PROTECTING ★ THE ★ UNPROTECTED

OHIO SUNSHINE LAWS

2022 AN OPEN GOVERNMENT RESOURCE MANUAL

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OHIO ATTORNEY GENERAL

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2022 AN OPEN GOVERNMENT RESOURCE MANUAL

Ohio Sunshine Laws 2022

My Fellow Ohioans,

Since my days as a journalist, government accountability has been a top priority of mine, and that hasn't changed throughout my career in public service.

Each of us has a right to know what our government is doing in our name, with our money.

That's why I'm pleased to offer this updated guide to Ohio's Sunshine Laws. The 2022 Sunshine Laws Manual spells out the rights that each Ohioan has to oversee his or her elected officials and details for those officials their obligation to operate transparently.

The manual, updated annually by my office's Public Records Unit, incorporates Ohio's Public Records and Open Meetings Acts, 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 of State's Office to offer free Sunshine Laws training at dozens of locations across Ohio. Public officials or their designees are required to complete training on Ohio's Public Records Act at least once per elected term. An online version of the training is available, too.

My office has made access to these trainings easier than ever. Not only are they available on our website at www.OhioAttorneyGeneral.gov/Sunshine, but we also will be taking them on the road, presenting regional sessions throughout the state.

We also offer a model public-records policy for local governments to use when creating their own policies. These resources and others are available on our website.

The Sunshine Laws Manual is a guide, not a substitute for legal advice. Much of open-government law stems from court interpretation of Ohio's Sunshine Laws. Because of this, I encourage local governments to seek guidance from their legal counsel as specific questions arise.

Government of, by and for the people also must be *open* to the people.

I encourage Ohioans to exercise these rights vigorously.

Yours,

Dave Yost

Dave Yost
Attorney General

Ohio Sunshine Laws 2022

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
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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:

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Glossary

When learning about the Ohio Sunshine Laws, you may confront some 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
The term means literally "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
The term means "for oneself," and is used to refer to people who represent themselves in court, acting as their own legal counsel.

The Ohio Public Records Act

Chapter One: Public Records Defined

Overview of the Ohio Public Records Act

Ohio law has long provided for public scrutiny of state and local government records.[1]

Ohio's Public Records Act details what is a "public record," the obligations of a public office, and the rights and obligations of a public records requester. The Act also excludes certain records from disclosure and enforces production when an office denies a proper public records request. The pages that follow will explain all of these principles, and below is a brief overview of them.

Any person may request to inspect or obtain copies of public records from a public office that keeps those records. A public office must organize and maintain its public records in a manner that meets its duty to respond to public records requests and must keep a copy of its records retention schedules at a location readily available to the public. When it receives a proper public records request, unless part or all of a record is exempt from release, a public office must provide inspection of the requested records promptly and at no cost or provide copies at cost within a reasonable period of time.

Unless a specific law states otherwise, a requester does not have to provide a reason for wanting records, give their name, or make the request in writing. However, the requester does have to be clear and specific enough for the public office to reasonably identify what public records they seek. A public office can properly deny a request if the office no longer keeps the records pursuant to their records retention schedules, if the request is for documents that are not records of the office, or if the requester does not revise an ambiguous or overly broad request.

The Ohio General Assembly has passed a number of laws that protect certain records by requiring or permitting a public office to withhold them from public release. When a public office invokes one of these exemptions, the office may only withhold a record or part of a record clearly covered by the exemption and must tell the requester on what legal authority it is relying to withhold it.

A person aggrieved by the alleged failure of a public office to comply with an obligation of the Public Records Act may choose to either (1) file a complaint against the public office in the Court of Claims or (2) file a mandamus lawsuit against the public office. The Court of Claims process provides an expedited procedure for resolving public records disputes. To commence an action in the Court of Claims, the requester must file a specified complaint form, attaching the original public records request and any written responses. The case will first be referred to mediation, and then, if mediation is unsuccessful, proceed on a "fast track" resolution process that is overseen by a special master. In a mandamus lawsuit, the requester will have the burden of showing that he or she made a proper public records request, and the public office will have the burden of showing the court that it complied with the obligation(s) allegedly violated. If the public office cannot show that it complied with its legal obligation, the court will order the public office to provide any improperly withheld record, and the public office may be required to pay a civil penalty and attorney fees.

I. Chapter One: Public Records Defined

The Public Records Act applies only to "public records," which the Act defines as "records kept by any public office."[2] When making or responding to a public records request, it is important to first establish whether the items sought are really "records," and if so, whether they are currently being "kept by" an organization that meets the definition of a "public office." This chapter will review the definitions of each of these key terms and how Ohio courts have applied them.

One of the ways that the Ohio General Assembly removes certain records from the operation of the Public Records Act is to simply remove them from the definition of "public record." Chapter Three addresses how exemptions to the Act are created and applied.

A. What Is a "Public Office"?

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

"Public office" includes "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government."[3] Note that an organization which meets the statutory definition of a "public body" under the Open Meetings Act (see Open Meetings Act, Chapter One: A. "Public Body") does not automatically meet the definition of a "public office" for purposes of the Public Records Act.[4]

This definition includes all state and local government offices, and also many agencies not directly operated by a political subdivision, such as police departments operated by private universities.[5] Examples of entities that previously have been determined to be "public offices" (prior to the *Oriana House*[6] decision) include:

- Some public hospitals; [7]
- Community action agencies; [8]
- Private non-profit water corporations supported by public money; [9]
- Private non-profit PASSPORT administrative agencies; [10]
- Private equity funds that receive public money and are essentially owned by a state agency; [11]
- Non-profit corporations that receive and solicit gifts for a public university and receive support from taxation; [12]
- Private non-profit county ombudsman offices; [13] and
- County emergency medical services organizations.[14]

2. Private entities can be "public offices"

If there is clear and convincing evidence that a private entity is the "functional equivalent" of a public office, that entity will be subject to the Public Records Act.[15] Under the functional-equivalency test, a court must analyze all pertinent factors, including: (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.[16] 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.'"[17] 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.

3. Quasi-agency – A private entity, even if not a "public office," can be "a person responsible for public records"

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.[18] These records are public records when three conditions are met: (1) the private entity prepared the records to perform responsibilities normally belonging to the public office; (2) the public office is able to monitor the private entity's performance; *and* (3) the public office may access the records itself.[19] Under these circumstances, the public office is subject to requests for the public records under its jurisdiction, and the private entity itself may have become a "person[20] responsible for public records"[21] for purposes of the Public Records Act.[22] For example, a public office's obligation to turn over application materials and resumés extends to records of private search firms the public office used in the hiring process.[23] Even if the public office does not have control over or access to such records, the records may still be public.[24] A public office cannot avoid its responsibility for public records by transferring custody of records or the record-making function to a private entity.[25] 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.[26] 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.[27]

4. Public office is responsible for its own records

Only a public office or person who is actually responsible for the record sought is responsible for providing inspection or copies.[28] 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.[29] 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.[30] The same document may be kept as a record by more than one public office.[31] One appellate court has 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.[32]

B. 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 a document or other item does not meet all three parts of the definition of a "record," then it is a non-record and is <u>not</u> 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).[33]

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, [34] video, [35] map, blueprint, photograph, voicemail message, text message, [36] or any other reproducible storage medium could be a record. This element is fairly broad. With the exemption of one's thoughts and unrecorded conversation, 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) [37] made to a public office, rather than a request for a specific, existing document, device, or item containing such information, would fail this part of the definition of a "record." [38] A public office has discretion to determine the form in which it will keep its records. [39] Further, a public office has no duty to fulfill requests that do not specifically and particularly describe the records the requester is seeking. (See Chapter Two: A. 4, "A request must be specific enough for the public office to reasonably identify responsive records").

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. [40] 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." [41]

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 found 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." [42] It is the message or content, not the medium on which it exists, that makes a document a record of a public office. [43] The Ohio Supreme Court has noted that "disclosure [of non-records] would not help to monitor the conduct of state government." [44] Some items that have been found not to document the activities, etc., of public offices include public employee home addresses kept by the employer solely for administrative (i.e., management) convenience, [45] retired municipal government employee home addresses kept by the municipal retirement system, [46] mailing lists [47], personal calendars and appointment books, [48] juror contact information and other juror questionnaire responses, [49] personal information about children who use public recreational facilities, [50] personal identifying information in housing authority lead-poisoning documents, [51] and non-record items and information contained in employee personnel files. [52] On the other hand, the names and contact information of some licensees, [53] contractors, [54] lessees, [55] customers, [56] and other non-employees of a public office [57] have been found to be "records" when they actually document the formal activities of a particular office. 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 itself document the activities, etc., of a public office. [58] Personal correspondence or personal email addresses that do not document any activity of the office are non-records. [59] Finally, 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. [60]

3. The effect of "actual use"

An item received by a public office is not a record simply because the public office *could* use the item to carry out its duties and responsibilities. [61] However, if the public office *actually* uses the item, it may thereby document the office's activities and become a record. [62] For example, where a school board invited job applicants to send applications to a post office box, any applications received in that post office box did not become records of the office until the board retrieved and reviewed, or otherwise used and relied on them. [63] Personal, otherwise non-record correspondence that is actually used to document a decision to discipline a public employee qualifies as a "record." [64]

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

a. Email

A public office must analyze an email message like any other item—by its *content*—to determine if it meets the definition of a record. As electronic documents, all 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.[65] If an email does not serve to document the activities of the office, then it does not meet the definition of a record.[66]

Although the Ohio Supreme Court has not ruled directly on whether communications of public employees to or from private email accounts that otherwise meet the definition of a record are subject to the Public Records Act,[67] the Ohio Court of Claims has held that they are.[68] 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.[69]

b. Notes

Not every piece of paper on which a public official or employee writes something meets the definition of a record.[70] Personal notes generally do not constitute records.[71] Employee notes have been found not to be public records if they are:

- 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.[72]

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 Ohio 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.[73] 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 to be considered a record.[74]

c. Drafts

If a draft document kept by a public office meets the three-part definition of a record, it is subject to both the Public Records Act and records retention law.[75] For example, the Ohio Supreme Court found 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.[76] A public office may address the length of time it must keep drafts through its records retention schedules.[77]

d. Electronic database contents

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.[78] 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 Ohio Supreme Court has determined that the output already "exists" as a record for the purposes of the Public Records Act.[79] In contrast, where the public office would have to reprogram its computer system to produce the

requested output, the Court has determined that the public office does not have that output as an existing record of the office.[80]

C. What is a "Public Record"?

1. Statutory definition – R.C. 149.43(A)(1): "'Public record' means records kept by any public office"[81]

This short definition joins the previously detailed definitions of "records" and "public office," with the words "kept by."

2. What "kept by" means

A record is only a public record if it is "kept by"[82] a public office.[83] 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 actually in existence and "kept" by the public office.[84] A public office has no duty to furnish records that are not in its possession or control.[85] 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.[86] 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.[87] But "'so long as a public record is kept by a government agency, it can never lose its status as a public record.'"[88]

D. Exemptions

Both within the Public Records Act and in separate statutes throughout the Ohio Revised Code, the Ohio General Assembly has identified items and information that are either removed from the definition of public record or are otherwise required or permitted to be withheld.[89] (See Chapter Three: "Exemptions to the Required Release of Public Records" for definitions, application, and examples of exemptions to the Public Records Act).

Notes:

[1] Ohio's state and local government offices follow Ohio's Public Records Act, found at R.C. 149.43. The federal Freedom of Information Act, 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.*, 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297, ¶ 38.
[2] R.C. 149.43(A)(1).
[3] R.C. 149.011(A). JobsOhio, the 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).
[4] *State ex rel. ACLU of Ohio v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶¶ 35-38.
[5] *State ex rel. Schiffbauer v. Banaszak*, 142 Ohio St.3d 535, 2015-Ohio-1854, 33 N.E.3d 52, ¶ 12 (finding the Otterbein University police department to be public office because it "is performing a function that is historically a government function").
[6] *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193. Similar private entities today should be evaluated based on the functional-equivalency test adopted in *Oriana House*.
[7] *State ex rel. Dist. 1199, Health Care & Social Serv. Union v. Lawrence Cty. Gen. Hosp.*, 83 Ohio St.3d 351, 1998-Ohio-0049, 699 N.E.2d 1281 (1998). *But see* State ex rel. Stys v. Parma Community Gen. Hosp., 93 Ohio St.3d 438, 2001-Ohio-1582, 755 N.E.2d 874 (2001) (deeming a particular hospital not a "public office"); *State ex rel. Farley v. McIntosh*, 134 Ohio App.3d 531, 731 N.E.2d 726 (2d Dist. 1998) (finding court-appointed psychologist not a "public office").
[8] *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn.*, 61 Ohio Misc.2d 631, 582 N.E.2d 59 (Lucas C.P. 1990).
[9] *Sabo v. Hollister Water Assn.*, 4th Dist. Athens No. 93 CA 1582, 1994 Ohio App. LEXIS 33 (Jan. 12, 1994).
[10] 1995 Ohio Op. Att'y Gen. No. 001.
[11] State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers' Comp., 106 Ohio St.3d 113, 2005-Ohio-3549, 832 N.E. 2d 711 (holding that limited-liability companies organized to receive state-agency contributions were public offices for purposes of the Public Records Act); *see also State ex rel. Repository v. Nova Behavioral Health, Inc.*, 112 Ohio St.3d 338, 2006-Ohio-6713, 859 N.E.2d 936, ¶ 42.
[12] *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St.3d 258, 602 N.E.2d 1159 (1992).
[13] State ex rel. Strothers v. Wertheim, 80 Ohio St.3d 155, 1997-Ohio-349, 684 N.E.2d 1239.
[14] 1999 Ohio Op. Att'y Gen. No. 006.
[15] *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854,854 N.E.2d 193, paragraph one of syllabus; *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 51 (holding that no clear and convincing evidence that private groups were functionally equivalent to 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, 117 N.E.3d 194 ¶¶ 17-42 (8th Dist.) (reversing Court of Claims' order and holding that community college foundation is the functional equivalent of a public entity).
[16] *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193, paragraphs one and two of syllabus; *see also State ex rel. Repository v. Nova Behavioral Health, Inc.*, 112 Ohio St.3d 338, 2006-Ohio-6713, 859 N.E.2d 936.
[17] *State ex rel. Repository v. Nova Behavioral Health, Inc.*, 112 Ohio St.3d 338, 2006-Ohio-6713, 859 N.E.2d 936, ¶ 24; *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193, ¶ 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*, 130 Ohio St.3d 87, 2011-Ohio-4897, 955 N.E.2d 987, ¶¶ 15-29 (finding joint self-insurance pool for counties and county governments not to be the functional equivalent of a public office); *see also State ex rel. Dayton Tea Party v. Ohio Mun. League*, 129 Ohio St.3d 1471, 2011-Ohio-4751, 953 N.E.2d 839 (granting a motion to dismiss without opinion, based on the argument that the Ohio Municipal League and Township Association were not the functional equivalents of public offices); *State ex rel. Dist. Eight Reg'l Org. Comm. v. Cincinnati-Hamilton County Cmty. Action Agency*, 192 Ohio App.3d 553, 2011-Ohio-312, 949 N.E.2d 1022 (1st Dist.) (finding home weatherization program administered by private non-profit community action agency not to be functional equivalent of public office); *State ex rel. Luken v. Corp. for Findlay Mkt. of Cincinnati*, 2012-Ohio-2074, 972 N.E.2d 607 (1st Dist.), ¶ 27 (finding non-profit corporation that manages the operation of a public market is not the functional equivalent of a public office); *Hurt v. Liberty Twp.,* 2017-Ohio-7820, 97 N.E.3d 1153 (5th Dist.), ¶ 42 (investigator was the functional equivalent of a public office because he was performing a governmental function and was even paid by the township with public tax dollars); *Schutte v. Gorman Heritage Found.,* Ct. of Cl. No. 2018-01029PQ, 2019-Ohio-1818 (finding foundation that operated a working farm to be the functional equivalent of a public office because foundation provided a service akin to a public park on government land and received a significant level of funding from a village that played a key role in its creation).
[18] *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 660, 2001-Ohio-1895, 758 N.E.2d 1135; *State ex rel. Gannett Satellite Info. Network v. Shirey*, 76 Ohio St.3d 1224, 669 N.E.2d 1148 (1996). *State ex rel. Armatas v. Plain Twp.*, 163 Ohio St.3d 304, 2021-Ohio-1176, 170 N.E.3d 19, ¶ 14 (applying quasi-agency test to hold that private law firm to which township delegated legal work was a "person responsible" for public records).
[19] *State ex rel. Carr v. City of Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948, ¶ 37 (finding that 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-Ohio-1895, 758 N.E.2d 1135; *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 550 N.E.2d 464 (1990) (outcome overturned by subsequent amendment of R.C. 4701.19(B)). *But see State ex rel. Am. Civ. Liberties Union of Ohio v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶¶ 52-54 (holding that quasi-agency theory did not apply when private citizen group submitted recommendations but owed no duty to government office to do so); *State ex rel. Armatas, v. Plain Twp. Bd. Of Trustees,* 5th Dist. Stark No. 2019CA00141, 2020-Ohio-1225, ¶¶ 33-35 (quasi-agency test not met when no evidence that township monitored law firm's handling of legal matters, had access to legal invoices for monitoring purposes, or directly contracted with law firm for legal services.)
[20] The legal definition of "person" "includes an individual, corporation, business trust, estate, trust, partnership, and association." R.C. 1.59(C).
[21] *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers' Comp.*, 106 Ohio St.3d 113, 2005-Ohio-3549, 832 N.E.2d 711, ¶ 20 (Ohio "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.'"), citing *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 39, 550 N.E.2d 464 (1990); *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 658, 2001-Ohio-1895, 758 N.E.2d 1135; *State ex rel. Dist. Eight Reg'l Org. Comm. v. Cincinnati-Hamilton County Cmty. Action Agency*, 192 Ohio App.3d 553, 2011-Ohio-312, 949 N.E.2d 1022 (1st Dist.) (finding home weatherization program administered by private non-profit community action agency not to be person responsible for public records); State ex rel. Doe v. Tetrault, 12th Dist. Clermont No. CA2011-10-070, 2012-Ohio-3879, ¶ 26 (finding 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, 53 N.E.3d 788 (8th Dist.), ¶ 33 (deeming private company that entered into contract with city to conduct study and make recommendations to ensure equal opportunities for minorities a person responsible for records); *Sheil v.*

Horton, 2018-Ohio-5240, 117 N.E.3d 194 (8th Dist.), ¶¶ 17-42 (finding that community college foundation met the elements to qualify as a "person responsible for records" of community college, but concluded this issue moot).
[22] *See, e.g.*, R.C. 149.43(B)(1)-(9), (C)(1), (C)(2).
[23] *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403-404, 1997-Ohio-206, 678 N.E.2d 557; *State ex rel. Carr v Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948, ¶¶ 36-37; for additional discussion, see Chapter Six: B. "Employment Records."
[24] *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 402-03, 1997-Ohio-206, 678 N.E.2d 557 (finding that, despite a lack of proof of public office's ability to access search firm's records or monitor performance, requested resumes were still public records).
[25] *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 659, 2001-Ohio-1895. 758 N.E.2d 1135; *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403, 1997-Ohio-206, 678 N.E.2d 557.
[26] *State ex rel. Rittner v. Foley*, 6th Dist. Lucas No. L-08-1328, 2009-Ohio-520 (finding school system not responsible for alumni rosters kept only by private alumni organizations); *Hurt v. Liberty Twp.*, 2017-Ohio-7820, 91 N.E.3d 1153 (5th Dist.) ¶ 51 (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).
[27] *State ex rel. Keating v. Skeldon*, 6th Dist. Lucas No. L-08-1414, 2009-Ohio-2052 (finding assistant prosecutor and county public affairs liaison not "persons responsible" for records of county dog warden).
[28] *Cvijetinovic v. Cuyahoga Cty. Aud.*, 8th Dist. Cuyahoga No. 96055, 2011-Ohio-1754.
[29] *State ex rel. MADD v. Gosser*, 20 Ohio St.3d 30, 485 N.E.2d 706 (1985), paragraph two of the syllabus.
[30] *State ex rel. ACLU of Ohio v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625,943 N.E.2d 553, ¶¶ 33-34.
[31] *State v. Sanchez*, 79 Ohio App.3d 133, 136, 606 N.E.2d 1058 (6th Dist. 1992).
[32] *State ex rel. Cushion v. Massillon*, 5th Dist. Stark No. 2010CA00199, 2011-Ohio-4749, ¶¶ 81-86, *appeal not allowed* 2012-Ohio-136.
[33] *See State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, 963 N.E.2d 1288, ¶¶ 28-41 (detailing application of the definition of "records" to the electronic records of one public office).
[34] *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 21 (finding email messages constitute electronic records under R.C. 1306.01(G)); *Sinclair Media III, Inc. v. City of Cincinnati*, Ct. of Cl. No. 2018-01357PQ, 2019-Ohio-2623, ¶ 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").
[35] *State ex rel. Harmon v. Bender*, 25 Ohio St.3d 15, 17, 494 N.E.2d 1135 (1986).
[36] *Sinclair Media III, Inc. v. City of Cincinnati,* Ct. of Cl. No. 2018-01357PQ, 2019-Ohio-2623, ¶ 14 (holding that "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"); *Cincinnati Enquirer v. City of Cincinnati,* Ct. of Cl. No. 2018-01339PQ, 2019-Ohio-1613.
[37] *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 1998-Ohio-242, 695 N.E.2d 256 (determining that 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-Ohio-104, 687 N.E.2d 283 (inmate's request for "qualifications of APA members" was a request for information rather than for specific records); *Wilhelm v. Jerusalem Twp. Zoning,* Ct. of Cl. No. 2020-008342PQ, 2020-Ohio-5283, ¶ 11 (requester's questions about a township's records did not identify any specific records) adopting Report and Recommendation at *Wilhelm v. Jerusalem Twp. Zoning,* Ct. of Cl. No. 2020-00342PQ, 2020-Ohio-5282.
[38] *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154, 1999-Ohio-447, 707 N.E.2d 496 (finding that a public office has "no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records," and that requested records of peremptory strikes during relator's trial did not exist, and the court had no obligation to create responsive records); *Capers v. White*, 8th Dist. Cuyahoga No. 80713, 2001 Ohio App. LEXIS 1962 (Apr. 17, 2002) (holding that requests for information are not enforceable in a public records mandamus action).
[39] *State ex rel. Recodat Co. v. Buchanan*, 46 Ohio St.3d 163, 164, 546 N.E.2d 203 (1989); *State ex rel. Bardwell v. City of Cleveland,* 126 Ohio St.3d 195, 2010-Ohio-3267, 931 N.E.2d 1080, ¶ 4.
[40] *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 660, 2001-Ohio-1895, 758 N.E.2d 1135 (finding requested stadium cost-overrun records were within jurisdiction of county board and were public records regardless of whether they were in the possession of the county or the construction companies).
[41] *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 2001-Ohio-1895, 758 N.E.2d 1135; *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 39 (1990) ("[W]e hold that the records [of an independent certified public account] are within the Auditor's jurisdiction and that he is subject to a writ of mandamus ordering him to make them available for inspection.").
[42] *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 29 (quotation omitted); *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188, 610 N.E.2d 997 (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.").
[43] *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St.3d 456, 461, 584 N.E.2d 665 (1992); *Sinclair Media III, Inc. v. City of Cincinnati,* Ct. of Cl. No. 2018-01357PQ, 2019-Ohio-2623, ¶ 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").
[44] *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 27, citing *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 369, 2000-Ohio-345 (noting that names, addresses, and other personal information kept by city recreation and parks department regarding children who used city's recreational facilities are not public records).
[45] *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274 (holding that home addresses of employees generally do not document activities of the office, but may in certain circumstances).
[46] *State ex rel. DeGroot v. Tilsley*, 128 Ohio St.3d 311, 2011-Ohio-231, 943 N.E.2d 1018, ¶¶ 6-8.
[47] State ex rel. Taxpayers Coalition v. City of Lakewood, 86 Ohio St.3d 385, 1999-Ohio-114, 715 N.E.2d 179 (holding that city was not required to create mailing list it did not regularly keep in its existing records).
[48] *Internatl. Union, United Auto., Aerospace & Agricultural Implement Workers v. Voinovich*, 100 Ohio App.3d 372, 378, 654 N.E.2d 139 (10th Dist. 1995). However, work-related calendar entries are manifestly items created by a public office that document the functions, operations, or other activities of the office, and are records. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.2d 877, ¶ 33.
[49] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E.2d 180, ¶ 51; *State v. Carr,* 2d Dist. Montgomery No. 28193, 2019-Ohio-3802, ¶ 22 (holding that jury verdict forms that contain names of jurors are not public records).
[50] *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 369, 2000-Ohio-345, 725 N.E.2d 1144; R.C. 149.43(A)(1)(r).
[51] *State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297, ¶ 36 (holding that personal identifying information in lead-poisoning documents, such as the names of parents and guardians; their Social Security and telephone numbers; their children's names and dates of birth; the names, addresses, and telephone numbers of other caregivers; and the names and places of employment of occupants, did not serve to document the CMHA's functions or other activities).
[52] *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188, 610 N.E.2d 997 (1993); *State ex rel. Louisville Edn. Assn v. Louisville City School Dist. Bd. of Edn.*, 5th Dist. Stark No. 2016CA00159, 2017-Ohio-5564, ¶¶ 4-9 (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, therefore, it is not public information subject to disclosure); *State ex rel. Community Press v. City of Blue Ash*, 2018-Ohio-2506, 116 N.E.3d 755 (1st Dist.) ¶¶ 2, 12 (requested records were peer assessments of managers, but the assessments 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.*, Ct. of Cl. No. 2018-01032PQ, 2018-Ohio-5015, ¶ 11 (requested records documented optional health insurance choices made by employees and reveal little about the agency's activities).

[53] *State ex rel. Cincinnati Enquirer v. Jones-Kelly*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, ¶ 7 (requiring release of names and addresses of persons certified as foster caregivers); exemption for this information later created by R.C. 5101.29(D), R.C. 149.43(A)(1)(y).

[54] *State ex rel. Carr v. City of Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948, ¶¶ 41-43 (holding that names of fire-captain promotional candidates; names, ranks, addresses, and telephone numbers of firefighter assessors; and all documentation on subject-matter experts were records, although a [since-repealed] statutory exemption applied).

[55] *State ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 5th Dist. Tuscarawas No. 2013 AP 06 0024, 2014-Ohio-1222, ¶ 4 (relating to names and addresses of persons leasing property from the Watershed District for any purpose).

[56] 2002 Ohio Op. Att'y Gen. No. 030, pp. 9-10 (relating to names and address of a county sewer district's customers); partial exemption later created by 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").

[57] *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, 844 N.E.2d 1181, ¶¶ 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); *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St.3d 258, 602 N.E.2d 1159 (1992), paragraph 2 of syllabus (relating to names of donors to a gift-receiving arm of a public university); *Brown v. City of Cleveland,* Ct. of Cl. No. 2018-01426PQ, 2019-Ohio-2627, ¶¶ 8-10 (holding that home addresses of attendees who were invited to a city councilmember's meeting to be public record 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).

[58] *State ex rel. Recodat Co. v. Buchanan*, 46 Ohio St.3d 163, 165, 546 N.E.2d 203 (1989); *see State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, 986 N.E.2d 931, ¶¶ 21-25 (holding that data "inextricably intertwined" with exempt proprietary software need not be disclosed).

[59] 2014 Ohio Op. Att'y Gen. No. 029; *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37, 693 N.E.2d 789 (1998); *Brown v. City of Cleveland,* Ct. of Cl. No. 2018-01426PQ, 2019-Ohio-2627, ¶¶8-10 (holding that home addresses of attendees who were invited to a city councilmember's meeting to be public records 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).

[60] 2007 Ohio Op. Att'y Gen. No. 034.

[61] *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63, 1998-Ohio-180, 697 N.E.2d 640; *State ex rel. Community Press v. City of Blue Ash*, 2018-Ohio-2506, 116 N.E.3d 755 (1st Dist.), ¶¶ 2, 12 (requested records were peer assessments of managers, but the assessments were only used for "individual development" and not "used" by public office to carry out its duties and responsibilities and accordingly non-records); *Bollinger v. River Valley Local School Dist.,* Ct. of Cl. No. 2020-00368PQ, 2020-Ohio-6637, ¶ 10 ("[i]tems gathered during an investigation, but never used to document any aspect of the investigation, do not qualify as 'records.'")

[62] *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, 805 N.E.2d 1116, ¶ 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-Ohio-180, 697 N.E.2d 640 (noting that judge read unsolicited letters but did not rely on them in sentencing defendant, therefore, letters did not serve to document any activity of the public office); *State ex rel. Sensel v. Leone*, 85 Ohio St.3d 152, 1999-Ohio-446, 707 N.E.2d 496 (finding unsolicited letters alleging inappropriate behavior of coach not "records"); *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 39 (1990) (finding a record is "anything a governmental unit utilizes to carry out its duties and responsibilities."); *State ex rel. Rhodes v. City of Chillicothe*, 4th Dist. Ross No. 12CA3333, 2013-Ohio-1858, ¶ 28 (finding images that were not forwarded to city by vendor not public records because city did not use them in performing a governmental function); *State ex rel. Carr v. Caltrider*, C.P. Case No. 00CVH07-6001, 2001 Ohio Misc. LEXIS 41 (May 16, 2001); *Chernin v. Geauga Park Dist.*, Ct. of Cl. No. 2017-00922PQ, 2018-Ohio-1579, ¶ 17, adopting Report and Recommendation at *Chernin v. Geauga Park Dist.*, Ct. of Cl. No. 2017-00922PQ, 2018-Ohio-1717 (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"); *Brown v. City of Cleveland,* Ct. of Cl. No. 2018-01426PQ, 2019-Ohio-2627, ¶¶ 8-10 (holding that 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).

[63] *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, 938 N.E.2d 347, ¶¶ 15-16.

[64] *State ex rel. Bowman v. Jackson City School Dist.*, 4th Dist. Jackson No. 10CA3, 2011-Ohio-2228.

[65] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961 (holding public office email can constitute public records under R.C. 149.011(G) and 149.43 if it documents the organization, policies, decisions, procedures, operations, or other activities of the public office); *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶¶ 28-32; *State ex rel. Bowman v. Jackson City School Dist.*, 4th Dist. Jackson No. 10CA3, 2011-Ohio-2228 (finding personal emails on public system to be "records" when relied upon for discipline).

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

[67] *But see State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 23 (noting that respondent conceded that email messages created or received by her in her capacity as state representative that document her work-related activities constitute records subject to disclosure under R.C. 149.43 regardless of whether it was her public or her private email account that received or sent the email messages).

[68] *State ex rel. Sinclair Media v. Cincinnati,* Ct. of Cl. No. 2018PQ-01357PQ, 2019-Ohio-2624, ¶¶ 5-12.

[69] *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 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.").

[70] *Internatl. Union, United Auto., Aerospace & Agricultural Implement v. Voinovich*, 100 Ohio App.3d 372, 376, 654 N.E.2d 139 (10th Dist. 1995) (holding that governor's logs, journals, calendars, and appointment books not "records"); *State ex rel. Doe v. Tetrault*, 12th Dist. Clermont No. CA2011-10-070, 2012-Ohio-3879, ¶¶ 4, 28, 35-38 (noting that scrap paper used by one person to track his hours worked, for entering his hours into report, contained only personal notes and were not a record); *State ex rel. Essi v. City of Lakewood*, 2018-Ohio-5027, 126 N.E.3d 254 (8th Dist.), ¶ 41 (redaction of personal and family appointments before release of work calendar was appropriate).

[71] *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, 814 N.E.2d 1218, ¶ 22 (holding notes taken during public employee's pre-disciplinary conference not "records"); *Hunter v. Ohio Bur. of Workers' Comp.*, 10th Dist. Franklin No. 13AP-457, 2014-Ohio-5660, ¶¶ 16-17, 23-35 (holding investigators' handwritten notes, used to convey information for oral or written reports and then disposed of, were not public

records subject to disclosure); *State ex rel. Doe v. Tetrault*, 12th Dist. Clermont No. CA2011-10-070, 2012-Ohio-3879, ¶¶ 38, citing *Cranford v. Cleveland*; *State ex rel. Santefort v. Wayne Twp. Bd. of Trustees*, 12th Dist. Butler No. CA2014-070153, 2015-Ohio-2009, ¶¶ 13, 15 (holding 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.,* 5th Dist. Perry Nos. 19-CA-0003, 19-CA-0004, 2019-Ohio-5435, ¶ 47, *discretionary appeal not allowed,* 158 Ohio St.3d 1488, 2019-Ohio-5435 (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,* Slip Op. 2020-Ohio-5585, ¶¶ 62-67 (handwritten notes maintained by prosecuting attorney are personal notes and therefore, "are outside the scope of the Public Records Act.")

