).

[839] R.C. 149.43(C)(3).

[840] R.C. 149.43(C)(4)(a)(i).

[841] R.C. 149.43(C)(4)(a)(ii); *State ex rel. Ware v. Funkhauser,* 2022-Ohio-172, ¶ 9 (11th Dist.) (awarding court costs because public office acted in bad faith when it "consciously disregarded" the requests for over one year and complied over two months after requester filed a mandamus complaint).

[842] R.C. 149.43(C)(5)(a); R.C. 149.43(C)(4)(a)(i).

[843] *State ex rel. Doe v. Smith*, 2009-Ohio-4149, ¶ 10, 46 (reversing award of litigation expenses).

[844] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253, ¶ 31-32, 41 (noting that board did not contest the status of the requested emails as public records).

[845] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-6253, ¶ 51 (when newspaper sought to inspect improperly deleted emails, the public office had to bear the expense of forensic recovery).

[846] R.C. 2743.75.

[847] R.C. 2743.75(A); *Jabr v. Disciplinary Counsel,* 2021-Ohio-398 (Ct. of Cl.) (Court of Claims has jurisdiction to resolve disputes arising under the Public Records Act and cannot adjudicate actions to enforce violation of Rules of Superintendence).

[848] R.C. 2743.75(A).

[849] R.C. 2743.75(C)(1); *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 2020-Ohio-5371, ¶ 12.

[850] *State ex rel. Sultaana v. Mansfield Corr. Inst.,* 2023-Ohio-1177, ¶ 10 (a requester cannot transfer a mandamus case from a court of common pleas, court of appeals, or the Supreme Court of Ohio to the Court of Claims because the Court of Claims does not have jurisdiction in mandamus actions).

[851] R.C. 2743.75(D)(1); R.C. 2743.75(B).

[852] R.C. 2743.75(D)(1).

[853] R.C. 149.43(C)(2). Refer to Chapter 6: A. "Pre-filing Complaint Must Be Served on Public Offices," for a detailed description of this process.

[854] *Bruno v. Ohio Auditor of State's Office*, 2024-Ohio-5312, ¶ 6-8 (Ct. of Cl.).

[855] R.C. 2743.75(D)(1).

[856] R.C. 2743.75(D)(1).

[857] R.C. 2743.75(D)(2).

[858] R.C. 2743.75(A).

[859] R.C. 2743.75(D)(2).
[860] R.C. 2743.75(D)(2).
[861] R.C. 2743.75(C)(2). A "case of first impression" is one that presents the court with an issue of law that has not previously been decided by any controlling legal authority in that jurisdiction. *See* Black's Law Dictionary (10th ed. 2014).
[862] R.C. 2743.75(E)(1).
[863] R.C. 2743.75(E)(1).
[864] R.C. 2743.75(E)(1).
[865] R.C. 2743.75(E)(1).
[866] R.C. 2743.75(E)(1); *Meros v. Office of Ohio Attorney General Dave Yost*, 2023-Ohio-1861, ¶ 10 (special master did not err in refusing to refer case to mediation).
[867] R.C. 2743.75(E)(1).
[868] R.C. 2743.75(E)(2).
[869] R.C. 2743.75(E)(2).
[870] R.C. 2743.75(E)(2).
[871] R.C. 2743.75(E)(2), (E)(3)(c).
[872] R.C. 2743.75(E)(3)(a), (b).
[873] R.C. 2743.75(E)(3); *Isreal v. Franklin Cty. Commrs.*, 2019-Ohio-5457, ¶14 (Ct. of Cl.) (rejecting relator's attempt to supplement the record with exhibits to his objections because "R.C. 2743.75(F)(2) does not expressly permit parties to engage in motion practice after a R&R, objection, or response to submitted to the court"), *aff'd*, 2021-Ohio-3824 (10th Dist.).
[874] *Mentch v. City of Cleveland,* 2021-Ohio 1564, ¶ 19 (Ct. of Cl.) (jurisdiction of Court of Claims is limited to the public records request set forth in the complaint; Court thus cannot adjudicate disputes related to new requests made during litigation).
[875] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 2020-Ohio-5371, ¶ 32.
[876] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 2020-Ohio-5371, ¶ 33.
[877] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 2020-Ohio-5371, ¶ 34; *Viola v. Ohio AG's Office,* 2021-Ohio-3828, ¶ 20-21 (10th Dist.) (requester's belief that public official's personal email account "may" contain public records is not clear and convincing evidence necessary to establish that public office improperly processed request).
[878] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 2020-Ohio-5371, ¶ 35.
[879] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 2020-Ohio-5371, ¶ 35, 63.
[880] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 2020-Ohio-5371, ¶ 53.
[881] R.C. 2743.75(F)(1). However, "the special master may extend the seven-day period for the submission of the report and recommendation to the court…by an additional seven business days" "[f]or good cause shown[.]" R.C. 2743.75(F)(1).
[882] R.C. 2743.75(F)(1).
[883] R.C. 2743.75(F)(2).
[884] R.C. 2743.75(F)(2).
[885] R.C. 2743.75(F)(2).
[886] R.C. 2743.75(F)(2).
[887] R.C. 2743.75(G)(1).
[888] R.C. 2743.75(F)(2).
[889] R.C. 2743.75(F)(3); *but see White v. Dept. of Rehab. & Corr.,* 2019-Ohio-472, ¶ 22 (Ct. of Cl.) (assessing court costs against requester because he did not give the public office a reasonable period of time to respond; requester filed five business days after sending 23 separate public records requests).
[890] R.C. 2743.75(F)(3)(b); *Ryan v. City of Ashtabula*, 2023-Ohio-621, ¶ 23 (Ct. of Cl.).
[891] R.C. 2743.75(G)(1); *Sheil v. Horton*, 2018-Ohio-5240, ¶ 4 (8th Dist.).

[892] R.C. 2743.75(G)(1).

[893] R.C. 2743.75(G)(2).

[894] R.C. 2743.75(G)(2).

[895] R.C. 149.43(C)(6), effective as of April 9, 2025; *State ex rel. Ware v. Vigluicci,* 2024-Ohio-5492, ¶ 5-6.

[896] *State ex rel. DiFranco v. S. Euclid*, 2015-Ohio-4915, ¶ 10-12 (motion filed pursuant to R.C. 2323.51 must be rejected if not filed within 30 days); *State ex rel. Ware v. Vigluicci*, 2024-Ohio-5492, ¶ 7-8.

[897] R.C. 2323.51; *State ex rel. Davis v. Metzger*, 2016-Ohio-1026, ¶ 9-13 (affirming sanctions against requester's attorney for frivolous mandamus action and discovery).

[898] *State ex rel. Striker v. Cline*, 2011-Ohio-5350, ¶ 7, 23-25; *State ex rel. Davis v. Metzger*, 2014-Ohio-4555, ¶ 13-14 (5th Dist.) (noting that requester filed mandamus within hours of being told request was being reviewed, did not dismiss action after receiving the records later that same day, and conducted unwarranted discovery); *State ex rel. DiFranco v. S. Euclid*, 2015-Ohio-4915, ¶ 15 (noting that frivolous conduct must be egregious and "is not proved merely by winning a legal battle or by proving that a party's factual assertions were incorrect").

[899] *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 2010-Ohio-5073, ¶ 15-17; *State ex rel. Verhovec v. Marietta*, 2013-Ohio-5414, ¶ 44-94 (4th Dist.) (relator engaged in frivolous conduct under Civ. R. 11 by feigning interest in records access when his actual intent was to seek forfeiture award).

[900] *State ex rel. DiFranco v. S. Euclid*, 2015-Ohio-4915, ¶ 18 (filing a Civ.R. 11 motion two years after final judgment in public records case was not within a reasonable period of time). An award or denial of Civil Rule 11 sanctions is reviewed on appeal under an abuse of discretion standard. *See State ex rel. Pietrangelo v. Avon Lake*, 2016-Ohio-2974, ¶ 19.

[901] A "vexatious litigator" is "any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions." R.C. 2323.52(A)(3).

[902] R.C. 2323.52.

[903] R.C. 2323.52(D)(1)(a).

[904] https://www.supremecourt.ohio.gov/opinions-cases/office/vexatious-litigators-local/.

[905] S.Ct.Prac.R. 4.03(B).

[906] https://www.supremecourt.ohio.gov/opinions-cases/office/vexatious-litigators-supreme-court/

[907] R.C. 2323.52(J)(1), effective as of April 9, 2025. Refer to Chapter Two "Requesting Public Records" for more information on this process.

VII. Chapter Seven: Other Obligations of a Public Office

In addition to producing public records, the Public Records Act and other statutes impose obligations on public offices on how records to keep and manage records. These include, but are not limited to:

- Managing and organizing public records such that they can be made available for copying and inspection in response to a public records request,[908] and ensuring that all records — public or not — are maintained and disposed of only in accordance with properly adopted, applicable records retention schedules;[909]
- Maintaining copies of the office's current records retention schedules at a location readily available to the public;[910]
- Adopting and posting an office public records policy;[911] and
- Ensuring that all elected officials associated with the public office, or their designees, obtain three hours of certified public records training once during each term of office to ensure that public offices are aware of these obligations.[912]

Using its Star Rating System (StaRS), the Auditor of State evaluates, rates, and reports on each public office's compliance with these requirements and with best practices.[913] These reports and ratings can be found on the Auditor of State's Website.[914]

A. Records Management

A good records management system is a crucial part of government transparency. Records and the information they contain must be well-managed to ensure accountability, efficiency, economy, and overall good government.

The term "records management" encompasses two distinct obligations of a public office, each of which furthers the goals of the Public Records Act. First, to facilitate broader access to public records, a public office must organize and maintain its public records in a way that makes them available for inspection or copying in response to a public records request.[915]

Second, Ohio's records retention law, R.C. 149.351, helps facilitate transparency in government and is one means of preventing the circumvention of the Public Records Act.[916] R.C. 149.351 prohibits the removal, destruction, mutilation, transfer, damage, or disposal of any record or part of a record, except as provided by law or under the rules adopted by the records commissions (i.e., pursuant to approved records retention schedules).[917]

Records that do not fall within an approved retention schedule, or law that allows their destruction, cannot be destroyed and must be maintained until the public office can adopt a retention schedule that permits their destruction. In the meantime, those records are still subject to public records requests. The process for adopting records retention schedules, and resources available to public offices for doing so, are described below.

But, not all documents received by a public office are "records" that must be maintained and produced upon request.[918] Ohio law provides that a public office shall 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."[919] This standard only addresses the records required to be *created* by a public office. A public office may also *receive* many items in addition to those it creates. Those items may the definition of a "record" that must also be retained and disposed of in accordance with records retention schedules. A public office must apply the definition of a "record" found in R.C. 149.011(G) to decide if a particular item must be maintained and produced.

1. Records management programs

a. Local government records commissions

Ohio law provides the process through which local governments may dispose of records in accordance with rules adopted by records commissions at the county,[920] township,[921] and municipal[922] levels. Records commissions also exist for each library district,[923] special taxing district,[924] school district,[925] and educational service center.[926]

Records commissions are responsible for reviewing applications for one-time disposal of obsolete records, as well as records retention schedules submitted by government offices within their jurisdiction. Once a records commission has approved an application or schedule, it is forwarded to the State Archives at the Ohio History Connection for review and identification of records[927] that the State Archives deems to be of continuing historical value.[928] Upon completion of that process, the Ohio History Connection will forward the application or schedule to the Auditor of State for approval or disapproval.[929]

b. State records program

The Ohio Department of Administrative Services (DAS) administers the records program for all state agencies,[930] except for state-supported institutions of higher education, and upon request for the legislative and judicial branches of government.[931] Among its other duties, the state records program is responsible for establishing "general schedules" for the disposal of certain types of records common to most state agencies. State agencies must affirmatively adopt existing general schedules within the Records and Information Management System (RIMS), that they wish to utilize.[932] Once a general schedule has been officially adopted by a state agency, when the time specified in the general schedule has elapsed, the records identified should no longer have sufficient administrative, legal, fiscal, or other value to warrant further preservation by the state.[933]

If a state agency keeps a record series that does not fit into an existing state general schedule, or if it wishes to modify the language of a general schedule to better suit its needs, the state agency can submit its own proposed retention schedules to DAS online via RIMS for approval by DAS, the Auditor of State, and the State Archivist.[934]

The State's records program works similarly to local records commissions, except that applications and schedules are first submitted to the DAS state records program for it to recommend approval, rejection, or modification. DAS then forwards its recommendation to State Archives and to the Auditor of State.[935] The State Auditor decides whether to approve, reject, or modify applications and schedules based on the continuing administrative and fiscal value of the state records to the state or to its citizens.[936] If the Auditor does not approve the application and schedule, the state agency will be notified. State Archives will review the proposed schedule to identify records which may have enduring historical value which should be preserved.

c. Records program for state-supported colleges and universities

State-supported institutions of higher education are unique in that their records programs are established and administered by their respective boards of trustees rather than a separate records commission or the State's records program.[937] Through their records programs, these state offices are charged with applying efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposition of records.[938]

2. Records retention and disposition

a. Retention schedules

Records of a public office may be destroyed, but only if they are destroyed in compliance with a properly-approved records retention schedule.[939] However, if the retention schedule does not address the particular type of record in question, the record must be kept until the schedule is properly amended to address that category of records.[940] Also, if a public record is retained beyond its properly-approved destruction date, it keeps its public record status and is subject to public records requests until it is destroyed.[941]

In crafting proposed records retention schedules, a public office must evaluate the length of time each type of record needs to be retained after it has been received or created by the office for administrative, legal, or fiscal purposes.[942] Offices should consider whether a record has historical value, a factor that the State Archives at the Ohio History Connection will also consider when conducting its review. Local records commissions may consult with the State Archives at the Ohio History Connection when setting retention schedules.[943] The DAS state records program also offers consulting services for state offices.[944]

All public offices must maintain a copy of all current records retention schedules at a location readily available to the public.[945]

b. Transient records

Transient records are records that have information of short-term usefulness or value to the public office. Examples of transient records include voicemail messages, telephone message slips, post it notes, and superseded drafts. Adopting a schedule for transient records allows a public office to dispose of these records once they are no longer of administrative value.[946] Both the State Archives at the Ohio History Connection and the DAS state records programs have examples of adoptable retention schedules concerning transient records.[947]

c. Records disposition

It is important to document the destruction of records that have met their approved retention periods. Properly tracking disposal of records allows a public office to verify which records it still maintains and to defend itself against any allegation of improper destruction.

- If required per the applicable records retention schedule (RC-2 form), a local government records commission must submit, at least 15 days before disposing of public records, a Certificate of Records Disposal (RC-3 form) with the State Archives at the Ohio History Connection to allow the State Archives to select records of enduring historical value.[948]
- State agencies can document their records disposals on the RIMS system or in-house.[949]

3. Liability for unauthorized destruction, damage, or disposal of records

All records are considered the property of the public office and must be delivered by outgoing officials and employees to their successors in office.[950] Improper removal, destruction, damage, or other disposition of a record is a violation of R.C. 149.351(A).

a. Injunction and civil forfeiture

Ohio law allows "any person who is aggrieved by"[951] the "removal, destruction, mutilation, transfer, or other damage to or disposition of a record," or by the threat of such action, to file either or both of the following types of lawsuits in the appropriate common pleas court:

- A civil action for an injunction to force the public office to comply with R.C. 149.351(A), as well as any reasonable attorney fees associated with the suit.[952]
- A civil action to recover a forfeiture of $1,000 for each violation of R.C. 149.351(A), not to exceed a total of $10,000 (regardless of the number of violations), as well as reasonable attorney fees associated with the suit, not to exceed the forfeiture amount recovered.[953]

A person is not "aggrieved" unless he or she establishes, as a threshold matter, that he or she made an enforceable public records request for the records claimed to have been disposed of in violation of R.C. 149.351.[954] Also, a person is not "aggrieved" by a violation of R.C. 149.351(A) if clear and convincing evidence shows that the request for a record was contrived as a pretext to create liability under the section.[955] If pretext is so proven, the court may order the requester to pay reasonable attorney fees to the defendant(s).[956]

The court of common pleas of the county where the alleged violation occurred has exclusive jurisdiction to hear such a case.[957] Any attempt to seek an injunction for a violation of R.C. 149.351(A) in another court (e.g., a court of appeals) through the vehicle of an original action (e.g., mandamus) will fail for lack of subject matter jurisdiction.[958] A mandamus action alleging violation of R.C. 149.351(A) in a court of appeals is also improper where no action pursuant to R.C. 149.351(B) has been commenced.[959]

b. Limitations on filing action for unauthorized destruction, damage, or disposal

A person has five years from the date of the alleged violation or threatened violation to file the above actions[960] and has the burden of providing evidence that records were destroyed in violation of R.C. 149.351.[961] When any person has recovered a forfeiture in a civil action under R.C. 149.351(B)(2), no other person may recover a forfeiture for that same record, regardless of the number of persons "aggrieved," or the number of civil lawsuits filed.[962] Determining the number of "violations" depends on the nature of the records involved.[963]

c. Attorney fees

The aggrieved person may seek an award of reasonable attorney fees for either the injunctive action or an action for civil forfeiture.[964] An award of attorney fees under R.C. 149.351 is discretionary,[965] and the award of attorney fees for the forfeiture action may not exceed the forfeiture amount.[966]

B. Records Management – Practical Pointers

1. Fundamentals

a. Create records retention schedules and follow them

Every record, public or not, that is kept by a public office must be covered by a records retention schedule. Without an applicable schedule dictating how long a record must be kept and when it can be destroyed, a public office must keep that record forever.[967] Apart from the inherent long-term storage problems and associated costs this creates for a public office, the office is also

responsible for continuing to maintain the record in such a way that it can be made available at any time if it is responsive to a public records request. Creating and following schedules for all records allows a public office to dispose of records once they are no longer necessary or valuable.

b. Content — not medium — determines how long to keep a record

Deciding how long to keep a record should be based on the *content* of the record, not on the medium on which it exists. Not all paper documents are "records" for purposes of the Public Records Act; similarly, not all electronic communications are "records" that must be maintained. Instead, a public office must look at the *content* of the communication or paper document to determine whether that record fits the definition of a "record" in R.C. 149.011 and then apply the proper retention schedule to it. Accordingly, to fulfill both its records management and public records responsibilities, a public office should categorize all the records it keeps — regardless of the *form* in which they exist — based on content. Content categories are also known as "records series". Records within a records series should be kept for as long as they have legal, administrative, fiscal, or historic value. Storing email records unsorted on a server does not satisfy records retention requirements. This is because proper retention requires that a public office be able to destroy records according to records series. When emails are not sorted by content into records series, a server cannot apply proper retention and destroy records according to their content.

c. Practical application

Creating and implementing a records management system might sound daunting. For most public offices, though, it is a matter of simple housekeeping. Many offices already have the scaffolding of existing records retention schedules in place, which may be improved in the ways outlined below.