[72] *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, 814 N.E.2d 1218. ¶¶ 9-23; *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439, 441, 1993-Ohio-32, 619 N.E.2d 668; *Barnes v. Columbus.*, 10th Dist. Franklin No. 10AP-637, 2011-Ohio-2808, *discretionary appeal not allowed*, 130 Ohio St.3d 1418, 2011-Ohio-5605 (relating to police promotional exam assessors' notes); *M.F. v. Perry Cty. Children Servs.,* 5th Dist. Perry Nos. 19-CA-0003, 19-CA-0004, 2019-Ohio-5435, ¶ 47; *State ex rel. Summers v. Fox*, 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625, ¶¶ 65-66 (law enforcement officer's personal notes properly withheld and not required to be maintained where kept for his own personal use).

[73] *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, 814 N.E.2d 1218, ¶ 19; *State ex rel. Steffan v. Kraft*, 67 Ohio St.3d 439, 440, 1993-Ohio-32, 619 N.E.2d 688; personal notes, if not physically "kept by" the public office, would also not fit that defining requirement of a "public record."

[74] *State ex rel. Verhovec v. Marietta*, 4th Dist. Washington No. 12CA32, 2013-Ohio-5415, ¶ 30 (holding that handwritten notes that are later transcribed are records because city clerk used them not merely as personal notes, but in preparation of official minutes in clerk's official capacity).

[75] *Kish v. City of Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, ¶ 20 (noting that "document need not be in final form to meet the statutory definition of 'record'"); *State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 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 organization, policies, functions, decisions, procedures, operations, or other activities of a public office."); *see also State ex rel. Wadd v. City of Cleveland*, 81 Ohio St.3d 50, 53, 1998-Ohio-444, 689 N.E.2d 25 (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, 527 N.E.2d 1230 (1988) (granting access to preliminary work product that had not reached its final stage or official destination); *State ex rel. Dist. 1199, Health Care & Social Serv. Union, SEIU v. Gulyassy*, 107 Ohio App.3d 729, 733, 669 N.E.2d 487 (10th Dist. 1995).

[76] *State ex rel. Calvary v. City of Upper Arlington*, 89 Ohio St.3d 229, 2000-Ohio-142, 729 N.E.2d 1182.

[77] For additional discussion, *see* Chapter Five: B. "Records Management – Practical Pointers."

[78] *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154, 1999-Ohio-447, 707 N.E.2d 496, citing *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 1998-Ohio-242, 695 N.E.2d 256; s*ee also State ex rel. Margolius v. Cleveland*, 62 Ohio St.3d 456, 461, 584 N.E.2d 665 (1992); *Kovach v. Geauga Cty. Auditor's Office,* Ct. of Cl. No. 2019-00917PQ, 2019-Ohio-5455, ¶ 10 (holding that Auditor properly denied requests seeking explanations or reasons for the execution of public functions and asking for admissions or denials of certain facts); *Isreal v. Franklin Cty. Commrs.,* Ct. of Cl. No. 2019-00548PQ, 2019-Ohio-5457, ¶ 8-9.

[79] *State ex rel. Scanlon v. Deters*, 45 Ohio St.3d 376, 379, 544 N.E.2d 680 (1989) (overruled on different grounds).

[80] *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 275, 1998-Ohio-242, 695 N.E.2d 256 (finding that the agency would have had to reprogram its computers to create the requested names and addresses of a described class of members).

[81] The definition goes on to expressly include specific entities, by title, as "public offices," and specific records as "public records," as follows: "… including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code." R.C. 149.43(A)(1).

[82] Prior to July 1985, the statute read, "records *required to be kept by* any public office," which was a very different requirement and no longer applies to the Ohio definition of "public record." *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170, 173, 527 N.E.2d 1230 (1988).

[83] *State ex rel. Hubbard v. Fuerst*, 8th Dist. Cuyahoga No. 94799, 2010-Ohio-2489 (holding that a writ of mandamus will not issue to compel a custodian of public records to furnish records that are not in his possession or control); *State ex rel. Cordell v. Paden,* 156 Ohio St.3d 394, 2019-Ohio-1216, 128 N.E.3d 179, ¶¶ 9-10 (no duty to provide access to nonexistent records); *Sinclair Media III, Inc. v. City of Cincinnati,* Ct. of Cl. No. 2018-01357PQ, 2019-Ohio-2623, ¶ 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).

[84] *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, 986 N.E.2d 931, ¶ 16 (holding that, in responding to request for copies of maps and aerial photographs, a county engineer's office has no duty to create requested records because the public office generates such records by inputting search terms into program).

[85] *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, ¶ 28; *State ex rel. Sinkfield v. Rocco*, 8th Dist. Cuyahoga No. 101579, 2014-Ohio-5555, ¶¶ 6-7.

[86] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶¶ 21-23.

[87] *See State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 99 Ohio St.3d 6, 2003-Ohio-2260, 788 N.E.2d 629, ¶ 12 (holding that materials related to superintendent search were not "public records" where neither board nor search agency kept such materials); *see also State ex rel. Johnson v. Oberlin City School Dist. Bd. of Edn.*, 9th Dist. Lorain No. 08CA009517, 2009-Ohio-3526 (holding that individual evaluations used by board president to prepare a composite evaluation but not kept thereafter were not "public records"); *Barnes v. Columbus.*, 10th Dist. Franklin No. 10AP-637, 2011-Ohio-2808, *discretionary appeal not allowed*, 2011-Ohio-5605 (relating to police promotional exam assessors' notes).

[88] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 28, quoting *State ex rel. Dispatch Printing Co. v. City of Columbus*, 90 Ohio St.3d 39, 41, 2000-Ohio-8, 734 N.E.2d 797.

[89] R.C. 149.43(A)(1)(a-oo) (establishing that some records, information, and other items are not public records or are otherwise exempted).

II. Chapter Two: Requesting Public Records

The Public Records Act sets out procedures, limits, and requirements designed to maximize requester success in obtaining access to public records and to minimize the burden on public offices when possible. When making or responding to a public records request, it is important to 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

Every public office must organize and maintain public records in a manner that they can be made available in response to public records requests. A public office must also maintain a copy of its current records retention schedules at a location readily available to the public.

Any person can make a request for public records by asking a public office or person responsible for public records for specific, existing records. The requester may make a request in any manner the requester chooses: by phone, in person, or in an email or letter. A public office cannot require the requester to identify him or herself or indicate why he or she is requesting the records, unless a specific law permits or requires it. Often, however, a discussion about the requester's purposes or interest in seeking certain information can aid the public office in locating and producing the desired records more efficiently.

Upon receiving a request for specific, existing public records, a public office must provide prompt inspection at no cost during regular business hours, or provide copies at cost within a reasonable period of time. The public office may withhold or redact specific records that are covered by an exemption to the Public Records Act but is required to give the requester an explanation, including legal authority, for each denial. The Public Records Act requires negotiation and clarification to help identify, locate, and deliver requested records if a requester makes an ambiguous or overly broad request. Similarly, if the public office believes that asking for a request in writing, asking for the requester's identity, or asking for the intended use of the requested information would enhance the ability of the public office to provide the records, it may ask for the information (though the requester is not required to provide it, and must be informed as such).

1. Organization and maintenance of public records

"To facilitate broader access to public records, a public office … shall organize and maintain public records in a manner that they can be made available for inspection or copying" in response to public records requests.[90] The fact that the office uses an organizational system that is different from, or inconsistent with, the form of a given request does not mean that the public office has violated this duty.[91] For instance, if a person requests copies of all police service calls for a particular geographical area identified by street names and the request does not match the office's method of retrieval, it is not one that the office has a duty to fulfill.[92] 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[93] (but doing so may reduce the number of public records requests the office receives for posted records). A public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.[94]

A public office must have a copy of its current records retention schedule at a location readily available to the public.[95] The records retention schedule can be a valuable tool for a requester to obtain in advance to plan a specific and efficient public records request or for the public office to use to inform a requester how the records kept by the office are organized and maintained.

2. "Any person" may make a request

The requesting "person" need not be an Ohio or United States resident. In fact, in the absence of a law to the contrary, foreign individuals and entities domiciled in a foreign country are entitled to

inspect and copy public records.[96] The requester need not be an individual, but may be a corporation, trust, or other body.[97]

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

The proper subject of a public records request is a *record* that actually exists at the time of the request,[98] not selected *information* the requester seeks to obtain.[99] 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.[100] Additionally, there is no duty to provide records that were not in existence at the time of the request[101] or that the public office does not possess,[102] including records that later come into existence.[103]

4. 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,"[104] so that the public office can identify responsive records based on the manner in which it ordinarily maintains and accesses the public records it keeps.[105] The request must fairly and specifically describe what the requester is seeking.[106] 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.[107]

What is An Ambiguous or Overly Broad Request?

An ambiguous request is one that lacks the clarity a public office needs to ascertain 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.[108]

A request can be overly broad when it is so inclusive that the public office is unable to identify the records sought based on the manner in which the office routinely organizes and accesses records. The courts have also found a request overly broad when it seeks what amounts to a complete duplication of a major category of a public office's records. Examples of overly broad requests include requests for:

- **All records containing particular names or words;**[109]
- **Duplication of all records having to do with a particular topic, or all records of a particular type;**[110]
- **Every report filed with the public office for a particular time period (if the office does not organize records in that manner);**[111]
- **All emails sent or received by a particular email address with no subject matter and time limitation;[112]**
- **"[A]ll e-mails between" two employees (when email not organized by sender and recipient).**[113]
- **"[A]ll documents which document any and all instances of lead poisoning in the last 15 years in any dwelling owned or operated by [the office]."**[114]
- **Discovery-style requests that seek all records relating to or reflecting certain types of information.[115]**

Note that a public office waives its ability to assert in litigation that a request is overly broad if the public office failed to deny the request as overly broad when first responding to it.[116]

5. Denying, and then clarifying, an ambiguous or overly broad request

R.C. 149.43(B)(2) permits a public office to deny any part of a public records request that is ambiguous or overly broad as defined above. However, the statute then 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.[117] Thus, the Public Records Act expressly promotes cooperation to clarify and narrow requests that are ambiguous or overly broad, in order to craft a successful, revised request.

The public office can inform the requester how the office ordinarily maintains and accesses records through a verbal or written explanation.[118] Giving the requester a copy of the public office's relevant records retention schedules can be a helpful starting point in explaining the office's records organization and access.[119] 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, which can help a requester revise and narrow the request. Ohio courts have noted favorably an office's invitation to discuss revision of an overly broad request as evidence supporting compliance with the Public Records Act.[120]

6. Unless a specific law provides otherwise, requests can be for any purpose, and need not identify the requester or be made in writing

A public records request does not need to be in writing or identify the person making the request.[121] If the request is verbal, it is recommended that the public employee receiving the request write down the complete request and confirm the wording with the requester to assure accuracy. In most circumstances, the Public Records Act neither requires the requester to specify the reason for the request[122] nor use particular wording to make a request.[123] Any requirement by the public office that the requester disclose his or her identity or the intended use of the requested public record constitutes a denial of the request.[124]

7. Optional negotiation when identity, purpose, or request in writing would assist identifying, locating, or delivering requested records

However, 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 benefit the requester by enhancing the ability of the public office to identify, locate, or deliver the requested records, the public office must first inform the requester that giving this information is not mandatory and then ask if the requester is willing to provide that information to assist the public office in fulfilling the request.[125] As with the negotiation required for an ambiguous or overly broad request, this optional negotiation tool regarding purpose, identity, or writing can promote cooperation and efficiency. *Reminder*: Before asking for the information, the public office must let a requester know that he or she may decline this option.

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.[126] If the requester asks for copies, he or she has the right to choose the copy medium (paper, film, electronic file, etc.).[127] The requester can choose to have the record copied: (1) on paper, (2) in the same medium as the public office keeps them,[128] or (3) on any medium upon which the public office or person responsible for the public records determines the record "reasonably can be duplicated as an integral part of the normal operations of the public office."[129] The public office may charge the requester the actual cost of copies made and may require payment of copying costs in advance.[130]

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

A requester may personally pick up requested copies of public records or may send a designee.[131] 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.[132] Although a public office has no duty to post public records online, if a requester lists 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.[133] Posting records online, however, does not satisfy a request for copies of those records.[134] 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.[135] (*See* paragraph 12 below for "costs" detail).

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

There is no set, predetermined time period for responding to a public records request. Instead, the requirement to provide "prompt" production of records for inspection[136] has been interpreted by the courts as being "without delay" and "with reasonable speed."[137] Public offices are required to provide copies of requested records in a "reasonable period of time."[138] The reasonableness of the time taken depends on the facts and circumstances of the particular request.[139] These terms do not mean "immediately," or "without a moment's delay,"[140] but the courts will find a violation of this requirement when an office cannot show that the time taken was reasonable.[141] Time spent on the following response tasks may contribute to the calculation of what is "prompt" or "reasonable" in a given circumstance:

Identification of Responsive Records:

- Clarify or revise request;[142] and
- Identify records.[143]

Location and Retrieval:

- Locate records[144] and retrieve from storage location, e.g., file cabinet, branch office, off-site storage facility.

Review, Analysis, and Redaction:

- Examine all materials for possible release;[145]
- Perform necessary legal review[146] or consult with knowledgeable parties;
- Redact exempt materials;[147] and
- Provide explanation and legal authority for all redactions and/or denials.[148]

Preparation:

- Obtain requester's choice of medium;[149] and
- Make copies.[150]

Delivery:

- Wait for advance payment of costs;[151] and
- Deliver copies or schedule inspection.[152]

The Ohio Supreme Court has held 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."[153]

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.[154] "Regular business hours" means established business hours.[155] 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.[156] Public offices may not charge requesters for inspection of public records.[157] A public office is required to make its records available only at the place where they are stored.[158] Posting records online is one means of providing 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.[159] Requesters are not required to inspect the records themselves; they may designate someone to inspect the requested records.[160]

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

A public office may charge costs for copies and/or for delivery or transmission, and it may require payment of both costs in advance.[161] "At cost" includes the actual cost of making copies,[162] packaging, postage, and any other costs of the method of delivery or transmission chosen by the requester.[163] The cost of employee time cannot be included in the cost of copies or of delivery.[164] 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.[165]

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.[166] 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 R.C. 149.43(B)(1) to obtain copies of the transcript at the actual cost of duplication.[167] 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.[168] 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.[169]

There is no obligation to provide free copies to someone who indicates an inability or unwillingness to pay for requested records.[170] 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.[171] 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[172] nor prohibits the public office from allowing this.

13. What responsive documents can the public office withhold?

a. Duty to withhold certain records

A public office must withhold records subject to a mandatory, "must not release" exemption to the Public Records Act in response to a public records request. (*See* Chapter Three: A.1. "Must not release").

b. Option to withhold or release certain records

Records subject to a discretionary exemption give the public office the option to either withhold or release the record. (See Chapter Three: A.2. "May release but may choose to withhold").

c. No duty to release non-records

A public office need not disclose or create[173] items that are "non-records." There is no obligation that a public office produce items that do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.[174] A record must document something that

the office does.[175] The Ohio Supreme Court expressly rejected the notion that an item is a "record" simply because the public office *could* use the item to carry out its duties and responsibilities.[176] Instead, the public office must actually use the item; otherwise, it is not a record.[177] The Public Records Act itself 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.[178]

A public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.[179] For example, if a person asks a public office for a list of cases pending against it, but the office does not keep such a list, the public office is under no duty to create a list to respond to the request.[180] The office also need not conduct a search for and retrieve records that contain described information that is of interest to the requester.[181]

14. 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 that particular item.[182] Any requirement by the public office that the requester disclose the requester's identity or the intended use of the requested public record also constitutes a denial of the request.[183]

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."[184] For records on paper, redaction is the blacking or whiting out of non-public information in an otherwise public document. A public office may redact audio, video, and other electronic records by processes that obscure or delete specific content.

The Public Records Act states that "[a] redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if a federal or state law authorizes or requires a public office to make the redaction."[185]

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."[186] Therefore, a public office may redact only that part of a record subject to an exemption or other valid basis for withholding. However, 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.[187] Whether a record contains exempted information that is "inextricably intertwined" with non-exempted information must be determined on a record-by-record basis.[188]

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

Public offices must either "notify the requester of any redaction or make the redaction plainly visible."[189] 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."[190] If the requester made the initial request in writing, then the office must also provide its explanation for the denial in writing.[191]

d. No obligation to respond to duplicate request

When a public office responds to a request, and the requester sends a follow-up letter reiterating a request for essentially the same records, the public office is not required to provide an additional response.[192]

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.[193] This rule does not apply to overly broad requests. A public office cannot assert that a request is overly broad for the first time in litigation.[194]

15. Burden or expense of compliance

A public office cannot deny or delay response to a public records request on the grounds that responding will interfere with the operation of the public office.[195] However, when a request unreasonably interferes with the discharge of the public office's duties, the office may not be obligated to comply.[196] For example, a requester does not have the right to the complete duplication of voluminous files of a public office.[197] Courts have also held that 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."[198]

B. Statutes that Modify General Rights and Duties

Through legislation, the General Assembly can change the preceding rights and duties for particular records, for particular public offices, for particular requesters, or in specific situations. Be aware that the general rules of public records law may be modified in a variety and combination of ways. Below are a few examples of modifications to the general rules.

1. Particular records

(a) Although most DNA records kept by the Ohio Bureau of Criminal Identification and Investigation (BCI) are protected from disclosure by exemptions,[199] Ohio law requires that the results of DNA testing of an inmate who obtains post-conviction testing must be disclosed to any requester,[200] which would include results of testing conducted by BCI.

(b) Certain Ohio sex offender records must be posted on a public website without waiting for an individual public records request.[201]

(c) Ohio law specifies that a public office's release of an "infrastructure record" or "security record" to a private business for certain purposes does not waive these exemptions,[202] despite the usual rule that voluntary release to a member of the public waives any exemption(s).[203]

(d) Journalists may inspect, but not copy, some of the records to which they have special access, despite the general right to choose either inspection or copies.[204]

(e) Contracts and financial records of moneys expended in relation to services provided under those contracts to federal, state, or local government by another governmental entity or agency, or by most nonprofit corporations or associations, shall be deemed to be public records, except as otherwise provided by R.C. 149.431.[205]

2. Particular public offices

(a) 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,[206] 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,[207] despite the general requirement that a public office may only charge the "actual cost" of copies.[208]

(b) Ohio courts' case records and administrative records are not subject to the Public Records Act. Rather, for cases that commenced on or after July 1, 2009, courts apply the records access rules of the Ohio Supreme Court Rules of Superintendence.[209]

(c) Information in a competitive sealed proposal and bid submitted to a county contracting authority becomes a public record subject to inspection and copying 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.[210]

3. Particular requesters or purposes

(a) Directory information concerning public school students may not be released if the intended use is for a profit-making plan or activity.[211]

(b) Incarcerated persons, commercial requesters, and journalists are subject to combinations of modified rights and obligations, discussed below.

4. Modified records access for certain requesters

The rights and obligations of the following requesters differ from those generally provided by 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 fashion. Some requesters are given greater access to records than other persons, and some are more restricted. These are only examples. Ohio law can, and frequently does, change. Be sure to check for any current law modifying access to the particular public records with which you are concerned.

a. Prison inmates

Prison inmates may request public records,[212] but they 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.[213] This process applies to both state and federal inmates[214] and reflects the General Assembly's public-policy decision to restrict a convicted inmate's unlimited access to public records, in order to conserve law enforcement resources.[215] An inmate's designee may not make a public records request on behalf of the inmate that the inmate is prohibited from making directly.[216] However, a designee relationship between an inmate and requester is not presumed to exist merely because the requester is seeking records to benefit the inmate.[217] Nor is a designee relationship presumed because the requester and inmate are related.[218] Rather, whether a designee relationship exists between an inmate and requester must be shown with direct evidence.[219]

The criminal investigation records subject to this process when requested by an inmate are broader than those defined under the Confidential Law Enforcement Investigatory Records (CLEIRs) exemption, and include offense and incident reports.[220] A public office is not required to produce such records 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.[221] The inmate's request must be filed in the inmate's

original criminal action, not in a separate, subsequent forfeiture action involving the inmate.[222] 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.[223] The appropriate remedy for an inmate who is denied a 149.43(B)(8) order is an appeal of the sentencing judge's findings, not a mandamus action.[224] One court has concluded that R.C. 2959.26(A)'s requirement that an inmate exhaust inmate grievance procedures before filing any civil action relating to an aspect of institutional life that directly and personally affects an inmate applies to mandamus actions brought to enforce public records requests when those requests concern aspects of institutional life that directly and personally affect the inmate.[225]

b. Commercial requesters

Unless a specific statute provides otherwise,[226] it is irrelevant whether the intended use of requested records is for commercial purposes.[227] However, if an individual or entity is making public records requests for commercial purposes, the public office receiving the requests 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."[228]

For purposes of this limitation, the term "commercial purposes"[229] is to 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.[230]

c. Journalists

Several statutes grant "journalists"[231] 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.

For example, a journalist may obtain the actual residential address of a "designated public service worker."[232] "Designated public service worker" means 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.[233] If the individual's spouse, former spouse, or child is employed by a public office, a journalist may obtain the name and address of that spouse or child's employer in this manner as well.[234] A journalist may also request customer information maintained by a municipally-owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information.[235] In addition, the journalist may request information about minors involved in a school vehicle accident, other than some types of personal information.[236] To obtain this information, the journalist must:

- Make the request in writing and sign the request;
- Identify himself or herself by name, title, and employer's name and address; and
- State that disclosure of the information sought would be in the public interest.[237]

Journalist Requests

Type of Request	*ORC Section*	*Requester May:*
Actual personal residential address of a "designated public service worker," which includes:[238] • 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 telecommunicatior, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.	**149.43(B)(9)(a)**	**Inspect or copy the record(s)**
Employer name and address, if the employer is a public office, of a spouse, former spouse, or child of a "designated public service worker," which includes:[239] • 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 telecommunicatior, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.	**149.43(B)(9)(a)**	**Inspect or copy the record(s)**
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)**	**Inspect or copy the record(s)**

Type of Request	*ORC Section*	*Requester May:*
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)**	**Inspect or copy the record(s)**
Coroner Records, including: • Preliminary autopsy and investigative notes[240] • Suicide notes • Photographs of the decedent made by the coroner or those directed or supervised by the coroner	**313.10(D)**	**Inspect the record(s) only, but may *not* 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	**4123.88(D)(1)**	**Inspect or copy the record(s)**
Actual confidential personal residential address of a: • Public children services agency employee • Private child placing agency employee • Juvenile court employee • Law enforcement agency employee Note: 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)**	**Inspect or copy the record(s)**

5. Modified access to certain public offices' records

As with requesters, the rights and obligations of public offices can be modified by law. Some of these modifications impose conditions on obtaining records in volume and setting permissible charges for copying. The following provisions are only examples. The law is subject to change, so be sure to check for any current law modifying access to particular public records with which you are concerned.

a. Bulk commercial requests from 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."[241] 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."[242]

b. Copies of coroner's records

Generally, all records of a coroner's office are public records subject to inspection by the public.[243] A coroner's office may provide copies to a requester upon a written request and payment by the requester of a statutory fee.[244] 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.[245] 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),[246] (2) journalists (limited right to inspect),[247] and (3) insurers (copy of full records).[248] The coroner may notify the decedent's next of kin if a journalist or insurer has made a request.[249]

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:

- 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 or that sending by email is cheaper and faster for the requester. The worst 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 likely 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 (see Section A.5. above) 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 (see Section A.7. above). But negotiation is not limited to these circumstances. If you have a concern or a creative idea (see Section C.1. above), 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:

[90] R.C. 149.43(B)(2).
[91] *See State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 30 (noting that 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*, 126 Ohio St.3d 195, 2010-Ohio-3267, 931 N.E.2d 1080, ¶ 5 (noting that police department kept and made available its pawnbroker reports on 3x5 notecards; while keeping these records on 8 ½ x 11 paper could reduce delays in processing requests, there was no requirement to do so).
[92] *State ex rel. Evans v. City of Parma*, 8th Dist. Cuyahoga No. 81236, 2003-Ohio-1159, ¶ 15; cf. *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, 41 N.E.3d 1203, ¶ 26 (holding request not overbroad when "there is no indication that the request is not readily amenable to the method of retrieval used by the government agency").
[93] *State ex rel. Patton v. Rhodes*, 129 Ohio St.3d 182, 2011-Ohio-3093, 950 N.E.2d 965, ¶¶ 15-17.
[94] *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154, 1999-Ohio-447, 707 N.E.2d 496; *State ex rel. Warren v. Warner*, 84 Ohio St.3d 432, 433, 1999-Ohio-475, 704 N.E.2d 1228; *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 274, 1998-Ohio-242, 695 N.E.2d 256; *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, 986 N.E.2d 931, ¶ 16; *State ex rel. Griffin v. Sehlmeyer,* S. Ct. No. 2020-1447, 2021-Ohio-3624, ¶ 5.
[95] R.C. 149.43(B)(2); for additional discussion, *see* Chapter Five: A. "Records Management."
[96] 2006 Ohio Op. Att'y Gen. No. 038.
[97] R.C. 1.59(C); 1990 Ohio Op. Att'y Gen. No. 050.
[98] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 23 ("[I]n cases in which public records…are properly disposed of in accordance with a duly adopted records-retention policy, there is no entitlement to these records under the Public Records Act."); *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 389-90, 1999-Ohio-114, 715 N.E.2d 179 (no duty to provide records that do not exist); *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154, 1999-Ohio-447, 707 N.E.2d 496 (holding that a public office has "no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records"); *State ex rel. Cioffi v. Stuard*, 11th Dist. Trumbull No. 2009-T-0057, 2010-Ohio-829, ¶¶ 21-23 (finding no violation of the Public Records Act when a clerk of courts failed to provide a hearing transcript that had never been created).
[99] *See State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶¶ 28-30 (requests 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. Fant v Mengel*, 62 Ohio St.3d 455, 584 N.E.2d 664 (1992) (finding request for name of person responsible for filing court case record was request for information, not specific records); *State ex rel. Evans v. City of Parma*, 8th Dist. Cuyahoga No. 81236, 2003-Ohio-1159, ¶ 14 (finding requests for service calls from geographic area to be improper request when public office would need to compile the requested information from existing records); *State ex rel. Fant v. Tober*, 8th Dist. Cuyahoga No. 63737, 1993 Ohio App. LEXIS 2591 (Apr. 28, 1993) (holding that office had no duty to seek out records that would contain information of interest to requester), *aff'd*, 68 Ohio St.3d 117 (1993); *State ex rel. McElrath v. City of Cleveland*, 2018-Ohio-1753, 111 N.E.3d 685, ¶¶ 18-19 (8th Dist.) (holding requests seeking information such as the names of officers involved in a police report and information about specific officers were not proper, but requester's request for work order concerning a specific car was a proper request for specific record); *State ex rel. Rittner v. Dir., Fulton Cty. Emergency Med. Servs.*, 6th Dist. Fulton No. F-10-020, 2010-Ohio-4055, ¶ 3 (finding request was improper when requester sought only information on "how documents might be searched; *Natl. Fedn. of the Blind of Ohio v. Ohio Rehab. Servs. Comm.*, 10th Dist. Franklin No. 09AP-1177, 2010-Ohio-3384, ¶ 35 (finding a request for amounts of payments made and received from state agencies was an improper request for information); *Reinel v. Butler Cty. Auditor*, Ct. of Cl. No. 2018-00441PQ, 2018-Ohio-2914, ¶ 4-5 (holding questions to Auditor asking how certain tax valuations were calculated, as well as request to "show me where I recommend that you increase my neighbor's property taxes," were not proper public records requests).
[100] *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154, 1999-Ohio-447, 707 N.E.2d 496 (holding that a public office has "no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records"); *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197, 198, 580 N.E.2d 1085 (1991) (no duty to create documents to respond to request); *State ex rel. Welden v. Ohio State Med. Bd.*, 10th Dist. Franklin No. 11AP139, 2011-Ohio-6560, ¶ 9 (noting that, because a list of addresses of every licensed physician did not exist, there was no clear legal duty to create such a record); *Pierce v. Dowler*, 12th Dist. Madison No. CA93-08-024, 1993 Ohio App. LEXIS 5224 (Nov. 1, 1993). *See also State ex rel. Essi v. City of Lakewood*, 2018-Ohio-5027, 126 N.E.3d 254, ¶ 35 (8th Dist.) ("Just as a governmental entity is under no duty to create a public record, it is under no duty to download a computer program so it can search for a given type of record.").
[101] *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.2d 877, ¶¶ 22-26; *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, ¶ 25; *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 15; *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, 986 N.E.2d 931, ¶ 16.
[102] *State ex rel. Chatfield v. Gammill*, 132 Ohio St.3d 36, 2012-Ohio-1862, 968 N.E.2d 477, ¶ 3; *State ex rel. Gooden v. Kagel*, 138 Ohio St.3d 343, 2014-Ohio-869, 6 N.E.3d 1170, ¶¶ 5, 8-9 (noting that respondent denied that records had been filed with her, and relator provided no evidence to the contrary).
[103] *State ex rel. Hogan Lovells U.S., LLP v. Dept. of Rehab. & Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928, ¶ 29; *Starks v. Wheeling Twp. Trustees*, 5th Dist. Guernsey Nos. 2008 CA 000037, 2009 CA 000003, 2009-Ohio-4827, ¶¶ 33-34; *Little Turtle Civic Assoc. v. City of Columbus,* Ct. of Cl. No. 2021-00370PQ, 2021-Ohio-4439, ¶ 10.
[104] *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 17, quoting *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 29; *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶ 42.
[105] *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 18; *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756, 577 N.E.2d 444 (10th Dist. 1989).
[106] *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶¶ 23-30; *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, 41 N.E.3d 1203, ¶¶ 21-31; *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 26 ("[R]ecords request is not specific merely because it names a broad category of records listed within an agency's retention schedule."); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 17; *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 314, 2001-Ohio-193, 750 N.E.2d 156; *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756, 577 N.E.2d 444 (10th Dist. 1989); *State ex rel. Dehler v. Spatny*, 11th Dist. Trumbull No. 2009-T-0075, 2010-Ohio-3052, ¶ 18, *aff'd*, 127 Ohio St.3d 312, 2010-Ohio-5711, 939 N.E.2d 831; *State ex rel. Cushion v. Massillon*, 5th Dist. Stark No. 2010CA00199, 2011-Ohio-4749, ¶¶ 35, 52-55 (noting that arbitrator fee records were not clearly sought by request for records of "legal fees or consulting fees").
[107] R.C. 149.43(B)(2); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 19; *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 27, 32; *Salemi v. Cleveland Metroparks*, 8th Dist. Cuyahoga No. 100761, 2014-Ohio-3914, ¶¶ 26-27, *aff'd,* 145 Ohio St.3d 408, 2016-Ohio-1192, 49 N.E.3d 1296.
[108] *State ex rel. Samara v. Byrd*, 8th Dist. Cuyahoga No. 103621, 2016-Ohio-5518, ¶ 14 (finding request for qualifications of various officials too broad and vague as "this category raises a host of educational, statutory, and bureaucratic possibilities to fulfill this request" and "presents a

perpetual moving target"); *Sandine v. Argyle*, Ct. of Cl. No. 2017-00891PQ, 2018-Ohio-1537, ¶ 9 (holding a request for "any records showing that any employee having [sic] a judgment or garnishment or notice including, but not limited to, child support arrearage from any State or County or individual in the last two years" isambiguous and overly broad).

[109] *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 2001-Ohio-193, 750 N.E.2d 156 (request for all records "containing any reference whatsoever" to requester was overly broad); *Kanter v. City of Cleveland Hts.*, Ct. of Cl. No. 2018-01092PQ, 2018-Ohio-4592, ¶ 8-12 (holding that a request for all "communications, messages, schedules, logs, and documents shared" regarding requester between City of Cleveland Heights and a newspaper for a specific date range was overbroad).

[110] *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 20-32 (regarding 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*, 127 Ohio St.3d 312, 2010-Ohio-5711, 939 N.E.2d 831, ¶¶ 1-3 (regarding request for prison quartermaster's orders and receipts for clothing over seven years); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 19 (regarding request for all work-related emails, texts, and correspondence of an elected official during six months in office); *Ebersole v. City of Powell,* 5th Dist. Delaware No. 2018 CAI 120098, 2019-Ohio-3073, ¶ 29 (holding request over a three-year span, "not limited to a litigation file, a single department, or a single records retention series." And "would include all correspondence between outside agencies," was overly broad); *State ex rel. Essi v. City of Lakewood,* 2018-Ohio-5027, 126 N.E.3d 254, ¶ 33 (8th Dist.) (finding that several of requester's 323 requests were "problematic" as seeking complete duplication of a voluminous file and "were more akin to discovery requests than requests for known identifiable records"); *State ex rel. Daugherty v. Mohr*, 10th Dist. Franklin No 11AP-5, 2011-Ohio-6453, ¶¶ 32-35 (regarding request for all policies, emails, or memos on whether prison officials are authorized to "triple cell" inmates into segregation); *State ex rel. Davila v. Bellefontaine*, 3d Dist. Logan No. 8-11-01, 2011-Ohio-4890, ¶¶ 36-43 (regarding request to inspect 911 tapes covering 15 years); *State ex rel. Davila v. East Liverpool*, 7th Dist. Columbiana No. 10 CO 16, 2011-Ohio-1347, ¶¶ 14-30, (regarding request to access tape recorded 911 calls and radio traffic over seven years); *Hicks v. Newtown*, Ct. of Cl. No. 2017-Ohio-00612-PQ, 2017-Ohio-8952, ¶ 8, *ruling modified by* 2018-Ohio-1540 ("A request to search for information 'regarding,' or 'relating' to, a topic is generally improper."); *Gupta v. City of Cleveland*, Ct. of Cl. No. 2017-00840PQ, 2018-Ohio-3475, ¶ 25 (holding requests for "entire categories of records, such as 'complaints,' 'reports of safety violations,' 'communications,' and 'emails'" with no time specification or for multiple years overly broad); *DeCrane v. City of Cleveland*, Ct. of Cl. No. 2018-00356PQ, 2018-Ohio-3476, ¶ 8-16 (finding a request for "all correspondence from the Division of Fire's drug-testing contractor between December 1, 2017 and February 1, 2018" overbroad where the requested correspondence is not kept in one file or location and would appear in a "broad category of records and locations" requiring an office-wide search.

[111] *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 755, 577 N.E.2d 444 (10th Dist. 1989).

[112] *Compare State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶¶ 23-26 (holding a request for all communications between specified individuals regarding certain subject during specified period of time not overbroad); *with State ex rel. Bristow v. Baxter*, 6th Dist. Erie No. E-17-060, 2018-Ohio-1973, ¶¶ 9-13 (finding requests for every incoming and outgoing email sent and received by certain public officials and their employees for one-month periods overbroad because they seek "a complete duplication of the respondents' email files, albeit in one-month increments"; public office properly invited requester to revise request to "specific topics or subject matter"); *Patton v. Univ. of Akron*, Ct. of Cl. No. 2017-00820PQ, 2018-Ohio-1555, ¶ 10 (finding requests for all emails sent to and from six faculty members' email accounts for five-month period without any subject matter limitation overbroad); *Gupta v. City of Cleveland*, Ct. of Cl. No. 2017-00840PQ, 2018-Ohio-3475, ¶ 25 (holding request for two years of all "emails and any other correspondence" between named individuals overly broad); *King v. Dept. of Job & Family Servs.*, Ct. of Cl. No. 2018-00416PQ, 2018-Ohio-3478, ¶ 8-9 (finding request for all emails between twenty-four pairs of correspondents for a nine-month period overbroad).

[113] *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶¶ 13, 28-32.

[114] *State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297, ¶¶ 19-20.

[115] *Paramount Advantage v. Ohio Dept. of Medicaid,* Ct. of Cl. No. 2021-00262PQ, 2021-Ohio-4180, ¶ 19, 21-22 (finding request for documents "reflecting . . . internal communications" between individuals an overly broad discovery-style request).

[116] *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625, ¶ 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.).

[117] R.C. 149.43(B)(2); *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, 970 N.E.2d 939, ¶ 11; *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625, ¶ 74.

[118] *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶¶ 13-16, 33-38 (noting a requester may also possess preexisting knowledge of the public office's records organization, which helps satisfy this requirement).

[119] *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶¶ 15, 26, 36-37.

[120] *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 40; *Ziegler v. Ohio Dept. of Pub. Safety*, 11th Dist. Lake No. 2014-L-064, 2015-Ohio-139, ¶ 16 ("Although repeatedly encouraged by respondent..., relator never revised her request to clarify any of the ambiguities."); *Hunter v. Ohio Bur. of Workers' Comp.*, 10th Dist. Franklin No. 13AP-457, 2014-Ohio-5660, ¶ 41.

[121] *See* R.C. 149.43(B)(4) and (5).

[122] *See* R.C. 149.43(B)(4); *see also, Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564, ¶ 10 ("[A] person may inspect and copy a 'public record' … irrespective of his or her purpose for doing so."), quoting *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 610 N.E.2d 997 (1993); *State ex rel. Consumer News Servs., v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶ 45 (noting that purpose behind request to "inspect and copy public records is irrelevant"). *But see State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 1999-Ohio-264, 707 N.E.2d 931 (noting that 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); For additional discussion, see Chapter 2.B.4: Journalist Records.

[123] *Franklin Cty. Sheriff's Dept. v. State Emp. Relations Bd.*, 63 Ohio St.3d 498, 504, 589 N.E.2d 24 (1992) ("No specific form of request is required by R.C. 149.43.").

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

[125] R.C. 149.43(B)(5).

[126] R.C. 149.43(B)(1); *see also State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶¶ 36-37.

[127] R.C. 149.43(B)(6); *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St.3d 172, 2005-Ohio-685, 824 N.E.2d 64, ¶¶ 12-13.

[128] *State v. Court of Common Pleas*, 7th Dist. Noble No. 07-NO-341, 2007-Ohio-6433, ¶¶ 30-31 (noting that, 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).

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

[130] R.C. 149.43(B)(1), (B)(6); *State ex rel. Ware v. City of Akron,* 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, ¶ 13-15 (finding that a public office complies with the Public Records Act when it identifies the cost of copies and offers to provide copies upon the payment of costs).

[131] *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458, 459, 2000-Ohio-383, 727 N.E.2d 910.

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

[133] *State ex rel. Patton v Rhodes*, 129 Ohio St.3d 182, 2011-Ohio-3093, 950 N.E.2d 965, ¶ 15-20; 2014 Ohio Op. Att'y Gen. No. 009.

[134] 2014 Ohio Op. Att'y Gen. No. 009.

[135] R.C. 149.43(B)(7).
[136] R.C. 149.43(B)(1); *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶ 35.
[137] *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶ 37; *see also State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53, 1998-Ohio-444, 689 N.E.2d 25.
[138] R.C. 149.43(B)(1).
[139] **Reasonable period of time under the facts and circumstances:** *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 153 Ohio St. 3d 63, 2017-Ohio-8988, 101 N.E.3d 396, ¶ 59 (finding two months a reasonable amount of time to produce redacted autopsy reports of homicide victims 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, 81 N.E.3d 863, ¶ 10 (8th Dist.) (finding delay of almost three months in responding to request for personnel files of police officers and other records not unreasonable as requested records potentially contained information prohibited by disclosure); *Strothers v. Norton*, 131 Ohio St.3d 359, 2012-Ohio-1007, 965 N.E.2d 282, ¶ 23 (finding 45 days reasonable when records responsive to multiple requests were voluminous); *State ex rel. Davis v. Metzger*, 139 Ohio St.3d 423, 2014-Ohio-2329, 12 N.E.3d 1178, ¶ 12 (finding 3 days was a reasonable period of time to respond to records request for the personnel files of six employees); *State ex rel. Patton v. Rhodes*, 129 Ohio St.3d 182, 2011-Ohio-3093, 950 N.E.2d 965, ¶¶ 2, 9, 20 (finding 56 days was reasonable under the circumstances); *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 17 ("Given the broad scope of the records requested, the governor's office's decision to review the records before producing them, to determine whether to redact exempt matter, was not unreasonable."); *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 44 (finding delay due to "breadth of the requests and the concerns over the employees' constitutional right of privacy" was reasonable); *State ex rel. Santefort v. Wayne Twp. Bd. of Trustees*, 12th Dist. Butler No. CA2014-07-153, 2015-Ohio-2009, ¶¶ 28-30 (finding 22 days was reasonable to provide records under the facts and circumstances of case, including public office's attempt to deliver records to address found on auditor's website when the relator did not provide an address in his request); *State ex rel. Pine Tree Towing & Recovery v. McCauley*, 5th Dist. Guernsey No. 14 CA 07, 2014-Ohio-4331, ¶¶ 16-20 (finding 95 days to provide 776 pages of records was a reasonable period of time based on affidavit of the facts and circumstances of compliance efforts); *State ex rel. Davis v. Metzger*, 5th Dist. Licking No. 12-CA-36, 2013-Ohio-1699, ¶¶ 12, 20 (finding that because requester requested, in effect, a complete duplication of the public office's files, the public office acted reasonably by releasing responsive records approximately 54 days after receiving request); *State ex rel. Striker v. Cline*, 5th Dist. Richland No. 09CA107, 2010-Ohio-3592, ¶ 13 (finding nine business days was a reasonable period of time to respond to a records request); *Parrish v. Village of Glendale*, Ct. of Cl. No. 2018-00191PQ, 2018-Ohio-2913, ¶ 15 (holding village's production of records for inspection not untimely where, among other things, the village was engaged in litigation with requester at the time of the request and the requester asked that all communications be in writing, and the requester responded to village's request for dates for inspection to occur by filing lawsuit).

Not a reasonable period of time under the facts and circumstances: *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 13, 2018-Ohio-5108, 123 N.E.3d 887, ¶¶ 14-20 (holding twenty-three days was not an unreasonable period of time to produce over 700 pages of responsive records, but over eight-month delay in producing other responsive records not reasonable); *State ex rel. Hogan Lovells U.S., LLP v. Dept. of Rehab. & Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928, ¶ 33 (finding ten months to respond to public records request when only explanation is inadvertence "is difficult to defend"); *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 565, 2015-Ohio-4914, 45 N.E.3d 981, ¶¶ 16, 18 (finding delay of approximately eight months in providing large amount of records unreasonable when it "was not primarily due to a review for redaction" but was caused by inadvertent omission of records from emails and producing other records before suit was filed); *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, 45 N.E.3d 981, ¶ 21, *superseded by statute on other grounds* ("It follows that the absence of any response over a two-month period constitutes a violation of the 'obligation in accordance with division (B)' to respond 'within a reasonable period of time' per R.C. 149.43(B)(7)."); *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶¶ 38-47 (holding six-day delay in providing requested resumes unreasonable); *State ex rel. Miller v. Ohio Dept. of Edn.*, 10th Dist. Franklin No. 15AP-1168, 2016-Ohio-8534, ¶ 8 (finding that, when "the limited number of documents sought by relator in his public records request were clearly identified and should not have been difficult to locate, review, and produce," and the only specific justification for delay was the occurrence of Thanksgiving, Christmas Day, and New Year's Day, the delay of 61 days was unreasonable); *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 10th Dist. Franklin No. 12AP-448, 2013-Ohio-5219, ¶ 19 (finding public office failed to provide records responsive to requests made on May 17 and October 27, 2011, within a reasonable period of time by releasing additional responsive records on April 19, 2012); *State ex rel. Schumann v. City of Cleveland,* 8th Dist. Cuyahoga No. 109776, 2020-Ohio-4920, ¶ 9 (even though public office had limited access to office building during COVID-19 pandemic, response time was unreasonable when over two months lapsed between the date of the request and the first production of records, and four months lapsed until production was completed.).
[139] *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, 842 N.E.2d 508, ¶ 10.
[139] *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶¶ 38-47 (finding public office's six-day delay when providing responsive records was neither prompt nor reasonable); *see also State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53, 1998-Ohio-444, 689 N.E.2d 25 (holding delays up to twenty-four days to provide access to accident reports was neither prompt nor reasonable); *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 624, 1994-Ohio-5, 640 N.E.2d 174 (finding four-month delay to respond to a request for "all incident reports and traffic tickets written in 1992" was neither prompt nor reasonable); *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. City of Cleveland*, 8th Dist. Cuyahoga No. 95277, 2011-Ohio-117 (finding 27-day delay in releasing two emergency response plans and two pieces of correspondence was not reasonable).
[140] *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, 842 N.E.2d 508, ¶ 10.
[141] *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶¶ 38-47 (finding public office's six-day delay when providing responsive records was neither prompt nor reasonable); *see also State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53, 1998-Ohio-444, 689 N.E.2d 25 (holding delays up to twenty-four days to provide access to accident reports was neither prompt nor reasonable); *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 624, 1994-Ohio-5, 640 N.E.2d 174 (finding four-month delay to respond to a request for "all incident reports and traffic tickets written in 1992" was neither prompt nor reasonable); *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. City of Cleveland*, 8th Dist. Cuyahoga No. 95277, 2011-Ohio-117 (finding 27-day delay in releasing two emergency response plans and two pieces of correspondence was not reasonable).
[142] R.C. 149.43(B)(2), (5).
[143] R.C. 149.43(B)(2), (5).
[144] R.C. 149.43(B)(5).
[145] *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 16; *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, 842 N.E.2d 508, ¶ 17, quoting *State ex rel. Warren Newspapers, Inc. v. Hutson,* 70 Ohio St.3d 619, 623, 1994-Ohio-5, 640 N.E.2d 174 (" 'R.C. 149.43(A) envisions an opportunity on the part of the public office to examine records prior to inspection in order to make appropriate redactions of exempt materials.'").
[146] *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 17.
[147] R.C. 149.43(A)(11), (B)(1); *see State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, 842 N.E.2d 508, ¶ 17 (affording clerk of courts time to redact social security numbers from requested records).
[148] R.C. 149.43(B)(3).

[149] R.C. 149.43(B)(6).
[150] R.C. 149.43(B)(1), (B)(6).
[151] R.C. 149.43(B)(6), (B)(7); *State ex rel. Ware v. City of Akron,* 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, ¶ 13-15 (finding that a public office complies with the Public Records Act when it identifies the cost of copies and offers to provide copies upon the paymen of costs.).
[152] R.C. 149.43(B)(1).
[153] *State ex rel. Beacon Journal Pub. Co. v. Andrews,* 48 Ohio St.2d 283, 289, 358 N.E.2d 565 (1976).
[154] R.C. 149.43(B)(1).
[155] *State ex rel. Butler Cty. Bar Assn. v. Robb*, 62 Ohio App.3d 298, 300, 575 N.E.2d 497 (12th Dist. 1990) (rejecting requester's demand that a clerk work certain hours different from the clerk's regularly scheduled hours).
[156] *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 622, 1994-Ohio-5, 640 N.E.2d 174 (allowing records requests during all hours of the entire police department's operations is unreasonable).
[157] *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 624, 1994-Ohio-5, 640 N.E.2d 174; *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 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." (quotation omitted)).
[158] *State ex rel. Karasek v. Haines*, 2d Dist. Montgomery C.A. Case No. 16490, 1998 Ohio App. LEXIS 4135, at *7 (Sept. 4, 1998); *Gupta v. City of Cleveland*, Ct. of Cl. No. 2017-00840PQ, 2018-Ohio-3475, ¶ 10 ("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 Dep't of Corr.,* 158 Ohio St.3d 15, 2019-Ohio-4130, 139 N.E.3d 862, ¶ 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").
[159] 2014 Ohio Op. Att'y Gen. No. 009.
[160] *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458, 459, 2000-Ohio-384, 727 N.E.2d 910.
[161] R.C. 149.43(B)(6), (B)(7); *State ex rel. Watson v. Mohr*, 131 Ohio St.3d 338, 2012-Ohio-1006, 964 N.E.2d 1048, ¶ 2; *State ex rel. Dehler v. Mohr*, 129 Ohio St.3d 37, 2011-Ohio-959, 950 N.E.2d 156, ¶ 3 (finding requester was not entitled to copies of requested records because he refused to submit prepayment); *State ex rel. Ware v. City of Akron,* 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724. ¶ 13-15 (finding that a public office complies with the Public Records Act when it identifies the cost of cpies and offers to provide copies upon the payment of costs).
[162] R.C. 149.43(B)(1) (holding that copies of public records must be made available "at cost"); *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 625-26, 1994-Ohio-5, 640 N.E.2d 174 (holding that public office cannot charge $5.00 for initial page or for employee labor, but only for "actual cost" of final copies).
[163] R.C. 149.43(B)(7); *State ex rel. Call v. Fragale*, 104 Ohio St.3d 276, 2004-Ohio-6589, 819 N.E.2d 294, ¶¶ 2-8.
[164] *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 626, 1994-Ohio-5, 640 N.E.2d 174.
[165] *State ex rel. Gibbs v. Concord Twp. Trustees*, 152 Ohio App.3d 387, 2003-Ohio-1586, 787 N.E.2d 1248, ¶ 31 (11th Dist.); *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, 986 N.E.2d 931, ¶ 29 (holding that, as long as 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 an otherwise copyrighted database).
[166] R.C. 1.51 (outlining the rules of statutory construction); *State ex rel. Motor Carrier Serv., Inc. v. Rankin*, 135 Ohio St.3d 395, 2013-Ohio-1505, 987 N.E.2d 670, ¶¶ 26-32; *State ex rel. Slagle v. Rogers*, 103 Ohio St.3d 89, 2004-Ohio-4354, 814 N.E.2d 55, ¶¶ 5-15.
[167] *State ex rel. Slagle v. Rogers*, 103 Ohio St.3d 89, 2004-Ohio-4354,814 N.E.2d 55, ¶ 15; *State ex rel. Kirin v. D'Apolito*, 7th Dist. Mahoning No. 15 MA 61, 2015-Ohio-3964, ¶¶ 12-14; *State ex rel. Kirin v. Evans*, 7th Dist. Mahoning No. 15 MA 62, 2015-Ohio-3965, ¶¶ 29-30; *Lawrence v. Shaughnessy*, 8th Dist. Cuyahoga No. 102616, 2015-Ohio-885, ¶ 6. For another example, see R.C. 5502.12(A) (Department of Public Safety may charge $4.00 for each accident report copy).
[168] *State ex rel. Call v. Fragale*, 104 Ohio St.3d 276, 2004-Ohio-6589, 819 N.E.2d 294, ¶ 8 (holding that court offered uncertified records at actual cost, but may charge up to $1.00 per page for certified copies pursuant to R.C. 2303.20); *State ex rel. Butler Cty. Bar Assn. v. Robb*, 66 Ohio App.3d 398, 399, 584 N.E.2d 76 (12th Dist. 1990).
[169] *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, 963 N.E.2d 1288, ¶¶ 42-62.
[170] *State ex rel. Call v. Fragale*, 104 Ohio St.3d 276, 2004-Ohio-6589, 819 N.E.2d 294, ¶ 6; *Breeden v. Mitrovich*, 11th Dist. Lake No. 2005-L-055, 2005-Ohio-5763, ¶ 10.
[171] *State ex rel. Ware v. City of Akron,* 164 Ohio St.3d 557, 2021-Ohio-624, 174 N.E.3d 724, ¶ 13-15 (finding that a public office complies with the Public Records Act when it identifies the cost of copies and offers to provide copies upon the payment of costs).
[172] R.C. 149.43(B)(6). For discussion of previous law, see 2004 Ohio Op. Att'y Gen. No. 011 (determining that county recorder may not prohibit person from using digital camera to duplicate records or assess a copy fee).
[173] R.C. 149.40 ("The … public office shall cause to be made *only* such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities." (emphasis added)).
[174]R.C. 149.011(G) (defining a "record" as a document "which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office"); *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 25; *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188, 610 N.E.2d 997 (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.").
[175] *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37, 41, 693 N.E.2d 789 (1998) (finding allegedly racist emails circulated between public employees are not "records" when the requested emails were not used to conduct the business of the public office).
[176] *See State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63, 1998-Ohio-180, 697 N.E.2d 640.
[177] *See* 2007 Ohio Op. Att'y Gen. No. 034 (determining that an item of physical evidence in the possession of the prosecuting attorney that was not introduced as evidence was not a "record"); *State ex rel. WBNS-TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, 805 N.E.2d 1116, ¶ 27 (noting that judge used redacted information to decide whether to approve settlement); *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63, 1998-Ohio-180, 697 N.E.2d 640 (finding that, 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"); *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37, 41, 693 N.E.2d 789 (1998) (holding that the finding allegedly racist email messages circulated between public employees were not "records"); *Andes v. Ohio AG's Office*, Ct. of Cl. No. 2017-0144-PQ, 2017-Ohio-4251, ¶ 14 (contents of electronic storage devices seized during criminal investigation that were not used are not records).
[178] *See, e.g.*, R.C. 1347.01, et seq. (Ohio Personal Information Systems Act).
[179] *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 1999-Ohio-447, 707 N.E.2d 496; *State ex rel. Warren v. Warner*, 84 Ohio St.3d 432, 1999-Ohio-475, 704 N.E.2d 1228; *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 1998-Ohio-242, 695 N.E.2d 256; *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37, 42, 693 N.E.2d 789 (1998); *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197, 580 N.E.2d 1085 (1991); *State ex rel. Griffin v. Sehlmeyer,* S. Ct. No. 2020-1447, 2021-Ohio-3624, ¶ 5 (no duty to create a list of names of inmates allegedly murdered in prison).
[180] *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197, 198, 580 N.E.2d 1085 (1991).

[181] State ex rel. White v. Goldsberry, 85 Ohio St.3d 153, 154, 1999-Ohio-447, 707 N.E.2d 496 (finding that a public office has "no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records").
[182] R.C. 149.43(B)(1).
[183] R.C. 149.43(B)(4).
[184] R.C. 149.43(A)(13).
[185] R.C. 149.43(B)(1).
[186] R.C. 149.43(B)(1)
[187] *State ex rel. Master v. Cleveland,* 76 Ohio St. 3d 340, 342, 667 N.E.2d 974 (1996).
[188] *State ex rel. Hogan-Lovells U.S., LLP v. Ohio Dept. of Rehab. & Corr.,* S. Ct. No. 2019-1511, 2021-Ohio-1762, ¶ 16-30 (conducting a document-by-document review to determine whether DRC correctly withheld privileged documents in their entirety in lieu of producing redacted versions of the documents).
[189] R.C. 149.43(B)(1).
[190] R.C. 149.43(B)(3).
[191] R.C. 149.43(B)(3).
[192] State ex rel. Laborers Internatl. Union of N. Am., Local Union No. 500 v. Summerville, 122 Ohio St.3d 1234, 2009-Ohio-4090, 913 N.E.2d 452 ¶ 6.
[193] R.C. 149.43(B)(3).
[194] *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585. 169 N.E.3d 624, ¶ 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.).
[195] *State ex rel. Beacon Journal Publishing Co. v. Andrews*, 48 Ohio St.2d 283, 289, 358 N.E.2d 565 (1976) ("No 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").
[196] State ex rel. Dehler v. Mohr, 129 Ohio St.3d 37, 2011-Ohio-959, 950 N.E.2d 156. ¶ 2 (allowing inmate to personally inspect requested 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, 640 N.E.2d 174 (1994) (explaining that "unreasonabl[e] interfere[nce] with the discharge of the duties of the officer having custody" of the public records creates an exemption to the rule that public records should be generally available to the public), citing *State ex rel. Natl. Broadcasting Co. v. Cleveland*, 38 Ohio St.3d 79, 81 (1988); *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371, 171 N.E2d 508 (1960) ("[A]nyone may inspect [public] records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same." (quotation omitted)); *State ex rel. McDougald v. Sehlmeyer*, 162 Ohio St.3d 94, 2020-Ohio-3927, 164 N.E.3d 366, ¶ 15 (holding that precluding an inmate from conducting in-person inspection of prison records is "sensible" in light of security issues involved, especially when the public office "offered to make the records available by other means.")
[197] State ex rel. Glasgow v. Jones, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 17 ("[T]he Public Records Act does not contemplate that any individual has the right to a complete duplication of voluminous files kept by government agencies." (quotation omitted)); *State ex rel. Zauderer v, Joseph,* 62 Ohio App.3d 752, 756, 577 N.E.2d 444 (10th Dist 1989).
[198] *State ex rel. Dehler v. Mohr,* 129 OhioSt.3d 37, 2011-Ohio-959, 950 n.E.2d 156, ¶ 2.
[199] R.C. 109.573(D), (E), (G)(1); R.C. 149.43(A)(1)(j).
[200] R.C. 2953.81(B).
[201] R.C. 2950.08(A) (BCI sex offender registry and notification, or "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).
[202] R.C. 149.433(D).
[203] *See, e.g.*, State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 22 ("Voluntarily disclosing the requested record can waive any right to claim an exemption to disclosure.").
[204] *See, e.g.*, R.C. 313.10(D) ("A journalist may submit to the coroner a written request to view preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent made by the coroner….").
[205] R.C. 149.431; State ex rel. Bell v. Brooks, 130 Ohio St.3d 87, 2011-Ohio-4897, 955 N.E.2d 987, ¶¶ 30-40.
[206] R.C. 5502.12 (providing that other agencies that submit such reports may charge requesters who claim an interest arising out of a motor vehicle accident a non-refundable fee not to exceed four dollars).
[207] R.C. 313.10(B).
[208] State ex rel. Warren Newspapers, Inc. v. Hutson, 70 Ohio St.3d 619, 625, 640 N.E.2d 174 (1994); *see also* State ex rel. Russell v. Thomas, 85 Ohio St.3d 83, 85, 706 N.E.2d 1251 (1999) (holding that one dollar per page did not represent actual cost of copies); 2001 Ohio Op. Att'y Gen. No. 012.
[209] Rules of Superintendence for the Courts of Ohio; *State ex rel. Bey v. Byrd,* S. Ct. No. 2019-0547, 2020-Ohio-2766, 154 N.E.3d 57, ¶ 11. For additional discussion, see Chapter Six: D. "Court Records."
[210] R.C. 307.862(C); 2012 Ohio Op. Att'y Gen. No. 036.
[211] R.C. 3319.321(A) (allowing schools to "require disclosure of the requestor's identity or the intended use of the directory information … to ascertain whether the directory information is for use in a profit-making plan or activity").
[212] *See* State ex rel. Dehler v. Kelly, 11th Dist. Trumbull No. 2009-T-0084, 2010-Ohio-3053, ¶ 34-37 (noting that prison officials had to comply with various requests submitted by inmate).
[213] R.C. 149.43(B)(8); State ex rel. Papa v. Starkey, 5th Dist. Stark No.2014CA00001, 2014-Ohio-2989, ¶¶ 7-9 (noting that 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).
[214] State ex rel. Bristow v. Chief of Police, Cedar Point, Police Dept., 6th Dist. Erie No. E-15-066, 2016-Ohio-3084, ¶ 10.
[215] State ex rel. Russell v. Thornton, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 14; State ex rel. Bristow v. Chief of Police, Cedar Point, Police Dept., 6th Dist. Erie No. E-15-066, 2016-Ohio-3084, ¶ 11 (following *Thornton*).
[216] State ex rel. Barb v. Cuyahoga Cty. Jury Commr., 128 Ohio St.3d 528, 2011-Ohio-1914, 947 N.E.2d 670, ¶ 1; State ex rel. Hopgood v. Cuyahoga Cty. Prosecutor's Office, 8th Dist. Cuyahoga No. 107098, 2018-Ohio-4121, ¶ 7.
[217] *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625, ¶ 34.
[218] *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625, ¶ 35.
[219] *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625, ¶¶ 34-36.
[220] State ex rel. Russell v. Thornton, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 96, ¶¶ 4-18.
[221] R.C. 149.43(B)(8); McCain v. Huffman, 151 Ohio. St.3d 409, 2017-Ohio-9241, 91 N.E.3d 74, ¶ 12 (denying an inmate request when the requested records would be "of no legal consequence"); State v. Dowell, 8th Dist. Cuyahoga No. 102408, 2015-Ohio-3237, ¶ 8 (denying inmate request for records when inmate "did not identify any pending proceeding for which the requested records would be material"); State v. Heid, 4th Dist. Scioto Nos. 14CA3668, 14CA3669, 2015-Ohio-1502, ¶ 15 (denying request when inmate "conceded that he wanted to support a potential delayed appeal

or postconviction action that he had not yet filed, i.e. he did not have a pending proceeding at the time he sought the records"); *State v. Cope*, 12th Dist. Butler No. CA2015-02-017, 2015-Ohio-3935, ¶ 17 (same); *State v. Heid*, 4th Dist. Scioto No. 14CA3655, 2015-Ohio-1467, ¶ 18 (noting that, among other failures, inmate "did not establish that the records sought contained information that would be either necessary or material"); *State ex rel. Rodriguez*, 12th Dist. Preble No. CA2013-11-011, 2014-Ohio-2583, ¶ 14; *State v. Wilson*, 2d Dist. Montgomery No. 23734, 2011-Ohio-4195 (holding application for clemency is not a "justiciable claim"); *State v. Rodriguez*, 6th Dist. Wood No. WD-10-062, 2011-Ohio-1397, ¶ 10 (noting that relator identified no pending proceeding to which his claims of evidence tampering would be material); *State v. Stinson,* 2d Dist. Montgomery No. 28073, 2019-Ohio-401, ¶ 10 (A "vague reference to 'any justiciable [c]laims'" does not satisfy R.C. 149.43(B)(8)).
[222] *State v. Lather*, 6th Dist. Sandusky No. S-08-036, 2009-Ohio-3215, ¶ 13; *State v. Chatfield*, 5th Dist. Perry No. 10CA12, 2010-Ohio-4261, ¶ 14 (noting that inmate may file R.C. 149.43(B)(8) motion, even if currently represented by criminal counsel in the original action).
[223] *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 8th Dist. Cuyahoga No. 93326, 2009-Ohio-3301, ¶ 4-5; *Hall v. State*, 11th Dist. Trumbull No. 2008-T-0073, 2009-Ohio-404, ¶¶ 12-14; *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶¶ 9-18; *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458, 459, 727 N.E.2d 910 (2000); *State ex rel. Ellis v. Cleveland Police Forensics Lab,* 157 Ohio St.3d 483, 2019-0398, 137 N.E.3d 1171, ¶¶ 9, 12.
[224] *State v. Heid*, 4th Dist. Scioto No. 14CA3655, 2014-Ohio-4714, ¶¶ 3-5 (finding that denial of inmate's request for order under R.C.149.43(B)(8) is a final appealable order); *State v. Thornton*, 2d Dist. Montgomery No 23291, 2009-Ohio-5049, ¶ 8; *State v. Armengau*, 10th Dist. Franklin No. 16AP-418, 2016-Ohio-5534, ¶ 12.
[225] *State ex rel. Bloodworth v. Bogan*, 12th Dist. Warren No. CA 2016-05-043, 2017-Ohio-7810, ¶ 26.
[226] *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").
[227] 1990 Ohio Op. Att'y Gen. No. 050; *see also* R.C. 149.43(B)(4).
[228] R.C. 149.43(B)(7)(c)(i) (noting 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"). NOTE: The limit only applies to records the office "will physically deliver by United States mail or by another delivery service."
[229] R.C. 149.43(B)(7)(c)(iii).
[230] R.C. 149.43(B)(7)(c)(iii).
[231] R.C. 149.43(B)(9)(c) states: "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."
[232] R.C. 149.43(B)(9)(a); R.C. 149.43(A)(7).
[233] R.C. 149.43(A)(7).
[234] R.C. 149.43(B)(9)(a).
[235] R.C. 149.43(B)(9)(b).
[236] R.C. 149.43(B)(9)(b).
[237] R.C. 149.43(B)(9)(a), (b).
[238] R.C. 149.43(B)(9)(b).
[239] R.C. 149.43(B)(9)(a).
[240] Journalists' right to inspect preliminary autopsy reports is not limited by the confidential law enforcement investigatory records exemption. *State ex rel. Cincinnati Enquirer v. Pike Cty. Gen. Health Dist.*, 154 Ohio St.3d 297, 2018-Ohio-3721, 114 N.E.3d 152, ¶ 21.
[241] R.C. 149.43(F)(1).
[242] These definitions are set forth at R.C. 149.43(F)(2) (a)-(d), and (F)(3).
[243] R.C. 313.10(A).
[244] R.C. 313.10(B).
[245] R.C. 313.10(A)(2)(a)-(f).
[246] R.C. 313.10(C). 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, *see infra*, do not apply. *State ex rel. Clay v. Cuyahoga Cty. Med. Examiners Office*, 152 Ohio St.3d 163, 2017-Ohio 8714, 94 N.E.3d 498, ¶ 37-38.
[247] R.C. 313.10(D).
[248] R.C. 313.10(E).
[249] R.C. 313.10(F).