2. Managing records

a. Conduct a records inventory

The purpose of an inventory is to identify and describe the types of records an office keeps, both physically and electronically. Existing records retention schedules are a good starting point for determining the types of records an office keeps. Retention schedules also allow a public office to identify records that are no longer kept or new types of records for which new schedules need to be created.

For larger offices, it is helpful to designate a staff member from each functional area of the office who knows the kinds of records his or her department creates and why, what the records document, and how and where they are kept.

b. Categorize records by record series

Records should be grouped according to record series. A record series is a group of similar records that are related because they are created, received, or used for, or result from the same purpose or activity. Record series descriptions should be broad enough to encompass all records of a particular type ("Itemized Phone Bills" rather than "FY20-FY21 Phone Bills" for instance), but not so broad that it fails to be instructive (such as "Finance Department emails") or leaves the contents open to interpretation or "shoehorning."

c. Decide how long to keep each records series

Retention periods are determined by assessing four values for each category of records:

- **Administrative Value**: A record maintains its administrative value as long as it is useful and relevant to the execution of the activities that caused the record to be created. Administrative value is determined by how long the record is needed by the office to carry out — that is, to "administer"— its duties. Every record created by government entities should have administrative value, which can vary from being transient (such as a notice of change in meeting location) to long-term (such as personnel files).
- **Legal Value**: A record has legal value if it documents or protects the rights or obligations of citizens or the agency that created it, provides for defense in litigation, or demonstrates compliance with laws, statutes, and regulations. Examples include contracts, real estate records, retention schedules, and licenses.
- **Fiscal Value**: 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. Examples include payroll records and travel vouchers.
- **Historical Value**: A record has historical value if it contains significant information about people, places, or events. The State Archives suggests that historical documents be retained permanently. Examples include board or commission meeting minutes and annual reports.

Retention periods should be set to the highest of these values and should reflect how long the record *needs* to be kept, not how long it *can* be kept.

d. Dispose of records on schedule

Records retention schedules show how long a particular record series must be kept and when and how the office can dispose of them. Records kept past their retention period are still subject to public records requests and can be unwieldy and expensive to store and/or migrate as technology changes. As a practical matter, it is helpful to designate a records manager or records custodian to assist in crafting retention schedules, monitoring when records are due for disposal and ensuring proper completion of disposal forms.

e. Review schedules regularly and revise, delete, or create new schedules as the law and the office's operations change

Keep track of new, or changes to, record series that are created because of statutory and policy changes. Ohio law requires all records to be scheduled within one year after the date that they are created or received.[968] Additionally, some record series will become obsolete due to statutory or policy changes. Those retentions schedules should be marked obsolete when no more records exist for that record series.

C. Resources for Local Government Offices: Ohio History Connection/State Archives – Local Government Records Program

The Local Government Records Program of the State Archives gives records-related advice, forms, model retention manuals, and assistance to local governments to facilitate the identification and preservation of local government records with enduring historical value. Inquiries and forms can be sent to:

The Ohio History Connection/State Archives
Local Government Records Program
800 East 17th Avenue
Columbus, Ohio 43211
(614) 297-2553
localrecs@ohiohistory.org
www.ohiohistory.org/research/local-government-records-program/

D. Resources for State Government Offices

1. Ohio Department of Administrative Services records management program

The Ohio Department of Administrative Services' State Records Administration can provide records management advice and assistance to state agencies, as well as provide training seminars by request. Information available on their website includes:

- Access to the Records Information Management System (RIMS) retention schedule database;
- RIMS User Manual;
- General Retention Schedules; and
- Records Inventory and Analysis template.

For more information, contact DAS at 614-502-7461, or visit the Records Management page of the DAS website: https://das.ohio.gov/buying-and-selling/state-printing-and-mail-services/records-management/records-management

2. The Ohio History Connection, State Archives

The State Archives can help state agencies with the identification and preservation of records with enduring historical value.

For more information or to schedule a records appraisal, visit www.ohiohistory.org/research/archives-library/state-archives/ or contact the State Archives:

The Ohio History Connection/State Archives
800 East 17th Avenue
Columbus, Ohio 43211
(614) 297-2536
statearchives@ohiohistory.org

E. Resources for All Government Offices

1. Ohio Electronic Records Committee

Electronic records present unique challenges for archivists and records managers. As offices have shifted from paper-based recordkeeping to electronic recordkeeping, the issues surrounding the amount, management, and storage of records have significantly increased. As the number of electronic records multiplies, the need for leadership and policy in keeping and organizing them becomes even more urgent.

The goal of the Ohio Electronic Records Committee (OhioERC) is to draft guidelines for the creation, maintenance, long term preservation of, and access to electronic records created by Ohio's state and local governments. The OhioERC's website includes resources on such topics as:

- Blockchain Technology;
- Databases as Public Records;
- Digital Document Imaging Guidelines;
- Electronic Records Management Guidelines;
- Hybrid Microfilm Guidelines;
- Information Governance;
- Managing Email Records;
- Managing Social Media Records;
- Trustworthy Information Systems Handbook; and
- Topical Tip Sheets

For more information and to learn about ongoing projects, visit the Ohio Electronic Records Committee website: www.OhioERC.org.

2. Statements on Maintaining Digitally Imaged Records Permanently

Ohio History Connection:
www.ohiohistory.org/learn/archives-library/state-archives/local-government-records-program/electronic-records-resources/statement-on-maintaining-digitally-imaged-records-

Ohio County Archivists and Records Managers Association
www.ohiohistory.org/wp-content/uploads/2022/02/CARMA_Statement_on_Permanent_Records_2013_12_17.pdf

F. Public Records Policy

A public office must create and adopt a policy for responding to public records requests. The Ohio Attorney General's Office has developed a model public records policy, which may serve as a guide.[969] The public records policy must be distributed to the records manager, records custodian, or the employee who otherwise has custody of the records of the office, and that employee must acknowledge receipt. In addition, a poster describing the policy must be posted in the public office in a conspicuous location, as well as in all branch offices.[970] The public records policy must be included in the office's policies and procedures manual, if one exists, and may be posted on the office's website.[971] Compliance with these requirements will be audited by the Auditor of State in the course of a regular financial audit.[972]

A public records policy may limit the number of records that the office will transmit by United States mail or by any other delivery service to a particular requester to ten per month, unless the requester certifies in writing that the requested records and/or the information those records contain will not be used or forwarded for commercial purposes. "Commercial" is narrowly construed and does not include reporting, news-gathering, or gathering of information to assist citizen oversight or understanding of the operation or activities of government, or non-profit educational research.[973]

However, a public records policy *may not* (1) limit the number of public records made available to a single person; (2) limit the number of records the public office will make available during a fixed period of time; or (3) establish a fixed period of time before the public office will respond to a request for inspection or copying of public records (unless that period is less than eight hours).[974]

G. Required Public Records Training for Elected Officials

To enhance their knowledge of their duties under the Public Records Act and Open Meetings Act, all local and statewide elected government officials or their designees must complete a three-hour training program during each term of elective office the official serves.[975] An "elected official" is any "official elected to a local or statewide office."[976] A "future official" ("a person who has received a certificate of election to a local or statewide office but has not yet taken office") may choose to satisfy this requirement before taking office.[977] Neither "elected official" or "future official" includes "the chief justice or a justice of the supreme court, a judge of a court of appeals, court of common pleas, municipal court, or county court, or a clerk of any of those courts."[978] A "designee" may be the designee of the sole elected official in a public office, or of all the elected officials if the public office includes more than one elected official.[979] Compliance with the training requirement is audited by the Auditor of State in the course of a regular financial audit.[980]

The training must be developed and certified by the Ohio Attorney General's Office and conducted either by the Ohio Attorney General's Office or an approved public or private entity with which the Attorney General's Office contracts.[981] The training is free and open to any member of the public.[982]

The Attorney General's Office certified training schedule can be viewed at:
www.OhioAttorneyGeneral.gov/Legal/Sunshine-Laws

Notes:

---

[908] R.C. 149.43(B)(2).
[909] R.C. 149.351(A).
[910] R.C. 149.43(B)(2).
[911] R.C. 149.43(E)(2); R.C. 109.43(E).
[912] R.C. 149.43(E)(1); R.C. 109.43(B).
[913] See Auditor of State Bulletin 2019-003 at https://www.ohioauditor.gov/publications/bulletins/2019/2019-003.pdf.
[914] *See* Auditor of State StaRS Rating System at https://ohioauditor.gov/open/starshtml.
[915] R.C. 149.43(B)(2).
[916] *Rhodes v. New Philadelphia*, 2011-Ohio-3279, ¶ 14.
[917] R.C. 149.351(A).
[918] Refer to Chapter One: A. "What are 'Records'?" and Chapter Two: A. "Rights and Obligations of Public Records Requesters and Public Offices," for more discussion of "record" v. "non-record."
[919] R.C. 149.40
[920] R.C. 149.38.
[921] R.C. 149.42.
[922] R.C. 149.39.
[923] R.C. 149.411.
[924] R.C. 149.412.
[925] R.C. 149.41.
[926] R.C. 149.41.
[927] R.C. 149.38, .381.
[928] R.C. 149.38, .381.
[929] R.C. 149.381(C).
[930] R.C. 149.33(A).
[931] R.C. 149.332.
[932] Instructions for how to adopt DAS general retention schedules are on page 8 of the RIMS User Manual, available at: https://das.ohio.gov/static/buying-selling/state-printing-and-mail-services/records-management/RIMS%20Manual.pdf.
[933] R.C. 149.331(C).
[934] Instructions for how to submit a retention schedule for approval are on page 10 of the RIMS User Manual, available at: https://das.ohio.gov/static/buying-selling/state-printing-and-mail-services/records-management/RIMS%20Manual.pdf.
[935] R.C. 149.333.
[936] R.C. 149.333.
[937] R.C. 149.33(B).
[938] R.C. 149.33.
[939] R.C. 149.351.
[940] *Wagner v. Huron Cty. Bd. of Cty. Commrs.*, 2013-Ohio-3961, ¶ 17 (6th Dist.) (a public office must dispose of records in accordance with then-existing retention schedule and cannot claim that it disposed of records based on a schedule implemented after disposal of requested records).
[941] *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 41 (2000).
[942] R.C. 149.34.

[943] R.C. 149.31(A) ("The archives administration shall be headed by a trained archivist designated by the Ohio History Connection and shall make its services available to county, municipal, township, school district, library, and special taxing district records commissions upon request.").

[944] R.C. 149.331(D).

[945] R.C. 149.43(B)(2).

[946] *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 24, n.1.

[947] Suggested local government retention schedules can be found at https://www.ohiohistory.org/research/local-government-records-program/local-retention-schedules-forms/#rc. "General Schedules" for state government agencies can be found in the RIMS database found at https://das.ohio.gov/buying-and-selling/state-printing-and-mail-services/records-management/records-management.

[948] R.C. 149.38(C)(3); R.C. 149.381 (B) and (D).

[949] Instructions for how to submit a records disposal are on page 18 of the RIMS User Manual, available at: https://das.ohio.gov/static/buying-selling/state-printing-and-mail-services/records-management/RIMS%20Manual.pdf.

[950] R.C. 149.351(A).

[951] *Rhodes v. New Philadelphia*, 2011-Ohio-3279; *Walker v. Ohio State Univ. Bd. of Trustees*, 2010-Ohio-373, ¶ 22-27 (10th Dist.) (a person is "aggrieved by" a violation of R.C. 149.351(A) when (1) the person has a legal right to disclosure of a record of a public office, and (2) the disposal of the record, not permitted by law, allegedly infringes the right); *see also State ex rel. Verhovec v. Uhrichsville*, 2014-Ohio-4848 (5th Dist.) (finding requester did not demonstrate actual interest in records).

[952] R.C. 149.351(B)(1).

[953] R.C. 149.351(B)(2).

[954] *Rhodes v. New Philadelphia*, 2011-Ohio-3279, ¶ 16; *Arnold v. Columbus*, 2015-Ohio-4873, ¶ 71-72 (10th Dist.); *Walker v. Ohio State Univ. Bd. of Trustees*, 2010-Ohio-373, ¶ 22-27 (10th Dist.); *State ex rel. Todd v. Canfield*, 2014-Ohio-569, ¶ 22 (7th Dist.).

[955] R.C. 149.351(C); *Rhodes v. New Philadelphia*, 2011-Ohio-3279; *Mentch v. Cuyahoga Cty. Pub. Lib. Bd.*, 2018-Ohio-1398, ¶ 78 (8th Dist.) (requester was not aggrieved when she made request "with the goal of challenging and/or reversing [a public office's decision], or in the alternative, to prove the nonexistence of the records"); *State ex rel. Verhovec v. Marietta*, 2013-Ohio-5415, ¶ 48 (4th Dist.) (when evidence showed that requester's intent was pecuniary, requester was not aggrieved and not entitled to civil forfeiture).

[956] R.C. 149.351(C)(2).

[957] R.C. 149.351(B).

[958] *State ex rel. Crenshaw v. King,* 2021-Ohio-4433, ¶ 7-12.

[959] *State ex rel. Crenshaw v. King,* 2021-Ohio-4433, ¶ 14-17.

[960] R.C. 149.351(E).

[961] *Snodgrass v. Mayfield Hts.*, 2008-Ohio-5095, ¶ 18 (8th Dist.); *State ex rel. Doe v. Register*, 2009-Ohio-2448, ¶ 30 (12th Dist.).

[962] R.C. 149.351(D).

[963] *Kish v. Akron*, 2006-Ohio-1244, ¶ 25-44; *see also Cwynar v. Jackson Twp. Bd. of Trustees*, 2008-Ohio-5011 (5th Dist.).

[964] R.C. 149.351(B)(1)-(2).

[965] *Cwynar v. Jackson Twp. Bd. of Trustees*, 2008-Ohio-5011, ¶ 56 (5th Dist.).

[966] R.C. 149.351(B)(2).

[967] R.C. 149.33; 149.351. Within one year after their date of creation or receipt, a public office must schedule all records for disposition or retention in the way prescribed by applicable law and procedures. R.C. 149.34.

[968] R.C. 149.34(C).

[969] R.C. 149.43(E)(2); R.C. 109.43(E). The Attorney General's Office Model Policy is available at: https://www.ohioattorneygeneral.gov/Files/Government-Entities/Model-Public-Records-Policy.aspx.

[970] R.C. 149.43(E)(2).
[971] R.C. 149.43(E)(2).
[972] R.C. 109.43(G).
[973] R.C. 149.43(B)(7)(a). In addition, a public office may adopt policies and procedures it will follow in transmitting copies by U.S. mail or other means of delivery or transmission, but adopting such policies and procedures is deemed to create an enforceable duty on the office to comply with them. R.C. 149.43(B)(7)(b).
[974] R.C. 149.43(E)(2).
[975] R.C. 109.43(B)
[976] R.C. 109.43(A)(2).
[977] R.C. 109.43(A)(3); R.C. 109.43(B).
[978] R.C.109.43(A)(2)-(3).
[979] R.C. 109.43(A)(1). R.C. 109.43(A)(1) does not define "appropriate."
[980] R.C. 109.43(G).
[981] R.C. 109.43(B)-(D).
[982] R.C. 109.43(C). While the Attorney General's Office may not charge a registration fee to attend the training programs it conducts, outside public or private entities that contract with the Attorney General's Office to conduct the training programs may charge a registration fee.

Overview of the Ohio Open Meetings Act

What is a “public body”?

- A “public body” is a decision-making body at any level of government.
- A public body may include the committees or subcommittees of a public body, even if these committees do not make the final decisions of the public body.

What is a “meeting”?

- A “meeting” is (1) a prearranged gathering, (2) of a majority of the members of the public body, (3) who are discussing or deliberating public business.
- A meeting does not have to be called a “meeting” for the OMA requirements to apply — if the three elements above are present, the requirements apply even if the gathering is called a “work session,” “retreat,” etc.

What is “discussion” or “deliberation” of public business?

- “Discussion” is an exchange of words, comments, or ideas.
- “Deliberation” is the weighing and examination of reasons for and against taking a course of action.
- “Discussion” or “deliberation” does not generally include information-gathering, attending presentations, or isolated conversations between employees.

What are the duties of a public body if the OMA applies?

- A public body must give proper notice of its meetings.
  - For regular meetings, notice must include the time and place of the meeting. For all other meetings — special and emergency meetings — notice must include the time, place, and purpose of the meeting.
  - For regular meetings of a public body that is authorized to hold meetings via video conference or other electronic means, at least 72-hours notice must be given and notice must include the time, place, purpose, and how the meeting will be conducted.
- A public body must make all meetings open to the public. Secret ballots, whispering of public business, and serial meetings or discussions are all prohibited under the openness requirement.
- A public body must keep and maintain meeting minutes. Minutes must be (1) promptly prepared, (2) filed, (3) maintained, and (4) open to the public. Minutes do not need to be verbatim transcripts but have enough detail to allow the public to understand and appreciate the rationale behind a public body’s decisions.

What are the requirements for an “executive session”?

- Proper procedure must be followed to move into an executive session, including a motion, second, and roll call vote in an open session.
- Discussion in an executive session must be limited to one of the proper topics listed in the OMA.

The Ohio Open Meetings Act

The Open Meetings Act requires public bodies to take official action and conduct all deliberations of official business in open meetings that the public may attend and watch. Public bodies must provide advance notice to the public of when and where each meeting will take place and, in the case of special meetings, the specific topics that the public body will discuss. The public body must take full and accurate minutes of all meetings and make these minutes available to the public, except in the case of permissible executive sessions.

Executive sessions are closed-door sessions convened by a public body, after a roll call vote, and attended by only the members of the public body and people they invite. A public body may hold an executive session only for a few specific purposes, which are listed in the law. Further, no vote or other decision-making on the matter(s) discussed may take place during the executive session.

Like the Public Records Act, the Ohio General Assembly enacted the Open Meetings Act as a "self-help" statute, which means that the people enforce the law themselves. If a person believes that a public body violated the Open Meetings Act, the person can file a lawsuit against the public body, either on his or her own or through a private attorney. There is no public entity — including the Ohio Attorney General's Office — that has the authority to enforce the Open Meetings Act.