III. Chapter Three: Exemptions to the Required Release of Public Records[250]

While the Public Records Act presumes and favors public access to government records, Ohio and federal laws provide limited exemptions to protect certain records from mandatory release. These laws can include constitutional provisions,[251] statutes,[252] common law,[253] or properly authorized administrative codes and regulations.[254] 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 other state or federal law, it must be disclosed.

A. Categories of Exemptions

There are two types of public records exemptions: 1) those that mandate that a public office cannot release certain documents; and 2) those that allow the public office to choose whether to release certain documents.

1. "Must not release"

The first type of exemption, a "mandatory" exemption, prohibits a public office from releasing specific records or information to the public, sometimes under civil or criminal penalty. Such records are prohibited from release in response to a public records request, and the public office has no choice but to deny the request. 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 "must not release" 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. "May release, but may choose to withhold"

The other type of exemption, a "discretionary" exemption, gives a public office the choice of either withholding or releasing 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; however, it may choose to do so without fear of punishment under the law.[258] Discretionary exemptions are usually found in state or federal statutes. Some laws contain ambiguous titles or text such as "confidential" or "private." But, the test for determining whether the exemption is mandatory or discretionary is whether a particular law applied to a particular request actually *prohibits* release of a record or just gives the public office the *choice* to withhold the record.

B. Multiple and Mixed Exemptions

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

C. Waiver of an Exemption

If a valid discretionary exemption applies to a particular record, but the public office voluntarily discloses it, the office is deemed to have waived[259] (abandoned) that exemption for that particular record, especially if the disclosure was to a person whose interests are antagonistic to those of the public office.[260]

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."[261] Under such circumstances, the information has never been disclosed to the public.[262]

D. Applying Exemptions

In Ohio, the public records of a public office belong to the people, not to the government officials holding the records.[263] Accordingly, public records law must be liberally interpreted in favor of disclosure, 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.[264] 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.[265] The Ohio Supreme Court 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."[266]

Even if a statute expressly states that specific records of a public office are public, it does *not* mean that all other records of that office are exempt from disclosure.[267] The Public Records Act still applies to all the public records of the office.

When an office can show that non-exempt records are "inextricably intertwined" with exempt materials, the non-exempt records are not subject to disclosure under R.C. 149.43 only to the extent they are inseparable.[268] Finally, a public office has no duty to submit a "privilege log" to preserve a claimed public records exemption.[269]

E. Exemptions Enumerated in the Public Records Act

The Public Records Act contains a list of records and types of information removed from the definition of "public record."[270] The full text of those exemptions appears in R.C. 149.43(A)(1). Here, these exemptions are addressed in brief summaries. Note that, 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* of withholding or releasing these records, many of these same records are also subject to other laws that *prohibit* their release.[271]

Type of Record(s)	§	Description
Medical records	(a)	Medical records are defined as any document or combination of documents that: 1) pertain to a patient's medical history, diagnosis, prognosis, or medical condition; **and** 2) were generated and maintained in the process of medical treatment.[272] Records meeting this definition need not be disclosed.[273] 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.[274] 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.[275] However, other statutes or federal constitutional rights may prohibit disclosure,[276] 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,[277] post-release control sanctions,[278] 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;[279] • Records relied on to compile a pre-sentence investigation report;[280] • Documents reviewed by the Parole Board in preparation for a parole hearing;[281] and • Records of parole proceedings.[282]
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.[283]

Type of Record(s)	§	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;[284] • Contents of an adoption file maintained by the Department of Health;[285] • A putative father registry;[286] and • An original birth record after a new birth record has been issued.[287] 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.[288] • 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.[289] • An adopted person at least eighteen years old may be entitled to the release of identifying information or access to their adoption file.[290]
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."[291] Documents that a public office obtains through discovery during litigation are considered trial preparation records.[292] In addition, material compiled for a public attorney's personal trial preparation constitutes a trial preparation record.[293] The trial preparation exemption does not apply to settlement agreements or settlement proposals,[294] or when there is insufficient evidence that litigation is reasonably anticipated at the time the records were prepared.[295] (See also Chapter Three: F.5.d. "Trial preparation records.")

Type of Record(s)	§	Description
Confidential law enforcement investigatory records (CLEIRs)	(h)	CLEIRs are defined [296] as records that (1) pertain to a law enforcement matter, and (2) have a high probability of disclosing any of the following: • The identity of an uncharged suspect; • 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; • Specific confidential investigatory techniques or procedures or specific investigatory work product; or • Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source. (See also Chapter Six: A. "CLEIRs: Confidential Law Enforcement Investigatory Records 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.[297]
DNA	(j)	DNA records stored in the state DNA database, pursuant to R.C. 109.573.[298]
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).[299]
Department of Youth Services	(l)	Records regarding children in its custody that are released for the limited purpose of carrying out the duties of DRC.[300]
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. [301] (See also Chapter Three: F.6. "Intellectual Property.")
Donor profile records	(n)	Similar to the intellectual property exemption, the "donor profile records" exemption is given 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.[302] Second, the names and reported addresses of all donors and the date, amount, and condition of their donation(s) *are* all public information.[303] The exemption applies only to all *other* records about a donor or potential donor.

Type of Record(s)	§	Description
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.[304]
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.[305] (See also Chapter Six: C. "Residential and Familial Information of Covered Professions that are not Public Records.")
Hospital trade secrets	(q)	Trade secrets of certain county and municipal hospitals.[306] "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 eighteen. This includes any information that would reveal the person's: • Address or telephone number, or that of the person's guardian, custodian, or emergency contact person; • Social security number, birth date, or photographic image; • Medical records, history, or information; or • 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.[307]
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).[308] 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. Some of these records are prohibited from release to the public. Others may become public depending on the circumstances.[309]
Nursing home administrator licensing	(u)	Nursing home administrator licensing test materials, examinations, or evaluation tools.[310]

Type of Record(s)	§	Description
Catch-all exemption	(v)	Records the release of which is prohibited by state or federal law; this is often called the "catch-all" exemption.[311] Although state and federal statutes can create both mandatory and discretionary exemptions by themselves, this provision also incorporates any statutes or administrative codes that prohibit the release of specific records. Under this provision, a state or federal agency rule designating particular records as confidential that is properly promulgated by the agency will constitute a valid exemption[312] because such rules have the effect of law.[313] But, if the rule was promulgated outside the authority statutorily granted to the agency, the rule is not valid and will not constitute an exemption to disclosure.[314]
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.[315]
Ohio Housing Finance Agency	(x)	Financial statements and data any person submits for any purpose to the Ohio Housing Finance Agency or the Controlling Board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency.[316]
Foster care / child care 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 child care centers. This exemption applies only to records held by county agencies or the Ohio Department of Job and Family Services.[317] (See also Chapter Three: F. 2. c. "County Children Services Agency Records").
Military discharges	(z)	Military discharges recorded with a county recorder.[318]
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.[319]
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.[320]
Lethal injection	(cc)	Information and records concerning drugs used for lethal injections that are made confidential, privileged, and not subject to disclosure under R.C. 2949.221(B) and (C).[321]

Type of Record(s)	§	Description
Personal information	(dd)	"Personal information," including 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.[322]
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.[323]
Military orders	(ff)	Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order.[324]
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."[325]
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.[326]
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."[327]

Restricted portions of dashboard camera and body camera	(jj)	Portions of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following: • 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; • The death of a person or deceased person's body, unless the death was caused by a peace officer or under certain other circumstances; • The death of a peace officer or first responder that occurs when the decedent was performing official duties; • Grievous bodily harm unless the injury was effected by a peace officer; • An act of severe violence against a person that results in serious physical harm unless the injury was effected by a peace officer; • Grievous bodily harm to, or an act of severe violence resulting in serious physical harm, against a peace officer or first responder while the injured person was performing official duties; • A person's nude body; • 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; • Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence; • 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; • A person's personal information who is not arrested, charged, or issued a written warning; • Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety; • Personal conversations between peace officers unrelated to work; • Conversations between peace officers and members of the public that do not concern law enforcement activities; • The interior of a residence unless it is the location of an adversarial encounter with, or use of force by, a peace officer; or (continued on next page)

Type of Record(s)	§	Description
Restricted portions of dashboard camera and body camera	(jj)	(continued from previous page) • 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.[328] 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.[329] 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.[330]
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.[331]
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.[332]
Crime victim telephone numbers	(mm)	Telephone numbers of victims and witnesses to a crime listed on a law enforcement record or report.[333]
Preneed funeral contracts	(nn)	Information and records contained in a report submitted to the board of embalmers and funeral directors.[334]
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.[335]

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 seventy-five 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. If any other section of the Revised Code establishes a conflicting time period for disclosure, the other section controls.

F. Exemptions Created by Other Laws (by Category)

The following is a non-exhaustive list of exemptions that may apply to records of public offices. Some will require expert case-by-case analysis by the public office's legal counsel before application to a public records request. Additional Ohio statutory exemptions beyond those mentioned in this Chapter can be found in "Appendix A – Statutory Provisions Exempting Records from the Ohio Public Records Act."

1. Exemptions affecting personal privacy

There is no general "privacy exemption" to the Public Records Act. Ohio has no general privacy law comparable to the federal Privacy Act.[336] However, a public office is obligated to protect certain *non-public record* personal information from unauthorized dissemination.[337] Though many of the exemptions to the Public Records Act apply to information people would 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,"[338] but must be balanced against the public interest in the information.[339] Such information cannot be disclosed unless disclosure "narrowly serves a compelling state interest."[340]

In Ohio, the U.S. Court of Appeals for the Sixth Circuit has 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."[341]

The Ohio Supreme Court 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."[342] In matters that do not rise to fundamental constitutional levels, state statutes address privacy rights, and the 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."[343] Cases finding a new or expanded constitutional right of privacy affecting public records are infrequent.

In the Sixth Circuit case of *Kallstrom v. Columbus*, 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.[344] 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 at stake.[345] The Court described this constitutional right as a person's "'interest in preserving [one's] life.'"[346] 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."[347] 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.[348]

Based on *Kallstrom*, the Ohio Supreme Court subsequently held that police officers have a constitutional right to privacy in their personal information that could be used by defendants in a criminal case to achieve nefarious ends.[349] The Ohio Supreme Court has also suggested that the constitutional right to privacy of minors would come into play when "release of personal information … creates an unacceptable risk that a child could be victimized."[350] The Court of Claims has also

applied the constitutional right to privacy to permit the redaction of an inmate's nude body and underwear from video taken by officers' body-worn cameras.[351]

However, neither the Ohio Supreme Court nor the Sixth Circuit has applied broadly the constitutional right to privacy to the Public Records Act. For example, the Sixth Circuit held in another case, *Bloch v. Ribar*, that "a rape victim has a fundamental right of privacy in preventing government officials from gratuitously and unnecessarily releasing the intimate details of the rape where no penalogical [sic] purpose is being served."[352] But, the Ohio Supreme Court later noted that *Bloch* was not a public records case and held that "it did not create the categorical exception to disclosure under federal law" required by the "catch-all" exemption to the Public Records Act.[353]

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.[354]

b. Personal information listed online

R.C. 149.45 requires public offices to redact, and permits certain individuals to request redaction of, specific personal information[355] from any records made available to the general public on the internet.[356] 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.[357] In addition, certain designated public service workers can also request the redaction of their actual residential address from any records made available by public offices to the general public on the internet.[358] When a public office receives a request for redaction, it must act in accordance with the request within five business days, if practicable.[359] 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.[360]

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 general public on the internet.[361] 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.[362]

The statute provides that a public office is not liable in a civil action for any alleged harm as a result of the failure to redact personal information or addresses on records made available on the internet to the general public, unless the office acted with a malicious purpose, in bad faith, or in a wanton or reckless manner.[363]

In addition to the protections listed above, R.C. 319.28 allows a "designated public service worker"[364] 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.[365] Upon receiving such a request, the county auditor must act within five days in accordance with the request.[366] 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.[367]

c. Social security numbers

Social security numbers (SSNs) must be redacted before the disclosure of public records, including court records.[368]

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 that disclosure is mandatory or voluntary and, if mandatory, under what authority the SSN is solicited; and (2) what use will be made of it.[369] In short, a SSN can only be disclosed if an individual has been given prior notice that their SSN will be publicly available.

However, the Ohio Supreme Court has ruled that 911 tapes must be made immediately available for public disclosure without redaction, even if the tapes contain SSNs.[370] The Court explained that there is no expectation of privacy when a person makes a 911 call. Instead, there is an expectation that the information will be recorded and disclosed to the public.[371] Similarly, the Ohio Attorney General has opined that there is no expectation of privacy in official documents containing SSNs.[372]

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.[373]

e. Income tax returns

Generally, any information gained as a result of municipal and state income tax returns, investigations, hearings, or verifications is confidential and may only be disclosed as permitted by law.[374] 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.[375]

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.[376] Release of municipal income tax information to the Auditor of State is permissible for purposes of facilitation of an audit.[377] Federal tax returns and "return information" are also confidential.[378]

f. 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.[379] 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.[380] 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.[381]

2. Juvenile records

Although it is a common misconception that such a law exists, there is no Ohio law that categorically excludes all juvenile records from public records disclosure.[382] 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.[383] Examples of laws that exempt specific juvenile records include:

a. Juvenile court records

Records maintained by the juvenile court and parties for certain proceedings are not available for public inspection and copying.[384] Although the juvenile court may exclude the general public from most hearings, serious youthful offender proceedings and their transcripts are open to the public unless the court orders a hearing closed.[385] The closure hearing notice, proceedings, and decision must themselves be public.[386] Records of social, mental, and physical examinations conducted pursuant to a juvenile court order,[387] records of juvenile probation,[388] and records of juveniles held in custody by the Department of Youth Services are not public records.[389] Sealed or expunged juvenile adjudication records must be withheld.[390]

b. Juvenile law enforcement records

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.[391] Specific additional juvenile exemptions apply to: (1) fingerprints, photographs, and related information in connection with specified juvenile arrest or custody;[392] (2) certain information forwarded from a children's services agency;[393] and (3) sealed or expunged juvenile records (see Juvenile court records, above). 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.[394]

Federal law similarly prohibits disclosure of specified records associated with federal juvenile delinquency proceedings.[395] Additionally, federal laws restrict the disclosure of fingerprints and photographs of a juvenile found guilty in federal delinquency proceedings of committing a crime that would have been a felony if the juvenile were prosecuted as an adult.[396]

c. County children services agency records

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.[397] These records shall be open to inspection by the agency and certain listed officials 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).[398]

d. Some other exemptions for juvenile records

Other exemptions that relate to juvenile records include: (1) reports regarding allegations of child abuse;[399] (2) individually identifiable student records;[400] (3) certain foster care and day care information;[401] and (4) information pertaining to the recreational activities of juveniles.[402]

3. Student records[403]

The federal Family Education Rights and Privacy Act of 1974 (FERPA)[404] prohibits educational institutions from releasing a student's "education records" without the written consent of the eligible student[405] or his or her parents, except as permitted by the Act.[406] "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.[407] The term encompasses records such as school transcripts, attendance records, and student disciplinary records.[408] "Education records" covered by FERPA are not limited to "academic performance, financial aid, or scholastic performance."[409] Note, however, that "education records" do not include records of an agency or institution's law enforcement unit.[410]

A record is considered to be "directly related" to a student if it contains "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.[411] In evaluating records for release, an agency or institution must consider what the records 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.

The federal FERPA law applies to all students, regardless of grade level. In addition, Ohio has adopted laws specifically applicable to public school students in grades kindergarten through twelve.[412] 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.[413]

"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."[414] 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.[415] Pursuant to federal law, post-secondary institutions designate what they will unilaterally release as directory information. For grades kindergarten through twelve, 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.[416]

Ohio law prohibits release of directory information to any person or group for use in a profit-making plan or activity.[417] A public office may require disclosure of the requester's identity or the intended use of directory information to ascertain whatever it will be used in a profit-making plan or activity.[418]

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.[419]

4. Public safety and public office security

a. Infrastructure and security records

"Infrastructure records" and "security records" are exempt from mandatory public disclosure.[420] Note that other state[421] and federal[422] laws may create exemptions for the same or similar records.

i. 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.[423] Simple floor plans or records showing the spatial relationship of the public office are not infrastructure records.[424] 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]

ii. Security records

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."[426] Protecting a public office includes protecting the employees, officers, and agents who work in that office.[427] However, this is not to say that all records involving criminal activity in or near a public building or official are automatically "security records."[428] Security records may be disclosed for purposes of construction, renovation, or remodeling of a public office without waiving the exempt status of that record.[429]

b. Records that would jeopardize the security of public office electronic records

Records 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 under the Public Records Act.[430]

5. Exemptions related to litigation

a. Attorney-client privilege and attorney work product

"'The attorney-client privilege is one of the oldest recognized privileges for confidential communications.'" [431] Attorney-client privileged records and information must not be revealed without the client's waiver.[432] Such records are prohibited from release by the "catch-all" exemption to the Public Records Act.[433]

The attorney-client privilege arises when legal advice of any kind is sought from a professional legal advisor. Communications made in confidence between an attorney and a client that facilitate the attorney's provision of legal advice are permanently protected from disclosure by the client or the legal advisor.[434] Records or information that meet those criteria must be withheld or redacted in order to preserve attorney-client privilege.[435] For example, drafts of proposed bond documents prepared by an attorney are protected by the attorney-client privilege and are not subject to disclosure.[436]

The attorney-client privilege applies to records of communications between public office clients and their attorneys in the same manner that it does for private clients and their attorneys.[437] Communications between a client and an attorney's agent (for example, a paralegal) may also be subject to the attorney-client privilege.[438] The privilege also applies to "documents containing communications between members of the public entity represented about the legal advice given."[439] 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.[440]

The common law attorney work-product doctrine also protects certain materials in a similar manner to the attorney-client privilege.[441] The doctrine provides a qualified privilege[442] and is incorporated into Rule 26 of both the Ohio and Federal Rules of Civil Procedure. Ohio Civil Rule 26(B)(3) protects material "prepared in anticipation of litigation or for trial." The rule protects "the attorney's mental processes in preparation of litigation" and "establish[es] a zone of privacy in which lawyers can analyze and prepare their client's case."[443]

b. 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]

Note that 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[448] applicable public records exemptions, such as trial preparation records or confidential law enforcement records,[449] simply by complying with discovery rules.[450]

c. Civil discovery

In civil court proceedings, the parties are not limited to the materials available under the civil rules. A civil litigant is allowed to use the Public Records Act in addition to civil discovery.[451] The exemptions contained in the Public Records Act do not protect documents from discovery in civil actions.[452] The nature of a request as either discovery or a request for public records will determine any available enforcement mechanisms.[453]

The Ohio Rules of Evidence govern the use of public records as evidence in litigation.[454] 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."[455]

d. Trial preparation records

R.C. 149.43(A)(1)(g) exempts from disclosure "trial preparation records," which are 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."[456] Trial preparation records need not exist solely for the purpose of litigation; they can also serve the regular functions of a public office.[457] Documents that a public office obtains as a litigant through discovery will ordinarily qualify as "trial preparation records,"[458] as would the materials compiled for a criminal proceeding by a prosecutor or the personal trial preparation by a public attorney.[459] Attorney trial notes and legal research are "trial preparation records" that may be withheld from disclosure.[460] Virtually everything in a prosecutor's file during an active prosecution is either material compiled in anticipation of a specific criminal proceeding or personal trial preparation of the prosecutor, and therefore, is exempt from public disclosure as "trial preparation records."[461] However, unquestionably non-exempt materials do not transform into "trial preparation records" simply because they are held in a prosecutor's file.[462] For example, routine offense and incident reports are subject to release while a criminal case is active, including those reports in the files of the prosecutor.[463] 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. [464]

e. Protective orders and sealed or expunged court records[465]

When the release of court records would prejudice the rights of the parties in an ongoing criminal or civil proceeding,[466] court rules may permit a protective order prohibiting release of the records.[467] Similarly, when court records have been properly expunged or sealed, they are no longer public records.[468] The criminal sealing statute does not apply to the sealing of pleadings in related civil cases.[469] 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.[470]

Even absent statutory authority, trial courts "in unusual and exceptional circumstances" have the inherent authority to seal court records.[471] 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.[472] 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[473] or give the trial court the authority to seal the conviction outside of the statutory sealing process.[474]

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.[475] Materials covered by Criminal Rule 6 include transcripts, voting records, subpoenas, and the witness book.[476] 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.[477] Release of the names of grand jury witnesses, witness subpoenas, and documents produced in response to a witness subpoena, are not restricted by Criminal Rule 6(E).[478]

g. Settlement agreements and other contracts

When a public office is a party to a settlement, the trial preparation records exemption does not apply to the settlement agreement.[479] But the parties are entitled to redact any information within the settlement agreement that is subject to the attorney-client privilege.[480] Any promise not to release a

settlement agreement to which a public office is a party is void and unenforceable because a contractual provision cannot supersede the Public Records Act.[481]

6. Intellectual property

a. Trade secrets

Trade secret law is underpinned by "[t]he protection of competitive advantage in private, not public, business."[482] However, the Ohio Supreme Court has held that certain governmental entities can have trade secrets in limited situations.[483]

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.[484]

Information identified in a record by its owner as a trade secret is not automatically prohibited from release by the "catch-all" exemption to the Public Records Act. Rather, identification of a trade secret requires a fact-based assessment.[485] "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."[486]

The Ohio Supreme Court has 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.[487]

The maintenance of secrecy is important but does not require that a trade secret be completely unknown to the public in its entirety. 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 remains protected under Ohio law.[488] An *in camera* inspection may be necessary to determine if disputed records contain trade secrets.[489]

Signed non-disclosure agreements do not create trade secret status for otherwise publicly disclosable documents.[490]

b. Copyright

Federal copyright law is designed to protect "original works of authorship," which may exist in one of several specified categories:[491] (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.[492]

Federal copyright law provides certain copyright owners the exclusive right of reproduction,[493] 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 sought by a requester is copyrighted material that the public office does not possess 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.[494] However, there are some exemptions to this rule. For example, in certain situations, the copying of a portion of a copyrighted work may be permitted.[495]

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

G. No Valid Exemption

Only those exemptions listed in the Public Records Act and those created by certain other state or federal laws are valid.

1. Contracts cannot create exemptions

A public office cannot contract around the Public Records Act,[496] and parties to a public contract, including settlement agreements,[497] memoranda of understanding,[498] and collective bargaining agreements,[499] cannot nullify public records obligations by agreeing that records will not be public.[500] Nor can an employee handbook confidentiality provision alter the status of public records.[501] In other words, a contract cannot nullify or restrict the public's access to public records.[502] Absent a statutory exemption, a "public entity cannot enter into enforceable promises of confidentiality regarding public records."[503]

2. Marsy's Law does not provide an exemption

Article I, Section 10a of the Ohio Constitution, known as "Marsy's Law," seeks to "secure for victims justice and due process throughout the criminal and juvenile justice systems" by affording certain rights, among them the right "to be treated with fairness and respect for the victim's safety, dignity, and privacy."[504] The Ohio Supreme Court has held that Marsy's Law does not provide an exemption to the Public Records Act.[505]

3. FOIA does not apply to Ohio public offices

A request for public records from a state or local agency in Ohio is governed only by the Public Records Act. The federal Freedom of Information Act (FOIA)[506] and its exemptions do not apply to Ohio public offices.[507] Requests for records and information from federal agencies located in Ohio are governed by FOIA.

Notes:

[250] In this section, the term "exemption" will be used to describe laws authorizing the withholding of records from public records requests. Note that the term "exception" also is used often in public records law and court cases.
[251] *See, e.g., State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 282 (1999).
[252] *See, e.g., State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶ 56 (applying R.C. 2151.421).
[253] An example being the common law attorney-client privilege. *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶ 27.
[254] *See, e.g., State ex rel. Lindsay v. Dwyer*, 108 Ohio App.3d 462, 467 (10th Dist. 1996) (finding 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) (holding that, if regulation was promulgated outside of agency's statutory authority, the invalid rule will not constitute an exemption to the Public Records Act).
[255] *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379 (1998).
[256] *See State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 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] *Bentkowski v. Trafis*, 8th Dist. Cuyahoga No. 102540, 2015-Ohio-5139, ¶ 31 (holding that Public Records Act does not explicitly and directly impose a duty upon officials to withhold records that are exempt from disclosure).
[259] *State ex rel. Wallace v. State Med. Bd. of Ohio*, 89 Ohio St.3d 431, 435 (2000) (noting that "waiver" is defined as a voluntary relinquishment of a known right).
[260] *See, e.g., State ex rel. Hicks v. Fraley,* Slip Opinion No. 2021-Ohio-2724, ¶ 23 (finding 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*, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶ 22; *State ex rel. Gannett Satellite Info. Network, Inc. v. Petro*, 80 Ohio St.3d 261, 265 (1997); *State ex rel. Zuern v. Leis*, 56 Ohio St.3d 20, 22 (1990) (finding any exemptions applicable to sheriff's investigative material were waived by disclosure in civil litigation); *Aire-Ride, Inc. v. DHL Express (USA) Inc.,* 12th Dist. Clinton No. CA2008-01-001, 2008-Ohio-5669, ¶ 17-30 (holding that attorney-client privilege was waived when counsel had reviewed, marked confidential, and inadvertently produced documents during discovery); *Dept. of Liquor Control v. B.P.O.E Lodge 0107,* 10th Dist. Franklin No. 90AP-821, 1991 Ohio App. LEXIS 2639 (June 4, 1991) (holding that introduction of record at administrative hearing waives any bar to dissemination); *State ex rel. Coleman v. Norwood*, 1st Dist. Hamilton No. C-890075, 1989 Ohio App. LEXIS 3088, *2 (1989) ("[T]he visual disclosure of the documents to [the requester] waives any contractual bar to dissemination of these documents.").
[261] *State ex rel. Cincinnati Enquirer, Div. of Gannet Satellite Information Network, Inc. v. Sharp*, 151 Ohio App.3d 756, 761, 2003-Ohio-1186, ¶ 14 (1st Dist.) (finding 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*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶ 37 (forwarding police investigation records to a city's ethics commission did not constitute waiver).
[262] *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 465, 2005-Ohio-5521, ¶¶ 35-39; *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Sharp*, 151 Ohio App.3d 756, 761, 2003-Ohio-1186, ¶ 15 (1st Dist.).
[263] *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 420 (1996); *Dayton Newspapers, Inc. v. Dayton*, 45 Ohio St.2d 107, 109 (1976); *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371 (1960).
[264] *State ex rel. Pietrangelo v. Avon Lake,* 146 Ohio St.3d 292, 2016-Ohio-2974, ¶9; *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, ¶ 21; *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 17; *State ex rel. Carr v. Akron*, 112 Ohio St.3, d 351, 2006-Ohio-6714, ¶ 30.
[265] *State ex rel. Rocker v. Guernsey Cty. Sheriff's Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, ¶ 7; *Cuyahoga Cty. Bd. of Health v. Lipson O'Shea Legal Group*, 8th Dist. Cuyahoga No. 99832, 2013-Ohio-5736, ¶¶ 31-32.
[266] *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 172 (1994). NOTE: The Ohio Supreme Court has not authorized courts or other records custodians to create new exemptions to R.C. 149.43 based on a balancing of interests or generalized privacy concerns. *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, ¶ 31.
[267] *Franklin Cty. Sheriff's Dept. v. State Emp. Relations Bd.*, 63 Ohio St.3d 498, 502 (1992) (noting that, while categories of records designated in R.C. 4117.17 clearly are public records, all other records must still be analyzed under R.C. 149.43).
[268] *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, ¶¶ 21-25; *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 2011-Ohio-6009, ¶ 29; *State ex rel. Master v. Cleveland*, 76 Ohio St.3d 340, 342 (1996)
[269] *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶ 24.
[270] R.C. 149.43(A)(1)(a)-(mm).
[271] *See* Chapter Three: B. "Multiple and Mixed Exemptions."
[272] R.C. 149.43(A)(1)(a) (applying Public Records Act definition of "medical records" at R.C. 149.43(A)(3)).
[273] 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; *but see State ex rel. Cincinnati Enquirer v. Adcock*, 1st Dist. Hamilton No. C-040064, 2004-Ohio-7130.
[274] R.C. 149.43(A)(3).
[275] *See State ex rel. O'Shea & Assocs. L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶¶ 41-43 (holding that 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) (finding a police psychologist report obtained to assist in the police hiring process is not a medical record); *State v Hall*, 141 Ohio App.3d 561, 567 (4th Dist. 2001) (finding psychiatric reports compiled solely to assist court with competency to stand trial determination are not medical records).
[276] *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).
[277] R.C. 149.43(A)(11) ("Community control sanction" has the same meaning as in R.C. 2929.01).
[278] 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).
[279] *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St.3d 30, 32 (1985), fn.2.
[280] *State ex rel. Hadlock v. Polito*, 74 Ohio App.3d 764, 766 (8th Dist. 1991).
[281] *State ex rel. Lipschutz v. Shoemaker*, 49 Ohio St.3d 88, 90 (1990).
[282] *State ex rel. Gaines v. Adult Parole Auth.*, 5 Ohio St.3d 104 (1983).
[283] R.C. 149.43(A)(1)(c) (referencing R.C. 2151.85 and 29.19.121(C).
[284] R.C. 149.43(A)(1)(d); R.C. 149.43(A)(1)(f) (referencing R.C. 3107.52(A)).
[285] R.C. 149.43(A)(1)(d) (referencing R.C. 3705.12 to 3705.124).
[286] R.C. 149.43(A)(1)(e) (referencing R.C. 3107.062 and R.C. 3111.69).