A person may file an action in a common pleas court to compel the public body to obey the Open Meetings Act. If the court issues an injunction, the public body must correct its actions and pay court costs, a fine of $500, and reasonable attorney fees subject to possible reduction by the court. If the court does not issue an injunction, and the court finds the lawsuit was frivolous, it may order the person who filed the suit to pay the public body's court costs and reasonable attorney fees. Any formal action of a public body that did not take place in an open meeting, which resulted from deliberations in a meeting improperly closed to the public, or that was adopted at a meeting not properly noticed to the public is invalid. A member of a public body who violates an injunction imposed for a violation of the Open Meetings Act may be subject to removal from office.

Like the Public Records Act, the Open Meetings Act is intended to be read broadly in favor of openness. However, while they share an underlying intent, the terms and definitions in the two laws are not interchangeable: the Public Records Act applies to the *records of public offices*; the Open Meetings Act addresses *meetings of public bodies*.

A Note about Case Law

When the Supreme Court of Ohio issues a decision interpreting a statute, that decision must be followed by all lower Ohio courts. Supreme Court decisions involving the Public Records Act are plentiful because a person may file a public records lawsuit at any level of the judicial system and often will choose to file in the court of appeals, or directly with the Supreme Court. By contrast, a lawsuit to enforce the Open Meetings Act must be filed in a county court of common pleas. While the losing party often appeals a court's decision, common pleas appeals are not guaranteed to reach the Supreme Court and rarely do. Consequently, many cases interpreting the Open Meetings Act come from courts of appeals, whose opinions are binding only on lower courts within its district, but they may be cited for the persuasive value of their reasoning in cases filed in other districts.

VIII. Chapter Eight: “Public Body” and “Meeting” Defined

Only entities that meet the definition of “public body” are subject to the Open Meetings Act. The Open Meetings Act requires “public bodies” to conduct their business in “meetings” that are open to the public. A “meeting” is any prearranged gathering of a public body by a majority of its members to discuss public business.[983]

A. “Public Body”

1. Statutory definition – R.C. 121.22(B)(1)

The Open Meetings Act defines a “public body” as 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;[984]

b. Any committee or subcommittee thereof;[985] or

c. A court[986] 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 or for any other matter related to such a district other than litigation involving the district.[987]

“Public body” under the Open Meetings Act has a different meaning and application than “public office” under the Public Records Act. An entity that is a “public body” that must comply with the Open Meetings Act may not also be a “public office” that must comply with the Public Records Act.[988]

2. Identifying public bodies

The term “public body” applies to many different decision-making bodies at the state and local level. A statute may specifically identify an entity as a “public body”, or it may state that an entity is not subject to the Open Meetings Act. Otherwise, courts will apply several factors to decide what constitutes a “public body,” including:

- The way the entity was created;[989]
- The name or official title of the entity;[990]
- The membership composition of the entity;[991]
- Whether the entity engages in decision-making;[992] and
- Who the entity advises or to whom it reports.[993]

3. Applying the definition of “public body”

Using the above factors, some courts of appeals have held that the following entities are public bodies:

- A selection committee established on a temporary basis by a state agency for the purpose of evaluating responses to a request for proposals and making a recommendation to a commission.[994]
- An urban design review board that provided advice and recommendations to the city manager and city council about land development.[995]

- A board of hospital governors of a joint township district hospital.[996]
- A citizens' advisory committee of a county children services board.[997]
- A board of directors of a county agricultural society.[998]

Courts have found that the Open Meetings Act does not apply to individual public *officials* (as opposed to public *bodies*) or to meetings held by individual officials.[999] Moreover, if an individual public official creates a group solely pursuant to his or her executive authority or as a delegation of that authority, the Open Meetings Act probably does not apply to the group's gatherings.[1000]

However, at least one court decided that a selection committee whose members were appointed by the chair of a public body, not by formal action of the body, is nevertheless a public body and subject to the Open Meetings Act.[1001]

Some private entities are considered "public bodies" for purposes of the Open Meetings Act.[1002]

4. Public bodies that are *never* subject to the Open Meetings Act:

- The Ohio General Assembly;[1003]
- Grand juries;[1004]
- An audit conference conducted by the State Auditor or independent certified public accountants with officials of the public office that is the subject of the audit;[1005]
- The Organized Crime Investigations Commission;[1006]
- County child fatality review boards or state-level reviews of deaths of children;[1007]
- The board of directors of JobsOhio Corp., or any committee thereof, and the board of directors of any subsidiary of JobsOhio Corp., or any committee thereof;[1008]
- An audit conference conducted by the audit staff of the Department of Job and Family Services with officials of the public office that is the subject of that audit under R.C. 5101.37;[1009]
- Fatality- or mortality-review boards established under R.C. 3738.01, 3707.071, 307.631, 307.641, and 307.651;[1010] and
- A nonprofit agency that has received an endorsement under section R.C. 122.69 to be designated as a community action agency.[1011]

5. Public bodies that are *sometimes* subject to the Open Meetings Act:

a. Public bodies meeting for specific purposes

Some public bodies are not subject to the Open Meetings Act when they meet for specific reasons, including:

- The Adult Parole Authority, when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine pardon or parole;[1012]
- The State Medical Board,[1013] the State Board of Nursing,[1014] the State Chiropractic Board[1015] when determining whether to suspend a license or certificate without a prior hearing;[1016]
- The State Board of Pharmacy when determining whether to suspend a license, certification, or registration without a prior hearing (including during meetings conducted by telephone

conference);[1017] or when determining whether to restrict a person from obtaining further information from the drug database without a hearing;[1018]

- The Emergency Response Commission's executive committee when meeting to determine whether to issue an enforcement order or bring an enforcement action;[1019]
- The Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board when determining whether to suspend a practitioner's license without a hearing;[1020] and
- Nonprofit corporations that created a special improvement district under R.C. 1710 when the corporation is not discussing business relating the purpose for which the improvement district was created.[1021]

b. Public bodies handling specific business

When meeting to consider "whether to grant assistance for purposes of community or economic development," certain public bodies may conduct meetings that are not open to the public. Specifically, the Controlling Board, the Tax Credit Authority, and the Minority Development Financing Advisory Board may close their meetings by *unanimous* vote of the members present to protect the interest of the applicant or the possible investment of public funds.[1022]

The meetings of these three bodies may only be closed "during consideration of the following information confidentially received … from the applicant:"

- Marketing plans;
- Specific business strategy;
- Production techniques and trade secrets;
- Financial projections; and
- Personal financial statements of the applicant or the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.[1023]

In addition, the board of directors of a community improvement corporation, when acting as an agent of a political subdivision, may close a meeting by *majority* vote of all members present during consideration of non-public record information set out in R.C. 1724.11(A).[1024]

B. "Meeting"

1. Definition

The Open Meetings Act requires members of a public body to take official action, conduct deliberations, and discuss the public business in an open meeting, unless the subject matter is specifically exempted by law.[1025] The Act defines a "meeting" as: (1) a prearranged gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business.[1026]

a. Prearranged

The Open Meetings Act governs prearranged discussions,[1027] but it does not prohibit unplanned encounters between members of public bodies, such as hallway discussions. One court held that neither an unsolicited and unexpected email sent from one board member to other board members, nor a spontaneous one-on-one telephone conversation between two members of a five-

member board was a prearranged meeting.[1028] In another case, the court held that two members of a three-member commission did not have a prearranged meeting when one member came to the office of another and had an impromptu discussion.[1029] However, the "prearranged" element does not require the parties to participate at the same time, and a series of emails exchanged among a majority of board members can constitute a "prearranged gathering" even when the emails started with one board member sending an unsolicited email to other board members.[1030]

b. Majority of members

The requirement that a gathering of a majority of the members of a public body constitutes a meeting applies to the public body as a whole and also to the separate memberships of all committees and subcommittees of that body.[1031] For example, if a council is comprised of seven members, four constitute a majority in determining whether the council as a whole is conducting a "meeting." If the council appoints a three-member finance committee, two of those members would constitute a majority of the finance committee.

i. Attending virtually, by teleconference, or other remote means — established for some public bodies under R.C. 121.221, or under statutes specific to certain public bodies

The Open Meetings Act does not authorize public bodies to meet or participate in meetings or hearings by videoconference, teleconference, or other remote, electronic means. Thus, the default rule under the Open Meetings Act is that members of a public body must be physically present at meetings or hearings for purposes of establishing quorum and voting. However, some public bodies can conduct administrative hearings and meetings by video conference or similar electronic technology through specific statutory authority.

First, R.C. 121.221 authorizes some public bodies to meet by video conference or via other electronic technology, subject to certain restrictions and conditions.[1032] R.C. 121.221 *does not* apply to bodies whose members are compensated for their position,[1033] or members of bodies who are elected by the general public.[1034] Thus, the law may not apply to township officials[1035] and councilmembers[1036] in non-chartered municipalities, among many other public bodies.

A public body cannot conduct a virtual hearing unless all parties to the hearing consent.[1037] When conducting a meeting or hearing by video conference or any other similar electronic technology, the public body must establish a means, using electronic equipment that is widely available to the general public, to talk to witnesses, receive testimony and physical evidence, and allow public comment, if applicable.[1038]

In addition, there are restrictions on the topics that public bodies can discuss if meeting remotely. Members of public bodies must be physically present if approving a major non-routine expenditure, a significant hiring decision, or to propose, approve, or vote on a tax issue or increase.[1039]

Before a public body can meet via electronic technology or other remote means, it must adopt a policy that includes the following policies:

- Except in an emergency, at least 72-hour notice will be given to the public, news media that have requested notice, and any parties required to be notified, including parties to hearings. The notice must include the time, location, agenda, and the way the meeting or hearing will be conducted.[1040]

- In the case of an emergency requiring immediate official action, the public body must immediately notify the news media, or parties required to be notified, of the time, place, and purpose of the meeting or hearing. [1041]
- The public must be able to access the meeting or hearing by livestreaming on the internet, television, cable, or public access channels or other similar electronic technology, which allows the public to see and hear all discussions and deliberations.[1042]
- All votes must be taken by roll call unless a unanimous consent motion is adopted.[1043]
- Members of the public body who will attend a meeting or hearing virtually must notify the chairperson not less than 48 hours before the meeting, except in the case of an emergency.[1044]
- A definition of "a major nonroutine expenditure" and "a significant hiring decision."[1045]
- If notified by the greater of at least 10% or two members of the public body that an agenda item must be acted upon at a meeting conducted fully in person, the public body can only act on the item at an in-person meeting.[1046]

If all conditions are met, members of the body attending by video conference are counted for determining whether a quorum is present and can vote on actions taken by the public body.[1047] And any rule, resolution, or formal action taken at such meeting or hearing has the same effect as if it has occurred at an in-person open meeting of the public body.[1048]

In addition to the authority granted in R.C. 121.221, some public bodies have statutes specific to them that allow meetings by video conference or other electronic technology.[1049] If another provision of the Revised Code permits a public body to meet or hold hearings by teleconference, video conference, or any other similar electronic technology, that provision prevails over the general provisions of R.C. 121.221 as to that particular public body.[1050]

As with all other provisions of the Open Meetings Act, public bodies should seek guidance from legal counsel for the body on how these laws apply to them.

ii. Serial "meetings"

Unless two members constitute a majority, isolated one-on-one conversations between individual members of a public body regarding its business, either in person or by telephone, do not violate the Open Meetings Act.[1051] However, a public body may not "circumvent the requirements of the statute by setting up back-to-back meetings of fewer than a majority of its members, with the same topics of public business discussed at each."[1052] Such conversations may be considered multiple parts of the same, improperly private, "meeting."[1053] Serial meetings may also occur over the telephone or through electronic communications, like email.[1054]

c. Discussing public business

With narrow exceptions, the Open Meetings Act requires the members of a public body to discuss and deliberate on official business only in open meetings.[1055] "Discussion" is the exchange of words, comments, or ideas by the members of a public body.[1056] "Deliberation" means the act of weighing and examining reasons for and against an action.[1057] One court described "deliberation" as a thorough discussion of all factors involved, a careful weighing of positive and negative factors, and a cautious consideration of the ramifications of the proposal, while gradually arriving at a

decision.[1058] Another court described the term as involving "a decisional analysis, i.e., an exchange of views on the facts in an attempt to reach a decision."[1059] Discussions of public business may also be conducted over any other media, such as the telephone, video conference, email, text, or tweet.[1060] In other words, just because a discussion did not occur in-person does not mean it is exempt from the requirements of the Open Meetings Act.

In evaluating whether a gathering of public officials constituted a "meeting," one court opined that the Open Meetings Act "is intended to apply to those situations where there has been actual formal action taken; to wit, formal *deliberations* concerning the public business."[1061] Under this analysis, courts have determined that gatherings strictly of an investigative and information-seeking nature that do not involve actual discussion or deliberation of public business are not "meetings" for purposes of the Open Meetings Act.[1062] More importantly, the Supreme Court of Ohio has not ruled on whether "investigative and informational" gatherings are or are not "meetings." Consequently, public bodies should seek guidance from their legal counsel about how such gatherings are viewed by the court of appeals in their district, before convening this kind of private gathering as something other than a regular or special meeting.

Some courts have distinguished "discussions" or "deliberations" that must take place in public from other exchanges among a majority of members at a prearranged gathering. These courts have opined that the following are not "meetings" subject to the Open Meetings Act:

- A question-and-answer session between board members, the public body's legal counsel, and others who were not public officials, was not a meeting because a majority of the board members did not engage in discussion or deliberation of public business *with one another*;[1063]
- Conversations among staff members employed by a city council;[1064]
- A presentation to a public body by its legal counsel when the public body receives legal advice,[1065] or when a public body requests a legal opinion from its counsel;[1066]and
- A press conference.[1067]

2. Applying the definition of "meeting"

If a gathering meets all three elements of the definition of a "meeting" — (1) a prearranged gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business — a court will consider it a "meeting" for the purposes of the Open Meetings Act. This is true regardless of whether the public body initiated the gathering itself or whether it was initiated by another entity. Further, if majorities of multiple public bodies attend one large meeting, a court may construe the gathering of each public body's majority of members as separate "meetings" of each public body.[1068]

a. Work sessions

A "meeting" by any other name is still a meeting. "Work retreats" or "workshops" are "meetings" when a public body discusses public business among a majority of the members of a public body at a prearranged time.[1069] When conducting any meeting, the public body must comply with its obligations under the Open Meetings Act: openness, notice, and minutes.[1070]

b. Quasi-judicial proceedings

Public bodies whose responsibilities include adjudicative duties, such as boards of tax appeals and state professional licensing boards, are considered "quasi-judicial." The Supreme Court of Ohio has determined that public bodies conducting quasi-judicial hearings, "like all judicial bodies, [require] privacy to deliberate, i.e., to evaluate and resolve, the disputes."[1071] Quasi-

judicial proceedings and the deliberations of public bodies when acting in their quasi-judicial capacities are not "meetings" and are not subject to the Open Meetings Act.[1072] Accordingly, when a public body is acting in its quasi-judicial capacity, the public body does not have to vote publicly to adjourn for deliberations or to take action following those deliberations.[1073]

c. County political party central committees

The convening of a county political party central committee to conduct purely internal party affairs, unrelated to the committee's duties of making appointments to vacated public offices, is not a "meeting" as defined by the Open Meetings Act. Thus, the Act does not apply to such a gathering.[1074]

d. Collective bargaining

Collective bargaining meetings between public employers and employee organizations are private and are not subject to the Open Meetings Act.[1075]

Notes:

---

[983] R.C. 121.22(B)(2).

[984] R.C. 121.22(B)(1)(a).

[985] R.C. 121.22(B)(1)(b); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001) (the Open Meetings Act applies to "any committee or subcommittee of a legislative authority of a political subdivision, *e.g.*, a village council, as a 'public body' for purposes of the Sunshine Law, so that the council's personnel and finance committees constitute public bodies in that context"); *State ex rel. Maynard v. Medina Cty. Facilities Taskforce Subcommt.*, 2020-Ohio-5561, ¶ 18-20 (9th Dist.) (subcommittee can be sued for Open Meetings Act violation even if not a "decision-making body" with "decision-making authority").

[986] Except for sanitation courts, the definition of "public body" does not include courts. *See Walker v. Muskingum Watershed Conservancy Dist.*, 2008-Ohio-4060, ¶ 27 (5th Dist.). Note that R.C. 121.22(G) prohibits executive sessions for sanitation courts.

[987] R.C. 121.22(B)(1)(c).

[988] "[The Supreme Court of Ohio has] never expressly held that once an entity qualifies as a public body for purposes of R.C. 121.22, it is also a public office for purposes of R.C. 149.011(A) and 149.43 so as to make all of its nonexempt records subject to disclosure. In fact, R.C. 121.22 suggests otherwise because it contains separate definitions for 'public body,' R.C. 121.22(B)(1), and 'public office,' R.C. 121.22(B)(4), which provides that '[p]ublic office' has the same meaning as in section 149.011 of the Revised Code.' Had the General Assembly intended that a 'public body' for the purposes of R.C. 121.22 be considered a 'public office' for purposes of R.C. 149.011(A) and 149.43, it would have so provided." *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 2011-Ohio-625, ¶ 38.

[989] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (selection committee established by Ohio Rail Development Commission was a "public body" under the Open Meetings Act because it made decisions and advised the commission; that the selection committee was created without formal action was immaterial); *State ex rel. Mohr v. Colerain Twp.*, 2022-Ohio-1109 (1st Dist.) (land-use planning committee created by a township's board of trustees was a "public body" under the Open Meetings Act because the committee's members were appointed to make recommendations for a land-use plan that the trustees had the power to approve; the committee's lack of formal decision-making power was not dispositive); *but see State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 2011-Ohio-625, ¶ 44 (groups formed by private entities to provide community input, not established by governmental entity, and to which no government duties or authority have been delegated, were not "public bodies"); *State ex rel. Massie v. Lake Cty. Bd. of Commrs.*, 2021-Ohio-786, ¶ 41 (11th Dist.) (county visitor's bureau, a non-profit corporation, was not a public body because it was not established by statute and its authority was independent from any government entity).

[990] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (in finding that a selection committee was a "public body," it was relevant that the entity was called a "committee," a term included in the definition of a "public body" in R.C. 121.22); *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 103 (3d Dist. 1985) (finding relevant that the name of the entity is one of the public body titles listed in R.C. 121.22(B)(1), *i.e.*, Board of Hospital Governors).

[991] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding relevant that commissioners of the parent Ohio Rail Development Commission comprised a majority of a selection committee's membership).

[992] *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (tasks such as making recommendations and advising involve decision-making); *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (whether urban design review board, comprised of a group of architectural consultants for the city, had ultimate authority to decide matters was not controlling because the board actually made decisions in the process of formulating its advice); *State ex rel. Mohr v. Colerain Twp.*, 2022-Ohio-1109 (1st Dist.) (land-use planning committee's lack of formal decision-making power was not dispositive because it made recommendations and advised other public bodies, which necessitated making decisions); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (selection committee made

decisions in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission).

[993] *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (urban design review board that advised not only the city manager, but also the city council, a public body).

[994] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding relevant that the group was called a "committee," a term included in the definition of a "public body" in R.C. 121.22; that a majority of the selection committee's members were commissioners of the commission itself; that the selection committee made decisions in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission (a public body); that the selection committee was established by the committee without formal action is immaterial).

[995] *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (whether an urban design review board, comprised of a group of architectural consultants for the city, had ultimate authority to decide matters was not controlling, as the board actually made decisions in the process of formulating its advice; the board advised not only the city manager, but also the city council, a public body); *State ex rel. Mohr v. Colerain Twp*., 2022-Ohio-1109 (1st Dist.) (a land-use planning committee created by a township's board of trustees was a "public body" even though it had no formal decision-making power, because it was a subcommittee to which the trustees referred business- and because it made recommendations and advised other public bodies, which necessitated making decisions).

[996] *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 102-03 (3d Dist. 1985) (the Board of Governors of a joint township hospital fell within the definition of "public body" because this definition includes "boards"; the board made decisions essential to the construction and equipping of a general hospital; and the board was of a "township" or of a "local public institution" because it existed by virtue of authority granted by the legislature for the creation of joint township hospital facilities).

[997] *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (committee was a public body because the subject matter of the committee's operations is the public business, each of its duties involves decisions, and the committee by law elects a chairman who serves as an *ex officio* voting member of the children services board, which involves decision-making).

[998] 1992 Ohio Atty.Gen.Ops. No. 078.

[999] *Smith v. Cleveland*, 94 Ohio App.3d 780, 784-785 (8th Dist. 1994) (city safety director is not a public body and may conduct disciplinary hearings without following the Open Meetings Act).

[1000] *Beacon Journal Publishing Co. v. Akron*, 3 Ohio St.2d 191 (1965) (boards, commissions, committees, etc., created by executive order of the mayor and chief administrator without the advice and consent of city council were not subject to the Open Meetings Act); *eFunds v. Ohio Dept. of Job & Family Serv.*, Franklin C.P. No. 05CVH09-10276 (2006) (an "evaluation committee" of government employees under the authority of a state agency administrator is not a public body); 1994 Ohio Atty.Gen.Ops. No. 096 (when a committee of private citizens and various public officers or employees is established solely pursuant to the executive authority of the administrator of a general health district for the purpose of providing advice pertaining to the administration of a grant, and establishment of the committee is not required or authorized by the grant or board action, committee is not a public body and not subject to the Open Meetings Act).

[1001] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460 (10th Dist. 2001).

[1002] *Thomas v. White,* 85 Ohio App.3d 410 (9th Dist. 1992) (citizens advisory committee that makes recommendations to a county children services board was public body); 1995 Ohio Atty.Gen.Ops. No. 001 (a PASSPORT administrative agency operated by a private not-for-profit corporation was public body. *But see State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Of Commrs.*, 2011-Ohio-625, ¶ 44 (groups formed by private entities to provide community input, not established by governmental entity, and to which no government duties or authority have been delegated, were not "public bodies"); *State ex rel. Massie v. Lake Couty Bd. Of Commrs*., 2021-Ohio-786, ¶ 36-37 (11th Dist.) (county visitor's bureau, a non-profit corporation, was not a public body because it was not established by statute and its authority was independent from any government entity).

[1003] While the Open Meetings Act does not apply to the General Assembly as a whole, legislative committees are required to follow the guidelines set forth in the General Assembly's own open meetings law (R.C. 101.15), which requires committee meetings to be open to the public and that minutes of those meetings

be made available for public inspection. Like the Open Meetings Act, the legislature's open meetings law includes some exemptions. For example, the law does not apply to meetings of the Joint Legislative Ethics Committee, other than those meetings specified in the law (R.C. 101.15(F)(1)), or to meetings of a political party caucus (R.C. 101.15(F)(2)).

[1004] R.C. 121.22(D)(1).

[1005] R.C. 121.22(D)(2).

[1006] R.C. 121.22(D)(4).

[1007] R.C. 121.22(D)(5).

[1008] R.C. 121.22(D)(11).

[1009] R.C. 121.22(D)(12).

[1010] R.C. 121.22(D)(16)-(19), (21).

[1011] R.C. 121.22(D)(22).

[1012] R.C. 121.22(D)(3).

[1013] R.C. 4730.25(G); R.C. 4731.22(G).

[1014] R.C. 4723.281(B).

[1015] R.C. 4734.37.

[1016] R.C. 121.22(D)(6)-(7), (9).

[1017] R.C. 121.22(D)(8)(a); R.C. 4729.16(D); R.C. 3796.14(B); R.C. 4752.09(C); R.C.3719.121(B).

[1018] R.C. 121.22(D)(8)(b); R.C. 4729.75; R.C. 4729.86(C).

[1019] R.C. 121.22(D)(10).

[1020] R.C. 121.22(D)(13)-(15); R.C. 4755.11; R.C. 4755.47; R.C. 4755.64.

[1021] R.C. 121.22(D)(20).

[1022] R.C. 121.22(E).

[1023] R.C. 121.22(E)(1)-(5).

[1024] R.C. 1724.11(B)(1) (providing that the board, committee, or subcommittee shall consider no other information during the closed session).

[1025] R.C. 121.22(A), (B)(2), (C).

[1026] R.C. 121.22(B)(2).

[1027] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544 (1996) (back-to-back, prearranged discussions of city council members form a "majority," but clarifying that the Open Meetings Act does not prohibit impromptu meetings between council members or prearranged member-to-member discussion).

[1028] *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 2005-Ohio-3489, ¶ 7 (1st Dist.).

[1029] *State ex rel. Ames v. Portage Cty. Bd. of Commrs*., 2024-Ohio-146, ¶ 32-33 (11th Dist.).

[1030] *White v. King*, 2016-Ohio-2770, ¶ 15-20.

[1031] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001).

[1032] R.C. 121.221.

[1033] R.C. 121.221(B)(5)(a)(iv).

[1034] R.C. 121.221(B)(5)(a)(v). The prohibition on compensated and elected members holding or attending virtual meetings and hearings does not apply to members participating in a virtual multi-party meeting if the meeting does not involve a vote to approve a major nonroutine expenditure or significant hiring decision or involve a purpose to propose, approve, or vote on a tax issue or tax increase. R.C. 121.221(B)(5)(b).

[1035] R.C. 3513.253.

[1036] R.C. 3513.251.

[1037] R.C. 121.221(B)(4).

[1038] R.C. 121.221(C).

[1039] R.C. 121.221(B)(5)(a)(i) – (iii).

[1040] R.C. 121.221 (B)(3)(a).

[1041] R.C. 121.221 (B)(3)(a).
[1042] R.C. 121.221 (B)(3)(b).
[1043] R.C. 121.221(B)(3)(c).
[1044] R.C. 121.221(B)(3)(d).
[1045] R.C. 121.221(B)(e)(i) & (2).
[1046] R.C. 121.221 (B)(3)(f).
[1047] R.C. 121.221(B)(2).
[1048] R.C. 121.221(B)(1).
[1049] The following are examples of public bodies that have statutory authority to conduct meetings via teleconference, videoconference, or other remote means: R.C. 145.071 (public employees retirement board); R.C. 308.051 (board of trustees of a regional airport authority); R.C. 339.02 (board of county hospital trustees); R.C. 715.693 (boards of directors of joint economic development zones, joint economic development review councils, and joint economic development districts); R.C. 742.071 (Ohio police and fire pension fund board); R.C. 3309.091 (school employees retirement board); R.C. 940.39(B) (board of supervisors of a soil and water conservation district); R.C. 3307.091 (State Teachers Retirement Board); R.C. 3316.05(K) (school district financial planning and supervision commission); R.C. 3345.82 (board of trustees of a state institution of higher education); R.C. 4517.35 (motor vehicle dealers board); R.C. 4582.60(A) (board of directors of a port authority); R.C. 4772.05(C)(3) (advisory committee on certified mental health assistant programs); R.C. 5123.35(F) (developmental disabilities council); R.C. 5126.0223 (county board of developmental disabilities); R.C. 5505.04(A)(2)(b) — (e) (state highway patrol retirement board); R.C. 6133.041(A) (joint board of county commissioners of joint county ditches).
[1050] R.C. 121.221(D). *See also* R.C. 1.51 (as a general rule of statutory interpretation, a special provision "prevails as an exception to the general provision").
[1051] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544 (1996) ("[The Open Meetings Act] does not prohibit member-to-member prearranged discussions."); *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 2005-Ohio-3489, ¶ 11 (1st Dist.) (a spontaneous telephone call from one board member to another to discuss election politics, not school board business, did not violate the Open Meetings Act).
[1052] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 543 (1996) (city council members had a "meeting" for purposes of the Open Meetings Act when it held back-to-back, prearranged discussions of public business).
[1053] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 542-44 (1996) (noting the purpose of the Open Meetings Act is to prevent a game of "musical chairs" in which elected officials contrive to meet secretly to deliberate on public issues without accountability to the public); *State ex rel. Floyd v. Rock Hill Local School Bd. of Edn.*, 1988 Ohio App. LEXIS 471, *4, 13-16 (4th Dist. Feb. 10, 1988) (school board president improperly discussed and deliberated dismissal of principal with other board members in multiple one-on-one conversations, and came to next meeting with letter of non-renewal ready for superintendent to deliver to principal, which the board voted to approve without discussion); *but see* *Wilkins v. Harrisburg*, 2013-Ohio-2751 (10th Dist.) (two presentations were not serial meetings when the gatherings were separated by two months, the presentations were discussed at regularly scheduled meetings, and a regularly scheduled meeting was held between the two presentations).
[1054] *White v. King*, 2016-Ohio-2770, ¶ 16-18.
[1055] R.C. 121.22(A), (B)(2), (C).
[1056] *DeVere v. Miami Univ. Bd. of Trustees*, 1986 Ohio App. LEXIS 7171, *10 (12th Dist. June 10, 1986) (no discussion of public business when board president simply conveyed information to the board and there was no exchange of words, comments, or ideas).
[1057] *State ex rel. Mohr v. Colerain Twp*., 2022-Ohio-1109, ¶ 39 (1st Dist.).
[1058] *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees,* 2019-Ohio-5311, ¶ 13-15 (11th Dist.)
[1059] *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 2005-Ohio-2868, ¶ 14 (4th Dist.).
[1060] *White v. King*, 2016-Ohio-2770, ¶ 16; *State ex rel. Mohr v. Colerain Twp*., 2022-Ohio-1109, ¶ 39 (1st Dist.)

[1061] *Holeski v. Lawrence*, 85 Ohio App.3d 824, 829 (11th Dist. 1993).

[1062] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2018-Ohio-2888, ¶ 25 (11th Dist.) (no deliberations occurred when the evidence established that the public body convened for informational purposes, and the members did not "exchange[] any ideas amongst one another"); *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 2005-Ohio-2868, ¶ 14-18 (4th Dist.) (a board may gather information on proposed school district in private, but it cannot deliberate privately in the absence of specifically authorized purposes); *State ex rel. Massie v. Lake County Bd. Of Commrs.,* 2021-Ohio-786, ¶ 27 (11th Dist.) (evidence supported finding that commission members' gathering was for information-seeking and was not a "meeting" under the Open Meetings Act); *State ex rel. Kovoor v. Trumbull Cty. Bd. of Elections,* 2023-Ohio-2256, ¶ 33 (11th Dist.) (board's request for a legal opinion from the prosecutor constituted information-gathering).

[1063] *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 2011-Ohio-703 (1st Dist.) (a non-public information-gathering investigative session with legal counsel was not a "meeting" under the Open Meetings Act because board members did not deliberate or discuss public business).

[1064] *Kandell v. City Council of Kent*, 1991 Ohio App. LEXIS 3640 (11th Dist. Aug. 2, 1991).

[1065] *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 2011-Ohio-703 (1st Dist.).

[1066] *State ex rel. Kovoor v. Trumbull Cty. Bd. of Elections*, 2023-Ohio-2256, ¶ 29-33 (11th Dist.).

[1067] *Holeski v. Lawrence*, 85 Ohio App.3d 824 (11th Dist. 1993).

[1068] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *State ex rel. Wengerd v. Baughman Twp. Bd. of Trustees*, 2014-Ohio-4749 (9th Dist.)

[1069] *State ex rel. Singh v. Schoenfeld*, 1993 Ohio App. LEXIS 2409 (10th Dist. May 4, 1993).

[1070] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990).

[1071] *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998).

[1072] *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998) ("[T]he Sunshine Law does not apply to adjudications of disputes in quasi-judicial proceedings, such as the [Board of Tax Appeals]."); *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 2010-Ohio-2167, ¶ 32 (board of elections proceeding determining whether to remove a candidate from the ballot was a quasi-judicial proceeding and the Open Meetings Act did not apply); *Pennell v. Brown Twp.*, 2016-Ohio-2652, ¶ 34-37 (5th Dist.) (board of zoning appeals hearing was quasi-judicial and Open Meetings Act did not apply); *Wightman v. Ohio Real Estate Comm.*, 2017-Ohio-756, ¶ 26 (10th Dist.) (state professional licensing board was quasi-judicial and Open Meetings Act did not apply); *Surber v. Hines,* 2024-Ohio-95, ¶ 14 (2d Dist.) (because an adjudicatory proceeding before board of zoning appeals is quasi-judicial in nature, its members' deliberations, *both before and after the commencement of the hearing*, are not subject to the Open Meetings Act).

[1073] *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 2010-Ohio-2167 (because the Open Meetings Act did not apply to the elections board's quasi-judicial proceeding, there was no violation in failing to publicly vote on whether to adjourn the public hearing to deliberate, and failing to publicly vote on the matters at issue following deliberations); *In re Application for Additional Use of Property v. Allen Twp. Zoning Bd. of Appeals*, 2013-Ohio-722, ¶ 15 (6th Dist.) (board of zoning appeals was acting in its quasi-judicial capacity in reviewing applications for conditional use); *Beachland Ents., Inc. v. Cleveland Bd. of Rev.*, 2013-Ohio-5585, ¶ 44-46 (8th Dist.) (board of review was acting in quasi-judicial capacity in adjudicating tax dispute between the city commissioner of assessments and licenses and the taxpayer); *Electronic Classroom of Tomorrow v. Ohio State Bd. of Edn.*, 2018-Ohio-716, ¶ 20-28 (10th Dist.) (consideration of hearing officer's recommendation was a quasi-judicial function); *Howard v. Ohio State Racing Comm.,* 2019-Ohio-4013, ¶ 46 (10th Dist.) (Ohio State Racing Commission not required to deliberate in public because meetings were quasi-judicial); *Nosse v. Kirtland,* 2022-Ohio-4161, ¶ 28 (11th Dist.) (public hearing on police chief's removal was a quasi-judicial proceeding).

[1074] 1980 Ohio Atty.Gen.Ops. No. 083; *see also* *Jones v. Geauga Cty. Republican Party Cent. Commt.*, 2017-Ohio-2930, ¶ 35 (11th Dist.) (meeting concerned purely internal affairs, not public business, thus not subject to Open Meetings Act); *State ex rel. Ames v. Geauga Cty. Republican Cent. & Executive Commts.,* 2021-Ohio-2888. ¶ 7, 73-74 (11th Dist.) (Open Meetings Act does not apply to meeting of county political party committee when purpose of the meeting is to make a recommendation to the Secretary of State on filling vacancy on county board of elections); *Ames v. Geauga Cty. Republican Cent. Commt.*, 2023-Ohio-

3689, ¶ 34 (11th Dist.) (Open Meetings Act does not apply to meeting of county political party committee when purpose of the meeting is the election of the party's officers).

[1075] R.C. 4117.21; *see also Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emps.*, 106 Ohio App.3d 855, 869 (9th Dist. 1995) (R.C. 4117.21 manifests a legislative interest in protecting the privacy of the collective bargaining process); *Back v. Madison Local School Dist. Bd. of Edn.*, 2007-Ohio-4218, ¶ 6-10 (12th Dist.) (school board's consideration of a proposed collective bargaining agreement with teachers was properly held in a closed session; collective bargaining meetings are exempt from Open Meetings Act requirements under RC. 4117.21).

IX. Chapter Nine: Duties of a Public Body

The Open Meetings Act requires public bodies to provide: (A) openness, (B) notice, and (C) minutes.

A. Openness

The Open Meetings Act requires that all meetings of a public body are always open to the public.[1076] The General Assembly mandates that the Act be liberally construed to require that public officials take official action and "conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law."[1077] Executive sessions (discussed in Chapter Ten) are the only portions of open meetings from which the public can be excluded.

1. Where meetings may be held

A public body must conduct its meetings in a venue that is open to the public.[1078] Although the Open Meetings Act does not specifically address where a public body must hold meetings, some authority suggests that a public body must hold meetings in a public meeting place[1079] that is within the geographical jurisdiction of the public body.[1080] Clearly, a meeting is not "open" when the public body has locked the doors to the meeting facility.[1081]

Where space in the facility is too limited to accommodate all interested members of the public, closed-circuit television may be an acceptable alternative.[1082] Allowing members of the public to observe the meeting from the hall and through the open meeting door may also be acceptable.[1083] Federal law requires that a meeting place be accessible to individuals with disabilities.[1084]

2. Method of voting

Unless a particular statute requires a specific method of voting, the public cannot insist on a particular form of voting. For example, a statute requires that all votes taken in a virtual meeting must be taken by roll call vote unless there is unanimous consent.[1085]

If no statute is on point, the body may use its own discretion in determining the method it will use, such as voice vote, show of hands, or roll call.[1086] The Open Meetings Act only specifies the method of voting when a public body is adjourning into executive session by requiring that the vote for that purpose be by roll call.[1087] The Supreme Court of Ohio held that the Act precludes a public body from taking official action by way of secret ballot.[1088] Voting by secret ballot contradicts the openness requirement of the Open Meetings Act by hiding the decision-making process from public view.[1089]

Using a consent agenda whereby a public body votes on the entire agenda in a single motion and with a single vote may violate the Open Meetings Act if doing so constructively closes a public meeting, or otherwise acts as a way around the openness requirement of the Act.[1090] A public body is also prohibited from voting on a consent agenda when the public has no way of knowing all the items the consent agenda contains.[1091]

3. Right to hear but not to be heard or to disrupt

The public must be able to hear meetings of a public body. Thus, one court found that members of a public body who whispered and passed documents among themselves constructively closed that portion of their meeting by intentionally preventing the audience from hearing or knowing the business the body discussed.[1092] However, the Open Meetings Act does not provide (or prohibit) attendees the right to be heard at meetings. Other laws may apply to limit the restrictions the public body can place

on the public's ability to speak during meetings.[1093] Further, a disruptive person waives his or her right to attend meetings, and the body may remove that person from the meeting.[1094]

When a public body conducts a meeting by videoconference, the public must be able to always hear and see the public body.[1095]

4. Audio and video recording

A public body cannot prohibit the public from audio or video recording a public meeting.[1096] A public body may, however, establish reasonable rules regulating the use of recording 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.[1097]

B. Notice

Every public body must establish, by rule, a reasonable method for notifying the public in advance of its meetings.[1098] The public body's notice rule must provide for "notice that is consistent and actually reaches the public."[1099] The requirements for proper notice vary depending on the type of meeting a public body is conducting, as detailed in this section.