[287] R.C. 3705.12.
[288] R.C. 3107.063.
[289] R.C. 3107.17(D).
[290] R.C. 149.43(A)(1)(f); R.C. 3107.38(B), (C).
[291] R.C. 149.43(A)(4); *see also* Chapter Three: F. 5. d. "Trial preparation records."
[292] *Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197, ¶ 10.
[293] *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 432 (1994).
[294] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶¶ 16-21.
[295] *See State ex rel. O'Shea & Assocs. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶ 44; *see also Betkowski v. Trafis*, 8th Dist. Cuyahoga No. 102540, 2015-Ohio-5139 (finding trial preparation records exemption 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).
[296] R.C. 149.43(A)(2).
[297] R.C. 149.43(A)(1)(i).
[298] R.C. 149.43(A)(1)(j).
[299] R.C. 149.43(A)(1)(k), Records of inmates committed to DRC and of persons under the supervisionof the Adult Parole Authority are also generally exempted from the Public Records Act. R.C. 5120.21; *State ex rel. Hogan Lovells U.S., LLP, v. Ohio Dept. of Rehab. & Corr.,* Slip Opinion No. 2021-Ohio-1762, ¶ 35-40.
[300] 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.
[301] R.C. 149.43(A)(1)(m); R.C. 149.43(A)(5); *see also Zamlen-Spotts v. Cleveland State Univ.*, Ct. of Cl. No. 2021-00087PQ, 2021-Ohio-2704, ¶ 9-18, *adopted by Zamlen-Spotts v. Cleveland State Univ.,* Ct. of Cl. No. 2021-00087PQ (July 21, 2021) (finding 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.*, 108 Ohio St.3d 288, 2006-Ohio-903, ¶ 33 (finding university's records of spinal cord injury research are exempted intellectual property records because the limited sharing of the records with other researchers to further the advancement of spinal cord injury research did not mean that the records had been "publicly released").
[302] R.C. 149.43(A)(6) ("'Donor profile record' means all records about donors or potential donors to a public institution of higher education….").
[303] R.C. 149.43(A)(6).
[304] R.C. 149.43(A)(1)(o) (referencing R.C. 3121.894).
[305] R.C. 149.43(A)(1)(p); R.C. 149.43(A)(7)-(8).
[306] R.C. 149.43(A)(1)(q).
[307] R.C. 149.43(A)(1)(r); R.C. 149.43(A)(10).
[308] R.C. 149.43(A)(1)(s) (referencing R.C. 307.621 - 629).
[309] R.C. 149.43(A)(1)(t) (referencing R.C. 5153.171).
[310] R.C. 149.43(A)(1)(u) (referencing R.C. 4751.15).
[311] R.C. 149.43(A)(1)(v).
[312] *State ex rel. Lindsay v. Dwyer*, 108 Ohio App.3d 462, ¶¶ 466-467 (10th Dist. 1996) (holding that State Teachers Retirement System properly denied access to beneficiary form pursuant to Ohio Administrative Code); 2000 Ohio Atty.Gen.Ops. No. 036 (determining that, per federal regulation, service member's discharge certificate prohibited from release by Governor's Office of Veterans Affairs, without service member's written consent).
[313] *Columbus & Southern Ohio Elec. Co. v. Indus. Comm.*, 64 Ohio St.3d 119, 122 (1992); *Doyle v. Ohio Bur. of Motor Vehicles*, 52 Ohio St.3d 46, 48 (1990); *State ex rel. DeBoe v. Indus. Comm.*, 161 Ohio St. 67 (1954), paragraph one of the syllabus.
[314] *State ex rel. Gallon & Takacs Co., L.P.A. v. Conrad*, 123 Ohio App.3d 554, 560-61 (10th Dist. 1997) (holding that Bureau of Workers' Compensation administrative rule prohibiting release of managed care organization applications was unauthorized attempt to create exemption to Public Records Act).
[315] R.C. 149.43(A)(1)(w) (referencing R.C. 150.01).
[316] R.C. 149.43(A)(1)(x).
[317] R.C. 149.43(A)(1)(y) (referencing R.C. 5101.29).
[318] R.C. 149.43(A)(1)(z) (referencing R.C. 317.24).
[319] R.C. 149.43(A)(1)(aa).
[320] R.C. 149.43(A)(1)(bb).
[321] 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.*, 156 Ohio St.3d 56, 2018-Ohio-5133, ¶¶ 13-24 (applying R.C. 2949.221).
[322] R.C. 149.43(A)(1)(dd) (referencing R.C. 149.45); *Gannett GP Media, Inc. v. Chillicothe, Ohio Police Dept.*, Ct. of Cl. No. 2017-00886PQ, 2018-Ohio-1552, ¶ 12 adopted by *Gannett GP Media, Inc. v. Chillicothe, Ohio Police Dept.*, Ct. of Cl. No. 2017-00886PQ (Mar. 7, 2018) (SSNs protected pursuant to R.C. 149.43(A)(1)(dd)).
[323] R.C. 149.43(A)(1)(ee).
[324] R.C. 149.43(A)(1)(ff).
[325] R.C. 149.43(A)(1)(gg).
[326] R.C. 149.43(A)(1)(hh).
[327] R.C. 149.43(A)(1)(ii).
[328] R.C. 149.43(A)(1)(jj) and (A)(17).
[329] R.C. 149.43(A)(17)(a)-(q) and (H).
[330] R.C. 149.43(H)(2).
[331] R.C. 149.43(A)(1)(kk).
[332] R.C. 149.43(A)(1)(ll).
[333] R.C. 149.43(A)(1)(mm).
[334] R.C. 149.43(A)(1)(nn).
[335] R.C. 149.43(A)(1)(oo).
[336] 5 U.S.C. 552a.
[337] Ohio has a Personal Information Systems Act (PISA), R.C. Chapter 1347, that 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 State ex rel. Renfro v. Cuyahoga Cty. Dept. of Human Servs.*, 54 Ohio St.3d 25 (1990); *Fischer v. Kent State Univ.*, 2015-Ohio-3569, 41 N.E.3d 840, ¶ 15 (10th Dist.) (finding legal brief written by state university's attorneys in response to retired professor's Equal Employment Opportunity Commission claims constituted a public record, and 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).

[338] *Kallstrom v. Columbus*, 136 F.3d 1055, 1061 (6th Cir. 1998), citing *Whalen v. Roe*, 429 U.S. 589, 598-600 (1977).
[339] *Kallstrom v. Columbus*, 136 F.3d 1055, 1061 (6th Cir. 1998); *Nixon v. Admr. of Gen. Servs.,* 433 U.S. 425 (1977); *see also, J.P. v. DeSanti*, 653 F.2d 1080, 1091 (6th Cir. 1981).
[340] *Kallstrom v. Columbus*, 136 F.3d 1055, 1059 (6th Cir. 1998).
[341] *Kallstrom v. Columbus*, 136 F.3d 1055, 1062 (6th Cir. 1998), citing *J. P. v. DeSanti*, 653 F.2d 1080, 1090 (6th Cir. 1981).
[342] *State ex rel. WBNS TV v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, ¶¶ 30-31, 36-37.
[343] *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St.3d 258, 266 (1992).
[344] *Kallstrom v. Columbus*, 136 F.3d 1055, 1059 (6th Cir. 1998).
[345] *Kallstrom v. Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998), citing *Doe v. Clairborne Cty.*, 103 F.3d 495, 507 (6th Cir. 1996).
[346] *Kallstrom v. Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998), quoting *Nishiyama v. Dickson Cty.*, 814 F.2d 277, 380 (6th Cir. 1987) (en banc).
[347] *Kallstrom v. Columbus*, 136 F.3d 1055, 1065 (6th Cir. 1998).
[348] *Deja Vu of Cincinnati, LLC v. Union Twp. Bd. of Trustees*, 411 F.3d 777, 793-794 (6th Cir. 2005) (en banc).
[349] *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 282 (1999); *see also State ex rel. Cincinnati Enquirer v. Craig*, 132 Ohio St.3d 68, 2012-Ohio-1999, ¶¶ 13-23 (holding that identities of officers involved in fatal accident with motorcycle club exempted from disclosure based on constitutional right of privacy when release would create likely threat of serious bodily harm or death).
[350] *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 372 (2000); *but see Sengstock v. City of Twinsburg,* Ct. of Cl. No. 2021-0330PQ, 2021-Ohio-4438, ¶ 23, *adopted by Sengstock v. City of Twinsburg,* Ct. of Cl. No. 2021-0330PQ, 2022-Ohio0314 (denying application of the constitutional right to privacy in the names of juvenile public employees).
[351] *Shaffer v. Budish,* Ct. of Cl. No. 2017-00690PQ, 2018-Ohio-1539, ¶ 41-46, *adopted by Shaffer v. Budish,* Ct. of Cl. No. 2017-00690PQ (Feb. 22, 2018). NOTE: This case precedes the enactment of R.C. 149.43(A)(1)(jj), which creates exemptions for certain types of body-worn camera video recordings. *See* Chapter Three: E. "Exemptions Enumerated in the Public Records Act" at Restricted Portions of Body Camera Recordings.
[352] *Bloch v. Ribar*, 156 F.3d 673, 686 (6th Cir. 1998).
[353] *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, ¶ 41.
[354] *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 8th Dist. Cuyahoga No. 99733, 2013-Ohio-4481, ¶ 3 (ordering public office to release replacement teachers' names because public office failed to establish that threats and violent acts continued after strike), aff'd *State ex rel. Quolke v. Strongsville City School Dist. Bd. Of Edn.,* 142 Ohio St.3d 509, 2015-Ohio-1083, ¶¶ 25-28.
[355] "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.
[356] R.C. 149.45(C)(1).
[357] This form is available at http://www.OhioAttorneyGeneral.gov/Sunshine.
[358] These designated public service workers include: 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. R.C. 149.45(A)(2); R.C. 149.43(A)(7)-(8). For additional discussion, see Chapter Six: C. "Residential and Familial Information of Designated Public Service Workers that are not Public Records"; R.C. 149.45(D)(1) (this section does not apply to county auditor offices). The request must be on a form developed by the Attorney General, which is available at http://www.OhioAttorneyGeneral.gov/Sunshine.
[359] R.C. 149.45(C)(2), (D)(2).
[360] R.C. 149.45(C)(2), (D)(2). NOTE: Explanation of the impracticability of redaction by the public office can be either oral or written.
[361] R.C. 149.45(B)(1),(2). NOTE: A public office is also obligated to redact social security numbers from records that were posted before the effective date of R.C. 149.45.
[362] R.C. 149.45(E)(1).
[363] R.C. 149.45(E)(2).
[364] R.C. 319.28(B)(1), citing R.C. 149.43(A)(7).
[365] R.C. 319.28(B)(1).
[366] R.C. 319.28(B)(2).
[367] R.C. 319.28(B)(2).
[368] R.C. 149.43(A)(1)(dd); *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 25 (noting that SSNs should be removed before releasing court records); *see also State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 25 (finding that the personal information of jurors was used only to verify identification not to determine competency to serve on the jury, and SSNs, telephone numbers, and driver's license numbers may be redacted). The Ohio Supreme Court has also held that, while the federal Privacy Act (5. U.S. C. 552a) does not expressly prohibit release of one's SSN, the Act does create an expectation of privacy as to the use and disclosure of a SSN. *State ex rel. Beacon Journal Publishing Co. v. Akron*, 70 Ohio St.3d 605, 607-08 (1994) (determining that city employees had legitimate expectation of privacy in their SSNs such that they must be redacted before release of public records to newspapers); *cf. State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996) (finding that SSNs contained in 911 tapes are public records subject to disclosure); *but see* 1996 Ohio Atty.Gen.Ops. No. 034 (opining that a county recorder is under no duty to obliterate SSN before making a document available for public inspection when the recorder presented with the document was asked to file it).
[369] Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).
[370] *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 379 (1996).
[371] *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St.3d 172, 2005-Ohio-685, ¶ 8; *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996).
[372] 1996 Ohio Atty.Gen.Ops. No. 034 (opining that the federal Privacy Act does not require county recorders to redact SSNs from copies of official records); *but see* R.C. 149.45(B)(1) (specifying that no public office shall make any document containing an individual's SSN available on the internet without removing the number from that document).
[373] 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*, 10th Dist. Franklin No. 10AP-1178, 2012-Ohio-2590, ¶ 23 (holding that requester motor carrier service was not entitled to unredacted copies of an employee's driving record from the BMV when requester did not comply with statutory requirements for access).
[374] R.C. 5747.18(C); R.C. 718.13(A); *see also, Reno v. Centerville*, 2d Dist. Montgomery No. 20078, 2004-Ohio-781. Several statutes refer to the confidentiality of information contained in tax filings, not the record itself. *Myers v. Dept. of Taxation,* Ct. of Cl. No. 2019-01207PQ, 2019-Ohio-2760, ¶ 21. 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.
[375] R.C. 718.13; *see also Cincinnati ex rel. Cosgrove v. Grogan*, 141 Ohio App.3d 733, 755 (1st Dist. 2001) (finding that under Cincinnati Municipal Code, the city's use of tax information in a nuisance-abatement action constituted an official purpose for which disclosure is permitted).

[376] 1992 Ohio Atty.Gen.Ops. No. 005. There is no prohibition on publishing or disclosing tax statistics that do not disclose information about particular taxpayers. R.C. 718.13(B).
[377] *See* R.C. 5747.18(C); *see also* 1992 Ohio Atty.Gen.Ops. No. 010.
[378] 26 U.S.C. 6103(a).
[379] 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).
[380] 2001 Ohio Atty.Gen.Ops. No. 041; 1999 Ohio Atty.Gen.Ops. No. 006.
[381] 2001 Ohio Atty.Gen.Ops. No. 041.
[382] 1990 Ohio Atty.Gen.Ops. No. 101; *see also Sengstock v. City of Twinsburg,* Ct. of Cl. No. 2021-00330PQ, 2021-Ohio-4438, ¶ 13, *adopted by Sengstock v. City of Twinsburg,* Ct. of Cl. No. 2021-0330PQ< 2022-Ohio-314 (juvenile employee names in a payroll record do not fall under any exemption and must be disclosed under R.C. 149.434).
[383] 1990 Ohio Atty.Gen.Ops. No. 101; *see also* Chapter Two: A. 14. b. "Requirement to notify of and explain redactions and withholding of records."
[384] Juv. R. 27 and 37(B), R.C. 2151.35; 1990 Ohio Atty.Gen.Ops. No. 101 (modified and clarified by 2017 Ohio Atty.Gen.Ops. No 042).
[385] *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).
[386] *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437, ¶¶ 44-52.
[387] Juv.R. 32(B).
[388] R.C. 2151.14.
[389] R.C. 5139.05(D).
[390] R.C. 2151.355-.358; *see State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 6, 9, 38, 43 (holding that 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); *see also* Chapter Six: D. "Court Records."
[391] *See* Chapter Six: A. "CLEIRs"; 1990 Ohio Atty.Gen.Ops. No. 101.
[392] R.C. 2151.313; 2017 Ohio Atty.Gen.Ops. No. 042; *State ex rel. Carpenter v. Chief of Police*, 8th Dist. Cuyahoga No. 62482, 1992 WL 252330 (1992) (noting that "other records" 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 was *not* the basis of the taking of any fingerprints and photographs. 1990 Ohio Atty.Gen.Ops. No. 101.
[393] *See, e.g., State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶¶ 44-45 (holding that 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)).
[394] R.C. 2151.14(D)(1)(e); 1990 Ohio Atty.Gen.Ops. No. 099 (opining that a local board of education may request and receive information regarding student drug or alcohol use from certain records of law enforcement agencies); 1987 Ohio Atty.Gen.Ops. No. 010.
[395] 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).
[396] *See* 18 U.S.C. 5038(d).
[397] R.C. 5153.17; *State ex rel. Clough v. Franklin Cty. Children Servs.*, 144 Ohio St.3d 83, 2015-Ohio-3425, ¶ 19 (finding the report of a child-abuse allegation and the investigation of that allegation is confidential under R.C. 2151.421(H)(1)); *State ex rel. Edinger v. Cuyahoga Cty. Dept. of Children & Family Serv.*, 8th Dist. Cuyahoga No. 86341, 2005-Ohio-5453, ¶¶ 6-7.
[398] R.C. 5153.17; 1991 Ohio Atty.Gen.Ops. No. 003.
[399] R.C. 2151.421(I); *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶¶ 44-45.
[400] *See* Chapter Three: F. 3. "Student records."
[401] R.C. 149.43(A)(1)(y), citing R.C. 5101.29.
[402] R.C. 149.43(A)(1)(r); *see also State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365 (2000).
[403] *See also* Chapter Six: B. 9. "School records."
[404] 20 U.S.C. 1232g.
[405] 34 C.F.R. 99.3 (providing that eligible student means a student who has reached 18 years of age or is attending an institution of post-secondary education).
[406] 34 C.F.R. 99.3.
[407] 34 C.F.R. 99.3; *State ex rel. School Choice Ohio, Inc. v. Cincinnati Public School Dist.*, 147 Ohio St.3d 256, 2016-Ohio-5026, ¶ 20 (holding that, under FERPA, school district court 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).
[408] *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, ¶¶ 28-30 (finding university disciplinary records are education records); *see also United States v. Miami Univ.*, 294 F.3d 797, 802-03 (6th Cir. 2002).
[409] *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, ¶ 30.
[410] 34 C.F.R. 99.8; *Cincinnati Enquirer v. Univ. of Cincinnati,* Ct. of Cl. No. 2020-00144PQ, 2020-Ohio-4958, ¶31, *adopted by Cincinnati Enquirer v. Univ. of Cincinnati,* Ct. of Cl. No. 2020-00144PQ, 2020-Ohio-5279 ("FERPA neither requires nor prohibits the disclosure by an educational institution of its law enforcement unit records.").
[411] 34 C.F.R. 99.3.
[412] R.C. 3319.321.
[413] R.C. 3319.321(B). The consent requirement does not extinguish upon the student's death. *State ex. rel. Cable News Network, Inc. v. Bellbrook-Sugarcreek Local Schs.,* 163 Ohio St.3d 314, 2020-Ohio-5149, ¶ 18 (finding no clear right to a deceased mass shooter's school records absent consent).
[414] 34 C.F.R. 99.3.
[415] R.C. 3319.321(B)(1).
[416] 34 C.F.R. 99.37.
[417] *State ex rel. School Choice Ohio, Inc. v. Cincinnati Public School Dist.*, 147 Ohio St.3d 256, 2016-Ohio-5026, ¶¶ 31-34 (finding release of student directory information to nonprofit organization that informs parents about alternative educational opportunities is not prohibited by state law).
[418] 34 C.F.R. 99.3, R.C. 3319.321.
[419] *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, ¶ 34.
[420] R.C. 149.433.
[421] *See, e.g.*, R.C. 5502.03(B)(2) (regarding information collected by Ohio Division of Homeland Security to support public and private agencies in connection with threatened or actual terrorist events).

[422] *See, e.g.*, 6 U.S.C. 671 *et seq.*, 6 C.F.R. 29 (providing that the federal Homeland Security Act of 2002 prohibits disclosure of certain "critical infrastructure information" shared between state and federal agencies).
[423] R.C. 149.433(A).
[424] R.C. 149.433(A); *State ex rel. Rogers v. Dept. of Rehab. and Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, ¶¶ 11-13 (holding prison security video was not an infrastructure record because it did not disclose "critical systems" but only revealed the "spatial relationship" of building features similar to a simple floor plan); *State ex rel. Ohio Republican Party v. FitzGerald*, 145 Ohio St.3d 92, 2015-Ohio-5056, ¶ 26 (holding that the key-card-swipe data of a county executive official that reveals the location of nonpublic, secured entrances is not exempted from disclosure as an infrastructure record); *Welsh-Huggins v. Office of the Pros. Atty., Jefferson Cty.*, 2019-Ohio-3967, 133 N.E.3d 550, ¶¶ 28-30 (7th Dist.), *rev'd on other grounds, Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371 (holding that courthouse security footage was not an infrastructure record when it did not "disclose the configuration of the camera security system").
[425] R.C. 149.433(D).
[426] R.C. 149.433(A) (1)-(2); *State ex rel. Bardwell v. Ohio Atty. Gen.*, 181 Ohio App.3d 661, 2009-Ohio-1265, ¶¶ 68-70 (10th Dist.) (applying the statute).
[427] *State ex rel. Plunderbund Media v. Born*, 141 Ohio St.3d 422, 2014-Ohio-3679, ¶¶ 19-31 (holding that, based on investigative agency testimony, records documenting threats to the governor were found to be "security records"); *McDougald v. Greene,* 162 Ohio St.3d 250, 2020-Ohio-4268, ¶ 9 (finding that a prison's shift-assignment rosters detailing theidentity and location of guards posted throughout a prison were security records because they could be used to plan an escape or an attack on the prison); *but see State ex rel. Ohio Republican Party v. FitzGerald*, 145 Ohio St.3d 92, 2015-Ohio-5056, ¶ 28 (holding that, although key-card-swipe data records were security records at the time of the public records request, the key-card-swipe data were no longer security records because public official who had received verified threats was no longer the county executive).
[428] *State ex rel. Rogers v. Dept. of Rehab. and Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, ¶¶ 19-22 (holding that public office did not meet its burden to show that prison security system video was a security record; affidavits provided were general and request was for footage from one video camera on a specified day and time and did not reveal the larger network of cameras); *State ex rel. Miller v. Pinkney*, 149 Ohio St.3d 662, 2017-Ohio-1335. ¶ 3 (holding initial incident reports at issue were not security records); *Eye on Ohio v. Ohio Dep't of Health,* Ct. of Cl. No. 2020-00279PQ, 2020-Ohio-5278, ¶ 14, *adopted by Eye on Ohio v. Ohio Dep't of Health,* Ct. of Cl. No. 2020-00279PQ, 2020-Ohio-5591 (finding that hospital data did not qualify as a security record just because of a "general warning" that a terrorist organization might try to attack some healthcare infrastructure somewhere in the United States); *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 67 (finding that a video depicting the shooting of a judge was not a security record because there was no evidence that the public office actually used the video to protect or maintain the security of the public office.).
[429] R.C. 149.433(D).
[430] R.C. 1306.23.
[431] *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶ 19, quoting *Swidler & Berlin v. United States*, 524 U.S. 399, 403 (1998).
[432] *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶ 18; *see, e.g., Reed v. Baxter*, 134 F.3d 351, 356 (6th Cir. 1998); *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379, 383 (1998); *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58 (1998); *State ex rel. Besser v. Ohio State Univ.*, 87 Ohio St.3d 535 (2000); *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245 (1994).
[433] R.C. 149.43(A)(1)(v).
[434] *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 265, 2005-Ohio-1508, ¶ 21, quoting *Reed v. Baxter*, 134 F.3d 351, 355-356 (6th Cir. 1998).
[435] *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶¶ 26-31. NOTW: If challenged in court, attorney-client privilege redactions may need to be supported with specific evidence demonstrating that legal advice was sought and/or received. *See, e.g., Hinners v. Huron*, Ct. of Cl. No. 2018-00549PQ, 2018-Ohio-3652, ¶ 10, *adopted by Hinners v. Huron,* Ct. of Cl. No. 2018-00549PQ, 2018-Ohio-4362 ("This general assertion does not meet the burden of proving the elements of attorney-client privilege."); *but see White v. Dept. of Rehab. and Corr.*, Ct. of Cl. No. 2018-00762PQ, 2019-Ohio-472, ¶ 18-19 (rejecting Special Master's recommendation because improper standard was applied to privilege review; records "facilitate[d] the rendition of legal services, or advice" under a preponderance of the evidence standard and were therefore properly withheld).
[436] *State ex rel. Benesch, Friedlander, Coplan & Aronoff, LLP v. Rossford*, 140 Ohio App.3d 149, 156 (6th Dist. 2000).
[437] *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶ 23 (finding attorney-client privilege applied to communications between state agency personnel and their in-house counsel); *American Motors Corp. v. Huffstutler*, 61 Ohio St.3d 343 (1991); *Morgan v. Butler*, 2017-Ohio-816, 85 N.E.3d 1188 (10th Dist.) (holding emails between attorneys and their state government clients pertaining to the attorneys' legal advice are exempted from disclosure).
[438] *State ex rel. Toledo Blade v. Toledo-Lucas Cty. Port Auth.*, 121 Ohio St.3d 537, 2009-Ohio-1767, ¶¶ 20-34 (finding that a factual investigation may invoke the attorney-client privilege); *State v. Post*, 32 Ohio St.3d 380, 385 (1987).
[439] *See State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245, 251 (1994); *Ass'n of Cleveland Firefighters IAFF Local 93 v. City of Cleveland,* 8th Dist. Cuyahoga App. No. 113029, 2021-Ohio-3602, ¶¶ 43-45 (communication that would facilitate legal advice is protected, but simply copying an attorney on a communication does not render the communication privileged).
[440] *State ex rel. Anderson v. Vermilion*, 134 Ohio St.3d 120, 2012-Ohio-5320, ¶¶ 13-15; *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 2011-Ohio-6009, ¶¶ 28-33; *State ex rel. Pietrangelo v. Avon Lake*, 146 Ohio St.3d 292, 2016-Ohio-2974, ¶¶ 10-17; *State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews,* 11th Dist. Portage No. 2021-P-0046, 2022-Ohio-171, ¶ 37-40; *State ex rel. Essi v. Lakewood*, 8th Dist. Cuyahoga No. 104659, 2018-Ohio-5027, ¶ 39.
[441] *Schaefer, Inc., v. Garfield Mitchell Agency, Inc.,* 82 Ohio App.3d 322, 329 (2d Dist. 1992); *Hickman v. Taylor,* 329 U.S. 495 (1947).
[442] *Squire, Sanders & Dempsey, LLP, v. Givaudan Flavors Corp.,* 127 Ohio St.3d 161, 2010-Ohio-4469, ¶ 55; *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, ¶ 55 (Public Records Act recognizes attorney-work product exception insofar as attorney work-product constitutes trial preparation).
[443] *Squire, Sanders & Dempsey, LLP, v. Givaudan Flavors Corp.,* 127 Ohio St.3d 161, 2010-Ohio-4469, ¶ 55 (quotations omitted).
[444] *State v. Athon*, 136 Ohio St.3d 43, 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. *State ex rel. Kirin v. D'Apolito*, 7th Dist. Mahoning No. 15 MA 61, 2015-Ohio-3964; *State ex rel. Kirin v. Evans*, 7th Dist. Mahoning No. 15 MA 62, 2015-Ohio-3965.
[445] *State v. Athon*, 136 Ohio St.3d 43, 2013-Ohio-1956, ¶¶ 18-19 (holding that, 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); *see also State v. Zimpfer*, 2d Dist. Montgomery No. 27705, 2018-Ohio-2430, ¶ 30 (noting a public records request, even if construed as a Crim.R. 16 motion, was defective because a discovery motion 1) is not contemplated in post-conviction proceedings and 2) failed to establish the State had not complied with discovery obligations).
[447] *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 355 (1997).
[448] *See* Chapter Three: C. "Waiver of an Exemption."
[449] *See* Chapter Three: F. 5. d. "Trial preparation records"; *see also* Chapter Six: A. "CLEIRs: Confidential Law Enforcement Investigatory Records Exemption."
[450] *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 354-55 (1997).
[451] *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 661-62, 2004-Ohio-7108.
[452] *Cockshutt v. Ohio Dept. of Rehab. & Corr.*, S.D. Ohio No. 2:13-cv-532, 2013 U.S. Dist. LEXIS 113293, 13 (Aug. 9, 2013); *Easter v. Beacon Tri-State Staffing, Inc.*, S.D.Ohio No. 2:17-cv-197, 2017 U.S. Dist. LEXIS 171741 (Oct. 17, 2017).
[453] *State ex rel. TP Mech. Contractors, Inc. v. Franklin Cty. Bd. of Commrs.*, 10th Dist. Franklin No. 09AP-235, 2009-Ohio-3614, ¶ 13.
[454] Evid.R. 803(8), 1005; *State v. Scurti*, 153 Ohio App.3d 183, 2003-Ohio-3286, ¶ 15 (7th Dist.).
[455] *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶¶ 13-14 (Stratton, J. concurring).
[456] R.C. 149.43(A)(4); *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, ¶ 55 (Public Records Act recognizes attorney-work product exception insofar as attorney work-product constitutes trial preparation).
[457] *Frank R. Recker & Assocs. Co. LPA, v. Ohio State Dental Bd.,* Ct. of Cl. No. 2019-00381PQ, 2019-Ohio-3268, ¶ 13, (*adopted by Frank R. Recker & Assocs. Co. LPA, v. Ohio State Dental Bd.,* Ct. of Cl. No. 2019-00381PQ, 2019-Ohio-3678 (holding that 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).
[458] *Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197, ¶ 10.
[459] *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 431-32 (1994).
[460] *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379, 384-85 (1998).
[461] *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 432 (1994); *State ex rel. Towler v. O'Brien*, 10th Dist. Franklin No. 04AP-752, 2005-Ohio-363, ¶¶ 14-16; *but see State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, ¶ 46-52 (finding that law enforcementinterviews were not trial preparation records when the interviews were conducted to gather information in the course of investigating a potential crime, rather than at the direction of the prosecutor in anticipation of and for possible use at trial).
[462] *State ex rel. WLWT-TV-5 v. Leis*, 77 Ohio St.3d 357, 361 (1997); *see also State ex rel. Rasul-Bey v. Onunwor*, 94 Ohio St.3d 119, 120, 2002-Ohio-67 (finding that a criminal defendant was entitled to immediate release of initial incident reports).
[463] *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 435 (1994); *see also Bentkowski v. Trafis*, 8th Dist. Cuyahoga No. 102540, 2015-Ohio-5139, ¶ 27 (finding trial preparation records exemption 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).
[464] *Hodge v. Montgomery Cty. Prosecutor's Office,* Ct. of Cl. No. 2019-01111PQ, 2020-Ohio-4520, ¶ 13, *adopted by Hodge v. Montgomery Cty. Prosecutor's Office,* Ct. of Cl. No. 2019-01111PQ, 2020-Ohio-4904.
[465] Chapter Six: D. "Court Records."
[466] *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*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶¶ 9-20 (pending appeal from court order unsealing divorce records does not preclude writ of mandamus claim).
[467] *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App.3d 725, 730-33 (1st Dist. 2001) (finding that a trial judge was required to determine whether release of records would jeopardize defendant's right to a fair trial).
[468] *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶¶ 4-13 (affirming trial court's sealing order per R.C. 2953.52); *Dream Fields, LLC v. Bogart*, 175 Ohio App.3d 165, 2008-Ohio-152, ¶¶ 5-6 (1st Dist.) (stating that "[u]nless a court record contains information that is excluded from being a public record under R.C. 149.43, it shall not be sealed and shall be available for public inspection[, a]nd the party wishing to seal the record has the duty to show that a statutory exclusion applies," and that "[j]ust because the parties have agreed that they want the records sealed is not enough to justify the sealing"); *see also* Chapter Six: D. "Court Records."
[469] *Mayfield Hts. v. M.T.S.*, 8th Dist. Cuyahoga No. 100842, 2014-Ohio-4088, ¶ 8.
[470] *State ex rel. Frank v. Clermont Cty. Prosecutor,* 164 Ohio St.3d 522, 2021-Ohio-623, ¶ 21 (finding that 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*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 6, 9, 38, 43 (finding that 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. 2953.38(G)(2) (providing that, "upon any inquiry" for expunged records of human trafficking victims,the court "shall reply that no record exists").
[471] *Pepper Pike v. Doe*, 66 Ohio St.2d 374, 376 (1981); *but see State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 1 (determining that divorce records were not properly sealed when an order results from "unwritten and informal court policy").
[472] *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235, ¶ 27, citing *State v. Chiaverini,* 6th Dist. Lucas No. L-00-1306, 2001 Ohio App. LEXIS 1190, 2 (Mar. 16, 2001).
[473] *State v. Boykin*, 138 Ohio St.3d 97, 2013-Ohio-4582, syllabus.
[474] *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235, ¶ 37.
[475] Crim.R. 6(E).
[476] *State ex rel. Beacon Journal v. Waters*, 67 Ohio St.3d 321, 327 (1993); Crim.R. 6.
[477] *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St.3d 172, 2005-Ohio-685, ¶ 5, citing *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996); *State ex rel. Gannett Satellite Information Network, Inc. v. Petro*, 80 Ohio St.3d 261, 267 (1997).
[478] *Krouse v. Ohio State Univ.*, Ct. of Cl. No. 2018-00988PQ, 2018-Ohio-5014, ¶ 9 adopted by *Krouse v. Ohio State Univ.*, Ct. of Cl. No. 2018-00988PQ, 2018-Ohio-5013.
[479] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶¶ 11-21; *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 663 (8th Dist. 1990); *State ex rel. Sun Newspapers v. Westlake Bd. of Edn.*, 76 Ohio App.3d 170, 172-73 (8th Dist. 1991).
[480] *State ex rel. Sun Newspapers v. Westlake Bd. of Edn.*, 76 Ohio App.3d 170, 173 (8th Dist. 1991); *see also* Chapter Three: F. 5. a. "Attorney-client privilege."
[481] *Keller v. Columbus*, 100 Ohio St.3d 192, 2003-Ohio-5599, ¶ 20; *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 136-37 (1997);- *Zamlen-Spotts v.Cleveland State Univ.*, Ct. of Cl. Case No. 2021-00087PQ, 2021-Ohio-2704, ¶ 17 (contractual promise cannot alter public nature of records); *see generally,* Chapter Three: G. 1. "Contracts cannot create exemptions."
[482] *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.,* 65 Ohio St.3d 258, 264 (1992).

[483] State ex rel. Besser v. Ohio State Univ., 87 Ohio St.3d 535, 543 (2000) (finding that a public entity can have its own trade secrets); State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency, 88 Ohio St.3d 166, 171-75 (2000); State ex rel. Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-25 (1997). *Compare State ex rel. Gannett Satellite Information Network v. Shirey*, 76 Ohio St.3d 1224, 1224-25 (1996) (finding that resumes are not trade secrets of a private consultant); *and* State ex rel. Rea v. Ohio Dept. of Edn., 81 Ohio St.3d 527, 533 (1998) (finding that proficiency tests are public record after they have been administered); *with* State ex rel. Perrea v. Cincinnati Pub. Schools, 123 Ohio St.3d 410, 2009-Ohio-4762, ¶¶ 32-33 (holding that a public school had proven that certain semester examination records met the statutory definition of "trade secret" in R.C. 1333.61(D)); *and* State ex rel. Am. Ctr. for Economic Equality v. Jackson, 8th Dist. Cuyahoga No. 102298, 2015-Ohio-4981, ¶¶ 41-48 (finding evidence sufficiently established that a document containing a list of names and email addresses was exempt from disclosure as a trade secret); *and* Salemi v. Cleveland Metroparks, 8th Dist. Cuyahoga No. 100761, 2014-Ohio-3914, ¶¶ 12, 14-23 (finding customer lists and marketing plan of public golf course exempt from disclosure pursuant to trade secret exemption).
[484] R.C. 1333.61(D) (adopting the Uniform Trade Secrets Act); *see also* R.C. 149.43(A)(1)(m); R.C. 149.43(A)(5).
[485] Fred Siegel Co., L.P.A. v. Arter & Hadden, 85 Ohio St.3d 171, 181 (1999) (finding that 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).
[486] State ex rel. Besser v. Ohio State Univ., 89 Ohio St.3d 396, 400 (2000), citing *Fred Siegel Co., L.P.A. v. Arter & Hadden,* 85 Ohio St.3d 171, 181 (1999).
[487] 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, 135 Ohio St.3d 416, 2013-Ohio-1532, ¶¶ 19-25 (determining that 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, 145 Ohio St.3d 408, 2016-Ohio-1192, ¶¶ 27-30 (holding that, after 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 expended money and effort in collecting and maintaining the information); Sheil v. Horton, 8th Dist. Cuyahoga No. 107329, 2018-Ohio-5240, ¶¶ 48-53 (applying *Besser* factors to conclude that a speaker contract was not a protected trade secret).
[488] State ex rel. Besser v. Ohio State Univ., 89 Ohio St.3d 396, 399-400 (2000).
[489] *State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland*, 63 Ohio St.3d 772, 776 (1992) (finding that an *in camera* inspection may be necessary to determine whether disputed records contain trade secrets); State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency, 88 Ohio St.3d 166 (2000); State ex rel. Besser v. Ohio State Univ., 89 Ohio St.3d 396, 404-05 (2000) (holding that, after an *in camera* inspection, a university's business plan and memoranda concerning a medical center did not constitute "trade secrets").
[490] State ex rel. Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 527 (1997); *see also* Chapter Three: G. 1. "Contracts cannot create exemptions."
[491] 17 U.S.C. 102(a).
[492] 17 U.S.C. 102(a)(1)-(8).
[493] 17 U.S.C. 102(a).
[494] Because of the complexity of copyright law and the fact-specific nature of this area, public bodies should resolve public records related copyright issues with their legal counsel.
[495] *See* 17 U.S.C. 107; *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 560-61 (1985) (providing that 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, 135 Ohio St.3d 298, 2013-Ohio-761, ¶ 25 (finding that, 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).
[496] See, e.g., State ex rel. Clough v. Franklin Cty. Children Servs., 144 Ohio St.3d 83, 2015-Ohio-3425, ¶ 16 (holding that 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); *Zamlen-Spotts v.Cleveland State Univ.,* Ct. of Cl. Case No. 2021-00087PQ, 2021-Ohio-2704, ¶ 17.
[497] Chapter Three: F. 5. g. "Settlement agreements and other contracts."
[498] State ex rel. Beacon Journal Publishing Co. v. Akron, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶¶ 40-41.
[499] State ex rel. Gannett Satellite Info. Network v. Shirey, 78 Ohio St.3d 400 (1997) (holding that, because contractual provision designating as confidential applications and resumes for city position could not alter public nature of information, applications and resumes were subject to disclosure under the Public Records Act); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384 (1985) (holding 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").
[500] Keller v. Columbus, 100 Ohio St.3d 192, 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 the dictates of the Public Records Act."); State ex rel. Dispatch Printing Co. v. Columbus, 90 Ohio St.3d 39, 40-41 (2000); State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs., 80 Ohio St.3d 134, 137 (1997); *Toledo Police Patrolman's Assn. v. Toledo*, 94 Ohio App.3d 734, 739 (6th Dist. 1994); *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 663 (8th Dist. 1990); *Bowman v. Parma Bd. of Edn.*, 44 Ohio App.3d 169, 172 (8th Dist. 1988); *State ex rel. Dwyer v. Middletown*, 52 Ohio App.3d 87, 91 (12th Dist. 1988); *State ex rel. Toledo Blade Co. v. Telb*, Lucas C.P. No. 90-0324, 50 Ohio Misc.2d 1, 8 (1990); *State ex rel. Sun Newspapers v. Westlake Bd. of Edn.*, 76 Ohio App.3d 170, 173 (8th Dist. 1991).
[501] State ex rel. Russell v. Thomas, 85 Ohio St.3d 83, 85 (1999).
[502] State ex rel. Gannett Satellite Info. Network v. Shirey, 76 Ohio St.3d 1224 (1996); Teodecki v. Litchfield Twp., 9th Dist. Medina No. 14CA0035-M, 2015-Ohio-2309, ¶ 25 (finding confidentiality clause prohibiting disclosure of an investigative report about a public official's actions was unenforceable and invalid).
[503] 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) (finding unenforceable an agreement between the city and police union to keep officers' home addresses and telephone numbers confidential).
[504] Ohio Constitution, Article I, Section 10a(A)(1).
[505] State ex rel. Summers v. Fox, 163 Ohio St.3d 217, 2020-Ohio-5585, ¶ 42.
[506] 5 U.S.C. 552.
[507] State ex rel. WBNS TV, Inc. v. Dues, 101 Ohio St.3d 406, 2004-Ohio-1497, ¶ 35; State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶ 32.

IV. Chapter Four: Enforcement and Liabilities

The Public Records Act is a "self-help" statute. This means that a person who believes that the Act has been violated must independently pursue a remedy, rather than asking a public official (such as the Ohio Attorney General) to initiate legal action on his or her behalf. If a public office or person responsible for public records fails to produce requested records, or otherwise fails to comply with the requirements of division (B) of the Public Records Act, the requester can file a lawsuit to 1) seek a writ of mandamus[508] to enforce compliance and 2) apply for various sanctions. Alternatively, the requester may file a complaint in the Court of Claims, where there is a special statutory procedure for public records cases.

This section discusses the basic aspects of both a mandamus suit and the Court of Claims procedure, along with the types of relief available.

A. Public Records Act Statutory Remedies — Mandamus Lawsuit

1. Parties

A person allegedly "aggrieved by"[509] a public office's failure to comply with division (B) of the Public Records Act may file an action in mandamus[510] against the public office or any person responsible for the office's public records.[511] A person may file a public records mandamus action regardless of pending related actions[512] but may not seek compliance with a public records request in an action for other types of relief, like an injunction or declaratory judgment.[513] 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." A relator can file a mandamus action or use the Court of Claims' procedure, but not both.[514]

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 Ohio Supreme Court.[515] If a relator files in the Supreme Court, the Court may refer the case to mediation counsel for a settlement conference.[516]

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.[517] The likely statute of limitations for filing a public records mandamus action is within ten years after the cause of action accrues.[518] 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.[519]

4. Discovery

In general, the Ohio Rules of Civil Procedure govern discovery in a public records mandamus case, as in any other civil lawsuit.[520] While discovery procedures are generally designed to ensure the free flow of accessible information,[521] in a public records case, it is the access to requested records that is in dispute. Instead of allowing a party to access the withheld records through discovery, the court will instead usually conduct an *in camera* inspection of the disputed records.[522] An *in camera* inspection allows the court to view the unredacted records in private[523] 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.[524] Attorneys are required to prepare a log of the documents subject to the attorney-client privilege in the course of discovery,[525] but a public office is not required to provide such a log during the initial response to a public records request.[526] In addition, law enforcement investigatory files sought in discovery may be entitled to a qualified common law privilege.[527]

5. Requirements to prevail

A person is not entitled to file a mandamus action unless a prior request for records has already been made.[528] Only those particular records that were requested from the public office can be litigated in the mandamus action.[529]

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.[530] 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.[531]

If these requirements are met, the respondent then has the burden of proving in court that any items withheld are exempt from disclosure[532] 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 not earlier provided to the requester in response to the request.[533] Note, though, that a 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 is required to give the requester a chance to revise the request by informing the requester of how the office's records are maintained and accessed. [534]

If necessary, the court, will review *in camera* the materials that were withheld or redacted.[535] To the extent any doubt or ambiguity exists as to the duty of the public office, the public records law will be liberally interpreted in favor of disclosure.[536]

Unlike most mandamus actions, a relator in a statutory public records mandamus action need not prove the lack of an adequate remedy at law.[537] Also note that 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.[538] Even if the case is rendered moot, the relator may still be entitled to statutory damages and attorney fees.[539] Further, a court may still decide the merits of the case if the issue is capable of repetition yet evading review.[540]

6. Liabilities of the public office under the Public Records Act[541]

In a properly filed action, if a court determines that the public office or the person responsible for public records failed to comply with an obligation contained in R.C. 149.43(B) and issues a writ of mandamus, the relator shall be entitled to an award of all court costs[542] and may receive an award of attorney fees and/or statutory damages, as detailed below.

a. Attorney fees

Any award of attorney fees is within the discretion of the court.[543] 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); 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);[544] 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;[545] 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.[546] In the last scenario, the relator is also entitled to court costs,[547] but the relator may not conduct discovery on the issue of bad faith and the court may not presume bad faith by the public office.[548]

An award of attorney fees may be reduced or eliminated at the discretion of the court (see Section 5 below). Litigation expenses, other than court costs, are not recoverable at all.[549]

b. Amount of fees

Only those attorney fees directly associated with the mandamus action[550] may be awarded. 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.[551] Neither the wages of in-house counsel[552] nor contingency fees are recoverable.[553] The relator is entitled to fees only insofar as the requests have merit.[554] 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.[555] 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.[556] 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.[557] Court costs and reasonable attorney fees awarded in public records mandamus actions are considered remedial rather than punitive.[558]

c. Statutory damages

A person who transmits a valid written request for public records by hand delivery, electronic submission, or certified mail[559] 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).[560] To be entitled to statutory damages, a requester must establish bt clear and convincing evidence that they transmitted the request by hand delivery, electronic submission, or certified mail.[561]

The award of statutory damages is not considered a penalty, but it is intended to compensate the requester for injury arising from lost use[562] of the requested information. If lost use is proven, then injury is conclusively presumed. Statutory damages are fixed at $100 for each business day the respondent fails to comply with division (B), beginning with the day on which the relator files a mandamus action to recover statutory damages, up to a maximum of $1,000.[563] The Act "does not permit stacking of statutory damages based on what is essentially the same records request."[564]

d. Recovery of deleted email records

The Ohio Supreme Court 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.[565] 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.[566]

e. Reduction of attorney fees and statutory damages

A court shall not award any attorney fees if it determines both of the following:[567]

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);[568]

   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.[569]

A court may also reduce an award of statutory damages for the same reasons.[570]

A court may also reduce an award of attorney fees if it determines that, given the facts of the particular case, an alternative means should have been pursued to more effectively and efficiently resolve the public records dispute.[571]

7. Liabilities applicable to either party

The following additional remedies may be available against a party in a public records mandamus action. They are applicable regardless of whether the party represents themselves ("*pro se*") or is represented by counsel.

a. 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), the court may award to the public office all court costs, expenses, and reasonable attorney fees, as determined by the court.[572]

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,[573] for an award of court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with the lawsuit or appeal.[574] 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.[575] Sanctions for frivolous conduct are reviewed on appeal under an abuse of discretion standard.[576]

b. 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.[577] Any Civil Rule 11 motion must be filed within a reasonable period of time following the final judgment.[578] An award or denial of Civil Rule 11 sanctions is reviewed on appeal under an abuse of discretion standard.[579]

B. Public Records Act Statutory Remedies — 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. [580] R.C. 2743.75 provides a special statutory procedure for requesters to resolve public records disputes arising under the Public Records Act[581] in an expedited and economical way.[582] With regard to a particular public records request, a requester can pursue either a mandamus action (see Section A above) or resolution in the Court of Claims, but not both.[583]

1. Filing procedure and initial review

A requester may file a Court of Claims public records complaint, 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.[584] 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.[585] The filing fee is $25.[586] 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.[587]

When the Court of Claims receives a public records complaint, it will assign the complaint to a special master for review.[588] 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.[589] The Court of Claims is able to dismiss the complaint on its own authority, if recommended by the special master.[590] The requester may also voluntarily dismiss his or her complaint at any time.[591] 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.[592]

2. Mediation

Once the complaint is served on the public office, the special master will refer the case to mediation.[593] While in mediation, the case is stayed—that is, action in the case is suspended until mediation concludes.[594] Mediation may occur by telephone or any other electronic means.[595] If mediation resolves the dispute between the parties, the case is dismissed.[596] 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.[597] If mediation does not resolve the dispute, the mediation stay terminates, and the case proceeds with the Court of Claims process.[598]

3. Expedited briefing

After mediation terminates, the public office has ten business days to file a response to the complaint.[599] The public office may also file a motion to dismiss, if applicable.[600] 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.[601] The special master may direct the parties in writing to file any additional motions, pleadings, information, or documentation, if needed.[602] No discovery is permitted, and the parties may support their pleadings with affidavits.[603]

The Court of Claims can only resolve disputes related to the public records request the requester identified in their complaint. Thus, if a requester make a new request during mediation or at any time after filing their complaint, the Court of Claims does not have jurisdiction to adjudicate disputes related to the new request. [604]

4. Requirements to prevail

Proceedings in the Court of Claims are consistent with the burden of proof standards in public records mandamus actions.[605] (See Chapter Four: A.5, "Requirements to prevail"). 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.[606] The requester must establish entitlement to relief by clear and convincing evidence.[607] The public office or person responsible for the records has the burden of establishing that an exemption applies.[608] The public office or person responsible fails to meet that burden if it has not proven that the requested records fall squarely within the exemption.[609] For proceedings in the Court of Claims, the Ohio Supreme Court has clarified that a public office or person responsible for the records must produce competent, admissible evidence to support the exemption claimed by the public office.[610]

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.[611] 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.[612] All parties will receive a copy of the report and recommendation.[613] The parties have seven business days after receipt of the report and recommendation to file a written objection.[614] 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.[615] 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.[616]

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.[617] There can be no appeal from this decision unless the Court of Claims materially altered the report and recommendation.[618] 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.[619]

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.[620] The requester is not entitled to recover attorney fees.[621]

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.[622] Any appeal must be given precedence to ensure a prompt decision.[623]

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 unduly harass the requester, the court of appeals may award reasonable attorney fees to the requester pursuant to R.C. 149.43(C).[624] 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.[625]

Notes:

[508] "Mandamus" means a court command to a governmental office to correctly perform a mandatory function. Black's Law Dictionary (10th Ed. 2014).
[509] *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, ¶ 27 ("*Every* records requester is aggrieved by a violation of division (B), and division (C)(1) authorizes the bringing of a mandamus action by any requester."); *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 142 Ohio St.3d 509, 2015-Ohio-1083, ¶ 21-24 (holding that president of a teacher's union had standing to sue despite submitting request through his attorney and the school board not initially knowing that he was the requester).
[510] R.C. 149.43(C)(1); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 12 ("Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act." (citation omitted)).
[511] *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170, 174 (1988) (finding that mandamus does not have to 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*, 12th Dist. Clermont No. CA2011-10-070, 2012-Ohio-3879, ¶ 23-26 (finding employee who created and disposed of requested notes was not the "particular official" charged with the duty to oversee records); *see also* Chapter One: A. 3. "Quasi-agency — A private entity, even if not a 'public office,' can be 'a person responsible for public records.'"
[512] *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 18.
[513] *Davis v. Cincinnati Enquirer*, 164 Ohio App.3d 36, 2005-Ohio-5719, ¶ 8-17; *Reeves v. Chief of Police*, 6th Dist. Erie No. E-14-124, 2015-Ohio-3075, ¶ 7-8 (affirming dismissal of a public records case brought as a declaratory judgment action); *State ex rel. Meadows v. Louisville City Council*, 5th Stark Dist. No. 2015CA00040, 2015-Ohio-4126, ¶¶ 26-29.
[514] R.C. 149.43(C)(1); R.C. 2743.75(C)(1). For more information about the Court of Claims procedures, see Section B below.
[515] R.C. 149.43(C)(1)(b); *Fischer v. Kent State Univ.*, 41 N.E.3d 840, 2015-Ohio-3569 (10th Dist.) (holding that the Court of Claims lacks jurisdiction to preside over mandamus actions alleging violation of R.C. 149.43) (decided prior to creation of Court of Claims procedure for resolving public records disputes).
[516] S.Ct.Prac.R. 19.01(A) (providing the court may, on its own or on motion by a party, refer cases to mediation counsel and, unless otherwise ordered by the court, this stays all filing deadlines for the action). Other courts may also offer mediation to facilitate settlement. *See Cleveland Assn. of Rescue Emples./ILA Local 1975 v. City of Cleveland*, 8th Dist. Cuyahoga No. 106783, 2018-Ohio-4602, ¶ 3 (noting that parties to public records action in Eighth District Court of Appeals mediated dispute through court's mediation program).
[517] *State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St.3d 41, 42 (1990).
[518] R.C. 2305.14.
[519] *State ex rel. Clinton v. MetroHealth Sys.*, 8th Dist. Cuyahoga No. 100590, 2014-Ohio-4469, ¶ 38-41 (finding three-year delay in filing action to enforce public records request untimely); *see also State ex rel. Carver v. Hull*, 70 Ohio St.3d 570, 577 (1994) (examining laches defense in employment mandamus context); *State ex rel. Moore v. Sanders*, 65 Ohio St.2d 72, 74 (1981) (noting mandamus request must be made in reasonable timeframe, regardless of statute of limitations).
[520] *See* Civ.R. 26-37, 45.
[521] *Vaught v. Cleveland Clinic Found.*, 98 Ohio St.3d 485, 2003-Ohio-2181, ¶ 25.
[522] *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶22 (citing *State ex rel. Natl. Broadcasting Co. v. Cleveland*, 38 Ohio St.3d 79 (1988)); *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. and Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, ¶ 6. *But see State ex rel. Plunderbund v. Born*, 141 Ohio St.3d 422, 2014-Ohio-3679 (holding that *in camera* review was unnecessary when testimonial evidence sufficiently showed all withheld records were subject to the claimed exemption.)
[523] *See* Black's Law Dictionary (10th ed. 2014) (defining "in camera inspection" as "[a] trial judge's private consideration of evidence").
[524] *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶ 23.
[525] Ohio Civ.R. 26(B)(6); *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 155 Ohio App.3d 653, 2003-Ohio-7257, ¶ 10.
[526] *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶ 24.
[527] *Henneman v. Toledo*, 35 Ohio St.3d 241, 245 (1988); *State ex rel. Community Journal v. Reed*, 12th Dist. Clermont No. CA2014-01-010, 2014-Ohio-5745, ¶ 17-20; *J & C Marketing, L.L.C. v. McGinty*, 143 Ohio St.3d 315, 2015-Ohio-1310.
[528] *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 390 (1999); *Strothers v. Norton*, 131 Ohio St.3d 359, 2012-Ohio-1007, ¶ 14.
[529] *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶ 14 ("R.C. 149.43(C) requires a prior request as a prerequisite to a mandamus action." (citation omitted)); *State ex rel. Bardwell v. Ohio Atty. Gen.*, 181 Ohio App.3d 661, 2009-Ohio-1265, ¶ 5 (10th Dist.) ("There can be no 'failure' of a public office to make a public record available 'in accordance with division (B),' without a request for the record under division (B)."); *State ex rel. Holloman v. Dolan*, 10th Dist. Franklin No. 15AP-31, 2016-Ohio-577, ¶ 3, 33-35 (finding relator not entitled to writ to compel production of four items that were not included in relator's public records request).
[530] *State ex rel. Van Gundy v. Indus. Comm.*, 111 Ohio St.3d 395, 2006-Ohio-5854, ¶ 13 (discussing mandamus requirements); *State ex rel. Fields v. Cervenik*, 8th Dist. Cuyahoga No. 86889, 2006-Ohio-3969, ¶ 4.
[531] *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 17; *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 26 ("[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." (quotation omitted) (alteration in original)); *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752 (10th Dist. 1989); *State ex rel. Citizens for Environmental Justice v. Campbell*, 93 Ohio St.3d 585, 586 (2001); *State ex rel. Verhovec v. Marietta*, 4th Dist. Washington Nos. 11CA29, 12CA52, 12CA53, 13CA1, 13CA2, 2013-Ohio-5414, ¶ 38-39 (noting that failure to comply with public records policy does not establish a violation of R.C. 149.43(B)(1) (prompt access)); *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 10th Dist. Franklin No. 12AP-448, 2013-Ohio-5219, ¶ 32 (holding that requester not required to prove harm or prejudice in order to obtain a writ of mandamus).
[532] *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 6, citing *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79 (1988); *State ex rel. Philbin v. City of Cleveland*, 8th Dist. Cuyahoga No. 104106, 2017-Ohio-1031, ¶ 8 (respondents failed to demonstrate that the released records were subject to redaction and that all requested records were provided to relator); *Schupp v. Ohio Dept. of Ins.*, Ct. of Cl. Case No. 2021-00199PQ, 2021-Ohio 4440, ¶ 16; *Ass'n of Cleveland Firefighters IAFF Local 93 v. City of Cleveland,* 8th Dist. Cuyahoga App. No. 113029, 2021-Ohio-3602, ¶¶ 22-24 (in a public records action, the burden of persuasion is on the requester and the burden of production is on the public office claiming the applicability of an exception).
[533] R.C. 149.43(B)(3).
[534] *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, ¶ 74 (holding that public office violated the Public Records Act when it failed to give requester chance to revise request and raised overbreadth for the first time in litigation); *see also* Chapter Two: A. 5. "Denying, and then clarifying, an overly broad request."
[535] *State ex rel. Seballos v. School Emp. Retirement Sys.*, 70 Ohio St.3d 667, 671 (1994); *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶ 21-22. *But see State ex rel. Plunderbund v. Born*, 141 Ohio St.3d 422,2014-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).

[536] State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs., 127 Ohio St.3d 202, 2010-Ohio-5073, ¶ 10; State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland, 8th Dist. Cuyahoga No. 102961, 2016-Ohio-2625, ¶ 4 (reviewing evidence and finding in favor of disclosure, against public office).
[537] State ex rel. Gaydosh v. Twinsburg, 93 Ohio St.3d 576, 580 (2001).
[538] State ex rel. Pietrangelo v. Avon Lake, 149 Ohio St.3d 273, 2016-Ohio-5725, ¶ 15-22; State ex rel. Striker v. Smith, 129 Ohio St.3d 168, 2011-Ohio-2878, ¶ 22; State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis, 98 Ohio St.3d 126, 2002-Ohio-7041 (noting mootness can be demonstrated by extrinsic evidence); State ex rel. Samara v. Byrd, 8th Dist. Cuyahoga No. 103621, 2016-Ohio-5518, ¶ 13-15 (holding case moot because public office provided all responsive records).
[539] R.C. 149.43(C)(2) (statutory damages); R.C. 149.43(C)(3)(b).
[540] State ex rel. Cincinnati Enquirer v. Ohio Dept. of Public Safety, 148 Ohio St.3d 433, 2016-Ohio-7987, ¶ 29-31.
[541] Public offices may still be liable for the content of public records they release, *e.g.*, defamation. Mehta v. Ohio Univ., 194 Ohio App.3d 844, 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.").
[542] R.C. 149.43(C)(3)(a)(i) (noting that court costs are considered "remedial and not punitive"); *see also* State ex rel. Caster v. Columbus, 151 Ohio St.3d 425, 2016-Ohio-8394, ¶ 53 (awarding court costs under prior law); State ex rel. Miller v. Ohio Dept. of Edn., 10th Dist. Franklin No. 15AP-1168, 2016-Ohio-8534, ¶ 17 (under prior law, declining to award court costs because action was moot).
[543] R.C. 149.43(C)(3)(b) (stating "the court may award" attorney fees).
[544] R.C. 149.43(C)(3)(b)(i); State ex rel. Caster v. Columbus, 151 Ohio St.3d 425, 2016-Ohio-8394, ¶ 49-51 (awarding attorney fees because public office failed to respond to request); State ex rel. Braxton v. Nichols, 8th Dist. Cuyahoga Nos. 93653, 93654, 93655, 2010-Ohio-3193, ¶ 13; *Cleveland Assn. of Rescue Emples./ILA Local 1975 v. City of Cleveland*, 8th Dist. Cuyahoga No. 106783, 2018-Ohio-4602, ¶ 4, 19 (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).
[545] R.C. 149.43(C)(3)(b)(ii).
[546] R.C. 149.43(C)(3)(b)(iii).
[547] R.C. 149.43(C)(3)(a)(ii); *State ex rel. Ware v. Fankhauser,* 11th Dist. Portage No. 2021-P-0056, 2022-Ohio-172, ¶ 9 (awarding court costs because public officed acted in bad faith when it "consciously disregarded" the requests for over a year and complied over two months after requester filed a mandamus complaint).
[548] R.C. 149.43(C)(3)(b)(iii).
[549] State ex rel. Doe v. Smith, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶ 10, 46, superseded by statute on other grounds; State ex rel. Dillery v. Icsman, 92 Ohio St.3d 312, 313, 318, 2001-Ohio-193 (litigation expenses sought included telephone, copying, mailing, filing, and paralegal expenses), superseded by statute on other grounds; State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland, 8th Dist. Cuyahoga No. 95277, 2011-Ohio-117.
[550] 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., 8th Dist. Cuyahoga No. 99733, 2013-Ohio-4481, ¶ 10-11 (reducing attorney fees award because counsel billed for time that did not advance public records case or was extraneous to the case).
[551] State ex rel. O'Shea & Assocs. Co., L.P.A v. Cuyahoga Metro. Hous. Auth., 131 Ohio St.3d 149, 2012-Ohio-115, ¶ 45; *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 684 (1996).
[552] State ex rel. Beacon Journal Publishing Co. v. Akron, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶ 62; State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources, 10th Dist. Franklin No. 12AP-448, 2013-Ohio-5219, ¶ 46 (holding that award of attorney fees is 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).
[553] State ex rel. Hous. Advocates, Inc. v. Cleveland, 8th Dist. Cuyahoga No. 96243, 2012-Ohio-1187, ¶ 6-7 (holding that in-house counsel taking case on contingent fee basis not entitled to award of attorney fees).
[554] State ex rel. Cranford v. Cleveland, 103 Ohio St.3d 196, 2004-Ohio-4884, ¶ 25 (denying relator attorney fees due to "meritless request"); State ex rel. Dillery v. Icsman, 92 Ohio St.3d 312, 318 (2001); State ex rel. ESPN, Inc. v. Ohio State Univ., 132 Ohio St.3d 212, 2012-Ohio-2690, ¶ 39.
[555] R.C. 149.43(C)(4)(c); State ex rel. Miller v. Brady, 123 Ohio St.3d 255, 2009-Ohio-4942, ¶ 19.
[556] State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer, 131 Ohio St.3d 255, 2012-Ohio-753, ¶ 69, citing State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland, 114 Ohio St.3d 183, 2007-Ohio-3831, ¶ 83.
[557] R.C. 149.43(C)(4)(b) and (c).
[558] R.C. 149.43(C)(4)(a); R.C. 149.43(C)(3)(a)(i).
[559] State ex rel. Pietrangelo v. Avon Lake, 149 Ohio St.3d 273, 2016-Ohio-5725, ¶ 23-27 (examining evidence of hand delivery); State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer, 131 Ohio St.3d 255, 2012-Ohio-753, ¶ 70; State ex rel. Miller v. Brady, 123 Ohio St.3d 255, 2009-Ohio-4942, ¶ 17; *State ex rel. McDougald v. Greene,* 161 Ohio St.3d 130, 2020-Ohio-3686, ¶ 18 (denying award of statutory damages when relator delivered public records request through prison "kite system" (system of delivering written messages between prison inmates and staff)); *State ex rel. Hedenberg v. N. Central Corr. Complex,* 162 Ohio St.3d 85, 2020-Ohio-3815, ¶ 14 (same); *see also* State ex rel. Petranek v. Cleveland, 8th Dist. Cuyahoga No. 98026, 2012-Ohio-2396, ¶ 8 (holding that later repeat request by certified mail does not trigger entitlement to statutory damages); *State ex rel. Summers v. Fox,* 164 Ohio St.3d 583, 2021-Ohio-2061, ¶ 24 (holding that letter sent by certifies mail only generally describes previous requests was not a qualifying communication for purposes of statutory damages).
[560] R.C. 149.43(C)(2); State ex rel. Caster v. Columbus, 151 Ohio St.3d 425, 2016-Ohio-8394, ¶ 52 (awarding statutory damages); State ex rel. DiFranco v. S. Euclid, 138 Ohio St.3d 367, 2014-Ohio-538, ¶ 22 (finding that failure of city to respond to request in a reasonable period of time triggered statutory damages award); State ex rel. DiFranco v. S. Euclid, 144 Ohio St.3d 565, 2015-Ohio-4914, ¶ 23-28 (finding that city law director informing requester he no longer would communicate with requester and city's failure to respond to request for 8 months put city on notice that failure to produce records could lead to statutory damages); *State ex rel. Cordell v. Paden,* 156 Ohio St.3d 394, 2019-Ohio-1216, ¶ 13 (awarding statutory damages when public office failed to respond in a reasonable period of time to part of relator's request by stating that it possessed no responsive records); *State ex rel. Ware v. DeWine,* 163 Ohio St.3d 332, 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); *State ex rel. Armatas v. Plain Twp. Bd. Of Trustees,* 163 Ohio St.3d 304, 2021-Ohio-1176, ¶ 28 (awarding statutory damages because township lacked reasonable legal basis for failing to provide requester with written explanation for its denial before mandamus complaint was filed).
[561] *State ex rel. McDougald v. Greene,* 161 Ohio St.3d 130, 2020-Ohio-3686, ¶ 27; *State ex rel. Ware v. Walsh,* 9th Dist. Summit No. 30051, 2021-Ohio-4585, ¶ 21 (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).
[562] R.C. 149.43(C)(2); *see* State ex rel. Bardwell v. Rocky River Police Dept., 8th Dist. Cuyahoga No. 91022, 2009-Ohio-727, ¶ 63 (finding that a public official's improper request for requester's identity, absent proof that this resulted in actual "lost use" of the records requested, does not provide a basis for statutory damages); *State ex rel. Ware v. City of Akron,* 164 Ohio St.3d 557, 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").
[563] R.C. 149.43(C)(2); *see also State ex rel. Miller v. Ohio Dept. of Edn.*, 10th Dist. Franklin No. 15AP-1168, 2016-Ohio-8534, ¶ 9-13 (holding that statutory damages begin accruing on day mandamus action is filed but does not include day records are provided).
[564] *State ex rel. Dehler v. Kelly*, 127 Ohio St.3d 309, 2010-Ohio-5724, ¶ 4; *State ex rel. Bristow v. Baxter,* 6th Dist. Erie No. E-18-026, 2019-Ohio-214, ¶ 43 (noting that 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).
[565] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 31-32, 41 (noting that board did not contest the status of the requested emails as public records).
[566] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 51 (finding that, when newspaper sought to inspect improperly deleted emails, the public office had to bear the expense of forensic recovery).
[567] R.C. 149.43(C)(3)(c); *see State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, ¶ 17 (holding that, 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*, 143 Ohio St.3d 392, 2015-Ohio-974, ¶ 37 (holding that courts first decide whether to award attorney fees and then conduct analysis of factors outlined in statute to determine amount of fees); *State ex rel. Rohm v. Fremont City School Dist. Bd. of Edn.*, 6th Dist. Sandusky No. S-09-030, 2010-Ohio-2751 (finding respondent did not demonstrate reasonable belief that its actions did not constitute a failure to comply); *State ex rel. Brown v. Village of North Lewisburg*, 2d Dist. Champaign No. 2012-CA-30, 2013-Ohio-3841, ¶ 19 (finding that it was not unreasonable for public office to believe that village council member would have access to requested council records, and was not entitled to duplicative voluminous copies of same records).
[568] *State ex rel. Anderson v. Vermilion*, 134 Ohio St.3d 120, 2012-Ohio-5320, ¶ 26; *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶ 39; *State ex rel. Bardwell v. Rocky River Police Dept.*, 8th Dist. Cuyahoga No. 91022, 2009-Ohio-727, ¶ 58 (finding respondents failed to show grounds for reduction of statutory damages); *State ex rel. Toledo Blade Co. v. Toledo*, 6th Dist. Lucas No. L-12-1183, 2013-Ohio-3094, ¶ 17 (denying attorney fees request because police department's refusal to release gang map was not unreasonable given court precedent); *State ex rel. Hicks v. Fraley,* Sup. Ct. No. 2020-1121, 2021-Ohio02724, 1570, ¶ 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).
[569] *State ex rel. Rogers v. Dept. of Rehab. and Corr.*, 155 Ohio St.3d 545, 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*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶ 40; *Rohm v. Fremont City School Dist. Bd. of Edn.*, 6th Dist. Sandusky No. S-09-030, 2010-Ohio-2751, ¶ 14; *Cleveland Assn. of Rescue Emples./ILA Local 1975 v. City of Cleveland*, 8th Dist. Cuyahoga No. 106783, 2018-Ohio-4602, ¶ 4, 19 (declining to reduce attorney fees award because public office did not establish a good-faith effort to timely produce requested records).
[570] R.C. 149.43(C)(2). An award or denial of statutory damages is reviewed on appeal under an abuse of discretion standard. *State ex rel. Pietrangelo v. Avon Lake*, 146 Ohio St.3d 292, 2016-Ohio-2974, ¶ 18; *State ex rel. Rogers v. Dept. of Rehab. and Corr.*, 155 Ohio St.3d 545, 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'"); *Mentech v. Cuyahoga Cty. Pub. Library Bd.*, 8th Dist. Cuyahoga No. 105963, 2018-Ohio-1398, ¶ 69 (affirming denial of statutory damages based on affidavit from public office employee affirming her belief that requested document did not exist and, once it was found, promptly providing it to requester); *State ex rel. Hicks v. Fraley,* Sup. Ct. No. 2020-1121, 2021-Ohio02724, 1570, ¶ 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).
[571] R.C. 149.43(C)(4)(d).
[572] R.C. 149.43(C)(5).
[573] *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 571, 2015-Ohio-4915, ¶ 10-12 (holding that a motion filed pursuant to R.C. 2323.51 must be rejected if not filed within 30 days).
[574] R.C. 2323.51; *State ex rel. Davis v. Metzger*, 145 Ohio St.3d 405, 2016-Ohio-1026, ¶ 9-13 (affirming sanctions against requester's attorney for frivolous mandamus action and discovery); *State ex rel. Striker v. Cline*, 5th Dist. Richland No 09CA107, 2011-Ohio-983, *aff'd*, 130 Ohio St.3d 214, 2011-Ohio-5350, ¶ 22-25; *State ex rel. Verhovec v. Marietta*, 4th Dist. Washington Nos. 11CA29, 12CA52, 12CA53, 13CA2, 2013-Ohio-5414, ¶ 44-92; *State ex rel. Bristow v. Baxter*, 6th Dist. Erie Nos. E-17-060, E-17-067, E-17-070, 2018-Ohio-1973, ¶ 29 (denying motion for sanctions under R.C. 2323.31 because counsel's incorrect legal positions and statements of fact did not amount to the egregious conduct required by statute).
[575] *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 2011-Ohio-5350, ¶ 7, 23-25; *State ex rel. Verhovec v. Marietta*, 4th Dist. Washington Nos. 11CA29, 12CA52, 12CA53, 13CA1, 13CA2, 2013-Ohio-5414, ¶ 93-94; *State ex rel. Davis v. Metzger*, 5th Dist. Licking No. 11-CA-130, 2014-Ohio-4555, ¶ 13-14 (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*, 144 Ohio St.3d 571, 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").
[576] *State ex rel. Davis v. Metzger*, 145 Ohio St.3d 405, 2016-Ohio-1026, ¶ 10.
[577] *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010-Ohio-5073, ¶ 15-17; *State ex rel. Verhovec v. Marietta*, 4th Dist. Washington Nos. 11CA29, 12CA52, 12CA53, 13CA1, 13CA2, 2013-Ohio-5414, ¶ 44-94 (finding relator engaged in frivolous conduct under Civ. R. 11 by feigning interest in records access when their actual intent was to seek forfeiture award); *State ex rel. Bristow v. Baxter*, 6th Dist. Erie Nos. E-17-060, E-17-067, E-17-070, 2018-Ohio-1973, ¶ 26 (denying motion for sanctions because, even assuming counsel violated Civ.R. 11, there was no evidence that counsel did so willfully or in bad faith).
[578] *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 571, 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).
[579] *State ex rel. Pietrangelo v. Avon Lake*, 146 Ohio St.3d 292, 2016-Ohio-2974, ¶ 19.
[580] R.C. 2743.75. For more information on public records cases in the Ohio Court of Claims, see https://ohiocourtofclaims.gov/public-records/. The Court of Claims is an Ohio court of limited jurisdiction, originally created to hear claims against the state for monetary damages. R.C. 2743.03. For more information, see https://ohiocourtofclaims.gov.
[581] R.C. 2743.75 (A); *Jabr v. Disciplinary Counsel,* Ct. of Cl. No. 2020-00596PQ, 2021-Ohio-398 (holding that under R.C. 2743.75(A), Court of Claims has jurisdiction to resolve disputes arising under R.C. 149.43; Court thus cannot adjudicate actions to enforce violation of Rules of Superintendence).
[582] R.C. 2743.75(A).
[583] R.C. 2743.75(C)(1); *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 12.
[584] R.C. 2743.75(D)(1); R.C. 2743.75(B).
[585] R.C. 2743.75(D)(1).
[586] R.C. 2743.75(D)(1).