1. Types of meetings and notice requirements

a. Regular meetings

"Regular meetings" are those held at prescheduled intervals, such as monthly or annual meetings.[1100] A public body must establish, by rule, a reasonable method that allows the public to know the *time* and *place* of regular meetings.[1101]

b. Special meetings

A "special meeting" is any meeting other than a regular meeting.[1102] A public body must establish, by rule, a reasonable method that informs the public of the *time*, *place*, and *purpose* of special meetings[1103] and conforms with the following requirements:

- A public body must provide at least 24-hours advance notice of a special meeting to all media outlets that have requested such notification,[1104] except in the case of an emergency requiring immediate official action (see "Emergency meetings," below).
- When a public body holds a special meeting to discuss particular issues, the statement of the meeting's purpose must specifically indicate those issues, and the public body can only discuss those specified issues at that meeting.[1105] When a special meeting is simply a rescheduled "regular" meeting occurring at a different time, the statement of the meeting's purpose may be for "general purposes."[1106] Discussing matters at a special meeting that were not disclosed in the notice of purpose, either in open session or executive session, is a violation of the Open Meetings Act.[1107]

c. Emergency meetings

An emergency meeting is a type of special meeting that a public body convenes when a situation requires immediate official action.[1108] Rather than the 24-hours advance notice usually required, a public body scheduling an emergency meeting must *immediately* notify all media outlets that have specifically requested such notice of the time, place, and purpose of the emergency meeting.[1109] The purpose statement must comport with the specificity requirements discussed above.

d. Virtual meetings

A public body conducting a virtual meeting or hearing under R.C. 121.221 must notify the public, media that have requested to be notified, and any parties to a hearing at least 72 hours in advance of the meeting or hearing.[1110] The notice must include the time, location, agenda, and the way the meeting or hearing will be conducted.[1111]

2. Rules for giving notice

The Open Meetings Act requires every public body to adopt rules establishing reasonable methods to notify the public of the time and place of all regularly scheduled meetings, and the time, place, and purpose of all special meetings.[1112] A parent public body may impose its own notice rules on a subordinate committee. [1113]

Those rules must include a provision for any person, upon request and payment of a reasonable fee, to obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.[1114] The statute says that provisions for advance notification may include mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person requesting notice.[1115]

3. Notice by publication

Courts have found that publication of meeting information in a newspaper is one reasonable method of noticing the public of its meetings.[1116] This method, however, does not satisfy the notice requirement if the public body does not have a rule providing for it or if the newspaper has discretion not to publish the information.[1117] Courts have addressed situations in which the media misprints meeting information and have not found a violation of the notice requirement.[1118] Many public bodies that adopt some other means of notice by rule also notify their local media of all regular, special, and emergency meetings as a courtesy.

C. Minutes

1. Content of minutes

A public body must keep full and accurate minutes of its meetings.[1119] Minutes do not have to be a verbatim transcript of the proceedings, but must include enough facts and information for the public to understand and appreciate the *rationale* behind the public body's decisions.[1120] Thus, minutes must include more than a record of roll call votes.[1121] However, minutes may be sufficient even if information such as the date or location of the meeting is missing.[1122] Minutes are inadequate when they contain inaccuracies that are not corrected. [1123]A public body cannot rely on sources other than their approved minutes to argue that their minutes are a full and accurate record of their proceedings.[1124]

Because executive sessions are not open to the public, the meeting minutes need to reflect only the general subject matter of the executive session via the motion to convene the session for a permissible purpose or purposes (*see* "Executive Session" in Chapter Ten).[1125] Including details of members' pre-vote discussion following an executive session may prove helpful, though. At least one court found that the lack of pre-vote comments reflected by the minutes supported the conclusion that the public body's discussion of the pros and cons of the matter at issue must have improperly occurred during executive session.[1126]

2. Making minutes available "promptly" as a public record

A public body must promptly prepare, file, and make its minutes available for public inspection.[1127] The term "promptly" is not defined. One court has adopted the definition applied by courts to the Public Records Act (without delay and with reasonable speed, depending on the facts of each case), to define that term in the Open Meetings Act.[1128] The final version of the official minutes approved by members of the public body is a public record.[1129] A draft version of the meeting minutes that the public body circulates for approval,[1130] as well as the clerk's handwritten notes used to draft minutes,[1131] may also be public records.

3. Medium on which minutes are kept

Because neither the Open Meetings Act nor the Public Records Act addresses the medium on which a public body must keep the official meeting minutes, a public body may make this decision itself. Some public bodies document that choice by adopting a formal rule or by passing a resolution or motion at a meeting.[1132] Many public bodies make a contemporaneous audio recording of the meeting to use as a back-up in preparing written official minutes. The Ohio Attorney General has opined that such a recording constitutes a public record that the public body must make available for inspection upon request.[1133]

D. Modified Duties of Public Bodies under Special Circumstances

1. Declared emergency

During a declared emergency,[1134] R.C. 5502.24(B) provides a limited exemption to fulfilling the requirements of the Open Meetings Act. If, due to a declared emergency, it becomes "imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual place," the governing body may meet at an alternate site previously designated (by ordinance, resolution, or other manner) as the emergency location of government.[1135] Further, the public body may exercise its powers and functions in light of the exigencies of the emergency without regard to or compliance with time-consuming procedures and formalities of the Open Meetings Act.

2. Municipal charters

The Open Meetings Act applies to public bodies at both the state and local government level. However, because the Ohio Constitution permits "home rule" (self-government), municipalities may adopt a charter under which their local governments operate.[1136] A charter municipality has the right to determine by charter the way it will hold its meetings.[1137] Charter provisions take precedence over the Open Meetings Act when the two conflict.[1138] If a municipal charter includes specific guidelines regarding the conduct of meetings, the municipality must abide by those guidelines.[1139] In addition, 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.[1140]

Notes:

[1076] R.C. 121.22(C).

[1077] R.C. 121.22(A).

[1078] R.C. 121.22(C); *State ex rel. Randles v. Hill*, 66 Ohio St.3d 32, 35 (1993) (locking the doors to the meeting hall, whether or not intentional, is not an excuse for failing to comply with the requirement that meetings be open to the public); *Paridon v. Trumbull Cty. Children Servs. Bd.*, 2013-Ohio-881, ¶ 22 (11th Dist.) (a public body may limit the time, place, and means of access to its meetings, if the restrictions are content neutral and narrowly tailored to serve a significant governmental interest).

[1079] *Paridon v. Trumbull Cty. Children Servs. Bd.*, 2013-Ohio-881, ¶ 24 (11th Dist.) ("While [the Open Meetings Act] does not state where a public body must hold its public meetings, it has been held that the public body must use a public meeting place."); 1992 Ohio Atty.Gen.Ops. No. 032.

[1080] 1992 Ohio Atty.Gen.Ops. No. 032.

[1081] *Specht v. Finnegan*, 2002-Ohio-4660, ¶ 33-35 (6th Dist.).

[1082] *Wyse v. Rupp*, 1995 Ohio App. LEXIS 4008 (6th Dist. Sept. 15, 1995) (Ohio Turnpike Commission handled a large crowd reasonably and impartially when it aired the meeting via closed circuit television in an adjacent room).

[1083] *State ex rel. Ames v. Portage Cty. Bd. Of Commrs.*, 2024-Ohio-146, ¶ 37-39 (11th Dist.).

[1084] 42 U.S.C. 12101 (Americans with Disabilities Act of 1990, P.L. §§ 201-202) (providing that remedy for violating this requirement would be under the ADA and does not appear to have any ramifications for the public body under the Open Meetings Act).

[1085] R.C. 121.221(B)(3)(c), effective as of April 9, 2025.

[1086] *But see State ex rel. Roberts v. Snyder*, 149 Ohio St. 333, 335 (1948) (council had no authority to adopt a conflicting rule when enabling law limited council president's vote to solely in case of a tie; decided under statute that preceded enactment of Open Meetings Act).

[1087] R.C. 121.22(G).

[1088] *State ex rel. MORE Bratenahl v. Bratenahl,* 2019-Ohio-3233, ¶ 8-20; 2011 Ohio Atty.Gen.Ops. No. 038 (voting by secret ballot is contrary to the principles of seeing the workings of the government and holding government representatives accountable).

[1089] *State ex rel. MORE Bratenahl v. Bratenahl,* 2019-Ohio-3233, ¶ 15.

[1090]*State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2021-Ohio-2374, ¶ 19 (public body violated the Open Meetings Act when it approved multiple consent agendas in a single vote; use of a consent agenda in such a way "constructively closes its public meetings and is an impermissible end run around the Open Meetings Act"); *Ames v. Columbus City School Dist. Bd. Of Edn*., 2024-Ohio-3411, ¶ 21 (10th Dist.) (the Open Meetings Act does not require a public body to discuss every issue on which it votes, only that the public have meaningful access to the discussions that do take place).

[1091] *State ex rel. Ames v. Portage Cty. Bd. of Commrs*., 2021-Ohio-2374, ¶ 19; *Ames v. Columbus City School Dist. Bd. of Edn.*, 2024-Ohio-3411, ¶ 19—20 (10th Dist.) (a public body does not violate the Open Meetings Act by voting on items on a "consent agenda" as long as the public body disclosed the items on the consent agenda and board members had an opportunity to publicly discuss any item on the agenda).

[1092] *Manogg v. Stickle*, 1998 Ohio App. LEXIS 1961 (5th Dist. Apr. 8, 1998); But see *Petty v. Lorain*, 2024-Ohio-2110, ¶ 23-24 (9th Dist.) (complaint fails to state an Open Meetings Act claim absent an allegation that public business was being discussed by a majority of city council members who exchanged texts, emails, whispers, notes, and social media messages during meeting).

[1093] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (the Open Meetings Act does not require that a public body give the public an opportunity to comment at its meetings, but if public participation is permitted, it is subject to the protections of the First and Fourteenth Amendments); *Forman v. Blaser*, 1988 Ohio App. LEXIS 3405 (3d Dist. Aug. 8, 1988) (the Open Meetings Act guarantees the right to observe a meeting, but not necessarily the right to be heard); *see also Paridon v. Trumbull Cty. Children Servs. Bd.*, 2013-Ohio-881, ¶ 19-29 (11th Dist.) (while the Public Records Act permits a requester

to be anonymous when making a public records request, the Open Meetings Act does not have a similar anonymity requirement; thus a public body can require attendees at meetings to disclose their identities by signing a sign-in sheet as long as the practice is content-neutral and narrowly tailored to serve a significant interest).

[1094] *Froehlich v. Ohio State Med. Bd.*, 2016-Ohio-1035, ¶ 25-27 (10th Dist.) (no violation of Open Meetings Act where disruptive person is removed); *Forman v. Blaser*, 1988 Ohio App. LEXIS 3405, *8 (3d Dist. Aug. 8, 1988) ("When an audience becomes so uncontrollable that the public body cannot deliberate, it would seem that the audience waives its right to, or is estopped from claiming a right under the Sunshine Law to continue to observe the proceedings."); *see also Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (no violation of First or Fourteenth Amendments when disruptive person was removed from a public meeting).

[1095] R.C. 121.221(B)(3)(b), effective as of April 9, 2025.

[1096] *McVey v. Carthage Twp. Trustees*, 2005-Ohio-2869, ¶ 14-15 (4th Dist.) (trustees violated the Open Meetings Act when they banned videotaping of their meetings).

[1097] *Kline v. Davis*, 2001-Ohio-2625 (4th Dist.) (blanket prohibition on recording a public meeting is not permissible); 1988 Ohio Atty.Gen.Ops. No. 087 (opining that trustees have authority to adopt reasonable rules for use of recording equipment at their meetings); *Mahajan v. State Med. Bd. of Ohio*, 2011-Ohio-6728 (10th Dist.) (when rule allowing board to designate reasonable location for placing recording equipment, requiring court reporter to move to back of the room was reasonable given the need to transact board business).

[1098] R.C. 121.22(F); *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn*., 121 Ohio App.3d 579, 587 (4th Dist. 1997) ("Typically, one would expect regular meetings to be scheduled well in advance …."); *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2024-Ohio-1852, ¶ 37-42 (11th Dist.) (plaintiff did not show that a public body's rule requiring that meeting notice be posted on bulletin boards in county administration building and imposing a three-month limitation on a request for advance notification were unreasonable).

[1099] *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 2014-Ohio-2717, ¶ 24 (3d Dist.); *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002).

[1100] 1988 Ohio Atty.Gen.Ops. No. 029; *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn*., 121 Ohio App.3d 579, 587 (4th Dist. 1997).

[1101] R.C. 121.22(F); *see also Wyse v. Rupp*, 1995 Ohio App. LEXIS 4008, *21 (6th Dist. Sept. 15, 1995) (public body must specifically identify the time at which a public meeting will start); *Thomas v. Wood County Bd. of Elections*, 2024-Ohio-379. ¶ 50 (a public body does not have to give individualized notice, including a description of matters that would be discussed, of a regular meeting).

[1102] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97, 100 (1990) ("The council either meets in a regular session or it does not, and any session that is not regular is special."); 1988 Ohio Atty.Gen.Ops. No. 029 (opining that, "[w]hile the term 'special meeting' is not defined in R.C. 121.22, its use in context indicates that a reference to all meetings other than 'regular' meetings was intended").

[1103] R.C. 121.22(F); see *also Doran v. Northmont Bd. of Edn.*, 2002-Ohio-386, ¶ 11-12 (2d Dist.) (a board violated the Open Meetings Act by failing to establish, by rule, method to provide reasonable notice to the public of time, place, and purpose of special meetings); *State ex rel. Stiller v. Columbiana Exempted Village School Dist. Bd. of Edn.*, 74 Ohio St.3d 113, 119-20 (1995) (public body did not violate the Open Meetings Act when it gave general notice that nonrenewal of contract would be discussed, even though ancillary matters were also discussed).

[1104] R.C. 121.22(F); 1988 Ohio Atty.Gen.Ops. No. 029.

[1105] *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 2016-Ohio-4663, ¶ 35-36, 40-43 (7th Dist.) (special meeting notice of "2015-2016 school year" was not specific enough to meeting's purpose to discuss a school closure, and large crowds did not prove notice was sufficient); *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.,* 2013-Ohio-1111 (12th Dist.) (school board failed to comply with special meeting notice requirements when notice indicated that the purpose of the special meeting was "community information," but during the meeting the board entered executive session "to discuss negotiations with public employees concerning their compensation and other terms and conditions of their employment"); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees,* 2019-Ohio-5412, ¶ 56 (11th Dist.) (special meeting notice of "budget approval" was sufficiently specific to cover discussion of invoice payments).

[1106] *Jones v. Brookfield Twp. Trustees*, 1995 Ohio App. LEXIS 2805 (11th Dist. June 30, 1995); *see also Satterfield v. Adams Cty. Ohio Valley School Dist.*, 1996 Ohio App. LEXIS 4897, *17 (4th Dist. Nov. 6, 1996) (although specific agenda items may be listed, stating only "personnel" is sufficient for notice of special meeting).

[1107] *State ex rel. Jones v. Bd. of Edn. of the Dayton Pub. Schs.*, 2018-Ohio-676, ¶ 51-66 (2d Dist.) (action taken in open session of special meeting exceeded the scope of the notice); *Hoops v. Jerusalem Twp. Bd. of Trustees*, 1998 Ohio App. LEXIS 1496, *13 (6th Dist. Apr. 10, 1998) (business transacted at special meetings exceeded scope of published purpose and thus violated R.C. 121.22(F)). *But see State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2017-Ohio-4237, ¶ 46 (11th Dist.) (public bodies may meet in executive session in emergency meetings; doing so did not exceed the scope of the special meeting notice).

[1108] *State ex rel. Bates v. Smith*, 2016-Ohio-5449, ¶ 13-17 ("emergency" meeting was improper because there was no suggestion of any emergency that would necessitate such a meeting); *Neuvirth v. Bd. of Trustees of Bainbridge Twp.*, 1981 Ohio App. LEXIS 14641, *2-4 (11th Dist. Jun. 29, 1981) (meetings were not emergencies when evidence showed that matters could have been scheduled any time in the preceding two or three months; the public body could not postpone considering the matter until the last minute and then claim an emergency). *But see State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2017-Ohio-4237, ¶ 39 (11th Dist.) (rejecting the argument "that an emergency session is invalid under R.C. 121.22(F) where a public body decides not to take official action at the close of the session").

[1109] R.C. 121.22(F).

[1110] R.C. 121.221(B)(3)(a), effective as of April 9, 2025.

[1111] R.C. 121.221(B)(3)(a).

[1112] R.C. 121.22(F).

[1113] *Ames v. Geauga Cty. Invest. Advisory Commt*., 2023-Ohio-2252, ¶ 49 (11th Dist.).

[1114] R.C. 121.22(F); *State ex rel. Patrick Bros v. Putnam Cty. Bd. of Commrs.*, 2014-Ohio-2717, ¶ 33-37 (3d Dist.)*; State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2024-Ohio-1852, ¶ 37-42 (11th Dist.) (plaintiff did not show that a public body's rule requiring that meeting notice be posted on bulletin boards in county administration building and imposing a three-month limitation on a request for advance notification were unreasonable).

[1115] These requirements aside, many courts have held that actions taken by a public body are not invalid simply because the body did not adopt notice rules. These courts reason that the purpose of the law's invalidation section (R.C. 121.22(H)) is to invalidate actions taken when insufficient notice of the meeting was provided. *See Doran v. Northmont Bd. of Edn.*, 2002-Ohio-386, ¶ 11 (2d Dist.); *Hoops v. Jerusalem Twp. Bd. of Trustees*, 1998 Ohio App. LEXIS 1496 (6th Dist. Apr. 10, 1998); *Barbeck v. Twinsburg Twp.*, 73 Ohio App.3d 587 (9th Dist. 1992).

[1116] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993); *Doran v. Northmont Bd. of Edn.*, 2002-Ohio-386, ¶ 12 (2d Dist.) ("If the board would establish a rule providing that it would notify these newspapers and direct the newspapers to publish this notice consistently, it would satisfy the first paragraph of R.C. 121.22(F).").

[1117] *Doran v. Northmont Bd. of Edn.*, 2002-Ohio-386, ¶ 12 (2d Dist.).

[1118] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (chairman of zoning commission testified that he correctly reported meeting time to newspaper but newspaper mis-published it); *Swickrath & Sons, Inc. v. Elida*, 2003-Ohio-6288, ¶ 19 (3d Dist.) (no violation from newspaper's misprinting of meeting start time when village had three separate methods of providing notice of its meetings and village official made numerous phone calls to newspaper requesting correction).

[1119] R.C. 121.22(C); *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2024-Ohio-1852, ¶ 71 (11th Dist.) (public body's inclusion of a non-statutory reason for entering into executive session in its meeting minutes did not make the minutes inaccurate).

[1120] *White v. Clinton Cty. Bd. of Commrs*., 76 Ohio St.3d 416, 424 (1996) ("[F]ull and accurate minutes must contain sufficient facts and information to permit the public to understand and appreciate the rationale behind the relevant public body's decision."). *See also State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 2007-Ohio-5542, ¶ 27-29 (construing R.C. 121.22, 149.43, and 507.04

together, a township fiscal officer has a duty to maintain full and accurate minutes and records of the proceedings, as well as the accounts and transactions of the board of township trustees); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 2013-Ohio-2295, ¶ 9-11 (5th Dist.) (absent evidence of alleged missing details or discussions, meeting minutes stating a vote was taken and providing the resolution number being voted on were sufficient); *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2022-Ohio-1012, ¶ 4 (11th Dist.) (public body prepared full and accurate minutes, even though minutes referenced a report that was attached as an exhibit, because the minutes never purported to attach the report as an exhibit or otherwise expressly incorporate the report).

[1121] *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 424 (1996) (minutes "certainly should not be limited to a mere recounting of the body's roll call votes," but must have "a more substantial treatment of the items discussed").

[1122] *State ex rel. Ames v. Portage Cty. Solid Waste Mgt. Dist. Bd. of Commrs*., 2023-Ohio-4870 (11th Dist.); *State ex rel. Ames v. Portage Cty. Solid Waste Mgt. Dist. Bd. of Commrs.*, 2024-Ohio-894, ¶ 27-28 (11th Dist.).

[1123] *State ex rel. Ames v. Portage Cty. Board of Commrs*., 2021-Ohio-2374, ¶ 23 (public body did not keep full and accurate minutes when minutes referenced attachment that was not in the approved minutes or produced to requester).

[1124] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58 (2001); *but see Shaffer v. W. Farmington*, 82 Ohio App.3d 579, 585 (11th Dist. 1992) (minutes may not be conclusive evidence on whether roll call vote was taken); *State ex rel. MORE Bratenahl v. Bratenahl*, 2018-Ohio-497, ¶ 25 (8th Dist.) ("[T]he meeting minutes in question, along with the transcripts of the subsequent council meetings, provide an accurate and adequate record[.]"), *rev'd on other grounds,* 2019-Ohio-3233.

[1125] R.C. 121.22(C).

[1126] *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 2005-Ohio-2868 (4th Dist.).

[1127] R.C. 121.22(C); *see also White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416 (1996); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 57 (2001) (audiotapes that are later erased do not meet requirement to maintain minutes).

[1128] *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 2013-Ohio-1111, ¶ 33 (12th Dist.) (reading R.C. 121.22 with R.C. 3313.26, school board failed to "promptly" prepare minutes where it was three months behind in approving minutes and did not approve minutes at the next respective meeting).

[1129] R.C. 121.22(C).

[1130] *State ex rel. Doe v. Register*, 2009-Ohio-2448, ¶ 28 (12th Dist.).

[1131] *State ex rel. Verhovec v. Marietta*, 2013-Ohio-5415, ¶ 19-30 (4th Dist.).

[1132] In *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 57 (2001), the Supreme Court found meritless the council's contention that audiotapes complied with Open Meetings Act requirements because they were not treated as official minutes, *e.g.*, council approved written minutes, did not tape all meetings, and voted to erase tapes after written minutes had been approved.

[1133] 2008 Ohio Atty.Gen.Ops. No. 019 (opining that an audio tape recording of a meeting that is created for the purpose of taking notes to create an accurate record of the meeting is a public record for purposes of the Public Records Act; the recording must be made available for public inspection and copying and retained in accordance with the terms of the records retention schedule for such a record).

[1134] "Emergency" is defined as "any period during which the congress of the United States or a chief executive has declared or proclaimed that an emergency exists." "Chief executive" is defined as "the president of the United States, the governor of this state, the board of county commissioners of any county, the board of township trustees of any township, or the mayor or city manager of any municipal corporation within this state."

[1135] R.C. 5502.24(B).

[1136] Ohio Constitution, Article XVIII, Sections 3, 7.

[1137] *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 168 (1988) (finding it unnecessary to decide the applicability of the Open Meetings Act because the charter language expressly provided for open meetings and encompassed the meeting at issue); *Hills & Dales, Inc. v. Wooster*, 4 Ohio

App.3d 240, 242-43 (9th Dist. 1982) (charter municipality need not comply with the Open Meetings Act; there is "nothing in the Wooster Charter which mandates that all meetings of the city council and/or the city planning commission must be open to the public").

[1138] *State ex rel. Lightfield v. Indian Hill*, 69 Ohio St.3d 441, 442 (1994) ("In matters of local self-government, if a portion of a municipal charter expressly conflicts with a parallel state law, the charter provisions will prevail."); *Kanter v. Cleveland Heights*, 2017-Ohio-1038 (8th Dist.) (city council did not have to follow the mandates of the Open Meetings Act when its charter permitted it to maintain its own rules, and those rules distinguished council meetings from special meetings, and made recording minutes of council meetings discretionary); *Kujvila v. Newton Falls*, 2017-Ohio-7957, ¶ 32-35 (11th Dist.).

[1139] *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728, 736 (1st Dist. 1989) ("If a city does choose to draft its own rules concerning the meeting of a public body and the rules are included in its charter, the city council must abide by those rules."); *State ex rel. Gannett Satellite Information Network, Inc. v. Cincinnati City Council*, 137 Ohio App.3d 589, 592 (1st Dist. 2001) (rules of city council cannot supersede city charter that mandates all meetings be open).

[1140] *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676 (1996); *see also Johnson v. Kindig,* 2001 Ohio App. LEXIS 3569, *8-9 (9th Dist. Aug. 15, 2001) (when charter explicitly states that all meetings shall be public and contains no explicit exemptions, charter's reference to Open Meetings Act is insufficient to allow for executive sessions).

X. Chapter Ten: Executive Session

Executive Session Overview

- Executive session is a part of an open meeting from which the public can be excluded.
- Proper procedure is required to move into executive session:
  - Meetings must always begin and end in an open session, where the public may be present
  - Motion on the record to move into executive session, followed by a second
  - Specific reason for executive session must be put in the motion and recorded
  - Roll call vote, which must be approved by the majority of a quorum of the public body
  - Motion and vote recorded in the meeting minutes
- Executive session can only be held for the following reasons:
  - Certain personnel matters
  - Purchase or sale of property
  - Pending or imminent court action
  - Collective bargaining matters
  - Matters required to be kept confidential
  - Security matters
  - Hospital trade secrets
  - Confidential business information of an applicant for economic development assistance
  - Veterans Service Commission applications
- Discussion in executive session must be limited to the specific, statutory reason for the executive session, as set forth in the motion.
- The public body can invite non-members to be present in an executive session but cannot exclude other members of the public body from the executive session.
- Discussion in executive session is not automatically confidential, but other confidentiality rules may apply; public records considered in the executive session may be accessible through the Public Records Act.
- The public body may not vote or make any decisions in executive session.

A. General Principles

An "executive session" is a conference between members of a public body from which the public is excluded.[1141] The public body, however, may *invite* anyone it chooses to attend an executive session.[1142] The Open Meetings Act strictly limits the use of executive sessions in several ways. First, a public body may only hold executive sessions at regular and special meetings.[1143] Second, the Open Meetings Act limits the matters that a public body may discuss in executive session to those matters identified in the Act,[1144] although some courts have held that a public body may discuss other related issues if they have a direct bearing on the permitted matter(s).[1145] Third, a public body must follow a specific procedure to adjourn into an executive session.[1146] Finally, a public body may not take any formal action, such as voting or otherwise reaching a collective decision, in an executive session; any formal action taken in an executive session is invalid.[1147]

The Open Meetings Act does not prohibit the public body or one of its members from disclosing the information discussed in executive session.[1148] However, other laws may prohibit such disclosure.[1149] An Ohio Ethics Commission Opinion concluded that if information discussed in executive session is made confidential by statute, or has been clearly designated as confidential, public officials may have a duty to keep that information confidential under Ohio ethic laws.[1150] Public officials should seek legal counsel to determine whether ethics laws prohibit them from disclosing topics discussed during executive session.

The privacy afforded by the Open Meetings Act to executive session discussions does not make confidential any documents that a public body may discuss in executive session. If a document is a "public record" and is not otherwise exempt under one of the exemptions to the Public Records Act, the record will still be subject to public disclosure even if the public body appropriately discussed it in executive session. Thus, an executive session under the Open Meetings Act is not an exemption for public records under the Public Records Act. For example, if a public body properly discusses pending litigation in executive session, a settlement agreement negotiated during that executive session and reduced to writing may be subject to public disclosure.[1151]

B. Permissible Discussion Topics in Executive Session

A public body can only adjourn into executive session to discuss one of the following nine topics.

1. Certain personnel matters when particularly named in motion

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[1152]; and
- To consider the investigation of charges or complaints against a public employee, official, licensee, or regulated individual,[1153] unless the employee, official, licensee, or regulated individual requests a public hearing;[1154]

  but

- A public body may not hold an executive session to consider the discipline of an elected official for conduct related to the performance of the official's duties or to consider that person's removal from office.

A motion to adjourn into executive session must specify which of the specific personnel matter(s) listed in the statute the movant proposes to discuss. A motion "to discuss personnel matters" *is not sufficiently specific* and *does not comply with the statute*.[1155] One court concluded that a public body violated the Open Meetings Act by going into executive session for the stated purpose of an employee's "evaluation." That court did not "necessarily disagree" that the Act allows discussion on an employee's "job performance" in executive session, but it concluded that "the public body must specify the context in which 'job performance' will be considered by identifying one of the statutory purposes set forth in R.C. 121.22(G)."[1156] The motion need not include the name of the person involved in the specified personnel matter[1157] or disclose "private facts."[1158]

Appellate courts disagree on whether a public body must limit its discussion of personnel in an executive session to a specific individual or may include broader discussion of employee matters. At least three appellate courts have held that the language of the Open Meetings Act clearly limits discussion in executive session to consideration of a specific employee's employment, dismissal, etc.[1159] These court decisions are based on the plain language in the Act, which requires that "all meetings of any public body are declared to be open to the public at all times,"[1160] meaning any exemptions to openness should be drawn narrowly. A different appellate court, however, looked at a

different provision in the Act that permits the public body to exclude the name of any person to be considered during the executive session as allowing general personnel discussions.[1161] It is important for a public body to consult the case law within its own appellate district to determine what applies.

2. Purchase or sale of property

A public body may adjourn into executive session to consider the purchase of property of any sort — real, personal, tangible, or intangible, the sale of real or personal property by competitive bid, or the sale or disposition of unneeded, obsolete, or unfit property under R.C. 505.10, if disclosure of the information would result in a competitive advantage to the person whose personal, private interest is adverse to the general public interest.[1162] No member of a public body may use this exemption as subterfuge to provide covert information to prospective buyers or sellers.[1163]

3. Pending or imminent court action

A public body may adjourn into executive session with the public body's attorney to discuss a pending or imminent court action.[1164] Court action is "pending" if a lawsuit has been commenced, and it is "imminent" if it is on the brink of commencing.[1165] Courts have concluded that threatened litigation is imminent and may be discussed in executive session.[1166] However, a general discussion of legal matters is not a sufficient basis for invoking this provision.[1167] Note that a member of a public body is not necessarily the public body's duly-appointed counsel simply because the member happens to also be an attorney.[1168]

4. Collective bargaining matters

A public body may adjourn into executive session to prepare for, conduct, or review a collective bargaining strategy.[1169]

5. Matters required to be kept confidential

A public body may adjourn into executive session to discuss matters that federal law or regulations or state statutes require the public body to keep confidential.[1170] The common law attorney-client privilege does not qualify under this enumerated exemption to allow general legal advice in executive session because the public body is not *required* to assert the privilege.[1171]

6. Security matters

A public body may adjourn into executive session to discuss details of security arrangements and emergency response protocols for a public body or public office if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.[1172]

7. Hospital trade secrets

Certain hospital public bodies established by counties, joint townships, or municipalities may adjourn into executive session to discuss trade secrets as defined by R.C. 1333.61.[1173]

8. Confidential business information of an applicant for economic development assistance

This topic requires that the information to be discussed in executive session be directly related to economic development assistance of specified types listed in the statute.[1174] "A unanimous quorum of the public body [must determine], by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project."[1175]

9. Veterans Service Commission applications

A Veterans Service Commission must hold an executive session when considering an applicant's request for financial assistance unless the applicant requests a public hearing.[1176] Unlike the other discussion topics, discussion of Veterans Service Commission applications in executive session is mandatory.

C. Proper Procedures for Executive Session

A public body may only hold an executive session at a regular or special meeting, and a meeting that includes an executive session must always begin and end in an open session.[1177] To begin an executive session, there must be a proper motion approved by a majority[1178] of a quorum of the public body, using a roll call vote.[1179]

1. The motion

A motion for executive session must specifically identify "which one or more of the approved matters listed … are to be considered at the executive session."[1180] Thus, if the public body intends to discuss one of the matters included in the personnel exemption in executive session, the motion must specify which of those specific matters it will discuss (e.g., "I move to go into executive session to consider the promotion or compensation of a public employee.").[1181] It is not sufficient to simply state "personnel" as a reason for executive session.[1182] The motion does not need to identify the person whom the public body intends to discuss.[1183] Similarly, reiterating "the laundry list of possible matters from R.C. 121.22(G)(1) without specifying which of those purposes [will] be discussed in executive session" is improper.[1184] Finally, a public body's motion to enter into executive session should include all the topics it might reasonably discuss during an executive session. But the public body is not required to discuss every topic it included in the motion during executive session.[1185]

2. The roll call vote

Members of a public body may adjourn into executive session only after a majority of a quorum of the public body approves the motion by a roll call vote.[1186] The vote may not be by a show of hands, and the public body should record the vote in its minutes.[1187]

Although a proper motion is required before entering executive session, a motion to end the executive session and return to public session is not necessary because the closed-door discussion is "off the record." Similarly, a public body does not have to take minutes during executive session. Any minutes taken during executive session may be subject to the Public Records Act. The minutes of the meeting need only document a motion to go into executive session that properly identifies the permissible topic or topics that the public body will discuss, as well as the return to open session (e.g., "We are now back on the record.").

Notes:

[1141] *Weisel v. Palmyra Twp. Bd. of Zoning Appeals*, 1991 Ohio App. LEXIS 3379 (11th Dist. July 19, 1991); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 1990 Ohio App. LEXIS 2190 (9th Dist. May 23, 1990).

[1142] *Chudner v. Cleveland City School Dist.*, 1995 Ohio App. LEXIS 3303, *8-9 (8th Dist. Aug. 10, 1995) (inviting select individuals to attend an executive session is not a violation if no formal action will occur).

[1143] R.C. 121.22(G).

[1144] R.C. 121.22(G)(1)-(8), (J).

[1145] *Chudner v. Cleveland City School Dist.,* 1995 Ohio App. LEXIS 3303 (8th Dist. Aug. 10, 1995) (issues discussed in executive session each had a direct bearing on topic that was permissible subject of executive session discussion); *State ex rel. Ames v. Portage Cty. Solid Waste Mgt. Dist. Bd. of Commrs*., 2024-Ohio-894, ¶ 40-41 (11th Dist.) (a public body that enters executive session to discuss the employment of a public employee may discuss matters incidental to that employment such as compensation and the plan to post an open position to replace an employee whose medical leave was being extended).

[1146] R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion).

[1147] R.C. 121.22(H).

[1148] *But see* R.C. 121.22(G)(2) (providing that "no member of a public body shall use [executive session under property exemption] as a subterfuge for providing covert information to prospective buyers or sellers").

[1149] *See, e.g.*, R.C. 102.03(B) (providing that a public official must not disclose or use any information acquired in course of official duties that is confidential because of statutory provisions or that has been clearly designated as confidential); *Humphries v. Chicarelli*, 2012 U.S. Dist. LEXIS 168038, at *14-15 (S.D.Ohio Nov. 27, 2012) (prohibiting city council members from testifying as to attorney-client privileged matters discussed during executive session); *Talismanic Properties, LLC v. Tipp City*, 2017 U.S. Dist. LEXIS 90290, *6-7 (S.D.Ohio June 9, 2017) (when city council entered executive session to discuss pending litigation and allegedly made the decision not to mediate, those discussions were privileged and not subject to discovery in the subsequent litigation when (1) the council did not violate the Open Meetings Act and (2) even if it had, the information was protected by attorney-client privilege).

[1150] OEC Adv.Op. 20-02, 2020 Ohio Ethics Comm. LEXIS 2.

[1151] *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 138, ¶ 19 (1997) ("'Since a settlement agreement contains the result of the bargaining process rather than revealing the details of the negotiations which led to the result, R.C. 121.22(G)(3), which exempts from public view only the conferences themselves, would not exempt a settlement agreement from disclosure.'").

[1152] *State ex rel. Ames v. Portage Cty. Solid Waste Mgt. Dist. Bd. of Commrs.*, 2024-Ohio-894, ¶ 40-41 (11th Dist.) (a public body that enters executive session to discuss the employment of a public employee may discuss matters incidental to that employment such as compensation and the plan to post an open position to replace an employee whose medical leave was being extended).