[587] R.C. 2743.75(D)(1).
[588] R.C. 2743.75(D)(2).
[589] R.C. 2743.75(A); *see* also Black's Law Dictionary (10th ed. 2014) (defining "special master").
[590] R.C. 2743.75(D)(2).
[591] R.C. 2743.75(D)(2).
[592] R.C. 2743.75(C)(2). A "case of first impression" is simply 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) (defining "case of first impression").
[593] R.C. 2743.75(E)(1).
[594] R.C. 2743.75(E)(1); *see also* Black's Law Dictionary (10th ed. 2014) (defining "stay").
[595] R.C. 2743.75(E)(1).
[596] R.C. 2743.75(E)(1).
[597] R.C. 2743.75(E)(1).
[598] R.C. 2743.75(E)(1).
[599] R.C. 2743.75(E)(2).
[600] R.C. 2743.75(E)(2).
[601] R.C. 2743.75(E)(2).
[602] R.C. 2743.75(E)(2), (E)(3)(c).
[603] R.C. 2743.75(E)(3)(a), (b).
[604] *Mentch v. City of Cleveland,* Ct. of cl. No. 2020-00535PQ, 2021-Ohio 1564, ¶ 19 (holding that 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).
[605] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 32.
[606] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 33.
[607] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 34; *Langshaw v. City of North Royalton,* Ct. of Cl. No. 2021-00070PQ, 2021-Ohio-3394, ¶ 12 (holding that implicit in requester's burden to establish public records violation by clear and convincing evidence in the burden to show that records sought actually exist and have not been provided); *Viola v. Cuyahoga Cty. Prosecutor's Office,* 8th Dist. Cuyahoga No. 110315, 2021-Ohio-4210, ¶ 30, 34 (holding that "requester's mere disbelief in a public office's assertion of nonexistence of records" or requester's belief that there "may be" responsive records, does not constitute clear and convincing evidence necessary to establish that responsive records exist); *Viola v. Ohio AG's Office,* 10th Dist. Frarnklin No. 21AP-126, 2021-Ohio-3828, ¶ 20-21 (holding that requester's belief that public official's personal email account "may" contain public records does not constitute clear and convincing evidence necessary to establish that public office improperly processed request).
[608] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 35.
[609] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 35, 63.
[610] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office,* 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 53.
[611] R.C. 2743.75(F)(1). Note that under R.C. 2743.75(F)(1), "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[.]"
[612] R.C. 2743.75(F)(1); *see* also Black's Law Dictionary (10th ed. 2014) (defining "report and recommendation").
[613] R.C. 2743.75(F)(2).
[614] R.C. 2743.75(F)(2).
[615] R.C. 2743.75(F)(2); *Isreal v. Franklin Cty. Commrs.,* Ct. of Cl. No. 2019-00548PQ, 2019-Ohio-5457, ¶ 14 (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,* 10th Dist. Frankin No. 20AP-51, 2021-Ohio-3824.
[616] R.C. 2743.75(F)(2).
[617] R.C. 2743.75(F)(2).
[618] R.C. 2743.75(G)(1).
[619] R.C. 2743.75(F)(2).
[620] R.C. 2743.75(F)(3); *White v. Dept. of Rehab. And Corr.,* Ct. of Cl. No. 2018-00762PQ, 2019-Ohio-472, ¶ 22 (assessing court costs because requester did not permit the public office a reasonable period of time to respond by prematurely filing his claim five business days after transmission of twenty-three separate public records requests).
[621] R.C. 2743.75(F)(3)(b).
[622] R.C. 2743.75(G)(1); *Sheil v. Horton*, 8th Dist. Cuyahoga No. 107329, 2018-Ohio-5240, ¶ 4.
[623] R.C. 2743.75(G)(1).
[624] R.C. 2743.75(G)(2).
[625] R.C. 2743.75(G)(2).

V. Chapter Five: Other Obligations of a Public Office

In addition to producing public records, public offices have obligations regarding the manner in which records are kept and managed. 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,[626] and ensuring that all records – public or not – are maintained and disposed of only in accordance with properly adopted, applicable records retention schedules;[627]
- Maintaining a copy of the office's current records retention schedules at a location readily available to the public;[628]
- Adopting and posting an office public records policy;[629] and
- Ensuring that all elected officials associated with the public office, or their designees, obtain three hours of certified public records training through the Ohio Attorney General's Office once during each term of office.[630]

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.[631] These reports and ratings can be found on the Auditor of State's Website. [632]

A. Records Management

Records are a crucial component of the government. They provide support for decisions made, explain government processes, and provide the public with the transparency that open government requires. Like other important government resources, 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, in order to facilitate broader access to public records, a public office must organize and maintain the public records it keeps in a manner such that they can be made available for inspection or copying in response to a public records request.[633]

Second, Ohio's records retention law, 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.)[634] Records that do not fall within a retention schedule or law which permits their destruction cannot be destroyed and must be maintained until the public office can adopt a retention schedule which permits their destruction. In the meantime, those records remain subject to public records requests. R.C.149.351 helps facilitate transparency in government and is one means of preventing the circumvention of the Public Records Act.[635] The process for adopting records retention schedules, and resources available to public offices for doing so, are described below.

But, recall that not all documents received by a public office are "records" that must be maintained and produced upon request.[636] 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."[637] 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 might—or might not—meet the definition of a "record" which 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 determine whether 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,[638] township,[639] and municipal[640] levels. Records commissions also exist for each library district,[641] special taxing district,[642] school district,[643] and educational service center.[644]

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[645] that the State Archives deems to be of continuing historical value.[646] Upon completion of that process, the Ohio History Connection will forward the application or schedule to the Auditor of State for approval or disapproval.[647]

b. State records program

The Ohio Department of Administrative Services (DAS) administers the records program for all state agencies,[648] with the exception of state-supported institutions of higher education, and upon request for the legislative and judicial branches of government.[649] 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.[650] 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.[651]

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.[652]

The state's records program works in a similar fashion 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.[653] 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.[654] 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.[655] 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.[656]

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.[657] In a 2008 decision, the Ohio Supreme Court emphasized that, "in cases in which public records, including e-mails, are properly disposed of in accordance with a duly adopted records-retention policy, there is no entitlement to those records under the Public Records Act."[658] 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.[659] 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.[660]

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.[661] Consideration should also be given to 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 dwhen setting retention schedules;[662] while the DAS state records program offers consulting services for state offices.[663]

b. Transient records

Adopting a schedule for transient records – that is, records containing information of short-term usefulness – allows a public office to dispose of these records once they are no longer of administrative value.[664] Examples of transient records include voicemail messages, telephone message slips, post-it notes, and superseded drafts.

c. Records disposition

It is important to document the destruction of records that have met their approved retention periods. At least fifteen days before disposing of public records, a local government records commission must file a Certificate of Records Disposal (RC-3) with the State Archives at the Ohio History Connection in order to allow the State Archives to select records of enduring historical value.[665] State agencies can document their records disposals on the RIMS system or in-house.[666] 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.

3. Liability for unauthorized destruction, damage, or disposal of records

All records are considered to be the property of the public office and must be delivered by outgoing officials and employees to their successors in office.[667] 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"[668] 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.[669]

- A civil action to recover a forfeiture of $1,000 for each violation of R.C. 149.351(A), not to exceed a cumulative 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.[670]

A person is not "aggrieved" unless he establishes, as a threshold matter, that he made an enforceable public records request for the records claimed to have been disposed of in violation of R.C. 149.351.[671] 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.[672] If pretext is so proven, the court may order the requester to pay reasonable attorney fees to the defendant(s).[673]

The court of common pleas of the county where the alleged R.C. 149.351(A) violation occurred is vested with exclusive jurisdiction to hear such a case.[674] 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.[675] 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.[676]

b. Limits 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[677] and has the burden of providing evidence that records were destroyed in violation of R.C. 149.351.[678] 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.[679] Determining the number of "violations" depends on the nature of the records involved.[680]

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.[681] An award of attorney fees under R.C. 149.351 is discretionary,[682] and the award of attorney fees for the forfeiture action may not exceed the forfeiture amount.[683]

4. Availability of records retention schedules

All public offices must maintain a copy of all current records retention schedules at a location readily available to the public.[684]

B. Records Management – Practical Pointers

1. Fundamentals

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.[685] 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 of its records allows a public office to dispose of records once they are no longer necessary or valuable.

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 documents transmitted via email are "records" that must be maintained. Instead, a public office must look at the *content* of the email 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 of 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. Note that 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.

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 manner outlined below.

2. Managing records in five easy steps:

a. Conduct a records inventory

The purpose of an inventory is to identify and describe the types of records an office keeps. 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 "FY07-FY08 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 (a notice of change in meeting location) to long-term (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 indicate how long 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 record series that are created as a result 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.[686]

C. Helpful Resources for Local Government Offices

Ohio History Connection/State Archives – Local Government Records Program
The Local Government Records Program of the State Archives (see: www.ohiohistory.org/lgr) provides records-related advice, forms, model retention manuals, and assistance to local governments in order to facilitate the identification and preservation of local government records with enduring historical value. Please direct inquiries and send forms to:

The Ohio History Connection/State Archives
Local Government Records Program
800 East 17th Avenue
Columbus, Ohio 43211
(614) 297-2553
localrecs@ohiohistory.org

D. Helpful 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 at

https://das.ohio.gov/Divisions/General-Services/State-Printing-and-Mail-Services/Records-Management

2. The Ohio History Connection, State Archives

The State Archives can assist state agencies with the identification and preservation of records with enduring historical value.

For more information or to schedule a records appraisal, contact the State Archives:

The Ohio History Connection/State Archives
800 East 17th Avenue
Columbus, Ohio 43211
(614) 297-2536
statearchives@ohiohistory.org
https://www.ohiohistory.org/learn/archives-library/state-archives

E. Helpful Resources for All Government Offices

Ohio Electronic Records Committee

Electronic records present unique challenges for archivists and records managers. As we have shifted from paper-based recordkeeping to electronic recordkeeping, the issues surrounding the amount, the management, and storage of records have significantly increased. As the number of electronic records multiply, 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 include resources on such topics like:

- 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 at http://www.OhioERC.org.

Statements on Maintaining Digitally Imaged Records Permanently

- Ohio History Connection

  https://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

  https://www.ohiohistory.org/OHC/media/OHC-Media/Documents/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.[687] 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.[688] 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.[689] Compliance with these requirements will be audited by the Auditor of State in the course of a regular financial audit.[690]

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. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering of news, reporting or gathering of information to assist citizen oversight or understanding of the operation or activities of government, or non-profit educational research.[691]

A public records policy may not …

- limit the number of public records made available to a single person;
- limit the number of records the public office will make available during a fixed period of time; or
- 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).[692]

G. Required Public Records Training for Elected Officials

All local and statewide elected government officials[693] or their designees[694] must attend a three-hour public records training program during each term of elective office[695] the official serves.[696] The training must be developed and certified by the Ohio Attorney General's Office and presented either by the Ohio Attorney General's Office or an approved entity with which the Attorney General's Office contracts.[697] Compliance with the training provision will be audited by the Auditor of State in the course of a regular financial audit.[698]

Both the online version of the certified elected officials' training and the schedule for in-person training sessions can be found online at www.OhioAttorneyGeneral.gov/Sunshine.

Notes:

[626] R.C. 149.43(B)(2).
[627] R.C. 149.351(A).
[628] R.C. 149.43(B)(2).
[629] R.C. 149.43(E)(2); R.C. 109.43(E).
[630] R.C. 149.43(E)(1); R.C. 109.43(B).
[631] *See* Auditor of State Bulletin 2019-003 at https://www.ohioauditor.gov/publications/bulletins/2019/2019-003.pdf.
[632] *See* Auditor of State StaRS Rating System at https://ohioauditor.gov/open/StaRS_results.html.
[633] R.C. 149.43(B)(2); *see* Chapter Two: A. "Rights and Obligations of Public Records Requesters and Public Offices" (providing more information about records management in the context of public records requests).
[634] R.C. 149.351(A).
[635] *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279, ¶ 14.
[636] *See* "Chapter One: B. "What are 'Records'?" (defining "record" vs. "non-record"); *and see* Chapter Two A. "Rights and Obligations of Public Records Requesters and Public Offices" (providing information about "non-records.")
[637] R.C. 149.40
[638] R.C. 149.38.
[639] R.C. 149.42.
[640] R.C. 149.39.
[641] R.C. 149.411.
[642] R.C. 149.412.
[643] R.C. 149.41.
[644] R.C. 149.41.
[645] R.C. 149.38, .381.
[646] R.C. 149.38, .381.
[647] R.C. 149.381(C)
[648] R.C. 149.33(A).
[649] R.C. 149.332.
[650] Instructions for how to adopt DAS general retention schedules are on page 8 of the RIMS User Manual, available at: http://www.das.ohio.gov/LinkClick.aspx?fileticket=D6T7Sb1qZ0k%3d&tabid=265.
[651] R.C. 149.331(C).
[652] 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/Portals/0/DASDivisions/GeneralServices/SPMS/RIMS%20Manual_2021.pdf?ver=isPzld7M10NpCxwH-n_T7A%3d%3d.
[653] R.C. 149.333.
[654] R.C. 149.333.
[655] R.C. 149.33(B).
[656] R.C. 149.33.
[657] R.C. 149.351.
[658] *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 23.
[659] *Wagner v. Huron Cty. Bd. of Cty. Commrs.*, 6th Dist. No. H-12-008, 2013-Ohio-3961, ¶ 17 (holding that 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).
[660] *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 41 (2000).
[661] R.C. 149.34.
[662] R.C. 149.31(A) (providing that "[t]he 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.").
[663] R.C. 149.331(D).
[664] *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 24, n.1.
[665] R.C. 149.38(C)(3); R.C. 149.381(D).
[666] Instructions for how to submit a records disposal are on page 18 of the RIMS User Manual, available at: https://das.ohio.gov/Portals/0/DASDivisions/GeneralServices/SPMS/RIMS%20Manual_2021.pdf?ver=isPzld7M10NpCxwH-n_T7A%3d%3d.
[667] R.C. 149.351(A).
[668] *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279; *Walker v. Ohio State Univ. Bd. of Trustees*, 10th Dist. No. 09AP-748, 2010-Ohio-373, ¶¶ 22-27 (determining that 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*, 5th Dist. No. 2014AP04 0013, 2014-Ohio-4848 (finding requester did not demonstrate actual interest in records); *State ex rel. Cincinnati Enquirer v. Allen*, 1st Dist. No. C-040838, 2005-Ohio-4856, ¶ 15; *State ex rel. Sensel v. Leone*, 12th Dist. No. CA97-05-102 (1998), reversed on other grounds, 85 Ohio St.3d 152 (1999).
[669] R.C. 149.351(B)(1).
[670] R.C. 149.351(B)(2).
[671] *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279, ¶ 16; *Arnold v. Columbus*, 10th Dist. No. 14AP-418, 2015-Ohio-4873, ¶¶ 71-72; *Walker v. Ohio State Univ. Bd. of Trustees*, 10th Dist. No. 09AP-748 2010-Ohio-373, ¶¶ 22-27; *State ex rel. Todd v. Canfield*, 7th Dist. No. 11 MA 209, 2014-Ohio-569, ¶ 22.
[672] R.C. 149.351(C); *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279; *Mentch v. Cuyahoga Cty. Pub. Lib. Bd.*, 8th Dist. Cuyahoga No. 105963, 2018-Ohio-1398, ¶ 78 (finding requester was not aggrieved because she made the 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*, 4th Dist. No. 12CA32, 2013-Ohio-5415, ¶ 48 (considering the intent of the real party-in-interest, Relator's husband, to determine whether requester was an aggrieved party, and finding that, because all evidence indicated that requester's intent was pecuniary gain, trial court properly determined that requester was not aggrieved and not entitled to civil forfeiture); *State ex rel. Rhodes v. Chillicothe*, 4th Dist. No. 12CA3333, 2013-Ohio-1858, ¶ 44 (holding that, because appellant's interest was purely pecuniary, appellant did not have an interest in accessing records and was not aggrieved).
[673] R.C. 149.351(C)(2).
[674] R.C. 149.351(B).

[675] *State ex rel. Crenshaw v. King,* 8th Dist. Cuyahoga No. 1111093, 2021-Ohio-4433, ¶ 7-12.
[676] *State ex rel. Crenshaw v. King,* 8th Dist. Cuyahoga No. 1111093, 2021-Ohio-4433. ¶ 14-17.
[677] R.C. 149.351(E).
[678] *Snodgrass v. Mayfield Hts.*, 8th Dist. No. 990643, 2008-Ohio-5095, ¶ 18; *State ex rel. Doe v. Register*, 12th Dist. No. CA2008-08-081, 2009-Ohio-2448, ¶ 30.
[679] R.C. 149.351(D).
[680] *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, ¶¶ 25-44; *see also Cwynar v. Jackson Twp. Bd. of Trustees*, 178 Ohio App.3d 345, 2008-Ohio-5011 (5th Dist.).
[681] R.C. 149.351(B)(1)-(2).
[682] *Cwynar v. Jackson Twp. Bd. of Trustees*, 178 Ohio App.3d 345, 2008-Ohio-5011, ¶ 56 (5th Dist.).
[683] R.C. 149.351(B)(2).
[684] R.C. 149.43(B)(2).
[685] *See* R.C. 149.33; 149.351. Remember, within one year after their date of creation or receipt, a public office must schedule all records for disposition or retention in the manner prescribed by applicable law and procedures. R.C. 149.34.
[686] R.C. 149.34(C).
[687] R.C. 149.43(E)(2); R.C. 109.43(E). Attorney General's Model Policy available at https://www.ohioattorneygeneral.gov/Files/Government-Entities/Model-Public-Records-Policy.aspx.
[688] R.C. 149.43(E)(2).
[689] R.C. 149.43(E)(2).
[690] R.C. 109.43(G).
[691] R.C. 149.43(B)(7). 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 these policies and procedures is deemed to create an enforceable duty on the office to comply with them.
[692] R.C. 149.43(E)(2).
[693] R.C. 109.43(A)(2) (defining "elected official"). NOTE: the definition excludes justices, judges, or clerks of the Supreme Court of Ohio; courts of appeals; courts of common pleas; municipal courts; and county courts.
[694] R.C. 109.43(B) (providing that training may be received by an "appropriate" designee, who 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). Note that R.C. 109.43(A) does not provide a definition of "appropriate."
[695] R.C. 109.43(B) (providing that training shall be three hours for every term of office for which the elected official was appointed or elected to the public office involved).
[696] R.C. 149.43(E)(1); R.C. 109.43(B) (providing that this training is intended to enhance an elected official's knowledge of his or her duty to provide access to public records and to provide guidance in developing and updating his or her office's public records policies); R.C. 149.43(E)(1) (providing that another express purpose of the training is "[t]o ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of [the Public Records Act]").
[697] R.C. 109.43(B)-(D) (providing that the Attorney General's Office may not charge a fee to attend the training programs it conducts, but outside contractors that provide the certified training may charge a registration fee that is based on the "actual and necessary" expenses associated with the training, as determined by the Attorney General's Office).
[698] R.C. 109.43(G).

VI. Chapter Six: Special Topics

A. CLEIRs: Confidential Law Enforcement Investigatory Records Exemption

This exemption is often mistaken as one that applies only to police investigations. In fact, the Confidential Law Enforcement Investigatory Records exemption, commonly known as "CLEIRs," applies to investigations of alleged violations of criminal, quasi-criminal, civil, and administrative law. It does not apply to most investigations conducted for purposes of employment matters, such as internal disciplinary investigations,[699] pre-employment questionnaires and polygraph tests,[700] or to public records that later become the subject of a law enforcement investigation.[701]

Note that a public records request made by an inmate for his or her own criminal or juvenile adjudicatory or investigation records must be pre-approved by the sentencing judge.[702] After pre-approval, the request is still subject to any exemptions and defenses that apply to the requested records.[703]

1. CLEIRs defined:

Under CLEIRs, a public office may withhold any record that both:

(1) Pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature;[704]

and

(2) If released, would create a high probability of disclosing any of the following information:[705]

- Identity of an uncharged suspect;
- Identity of a source or witness to whom confidentiality was reasonably promised;
- Specific confidential investigatory techniques or procedures;
- Specific investigatory work product; or
- Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

2. Determining whether the CLEIRs exemption applies

Remember that the CLEIRs exemption is a strict two-step test, and a record must first qualify as pertaining to a "law enforcement matter" under Step One before any of the exemption categories in Step Two will apply to the record.[706]

Step one: Pertains to "a law enforcement matter"

An investigation is only considered a "law enforcement matter" if it meets each prong of the following 3-part test:

(a) Has an investigation been initiated upon specific suspicion of wrongdoing? [707]

Investigation records must be generated in response to specific alleged misconduct, not as the incidental result of routine monitoring.[708] However, "routine" investigations of the use of deadly force by officers, even if the initial facts indicate accident or self-defense, are sufficient to meet this requirement.[709]

(b) Does the alleged conduct violate criminal,[710] quasi-criminal,[711] civil,[712] or administrative law?[713]

So long as the conduct is prohibited by statute or administrative rule, whether the punishment is criminal, quasi-criminal, civil, or administrative in nature is irrelevant.[714]

"Law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature refers directly to the enforcement of the law, and not to employment or personnel matters ancillary to law enforcement matters."[715]

Disciplinary investigations of alleged violations of internal office policies or procedures are *not* law enforcement matters,[716] including disciplinary matters and personnel files of law enforcement officers.[717]

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

If the office does not have legally-mandated investigative[718] or enforcement authority over the alleged violation of the law, then the records it holds are not "a law enforcement matter" for that office.[719] 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.[720]

Step two: High probability of disclosing certain information

If an investigative record pertains to a "law enforcement matter," the CLEIRs exemption applies, but only to the extent that release of the record would create a high probability of disclosing one or more of the following five types of information:[721]

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

An "uncharged suspect" is a person who at some point in the investigatory agency's investigation was believed to have committed a crime or offense,[722] but who has not been arrested[723] or charged[724] for the offense to which the investigative record pertains. The purposes of this exemption include: (1) protecting the rights of individuals to be free from unwarranted adverse publicity; and (2) protecting law enforcement investigations from being compromised.[725]

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.[726] When the contents of a particular record in an investigatory file are so "inextricably intertwined" with the suspect's identity that redacting will fail to protect the person's identity in connection with the investigated conduct, that entire record may be withheld.[727] However, the application of this exemption to some records in an investigative file does not automatically create a blanket exemption covering all other records in the file, and the public office must still release any investigative records that do not individually have a high probability of revealing the uncharged suspect's identity.[728] Note: use of any exemption requires an explanation, including legal authority, to be provided in any response that denies access to records.[729]

The uncharged suspect exemption applies even if:

- time has passed since the investigation was closed;[730]
- the suspect has been accurately identified in media coverage;[731] or
- the uncharged suspect is the person requesting the information.[732]

(b) Identity of a confidential source

For purposes of the CLEIRs exemption, "confidential sources" are those who have been "reasonably promised confidentiality."[733] 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.[734] When possible, it is advisable – though not required – that the investigator document the specific reasons why promising confidentiality was necessary to further the investigation.[735] 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.[736]

This exemption exists only to protect the identity of the information source, not the information he or she provides.[737] However, when the contents of a particular record in an investigatory file 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.[738]

(c) Specific confidential investigatory techniques or procedures

Specific confidential investigatory techniques or procedures,[739] including sophisticated scientific investigatory techniques or procedures such as forensic laboratory tests and their results, may be redacted pursuant to this exemption.[740] One purpose of the exemption is to avoid compromising the effectiveness of confidential investigative techniques.[741] Routine factual reports are not covered under the exemption.[742]

(d) Investigative work product

Statutory Definition: Information, including notes, working papers, memoranda, or similar materials, assembled in connection with a probable or pending criminal proceeding is work product under R.C. 149.43(A)(2)(c).[743] Copies of otherwise public records gathered by a law enforcement investigator from a separate public office may be exempted in the investigator's file as specific investigative work product, although public records gathered from the investigator's own public office or governmental subdivision generally do not lose the public records "cloak."[744] These materials may be protected even when they appear in a law enforcement office's files other than the investigative file.[745] "It is difficult to conceive of anything in a prosecutor's file, in a pending criminal matter, that would not be either material compiled in anticipation of a specified criminal proceeding or the personal trial preparation of the prosecutor."[746] However, there are some limits to the items in an investigative file covered by this exemption.[747]

Time Limits on Investigatory Work Product Exemption: Once a law enforcement matter has commenced, the investigative work product exemption applies until the matter has concluded. The Ohio Supreme Court has held that the investigative work product exemption does not extend past the completion of the trial for which the information was gathered.[748] Even if no suspect has been identified, "[o]nce it is evident that a crime has occurred, investigative materials developed are necessarily compiled in anticipation of litigation and so fall squarely within the *Steckman* definition of work product."[749] However, the work product exemption is not merely an "ongoing investigation" exemption. The investigating agency must be able to show that work product is being assembled in connection with a pending or

highly probable criminal proceeding, not merely the possibility of future criminal proceedings.[750]

Not Waived by Criminal Discovery: The work product exemption is not waived when a criminal defendant is provided discovery materials as required by law.[751]

Attorney Work Product Not Covered: Investigatory work product does not extend to 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).[752]

(e) Information that would endanger life or physical safety if released

Information that, if released, would endanger the life or physical safety of law enforcement personnel,[753] a crime victim, a witness, or a confidential informant may be redacted before public release of a record.[754] 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 not sufficient reasons to redact information.[755] Alleging that disclosing the information would infringe on a person's privacy does not justify a denial of release under this exemption.[756]

Note: Non-expiring Step Two exemptions: When a law enforcement matter has concluded, only the investigatory work product exemption expires. The courts have expressly or impliedly found that investigatory records that continue to fall under the uncharged suspect,[757] confidential source or witness,[758] confidential investigatory technique,[759] and information threatening physical safety[760] exemptions apply despite the passage of time.

Note: Exemptions other than CLEIRs may apply to documents within a law enforcement investigative file, including but not limited to social security numbers; Law Enforcement Automated Data System (LEADS) computerized criminal history documents;[761] information, data, and statistics gathered or disseminated through the Ohio Law Enforcement Gateway (OHLEG);[762] and information that is highly likely to identify an alleged delinquent child or arrestee who is also an abused child.[763]

3. Law enforcement records not covered by CLEIRs

As noted above, personnel files and other administrative records not pertaining to a law enforcement matter would not be covered by the CLEIRs exemption. In addition, the courts have specifically ruled that the following records are not covered by CLEIRs:

a. Offense and incident reports

"Offense-and-incident reports are form reports in which the law enforcement officer completing the form enters information in the spaces provided."[764] Police offense or incident reports initiate investigations but are not considered part of the investigation; and therefore, they are not a "law enforcement matter" covered by the CLEIRs exemption.[765] Therefore, none of the information explained in Step Two above can be redacted from an initial incident report.[766] However, if an offense or incident report contains information that is otherwise exempt from disclosure under state or federal law, the exempt information may be redacted.[767] This could include social security numbers, information referred from a children services agency,[768] or information subject to other independently applicable exemptions.[769] Additionally, not all reports utilized by police 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.[770]

b. 911 records

Audio records of 911 calls are not considered to pertain to a "law enforcement matter" or constitute part of an investigation for the purposes of the CLEIRs exemption.[771] Further, since there is no basis to find a constitutional right of privacy in such calls, even social security numbers may not be redacted.[772] As with other public records, a requester is entitled to access either the audio record or a paper transcript.[773] However, information concerning telephone numbers, addresses, or names obtained from a 911 database maintained pursuant to R.C. 128.32 may not be disclosed or used for any purpose other than as permitted in that section.[774]

B. Employment Records[775]

Public employee personnel records are generally considered public records.[776] However, if any item contained within a personnel file or other employment record[777] 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 75.