[1153] R.C. 121.22(B)(3) (defining "regulated individual" as (a) a student in a state or local public educational institution or (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 intellectual disability, disease, disability, age, or other condition requiring custodial care).

[1154] This provision does not create a substantive right to a public hearing. *See Matheny v. Frontier Local Bd. of Edn.*, 62 Ohio St.2d 362, 368 (1980) ("[T]he term 'public hearing' in subdivision (G)(1) of the Open Meetings Act refers only to the hearings elsewhere provided by law."). An employee who has a statutory right to a hearing may request a public hearing and prevent executive session; *Barga v. St. Paris Village Council*, 2024-Ohio-5293, ¶ 14-15 (when a public employee has a statutory right to and requests a public hearing, R.C. 121.22(G)(1) prohibits a public body from entering into executive session to discuss any of the statutorily enumerated employment actions, but rather must conduct its deliberations in a public forum); *Schmidt v. Newton*, 2012-Ohio-890, ¶ 26 (1st Dist.) ("Only when a hearing is statutorily authorized, and a public hearing is requested, does R.C. 121.22(G) operate as a bar to holding an executive session to consider the dismissal of a public employee."); *Brownfield v. Warren Local School Bd. of Edn.*, 1990 Ohio

App. LEXIS 3878, *13 (4th Dist. Aug. 28, 1990) (upon request, a teacher was entitled to have deliberations regarding his dismissal occur in open meetings). An employee with no statutory right to a hearing may not prevent discussion of his or her employment in executive session. *Stewart v. Lockland School Dist. Bd. of Edn.*, 2013-Ohio-5513 (1st Dist.); *Nosse v. City of Kirtland,* 2022-Ohio-4161 (11th Dist.) (when a public body is acting in a quasi-judicial capacity, the adjudicatory hearing process is not a meeting under the Open Meetings Act; thus, the public body's deliberations may be held privately in executive session).

[1155] R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (respondents violated the Open Meetings Act by using general terms like "personnel" and "personnel and finances" instead of one or more of the specified statutory purposes listed in division (G)(1)); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2014-Ohio-2312, ¶ 18-21 (2d Dist.) (general reference to "personnel matters" or "personnel issues" is insufficient); *Jones v. Brookfield Twp. Trustees*, 1995 Ohio App. LEXIS 2805, *8 (11th Dist. June 30, 1995) (stating "[p]olice personnel matters" did not comply because it did not refer to any of the specific purposes listed in the Open Meetings Act); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 2013-Ohio-2295, ¶ 25 (5th Dist.) (minutes stating that executive session was convened for "personnel issues" did not comply with the Open Meetings Act).

[1156] *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2014-Ohio-2312, ¶ 19 (2d Dist.); *see also* Lawrence v. Edon, 2005-Ohio-5883, ¶ 16 (6th Dist.) (Open Meetings Act does not prohibit a public body from discussing a public employee's evaluations or job performance in executive session). NOTE: the proper context and enumerated exemption in *Lawrence v. Edon* was "dismissal or discipline" — other enumerated exemptions that might be proper contexts for considering employee evaluations include "employment," "promotion," "demotion," or "compensation."

[1157] R.C. 121.22(G)(1).

[1158] *Smith v. Pierce Twp.*, 2014-Ohio-3291, ¶ 50-55 (12th Dist.) (public body's required publication of statutory purposes under R.C. 121.22(G)(1) for special meetings and executive sessions did not support claim of invasion of privacy under a publicity theory).

[1159] *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 2014-Ohio-2717, ¶ 36 (3d Dist.); *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218 (4th Dist. 1988); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 1990 Ohio App. LEXIS 2190 (9th Dist. May 23, 1990) (rejecting the argument that an executive session was illegally held for a dual, unauthorized purpose when it was held to discuss termination of a specific employee's employment due to budgetary considerations).

[1160] R.C. 121.22(C).

[1161] *Wright v. Mt. Vernon City Council*, 1997 Ohio App. LEXIS 4931 (5th Dist. Oct. 23, 1997) (public body could discuss merit raises for exempt city employees in executive session without referring to individuals in particular positions).

[1162] R.C. 121.22(G)(2); 1988 Ohio Atty.Gen.Ops. No. 003; *Look Ahead Am. v. Stark County Bd. of Elections*, 2024-Ohio-2691, ¶ 23-24 (the "premature disclosure clause" of R.C. 121.22(G)(2) applies to all of the preceding permissible reasons a public body may go into executive session).

[1163] R.C. 121.22(G)(2).

[1164] R.C. 121.22(G)(3); *Myers v. Village of Scio*, 2024-Ohio-2982, ¶ 48 (7th Dist.) (finding an Open Meetings Act violation where the village counsel called an executive session to discuss "pending litigation" when no attorney was present as required by R.C. 121.22(G)(3); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees,* 2019-Ohio-5311, ¶ 32 (11th Dist.) (there is no requirement that an attorney be physically present for the exception under R.C. 121.22(G)(3) to apply, and board properly conducted conference in executive session with attorney via telephone).

[1165] *State ex rel. Cincinnati Enquirer v. Hamilton Cty. Commrs.*, 2002-Ohio-2038, ¶ 20 (1st Dist.) ("imminent" is satisfied when a public body has moved beyond investigation and assumed a litigation posture, deciding to commit government resources to the prospective litigation).

[1166] *Maddox v. Greene Cty. Children Servs. Bd.*, 2014-Ohio-2312, ¶ 22 (2d Dist.) (letter expressly threatening litigation if a settlement is not reached "reasonably made a lawsuit appear imminent").

[1167] *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 2013-Ohio-2295, ¶ 25 (5th Dist.) (executive session was improper when minutes stated that it was convened for "legal issues"); *State ex rel. Ames v. Rootstown*

Twp. Bd. of Trustees, 2019-Ohio-5412, ¶ 36 (11th Dist.) (because meeting minutes did not indicate that board convened in executive session to discuss "pending or imminent court action," executive session was improper even though it included discussion with an attorney).

[1168] *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 2009-Ohio-6993, ¶ 66-69 (10th Dist.) (board members and executive director who were attorneys were not acting as legal counsel for the board when they discussed legal matters in executive session), *aff'd* 2010-Ohio-6207, ¶ 8, 27-29; *Awadalla v. Robinson Mem. Hosp.*, 1992 Ohio App. LEXIS 2838, *7 (11th Dist. June 5, 1992) (executive session improper when a board's "attorney" was identified as "senior vice president" in meeting minutes).

[1169] R.C. 121.22(G)(4); *Back v. Madison Local School Dist. Bd. of Edn.*, 2007-Ohio-4218, ¶ 8 (12th Dist.) (a school board's meeting with a labor organization to renegotiate teachers' salaries was proper because the meeting was not an executive session but was a "collective bargaining meeting," which was exempt from the Open Meetings Act's requirements under R.C. 4117.21).

[1170] R.C. 121.22(G)(5).

[1171] *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 2012-Ohio-2569, ¶ 75-79 (12th Dist.); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees*, 2019-Ohio-5311, ¶ 27 (11th Dist.); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees*, 2019-Ohio-5311, ¶ 27 (11th Dist.); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees,* 2019-Ohio-5412, ¶ 39-42 (11th Dist.).

[1172] R.C. 121.22(G)(6).

[1173] R.C. 121.22(G)(7).

[1174] R.C. 121.22(G)(8)(a).

[1175] R.C. 121.22(G)(8)(b); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees,* 2019-Ohio-5412, ¶ 79 (11th Dist.) (board did not comply with R.C. 121.22(G)(8)(a) and (b) when minutes reflected merely that the board moved into executive session "to discuss economic development assistance concerning" a contract).

[1176] R.C. 121.22(J).

[1177] R.C. 121.22(G).

[1178] R.C. 121.22(G).

[1179] R.C. 121.22(G). NOTE: to consider confidential business information of an application for economic development assistance under R.C. 121.22(G)(8), the motion must be approved by a unanimous quorum. R.C. 121.22(G)(8)(b).

[1180] R.C. 121.22(G)(1), (8).

[1181] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001).

[1182] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (using general terms like "personnel" instead of one or more of the specified statutory purposes is a violation of R.C. 121.22(G)(1)); *Jones v. Brookfield Twp. Trustees*, 1995 Ohio App. LEXIS 2805, *8 (11th Dist. June 30, 1995) ("[A] reference to 'police personnel issues' does not technically satisfy [the R.C. 121.22(G)(1)] requirement because it does not specify which of the approved purposes was applicable in this instance.").

[1183] R.C. 121.22(G)(1); *Beisel v. Monroe Cty. Bd. of Edn.*, 1990 Ohio App. LEXIS 3761 (7th Dist. Aug. 29, 1990).

[1184] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001); *State ex rel. Ames v. Portage Cty. Bd. of Commrs.,* 2019-Ohio-3729, ¶ 63 (11th Dist.); *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2024-Ohio-1852, ¶ 58, 63 (11th Dist.) (implicit in R.C. 121.22(G)(1)'s requirement that a public body's motion to enter executive session refer to one of purposes in the statute is a prohibition against stating a non-statutory reason to enter executive session).

[1185] *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs.,* 2022-Ohio-4237, ¶ 34-36 (public body need not discuss every single topic included in the executive-session motion during executive session).

[1186] R.C. 121.22(G).

[1187] R.C. 121.22(G); *State ex rel. MORE Bratenahl v. Bratenahl*, 2017-Ohio-8484, ¶ 29 (8th Dist.) (village council was in compliance when it took a roll call vote before going into executive session, even if vote took place before the court reporter began recording the transcript), *rev'd on other grounds,* 2019-Ohio-3233.

XI. Chapter Eleven: Enforcement and Remedies

The Ohio General Assembly enacted the Open Meetings Act as a “self-help” statute, which means that the people enforce the law themselves. If a person believes that a public body violated the Open Meetings Act, the person can file a lawsuit against the public body, either on his or her own or through a private attorney.[1188] There is no public entity — including the Ohio Attorney General’s Office — that has the authority to enforce the Open Meetings Act.

A. Enforcement

1. Injunction

Any person may file a court action for an injunction to address an alleged or threatened violation of the Open Meetings Act. This action must be “brought within two years after the date of the alleged violation or threatened violation.”[1189] There must still be an actual, genuine controversy at the time the action is filed, or the claim may be dismissed as moot.[1190] If granted by a court, an injunction compels the members of the public body to comply with the law by either refraining from the prohibited behavior or by lawfully conducting their meetings when they previously failed to do so. If the court finds multiple violations of the Open Meetings Act through the same conduct, the court may issue a single injunction for the multiple violations.[1191]

a. Who may file and against whom

“Any person” has standing to file for an injunction to enforce the Open Meetings Act.[1192] The person need not show a personal stake in the outcome of the lawsuit.[1193]

Open Meetings Act injunction actions sometimes include the public body as the defendant, or individual members of the public body, or both. No reported cases dispute that individual members of a public body are proper defendants, but some courts have held that the public body itself is not “sui juris” (capable of being sued) for violations of the Act.[1194] Other courts find that public bodies are “sui juris” for purposes of suits alleging violations of the Act.[1195] Persons filing an enforcement action should consult case law applicable to their appellate district.

b. Where to file

The Open Meetings Act requires that an action for injunction be filed in the court of common pleas in the county where the alleged violation took place.[1196]

Appellate courts disagree on whether an injunction action must be filed as a separate original action or whether it may be brought with a related lawsuit. One court found that a party may not assert an alleged violation of the Open Meetings Act in a related action before a county board of elections.[1197] Courts have reached different conclusions as to whether a court may consider an alleged violation of the Act as a claim made within an administrative appeal.[1198] Those cases finding no jurisdiction have reasoned that the exclusive method to enforce the Act is as a separate original action filed in the common pleas court.

c. Proving a violation

The person filing an action under the Open Meetings Act generally has the burden of proving the alleged violation, even if the alleged violation occurred during an executive session.[1199] Absent evidence to the contrary, courts will presume that public officers properly performed their duties and acted lawfully.[1200] Thus, courts should presume that a public body in executive session

discussed the topics stated in its motion to enter executive session.[1201] However, courts do not necessarily accept a public body's stated purpose for an executive session if other evidence demonstrates that the public body improperly deliberated during the executive session.[1202] Upon proof of a violation or threatened violation of the Act, the court will conclusively and irrebuttably presume harm and prejudice to the person who brought the suit[1203] and will issue an injunction.[1204]

d. Curing a violation

Once a violation is proven, the court must grant the injunction, regardless of the public body's subsequent attempts to cure the violation.[1205] Courts have different views as to whether and how a public body can then cure the violation, for instance with new, compliant discussions followed by compliant formal action.[1206] One court explained that after a violation a public body must "start its decision-making process over with regard to what was illegally deliberated or decided in a closed meeting."[1207] The Supreme Court of Ohio held that a city's failure to have public deliberation regarding the adoption of a charter amendment was cured when the amendment was placed on the ballot and adopted by the electorate.[1208]

2. Mandamus

When a person seeks access to the public body's minutes, that person may also file a mandamus action under the Public Records Act to compel the creation of or access to meeting minutes.[1209] Mandamus is also the proper action to order a public body to give notice of meetings to the person filing the action.[1210]

3. Quo warranto

Once a court issues an injunction finding a violation of the Open Meetings Act, members of the public body who later commit a "knowing" violation of the injunction may be removed from office through a *quo warranto* action, which may only be brought by the county prosecutor or the Ohio Attorney General.[1211]

B. Remedies

1. Invalidity

A resolution, rule, or formal action of any kind is invalid unless a public body adopts it in an open meeting.[1212] However, courts have refused to allow public bodies to benefit from their own violations of the Open Meetings Act.[1213] For instance, a public body may not attempt to avoid a contractual obligation by arguing that approval of the contract is invalid because of a violation of the Act.[1214]

a. Failure to take formal action in public

The Open Meetings Act requires a public body to take all "official" or "formal" action in open session.[1215] Even without taking a vote or a poll, members of a public body may inadvertently take "formal action" in an executive session when they indicate how they intend to vote about a matter pending before them, making the later vote in open session invalid.[1216] A formal action taken in an open session also may be invalid if it results from deliberations that improperly occurred outside of an open meeting, e.g., at an informal, private meeting or in an improper executive session.[1217] Even a decision in executive session not to take action (on a request made to the public body) has been held to be "formal action" that should have been made in open session, and thus, was deemed invalid.[1218]

b. Improper notice

When a public body takes formal action in a meeting for which it did not properly give notice, the action is invalid.[1219]

c. Minutes

At least one court has found that minutes are merely the record of actions; they are not actions in and of themselves.[1220] Thus, failure to properly approve minutes does not invalidate the actions taken during the meeting.[1221]

2. Mandatory civil forfeiture

If the court issues an injunction, the court will order the public body to pay a civil forfeiture of $500 to the person who filed the action.[1222] Courts that find that a public body has violated the law on repeated occasions have awarded a $500 civil forfeiture for each violation.[1223] However, if multiple violations through the same conduct are found, the court may issue a single injunction, and order the public body to pay a single $500 civil forfeiture penalty as to all offenses.[1224]

3. Court costs and attorney fees

If the court issues an injunction, it will order the public body to pay all court costs[1225] and the reasonable attorney fees of the person who filed the action.[1226] Courts have discretion to reduce or completely eliminate attorney fees, however, if they find that, (1) based on the state of the law when the violation occurred, a well-informed public body could have reasonably believed it was not violating the law; and (2) it was reasonable for the public body to believe its actions served public policy.[1227]

If the court does not issue an injunction and decides the lawsuit was frivolous, the court will order the person who filed the suit to pay all the public body's court costs and reasonable attorney fees as determined by the court.[1228] A public body is entitled to attorney fees even when those fees are paid by its insurance company.[1229]

Notes:

[1188] When an individual represents themselves in court, essentially acting as their own legal counsel, it is called "pro se." Courts will generally treat pro se litigants the same as litigants who are represented by counsel in that "pro se litigants are expected to possess knowledge of the law and legal procedures and, accordingly, are held to the same standard as litigants who have legal representation." *In re Application of Black Fork Wind Energy*, L.L.C., 2013- Ohio-5478, ¶ 22.

[1189] R.C. 121.22(I)(1); *see also* *Mollette v. Portsmouth City Council*, 2008-Ohio-6342 (4th Dist.); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 2013-Ohio-2295, ¶ 16 (5th Dist.).

[1190] *Tucker v. Leadership Academy*, 2014-Ohio-3307, ¶ 14-17 (10th Dist.) (closure of charter school rendered allegedly improper resolution under Open Meetings Act moot); *State ex rel. Crilley v. Lowellville Bd. of Educ.,* 2021-Ohio-3333 (7th Dist.) (Open Meetings Act challenge based on school board's reopening plan was moot by the end of the school year); *but see* *Myers v. Village of Scio*, 2024-Ohio-2982, ¶ 36 (7th Dist.) (a village council's Open Meeting Act violations in the adoption of an ordinance were not mooted by the adoption of a replacement ordinance: "the elimination of an ordinance may make that ordinance moot but does not retroactively cure the OMA violation and does not make an OMA action moot so as to avoid the monetary award called for by R.C. 121.22(I)(2)(a)").

[1191] *Ames v. Rootstown Twp. Bd. of Trustees,* 2022-Ohio-4605, ¶ 21.

[1192] R.C. 121.22(I)(1); *McVey v. Carthage Twp. Trustees*, 2005-Ohio-2869 (4th Dist.); *see also State ex rel. Ames v. Geauga County Bd. of Developmental Disabilities*, 2024-Ohio-5441, ¶ 27-28 (11th Dist.) (because R.C. 121.22 authorizes "any person" to bring an action to enforce the Open Meetings Act, the trial court did not err in dismissing an action brought by a private individual on behalf of the state).

[1193] *Doran v. Northmont Bd. of Edn.*, 2003-Ohio-4084, ¶ 20 (2d Dist.); *State ex rel. Mason v. State Employment Relations Bd.*, 133 Ohio App.3d 213 (10th Dist. 1999); *but see Korchnak v. Civil Serv. Comm. of Canton*, 1991 Ohio App. LEXIS 291, *5 (5th Dist. Jan. 7, 1991) (party did not have standing to challenge a public body's failure to provide requested notices of meetings when he had not followed procedures entitling him to notice).

[1194] *Mollette v. Portsmouth City Council*, 2006-Ohio-6289 (4th Dist.) (suit should have been filed against the individual council members in their official capacities).

[1195] *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2014-Ohio-2312, ¶ 10-14 (2d Dist.); *Krueck v. Kipton Village Council*, 2012-Ohio-1787, ¶ 3-4, 16 (9th Dist.); *State ex rel. Maynard v. Medina Cty. Facilities Taskforce Subcommt.,* 2020-Ohio-5561, ¶ 18-21 (9th Dist.) (subcommittee is *sui juris* even though it is not a "decision-making body" and does not have "decision-making authority"; while individual subcommittee members were also sued, they were not necessarily parties).

[1196] R.C. 121.22(I)(1).

[1197] *State ex rel. Savko & Sons v. Perry Twp. Bd. of Trustees*, 2014-Ohio-1181 (10th Dist.)

[1198] **Courts finding jurisdiction:** *Brenneman Bros. v. Allen Cty. Commrs.*, 2013-Ohio-4635 (3d Dist.); *Hardesty v. River View Local School Dist. Bd. of Edn.*, 63 Ohio Misc.2d 145 (C.P. 1993). **Courts finding no jurisdiction:** *Stainfield v. Jefferson Emergency Rescue District*, 2010-Ohio-2282 (11th Dist.); *Fahl v. Athens*, 2007-Ohio-4925 (4th Dist.); *Pfeffer v. Bd. of Cty. Commrs. of Portage Cty.*, 2001 Ohio App. LEXIS 3185 (11th Dist. July 13, 2001).

[1199] *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs.,* 2022-Ohio-4237, ¶ 40 ("Plaintiffs alleging violations of Ohio's OMA, R.C. 121.22, bear the burden of proving the violations they have alleged"); *Paridon v. Trumbull Cty. Children Servs. Bd.*, 2013-Ohio-881, ¶ 18 (11th Dist.) (requiring proof by clear and convincing evidence); *State ex rel. Masiella v. Brimfield Twp. Bd. of Trustees*, 2017-Ohio-2934, ¶ 53 (11th Dist.) (appellant failed to meet this burden, which required him "to demonstrate that a meeting occurred . . .[and] that a public action resulted from a deliberation in the meeting that was not open to the public").

[1200] *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs*., 2022-Ohio-4237, ¶ 21.

[1201] *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs.,* 2022-Ohio-4237, ¶ 21; *Armatas v. Plain Twp.,* 2023-Ohio-204, ¶ 59 (5th Dist.) (plaintiff failed to present evidence of the public body's improper deliberations during secret meeting).

[1202] *Sea Lakes, Inc. v. Lipstreu*, 1991 Ohio App. LEXIS 4615, *12 (11th Dist. Sept. 30, 1991) (finding a violation when board was to discuss administrative appeal merits privately, appellant's attorney objected, board immediately held executive session "to discuss possible legal actions", then emerged to announce decision on appeal); *In the Matter of Removal of Smith*, 1991 Ohio App. LEXIS 2409, *2 (5th Dist. May 15, 1991) (county commission violated the Open Meetings Act when it emerged from executive session held "to discuss legal matters" and announced decision to remove a board member; no county attorney was present in executive session, and a request for public hearing on removal decision was pending).

[1203] R.C. 121.22(I)(3).

[1204] R.C. 121.22(I)(1); *Doran v. Northmont Bd. of Edn.*, 2003-Ohio-4084, ¶ 21 (2d Dist.) (statute's provision that an injunction is mandatory upon finding violation is not an unconstitutional violation of separation of powers); *Fayette Volunteer Fire Dept. No. 2, Inc. v. Fayette Twp. Bd. of Trustees*, 87 Ohio App.3d 51, 54 (4th Dist. 1993) (injunction was mandatory even though challenged board action was nullified and there was no need for an injunction); *Myers v. Village of Scio*, 2024-Ohio-2982, ¶ 50 (7th Dist.) (upon finding of a violation of the Open Meetings Act, the issuance of an injunction is mandated by R.C. 121.22(I)(1), which "open[s] the door to the monetary remedy part of the OMA").

[1205] *McVey v. Carthage Twp. Trustees*, 2005-Ohio-2869, ¶ 9 (4th Dist.) ("Because the statute clearly provides that an injunction is to be issued upon finding a violation of the Sunshine Law, it is irrelevant that the Trustees nullified their prior [offending] action."); *Myers v. Village of Scio*, 2024-Ohio-2982, ¶ 36 (7th Dist.) (a village council's Open Meetings Act violations in the adoption of an ordinance were not mooted by the adoption of a replacement ordinance: "the elimination of an ordinance may make that ordinance moot but does not retroactively cure the OMA violation and does not make an OMA action moot so as to avoid the monetary award called for by R.C. 121.22(I)(2)(a)").

[1206] **Courts finding that violation was not cured:** *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 2016-Ohio-4663, ¶ 44-46 (7th Dist.) (a public body cannot "cure" a violation by simply voting again on the same information improperly obtained in executive session); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 476 (10th Dist. 2001) (no cure of violation by conducting an open meeting prior to taking formal action); *M.F. Waste Ventures, Inc. v. Bd. of Amanda Twp. Trustees*, 1988 Ohio App. LEXIS 493, *9 (3d Dist. Feb. 12, 1988) (based on violation "the resolutions were invalid, and the fact that they were later adopted at public meetings did not cure their invalidity"); *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218, 221 (4th Dist. 1988) ("A violation of the Sunshine Law cannot be 'cured' by subsequent open meetings if the public body initially discussed matters in executive session that should have been discussed before the public.").

Courts finding violation was cured: *Kuhlman v. Leipsic*, 1995 Ohio App. LEXIS 1269, *8 (3d Dist. Mar. 27, 1995) ("[A]n initial failure to comply with R.C. 121.22 can be cured if the matter at issue is later placed before the public for consideration."); *Beisel v. Monroe Cty. Bd. of Edn.*, 1990 Ohio App. LEXIS 3761, *6-7 (7th Dist. Aug. 29, 1990) (discussing a permitted matter in executive session, without a proper motion, was cured by rescinding the resulting action and then conducting the action in compliance with the Open Meetings Act).

[1207] *Danis Montco Landfill Co. v. Jefferson Twp. Zoning Commn.*, 85 Ohio App.3d 494, 501 (2d Dist. 1993); *see also Maddox v. Greene Cty. Children Servs. Bd.*, 2014-Ohio-2312, ¶ 36 (2d Dist.) (finding Open Meetings Act violation in termination of an employee did not afford employee lifetime employment but the public body must re-deliberate "at least enough to support a finding that its discharge decision did not result from prior improper deliberations").

[1208] *Fox v. Lakewood*, 39 Ohio St.3d 19 (1998); *see also Skindell v. Madigan*, 2017-Ohio-398, ¶ 5 (8th Dist.).

[1209] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54 (2001) (once a public body's minutes are prepared, the Public Records Act requires the public body to permit access to the minutes upon request); *Ames v. Portage Cty. Bd. Commrs.*, 2023-Ohio-3382 (when the public body violated the Open Meetings Act in not preparing full and accurate minutes, the relator also established a violation of the Public Records Act).

[1210] *State ex rel. Vindicator Printing Co. v. Kirila*, 1991 Ohio App. LEXIS 6413 (11th Dist. Dec. 31, 1991).

[1211] R.C. 121.22(I)(4); R.C. Chapter 2733 (*quo warranto*); *State ex rel. Bates v. Smith*, 2016-Ohio-5449 (granting *quo warranto* to remove township trustee from office because trustees unlawfully voted to declare that position vacant when officeholder was on active military service); *State ex rel. Newell v. Jackson*, 2008-Ohio-1965, ¶ 8-14 (to be entitled to a writ of *quo warranto* to oust a good-faith appointee, a relator must either file a *quo warranto* action or an injunction challenging the appointment before the appointee completes the probationary period and becomes a permanent employee; this duty applies to alleged violations of the Open Meetings Act); *State ex rel. Randles v. Hill*, 66 Ohio St.3d 32 (1993) (granting writ of *quo warranto* reinstating petitioner when vote to remove him was made at a meeting where the public was inadvertently excluded); *McClarren v. Alliance*, 1987 Ohio App. LEXIS 9211 (5th Dist. Oct. 13, 1987) (an injunction must be issued upon the finding of a violation to allow for removal from office after any future knowing violation).

[1212] R.C. 121.22(H).

[1213] *Jones v. Brookfield Twp. Trustees*, 1995 Ohio App. LEXIS 2805 (11th Dist. June 30, 1995); *Roberto v. Brown Cty. Gen. Hosp.*, 1988 Ohio App. LEXIS 372 (12th Dist. Feb. 8, 1988).

[1214] *Roberto v. Brown Cty. Gen. Hosp.*, 1988 Ohio App. LEXIS 372 (12th Dist. Feb. 8, 1988).

[1215] R.C. 121.22(A), (C), and (H).

[1216] *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 2005-Ohio-2868, ¶ 19 (4th Dist.) (resolution to adopt proposal was invalid; even though it was adopted in open session, board members gave personal opinions and indicated how they would vote in resolution in an executive session); *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 2016-Ohio-4663, ¶ 37-39 (7th Dist.) (an attempt to "cure" a violation "with an open vote that immediately followed presentations and discussions held behind closed doors in executive sessions is exactly the type of conduct the Act seeks to prohibit"); *Mathews v. E. Local School Dist.*, 2001 Ohio App. LEXIS 1677 (4th Dist. Jan. 4, 2001) (board was permitted to discuss employee grievance in executive session, but was required to take formal action by voting in an open meeting); *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 664 (8th Dist. 1990) (once a conclusion is reached regarding pending or imminent litigation, the conclusion is to be made public, even though the deliberations leading to the conclusion were private).

[1217] R.C. 121.22(H); *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 2016-Ohio-4663, ¶ 30-31 (7th Dist.) (action by the public body that resulted from improper discussion in executive session was invalid); *Mansfield City Council v. Richland Cty. Council AFL-CIO,* 2003 Ohio App. LEXIS 6654 (5th Dist. Dec. 24, 2003) (council reached its conclusion based on comments in executive session and acted according to that conclusion).

[1218] *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 2003 Ohio App. LEXIS 6654 (5th Dist. Dec. 24, 2003).

[1219] R.C. 121.22(H). *But see Hoops v. Jerusalem Twp. Bd. of Trustees*, 1998 Ohio App. LEXIS 1496, *10-11 (6th Dist. Apr. 10, 1998) (illustrating that actions are not invalid merely because a reasonable method of notice had not been enacted by "rule"); *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 2016-Ohio-4663, ¶ 35-36 (7th Dist.) (notice of special meeting "to discuss the 2015-2016 school year" was not specific enough to meeting's purpose to discuss a school closure); *Barbeck v. Twinsburg Twp.*, 73 Ohio App.3d 587 (9th Dist. 1992); *Huth v. Bolivar*, 2014-Ohio-4889, ¶ 20-23 (5th Dist.) (even if notice was flawed, the second reading of a proposed ordinance was not "formal action").

[1220] *Davidson v. Hanging Rock*, 97 Ohio App.3d 723, 733 (4th Dist. 1994).

[1221] *Davidson v. Hanging Rock*, 97 Ohio App.3d 723, 733 (4th Dist. 1994).

[1222] R.C. 121.22(I)(2)(a); *Myers v. Village of Scio*, 2024-Ohio-2982, ¶ 50 (7th Dist.) (upon finding of a violation of the OMA, the issuance of an injunction is mandated by R.C. 121.22(I)(1), which "open[s] the door to the monetary remedy part of the OMA"). *But see State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 2013-Ohio-2295, ¶ 32 (5th Dist.) (declining to award civil forfeiture damages and attorney fees when case was filed as mandamus action in the court of appeals instead of a request for an injunction in the court of common pleas).

[1223] *Specht v. Finnegan*, 2002-Ohio-4660 (6th Dist.); *Manogg v. Stickle*, 1999 Ohio App. LEXIS 1488 (5th Dist. Mar. 15, 1999); *Weisbarth v. Geauga Park Dist.*, 2007-Ohio-6728, ¶ 30 (11th Dist.) (the only violation alleged was board's failure to state a precise statutory reason for going into executive session and that this

"'technical' violation entitled appellant to only one statutory injunction and one civil forfeiture"); *Maddox v. Greene Cty. Children Servs. Bd*., 2014-Ohio-2312, ¶ 40-51 (2d Dist.) (stacking forfeitures for certain violations but not others). *But see Doran v. Northmont Bd. of Edn.*, 2003-Ohio-7097, ¶ 18, n.3 (2d Dist.) (determining that the failure to adopt rule is one violation with one $500 fine; fine is not assessed for each meeting conducted in absence of rule where meetings were, in fact, properly noticed and held in an open forum).

[1224] *Ames v. Rootstown Twp. Bd. of Trustees,* 2022-Ohio-4605, ¶ 21.

[1225] R.C. 121.22(I)(2)(a); *State ex rel. Ames v. Freedom Twp. Bd. of Trustees*, 2024-Ohio-1645, ¶ 9 (11th Dist.).

[1226] R.C. 121.22(I)(2)(a); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 60 (2001) and 93 Ohio St.3d 1230 (2001) (awarding over $17,000 in attorney fees); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.,* 2014-Ohio-2312, ¶ 60 (2d Dist.) ("[T]he OMA is structured such that an injunction follows a violation and attorney fees follow an injunction."). *But see State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 2013-Ohio-2295, ¶ 32 (5th Dist.) (declining to award civil forfeiture damages and attorney fees when case was filed as mandamus action in the court of appeals instead of an injunction in the court of common pleas).

[1227] R.C. 121.22(I)(2)(a)(i), (ii); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2014-Ohio-2312*,* ¶ 61-62 (2d. Dist.) (trial court could reasonably conclude that a well-informed public body would know that it must be specific when giving a reason for executive session, and that it cannot vote in executive session); *Mathews v. E. Local School Dist.,* 2001 Ohio App. LEXIS 1677 (4th Dist. Jan. 4, 2001) (the board was not entitled to reduction when two board members knew not to take formal action during executive session); *State ex rel. Jones v. Bd. of Edn. of Dayton Pub. Schs.,* 2020-Ohio-4931, ¶ 61-62, 71 (2d Dist.) (awarding attorney fees because no well-informed board would believe it could publish a misleading notice of a special meeting or alter a published agenda after meeting; whether public body's actions were "egregious" or benefited the public is irrelevant).

[1228] R.C. 121.22(I)(2)(b); *McIntyre v. Westerville City School Dist. Bd. of Edn.*, 1991 Ohio App. LEXIS 2658, *9 (10th Dist. June 6, 1991) (plaintiff engaged in frivolous conduct because her actions subjected the board to a baseless suit and the incurring of needless expense); *State ex rel. Chrisman v. Clearcreek Twp.*, 2014-Ohio-252, ¶ 19 (12th Dist.) (upholding award of attorney fees when "there was no possible violation of the OMA as alleged in Relator's first four allegations").

[1229] *State ex rel. Chrisman v. Clearcreek Twp.*, 2014-Ohio-252, ¶ 23 (12th Dist.).

Glossary

When learning about the Ohio Sunshine Laws, you may come across legal terms that are unfamiliar to you. Below are the more common terms used in this handbook.

Charter

A charter is an instrument established by the citizens of a municipality, which is roughly analogous to a state's constitution. A charter outlines certain rights, responsibilities, liberties, or powers that exist in the municipality.

Discovery

Discovery is a pre-trial practice by which parties to a lawsuit disclose to each other documents and other information. The practice serves the dual purpose of permitting parties to be well-prepared for trial and enabling them to evaluate the strengths and weaknesses of their case.

In camera

In camera means "in chambers." A judge will often review records that are at issue in a public records dispute *in camera* to evaluate whether they are subject to any exemptions or defenses that may prevent disclosure.

Injunction

An injunction is a court order commanding that a person act or cease to act in a certain way. For instance, a person who believes a public body has violated the Open Meetings Act will file a complaint seeking injunctive relief. The court may then issue an order enjoining the public body from further violations of the act and requiring it to correct any damage caused by past violations.

Litigation

The term "litigation" refers to the process of carrying on a lawsuit, i.e., a legal action and all the proceedings associated with it.

Mandamus

Mandamus means "we command." In this area of law, it refers to the legal action filed by a party who believes that he or she has been wrongfully denied access to public records. The full name of the action is a petition for a writ of mandamus. If the party filing the action, or "relator," prevails, the court may issue a writ commanding the public office or person responsible for the public records, or "respondent," to correctly perform a duty that has been violated.

Pro se

Pro se means "for oneself." The term refers to people who represent themselves in court, acting as their own legal counsel.

Helpful Resources

- The Ohio Public Records Act, R.C. 149.43
  https://codes.ohio.gov/ohio-revised-code/section-149.43
- The Ohio Open Meetings Act, R.C. 122.121
  https://codes.ohio.gov/ohio-revised-code/section-121.22
- The Ohio Attorney General's Office Sunshine Laws Webpage
  https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws
- Links to the current Sunshine Laws Manual, the list of Ohio statutes that exempt specific records from public records disclosure, the list of Attorney General Opinions interpreting the Public Records Act and Open Meetings Act, the **Model Public Records Policy**, information on **Training Opportunities**, and other helpful resources on Ohio's Sunshine Laws.
- Ohio Laws and Administrative Rules
  https://codes.ohio.gov/
  Links to the Ohio Constitution, Ohio Revised Code, and Ohio Administrative Code.
- Ohio Rules of Court
  https://www.supremecourt.ohio.gov/laws-rules/ohio-rules-of-court/
  Links to Ohio rules of court, including the Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Juvenile Procedure, Supreme Court Rules of Practice, and Rules of Superintendence of the Courts of Ohio.
- The Ohio Auditor of State
  https://ohioauditor.gov/
  Links to Sunshine Laws training offered by the Auditor of State's Office and other Sunshine Laws resources.
- The Ohio Court of Claims
  https://ohiocourtofclaims.gov/public-records/
  Information on how to file a public records complaint in the Ohio Court of Claims, the mediation and case management process, and the case timeline.
- The Supreme Court of Ohio
  https://www.supremecourt.ohio.gov/
- The Ohio General Assembly
  https://www.legislature.ohio.gov/
- The Ohio History Connection and State Archives
  https://www.ohiohistory.org/
  Resources on records retention issues, including identifying and preserving records with historical value.
- The Department of Administrative Services
  https://das.ohio.gov/home/policy-finder/filter-policy-finder
  Examples of state agency records retention schedules, searchable by agency name or record category.

- The Ohio County Archivists and Records Managers Association
  https://www.ohiohistory.org/research/local-government-records-program/county-archivists-records-management-association/
  Resources for county records managers.
- The Ohio Electronic Records Committee (OhioERC)
  https://ohioerc.org/
  Resources for public offices on creating, maintaining, preserving, and accessing electronic records.

DAVE YOST
Attorney General

Dave Yost