1. Non-records

To the extent that any item contained in a personnel file is not a "record," that is, when it does not document the organization, operations, etc., of the public office, it is not a public record and need not be disclosed.[778] Based on this reasoning, the Ohio Supreme Court has found that in most instances the home addresses of public employees kept by their employers solely for administrative convenience are not "records" of the office.[779] 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 not to document the formal duties and activities of the office; a public office should evaluate these types of records carefully. Non-record items 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. 149.43(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."[780] Note that an amendment to this statute, effective September 30, 2021, removed "date of birth" from this requirement.[781] Thus, public offices or persons responsible are no longer required to maintain a database or list that includes employee dates of birth, and dates of birth are no longer statutorily public records. 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.[782]

3. Resumes and application materials

There is no public records exemption that generally protects resumes and application materials obtained by public offices in the hiring process.[783] The Ohio Supreme Court has found that "[t]he public has an unquestioned public interest in the qualifications of potential applicants for positions of authority in public employment."[784] 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.[785] The fact that a public office has promised confidentiality to applicants is irrelevant.[786] A public office's obligation to turn over application materials and resumes extends to records in the sole possession of private search firms used in the hiring process.[787] As with any other category of records, if an exemption for home address, social security number (SSN), or other specific item applies, it may be used to redact only the protected information.

Application Materials Not "Kept By" a Public Office: Application materials may not be public records if they are not "kept by"[788] the office at the time of the request. In *State ex rel. Cincinnati Enquirer v.*

Cincinnati Board of Education, the school board engaged a private search firm to assist in its search for a new superintendent. During the interview process, the school board members reviewed and then returned all application materials and resumes submitted by the candidates. A newspaper made a public records request for any resumes, documents, etc., related to the superintendent search. Because the materials had never been "kept" by the board, the court denied the writ of mandamus.[789] Keep in mind that this case is limited to a narrow set of facts, including compliance with records retention schedules in returning such materials.

4. Background investigations

Background investigations are not subject to any general public records exemption,[790] although specific statutes may exempt defined background investigation materials kept by specific public offices.[791] However, 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 a number of statutory exemptions.[792]

5. Evaluations and disciplinary records

Employee evaluations are not subject to any general public records exemption.[793] Likewise, records of disciplinary actions involving an employee are not exempted.[794] Specifically, note that the CLEIRs exemption does not apply to routine office discipline or personnel matters,[795] even when such matters are the subject of an internal investigation within a law enforcement agency.[796]

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.[797] Their use and release is strictly limited.

7. Physical fitness, psychiatric, and polygraph examinations

As used in the Public Records Act, the term "medical records" is limited to records generated and maintained in the process of medical *treatment* (see "Medical Records" below). Accordingly, records of examinations performed for the purpose of determining fitness for hiring or for continued employment, including physical fitness,[798] psychiatric,[799] and psychological[800] examinations, are not exempted from disclosure as "medical records." Similarly, polygraph, or "lie detector," examinations are not "medical records," and they do not fall under the CLEIRs exemption when performed in connection with hiring.[801] Note also that a separate exemption applies to "medical information" pertaining to those professionals covered under R.C. 149.43(A)(7).[802]

While fitness for employment records do not fit within the definition of "medical records," they 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."[803] Specifically, the federal Americans With Disabilities Act (ADA) and its implementing regulations[804] 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.[805] 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.[806] As non-public records, the examinations may constitute "confidential personal information" under Ohio's Personal Information Systems Act.[807]

8. Medical records

"Medical records" are not public records,[808] and a public office may withhold any medical records in a personnel file. "Medical records" are those generated and maintained in the process of medical treatment.[809] Note that the federal Health Insurance Portability and Accountability Act (HIPAA),[810] does not apply to records in employer personnel files, but that the federal Family and Medical Leave

Act (FMLA)[811] or the Americans With Disabilities Act (ADA)[812] may apply to medical-related information in personnel files.

9. School records

Education records, which include but are not limited to school transcripts, attendance records, and discipline records, that are directly related to a student and maintained by the educational institution, as well as personally identifiable information from education records, are generally protected from disclosure by the school itself through Ohio Law and the federal Family Educational Rights and Privacy Act (FERPA).[813] 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

SSNs should be redacted before the disclosure of public records.[814] Ohio statutes or administrative codes may provide other exemptions for SSNs and other information for specific employees,[815] when posted in particular locations,[816] and/or upon request.[817]

Information obtained from municipal tax returns is confidential.[818] 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.[819] However, W-2 forms filed as part of a municipal income tax return are confidential.[820] Federal law makes "returns" and "return information" confidential.[821] 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.[822]

With respect 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.[823]

11. Residential and familial information of designated public service workers

As detailed elsewhere in this manual,[824] the residential and familial information[825] of certain designated public service workers may be withheld from disclosure.[826]

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.[827]

13. Statutes specific to a particular agency's employees

Statutes may protect particular information or records concerning specific public offices, or particular employees[828] within one or more agencies.[829]

Personnel Files

The following lists are not exhaustive, but are intended as a starting point for each public office in compiling lists appropriate to its employee records.

Items from Personnel Files that Are 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 LEADS throughput, NCIC, and CCH
- Disciplinary investigation/action records, unless exempt from disclosure by law
- Limited access files

Items from 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 (see R.C. 149.43(A)(1)(p) and (A)(7)-(8))
- Employee ID numbers (if the number is part of the public office's security) (R.C. 149.433)

- 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 Dept. 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); O.A.C. 4501:2-10-06)
- 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))

C. Residential and Familial Information of Covered Professions That Are Not Public Records[830]

Residential and Familial Information Defined:[831] The "residential and familial information" of peace officers,[832] parole officers, probation officers, bailiffs, prosecuting attorneys, assistant prosecuting attorneys, correctional employees,[833] county or multicounty corrections officers,[834] community-based correctional facility employees, designated Ohio national guard members,[835] protective services workers,[836] youth services employees,[837] firefighters,[838] emergency medical technicians (EMTs),[839] medical directors or members of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employees, investigators of the bureau of crimical identification and investigation,[840] emergency service telecommunicators,[841] forensic mental health providers,[842] mental health evaluation providers,[843] regional psychiatric hospital employees,[844] judges, magistrates, or federal law enforcement officers[845]is exempted from mandatory disclosure under the Public Records Act.[846] "Residential and familial information" means any information that discloses any of the following about individuals in the listed employment categories (see following chart):

Information of Covered Professions That Is Not Public Record

Residential	Address of the covered employee's actual personal residence, except for state or political subdivision.[847]

	Residential address, residential phone number, and emergency phone number of the spouse, former spouse, or child of a covered employee.[848]
Medical	Any information of a covered employee that is compiled from referral to or participation in an employee assistance program[849] Any medical information of a covered employee[850]
Employment	The name of any beneficiary of employment benefits of a covered employee, including, but not limited to, life insurance benefits[851] The identity and amount of any charitable or employment benefit deduction of a covered employee[852] A photograph of a peace officer who holds a position that may include undercover or plain clothes positions or assignments[853]
Personal	The information below, which is not a public record, applies to *both* a covered employee, as well as their spouse, former spouse, and children: Social security number[854] Account numbers of bank accounts and debit, charge, and credit cards[855] The information below, which is not a public record, applies to *only* a covered employee's spouse, former spouse, and children: Name, name of employer, address of employer[856]

The following conclusions in 2000 Ohio Att'y Gen.Ops. No. 021 address the application of this exemption:

- **No duty to notify:** R.C. 149.43 imposes no duty upon any particular individual or office to notify public offices of a peace officer's residential and familial information or to update the database.

- **Definition of "child":** For purposes of R.C. 149.43, a child of a peace officer includes a natural or adopted child, a stepchild, and a minor or adult child.

- **Scope of exemption:** Under the definition in R.C. 149.43(A)(8), the peace officer residential and familial information 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.

  In addition, the exemption for peace officer residential and familial information 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 general public access where there is no reasonable basis for asserting a privacy interest and no expectation that the information will be identifiable as peace officer residential and familial information.

- **Liability:** R.C. 149.43 provides no liability for disclosing information that comes within an exception to the definition of "public record." Liability may result, however, from disclosing a record that is made confidential by a provision of law other than R.C. 149.43.

Note that additional statutes also prohibit release of officers' home addresses in court proceedings, but only in the limited circumstances set forth in those statutes.[857]

In addition to the professions treated collectively in R.C. 149.43(A)(1)(p) and (A)(7)-(8), other public office employees may be subject to similar exemptions through agency specific statutes.[858]

D. Court Records

Although records kept by the courts of Ohio otherwise meet the definition of public records under the Public Records Act,[859] access to most court records is governed by a separate set of rules.

1. Courts' supervisory power over their own records

Ohio courts[860] are subject to the Rules of Superintendence for the Courts of Ohio, adopted by the Supreme Court of Ohio. Therefore, a requester wishing to obtain records from the judicial branch must generally submit the request under the Rules of Superintendence.[861] The Rules of Superintendence establish rights and duties regarding court case documents and administrative documents, starting with the statement that "[c]ourt records are presumed open to public access."[862] Sup.R. 45(A). While similar to the Public Records Act, the Rules of Superintendence contain some additional or different provisions, including language:

- For internet records, allowing courts to announce that an attachment or exhibit was not scanned but is available by direct access. Sup.R. 45(C)(1).
- Establishing definitions of "court record," "case document," "administrative document," "case file," and other terms. Sup.R. 44(A)-(M).
- Identifying a process for restricting public access to part or all of any case document, including a process for any person to request access to a case document or information that has been granted limited public access. Sup.R. 45(E) and (F).
- 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. Sup.R. 45(D).

(This is a partial list – see Sup. Rules 44-47 for all provisions.)

2. Application of Rules of Superintendience and Public Records Act to Court Records

Rules 44 through 47 of the Rules of Superintendence apply to all court <u>administrative</u> documents, but only apply to court <u>case</u> documents in actions commenced on or after July 1, 2009.[863] Thus, the Public Records Act will apply to case documents in actions commenced prior to July 1, 2009.[864] Rule of Superintendence 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.[865]

The Rules of Superintendence for the Courts of Ohio are currently available online at:
https://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf

3. Rules of court procedure

The Ohio Rules of Procedure, which are also adopted through the Ohio Supreme Court, can create exemptions to public record disclosure.[866] Examples include certain records related to grand jury proceedings[867] and certain juvenile court records.[868]

4. Sealing statutes

Court records that have been properly expunged or sealed are not available for public disclosure.[869] 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.[870] Even absent statutory authority, the Ohio Supreme Court has found that trial courts have the inherent authority to seal court records in unusual and exceptional circumstances.[871] That inherent authority, however, is limited. The Ohio Supreme Court has concluded that there is no such authority "when the offender has been convicted and is not a first-time offender."[872] In such cases, the only authority to seal is statutory.[873] Courts have no authority to seal an offense that has been pardoned by the governor when the offender is not otherwise statutorily eligible for sealing.[874] The Ohio Supreme Court has also concluded that courts do not have inherent authority to unseal records and may only unseal records when statutorily authorized.[875]

5. Restricting access by rule

Sup.R. 45(E) also provides a procedure for restricting public access to a case document. Under this Rule, a court may 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. The Ohio Supreme Court has ordered a judge to unseal records after finding that there was not clear and convincing evidence to warrant restricting access.[876]

6. Non-records

Under the Public Records Act, courts, like other public offices, are not obligated to provide documents that are not "records" of the court. Examples include a judge's handwritten notes,[877] completed juror questionnaires,[878] social security numbers (SSNs) in certain court records,[879] and unsolicited letters sent to a judge.[880]

7. 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 Sup.R. 26.05 set records retention schedules for each type of court.

Other Case Law Prior to Rules of Superintendence

Constitutional Right of Access: Based on constitutional principles, and separate from the Public Records Act and Rules of Superintendence, Ohio common law grants the public a presumptive right to inspect and copy court records.[881] Both the United States and the Ohio Constitutions create a qualified right[882] of public access to court proceedings that "have historically been open to the public and in which the public's access plays a significantly positive role."[883] This qualified right includes access to the live proceedings, as well as to the records of the proceedings.[884]

Even when proceedings are not historically public, "the Ohio Supreme Court has determined that any restriction shielding court records from public scrutiny should be narrowly tailored to serve the competing interests of protecting the individual's privacy without unduly burdening the public's right of access."[885] This high standard exists because "[T]he purpose of the common-law right is to promote understanding of the legal system and to assure public confidence in the courts."[886] But, the constitutional right of public access is not absolute, and courts have traditionally exercised "supervisory power over their own records and files."[887]

Once an otherwise non-public document is filed with the court and becomes part of the record (such as pretrial discovery material), that document becomes a public record.[888] However, in circumstances when the release of the court records would prejudice the rights of the parties in an ongoing criminal

or civil proceeding, a narrow exemption to public access exists.[889] Under such circumstances, the court may impose a protective order prohibiting release of the records.[890]

Constitutional Access and Statutory Access Compared: The Ohio Supreme Court has distinguished between *public records* access and *constitutional* access to records, such as jurors' names, home addresses, and other personal information jurors provide in their responses to written juror questionnaires.[891] While such information is not a "public record,"[892] it is presumed to be subject to public disclosure based on constitutional principles.[893] The Court explained that the personal information of these private citizens is not "public record" because it does nothing to "shed light" on the operations of the court.[894] However, there is a constitutional presumption that this information will be publicly accessible in criminal proceedings.[895] As a result, the jurors' personal information will be publicly accessible unless there is "'an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'"[896]

Nevertheless, the Ohio Supreme Court also concluded, in a unanimous decision, that SSNs contained in criminal case files are appropriately redacted before public disclosure.[897] According to the Court, permitting the court clerk to redact SSNs before disclosing court records "does not contravene the purpose of the Public Records Act, which is 'to expose government activity to public scrutiny.' Revealing individuals' Social Security numbers that are contained in criminal records does not shed light on any government activity."[898]

E. HIPAA & HITECH

Regulations implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") became fully effective in April 2003. Among the regulations written to implement HIPAA was the "Privacy Rule," which is a collection of federal regulations seeking to maintain the confidentiality of individually identifiable health information.[899] For some public offices, the Privacy Rule and HITECH[900] affect the manner in which 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."[901] PHI is information that could reasonably lead to the identification of an individual, either by itself or in combination with other reasonably available information.[902] The HIPAA regulations apply to the three "covered entities"[903] listed below:

- **Healthcare provider**: Generally, a "healthcare provider" is any entity providing mental or health services that electronically transmits health information for any financial or administrative purpose subject to HIPAA.
- **A health plan**: A "health plan" is an individual or group plan that provides or pays the cost of medical care, such as an HMO.
- **Health care clearinghouse**: A "health care clearinghouse" is any entity that processes health information from one format into another for particular purposes, such as a billing service.

Legal counsel should be consulted if there is uncertainty about whether a particular public office is a "covered entity," or "business associate" of a covered entity, for purposes of HIPAA.

2. HIPAA does not apply when Ohio 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.[904] For this purpose, note that the Public Records Act only mandates disclosure when no other exemption applies.

So, when the public records law only permits, but does not mandate, the disclosure of protected health information then 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[905] 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.[906] 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 HIPPA did not supersede state disclosure requirements, even if requested records contained protected health information.[907] Specifically, the Court found 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[.]'"[908] However, the "Public Records Act requires disclosure of records unless the disclosure or release is prohibited by federal law."[909] 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.[910]

Additional resources:

The HITECH Act of 2009, effective on February 17, 2010, materially affects the privacy and security of PHI. A number of resources are available about HITECH legislation. *See, e.g.,* **http://www.hhs.gov/hipaa/for-professionals/special-topics/health-information-technology/index.html** and "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).

F. Ohio Personal Information Systems Act[911]

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.[912] 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.[913] The General Assembly has made clear that PISA is not designed to deprive the public of otherwise public information by incorporating the following provisions with respect to the Public Records and Open Meetings Acts:

- State and local agencies whose principle activities are to enforce the criminal laws are exempt from PISA.[914]
- "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]."[915]
- "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."[916]
- As used in the PISA, "'confidential personal information' means personal information that is **not** a public record for purposes of [the Public Records Act]."[917]

The following definitions apply to the information covered by PISA:

"Personal information" 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.[918]

"'Confidential personal information' means personal information that is **not** a public record for purposes of [the Public Records Act]."[919]

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.[920]

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, or newsletters; or
- Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.[921]

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.[922] Based on provisions added to the law in 2009, state agencies[923] must adopt rules under Chapter 119 of the Revised Code regulating access to confidential personal information the agency keeps, whether electronically or on paper.[924] No person shall knowingly access "confidential personal information" in violation of these rules,[925] and no person shall knowingly use or disclose "confidential personal information" in a manner prohibited by law.[926] A state agency may not employ persons who have violated access, use, or disclosure laws regarding confidential personal information.[927] 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."[928]

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).[929]

Note: Because PISA concerns the treatment of non-records and non-public records, it is not set out in great detail in this Sunshine Law Manual. Public offices should consult with their legal counsel for further guidance about this law.

Notes:

[699] *Mehta v. Ohio Univ.*, Ct. of Cl. No. 2006-06752, 2009-Ohio-4699, ¶¶ 36-37 (determining that a public university's internal report of investigation of plagiarism was not exempted from disclosure under the Public Records Act), *rev'd in part on other grounds,* 194 Ohio App.3d 844, 2011-Ohio-3484.
[700] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 647 N.E.2d 1374 (1995).
[701] *See State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 42, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 51 (holding that records "made in the routine course of public employment" that related to but preceded a law enforcement investigation are not confidential law enforcement investigatory records); *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 316, 750 N.E.2d 156 (2001).
[702] R.C. 149.43(B)(8); *see* Chapter Two: B. 4. a. "Prison Inmates."
[703] *E.g., State ex rel. Ellis v. Cleveland Police Forensic Lab,* 137 N.E.3d 1171, 2019-Ohio-4201 (denying an inmate's request "concerning a criminal investigation" because he failed to secure the pre-approval required in R.C. 149.43(B)(8)).
[704] R.C. 149.43(A)(2).
[705] R.C. 149.43(A)(2)(a)-(d).
[706] *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378, 662 N.E.2d 334 (1996) (holding that, because 911 tapes are not part of an investigation, "it does not matter that release of the tapes might reveal the identity of an uncharged suspect or contain information which, if disclosed, would endanger the life or physical safety of a witness"); *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 170, 637 N.E.2d 911 (1994).
[707] *See, e.g.*, *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53, 552 N.E.2d 635 (1990).
[708] *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53, 552 N.E.2d 635 (1990); *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 445, 732 N.E.2d 969 (2000).
[709] *See State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 57 Ohio St.3d 77, 79-80, 566 N.E.2d 146 (1991); *see also, State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Franklin Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 77, *rev'd on other grounds,* 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193 (holding that redacted portions of audit records were directed to specific misconduct and were not simply part of routine monitoring.)
[710] *State ex rel. Police Officers for Equal Rights v. Lashutka*, 72 Ohio St.3d 185, 187, 648 N.E.2d 808 (1995).
[711] *See State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Franklin Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 76, *rev'd on other grounds,* 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193 (noting that the special audit by the Auditor of State clearly 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, 313 N.E.2d 851 (1974) (noting juvenile delinquency is an example of a "quasi-criminal" matter).
[712] *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Franklin Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 76, *rev'd on other grounds,* 110 Ohio St.3d 456, 2006-Ohio-485, 854 N.E.2d 193 (noting that the special audit by the Auditor of State clearly 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).
[713] *See, e.g.*, *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 684, 660 N.E.2d 1211 (1996); *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53, 552 N.E.2d 635 (1990) ("The issue is whether records compiled by the committee pertain to a criminal, quasi-criminal or administrative matter. Those categories encompass the kinds of anti-fraud and anti-corruption investigations undertaken by the committee. The records are compiled by the committee in order to investigate matter prohibited by state law and administrative rule." (emphasis omitted)); *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, 930 N.E.2d 1280, ¶ 29 ("The reference in R.C. 149.43(A)(2) to four types of law enforcement matters – criminal, quasi-criminal, civil, and administrative – evidences a clear statutory intention to include investigative activities of state licensing boards." (quotation omitted)); *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Franklin Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 76, *rev'd on other grounds,* 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193 (holding that the special audit by the Auditor of State clearly 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".)
[714] *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53, 552 N.E.2d 635 (1990); *State ex rel. McGee v. Ohio State Bd. of Psychology*, 49 Ohio St.3d 59, 60, 550 N.E.2d 945 (1990*), overruled on other grounds*, *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (1994).
[715] *State ex rel. Freedom Communications, Inc. v. Elida Community Fire Co.*, 82 Ohio St.3d 578, 581 (1998) (citations omitted); *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143, 647 N.E.2d 1374 (1995) (finding polygraph test results, questionnaires, and other materials gathered in the course of a police department's hiring process were not "law enforcement matters" for purposes of CLEIRs).
[716] *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 49.
[717] *State ex rel. McGowan v. Cuyahoga Metro. Hous. Auth.*, 78 Ohio St.3d 518, 519, 678 N.E.2d 1388 (1997); *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142 (1995) (finding personnel records reflecting the discipline of police officers were not confidential law enforcement investigatory records exempted from disclosure).
[718] *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 153 Ohio St.3d 63, 2017-Ohio-8988, 101 N.E.3d 396, ¶¶ 34-38 (rejecting argument that a coroner is not a law enforcement officer and, therefore, CLEIRs cannot apply to a coroner's final autopsy reports, reasoning that "there is no doubt that the nature of a coroner's work in a homicide-related autopsy is investigative and pertains to law enforcement"); *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Franklin Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 76, *rev'd on other grounds*, 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193.
[719] *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158, 684 N.E.2d 1239 (1997) (finding that 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).
[720] *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 51 (holding that "records made in the routine course of public employment before" an investigation began were not confidential law enforcement records); *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 316, 750 N.E.2d 156 (2001) (finding street repair records of city's public works superintendent were "unquestionably public records" and "[t]he mere fact that these records might have subsequently become relevant to Dillery's criminal cases did not transform them into records exempt from disclosure"); *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378, 662 N.E.2d 334 (1996) (holding that 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").
[721] R.C. 149.43(A)(2); *State ex rel. Multimedia v. Snowden*, 72 Ohio St.3d 141, 142, '647 N.E.2d 1374 (1995).
[722] *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, ¶ 23.
[723] *State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept.*, 38 Ohio St.3d 324, 328 (1988) *overruled on other grounds, State ex rel. Steckman v. Jackson,* 70 Ohio St.3d 420, 639 N.E.2d 83 (1994) ("[I]t is neither necessary nor controlling to engage in a query as to whether or not a person who has been arrested or issued a citation for minor criminal violations and traffic violations … has been formally charged. Arrest records and intoxilyzer records which contain the names of persons who have been formally charged with an offense, as well as those who have been arrested and/or issued citations but who have not been formally charged, are not confidential law enforcement investigatory records within the exception of R.C. 149.43(A)(2)(a).").

[724] State ex rel. Musial v. N. Olmsted, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, ¶¶ 23-24 (noting that a "charge" is a "formal accusation of an offense as a preliminary step to prosecution" and that "[a] formal accusation of an offense requires a charging instrument, i.e., an indictment, information, or criminal complaint" (quotation omitted)); *see also* Crim.R. 7; *Black's Law Dictionary* 249 (10th ed. 2014); State ex rel. Master v. Cleveland, 75 Ohio St.3d 23, 30, 661 N.E.2d 180 (1996); *State ex rel. Moreland v. Dayton*, 67 Ohio St.3d 129, 130 (1993).
[725] State ex rel. Master v. Cleveland, 76 Ohio St.3d 340, 343, 667 N.E.2d 974 (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).
[726] State ex rel. Master v. Cleveland, 75 Ohio St.3d 23, 31, 661 N.E.2d 180 (1996) ("'[W]hen a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court must make an individualized scrutiny of the records in question. If the court finds that these records contain excepted information, this information must be redacted and any remaining information must be released.'" (quoting *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 85, 526 N.E.2d 786 (1998)); State ex rel. White v. Watson, 8th Dist. Cuyahoga No. 86737, 2006-Ohio-5234, ¶ 4 ("The government has the duty to disclose public records, including the parts of a record which do not come within an exemption. Thus, if only part of a record is exempt, the government may redact the exempt part and release the rest.").
[727] State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor, 89 Ohio St.3d 440, 447-48, 732 N.E.2d 969 (2000) (holding that public office may withhold portions of investigative records that "would create a high probability of disclosure of the identity of uncharged suspects"); *State ex rel. McGee v. Ohio State Bd. of Psychology*, 49 Ohio St.3d 59, 60, 550 N.E.2d 945 (1990), *overruled on other grounds, State ex rel. Steckman v. Jackson,* 70 Ohio St.3d 420, 639 N.E.2d 83 (1994) (holding that, when exempt information is so "intertwined" with the public information as to reveal the exempt information from the context, the record itself, and not just the exempt information, may be withheld); *State ex rel. Standifer v. City of Cleveland,* 8th Dist. Cuyahoga No. 110200, 2021-Ohio-3100, ¶ 17 (holding that release of use of force reports would create a high probability of disclosure of identity of the officer using force and concluding that the entire report could be withheld because the information in the report was so "intertwined with the identity of the suspect that effective redactions could not be made.").
[728] State ex rel. Rocker v. Guernsey Cty. Sheriff's Office, 126 Ohio St.3d 224, 2010-Ohio-3288, 932 N.E.2d 327, ¶¶ 11-15; Narciso v. Powell Police Dept., Ct. of Cl. No. 2018-01195PQ, 2018-Ohio-4590, ¶¶ 29-30 (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").
[729] R.C. 149.43(B)(3); State ex rel. Doe v. Smith, 123 Ohio St.3d 44, 2009-Ohio-4149, 914 N.E.2d 159, ¶¶ 6, 9, 38, 43 (finding that an explanation including legal authority must be provided even when that explanation reveals the otherwise deniable existence of sealed records, and the response, "no information available," violated R.C. 149.43(B)(3)).
[730] State ex rel. Musial v. N. Olmsed, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, ¶ 28.
[731] State ex rel. Rocker v. Guernsey Cty. Sheriff's Office, 126 Ohio St.3d 224, 2010-Ohio-3288, 932 N.E.2d 327, ¶ 10; State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor, 89 Ohio St.3d 440, 447, 732 N.E.2d 969 (2000).
[732] State ex rel. Musial v. N. Olmsted, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, ¶¶ 21-29.
[733] *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 682, 684, 660 N.E.2d 1211 (1996).
[734] *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9, 552 N.E.2d 243 (C.P. 1990).
[735] *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9, 552 N.E.2d 243 (C.P. 1990); *see also* State ex rel. Martin v. Cleveland, 67 Ohio St.3d 155, 156-57, 616 N.E.2d 886 (1993) (finding that, to trigger an exemption, a promise of confidentiality or a threat to physical safety need not be within the "four corners" of a document).
[736] *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 8-9, 552 N.E.2d 243 (C.P. 1990).
[737] *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9, 552 N.E.2d 243 (C.P. 1990).
[738] *State ex rel. Beacon Journal Publishing Co. v. Kent State Univ.*, 68 Ohio St.3d 40, 44, 623 N.E.2d 51 (1993), *overruled on other grounds, State ex rel. Steckman v. Jackson,* 70 Ohio St.3d 420, 639 N.E.2d 83 (1994); *State ex rel. Strothers v. McFaul*, 122 Ohio App.3d 327, 332, 701 N.E.2d 759 (8th Dist.1997).
[739] R.C. 149.43(A)(2)(c); *State ex rel. Walker v. Balraj*, 8th Dist. Cuyahoga No. 77967, 2000 Ohio App. LEXIS 3620 (Aug. 2, 2000) (results of "trace metal test" are exempt as specific investigatory work product).
[740] *See State ex rel. Dayton Newspapers, Inc. v. Rauch*, 12 Ohio St.3d 100, 100-01, 465 N.E.2d 458 (1984), *as modified by R.C. 313.10* (finding an autopsy report may be exempt as a specific investigatory technique or work product), *as modified by* R.C. 313.10; *State ex rel. Lawhorn v. White*, 8th Dist. No. 63290, (March 7,1994); *State ex rel. Williams v. Cleveland*, 8th Dist. Cuyahoga No. 57769, 1991 Ohio App. LEXIS 303 (Jan. 24, 1991); *State ex rel. Jester v. Cleveland*, 8th Dist. Cuyahoga No. 56438, 1991 Ohio App. LEXIS 149 (Jan. 17, 1991); *State ex rel. Apanovitch v. Cleveland*, 8th Dist. Cuyahoga No. 58867, 1991 Ohio App. LEXIS 663 (Feb. 6, 1991). The three preceding cases were affirmed in State ex rel. Williams v. Cleveland, 64 Ohio St.3d 544 (1992).
[741] *State ex rel. Broom v. Cleveland*, 8th Dist. Cuyahoga No. 59571, 1992 Ohio App. LEXIS 4548 (Aug. 27, 1992) ("[T]he records mention confidential investigatory techniques, the effectiveness of which could be compromised by disclosure. To insure the continued effectiveness of these techniques, this court orders references to the techniques redacted."(citation omitted)); State ex rel. Toledo Blade Co. v. Toledo, 6th Dist. Lucas No. L-12-1183, 2013-Ohio-3094, ¶ 10 (holding 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).
[742] *State ex rel. Beacon Journal v. Univ. of Akron*, 64 Ohio St.2d 392, 397, 415 N.E.2d 310 (1980).
[743] State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office, 153 Ohio St.3d 63, 2017-Ohio-8988, 101 N.E.3d 396 ¶¶ 34-44; State ex rel. Beacon Journal Publishing Co. v. Maurer, 91 Ohio St.3d 54, 56-57, 741 N.E.2d 511 (2001).
[744] State ex rel. Community Journal v. Reed, 12th Dist. Clermont No. CA2014-01-010, 2014-Ohio-5745, ¶¶ 35-42 (finding 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).
[745] State ex rel. Mahajan v. State Med. Bd. of Ohio, 127 Ohio St.3d 497, 2010-Ohio-5995, 940 N.E.2d 1280, ¶¶ 51-52 (regarding investigative work product incidentally contained in chief enforcement attorney's general personnel file).
[746] *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 431-32 (1994) (expanding the previous definition of "investigative work product" expressly and dramatically, which had previously limited the term to only those materials that would reveal the investigator's "deliberative and subjective analysis" of a case), *overruled on other grounds* by State ex rel. Caster v. Columbus, 151 Ohio St.3d 425, 2016-Ohio-8394, ¶ 47; Gannett GP Media, Inc. v. Chillicothe, Ohio Police Dept., Ct. of Cl. No. 2017-00886PQ, 2018-Ohio-1552, ¶ 25 ("Combing through law enforcement investigatory work product to find arguably non-exempt words or lines is the type of undue and needless interference that the Supreme Court sought to preclude by applying Black's broad definition of the 'work product rule' to investigatory work product.").
[747] State ex rel. Cincinnati Enquirer v. Ohio Dept. of Public Safety, 148 Ohio St.3d 433, 2016-Ohio-7987, ¶¶ 45-50 (holding that dash cam video must be subjected to case-by-case review to determine whether any portion is confidential investigatory work product); State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor, 89 Ohio St.3d 440, 448 (2000) (finding certain records, e.g., copies of newspaper articles and statutes, are unquestionably nonexempt and do not become exempt simply because they are placed in an investigative or prosecutorial file); State ex rel. WLWT-TV5 v. Leis, 77 Ohio St.3d 357, 361 (1997) ("An examination … reveals the following nonexempt records: The … indictment, copies of various Revised Code provisions, newspaper articles, a blank charitable organization registration statement form, the Brotherhood's Yearbook

and Buyer's Guide, the transcript of the … plea hearing, a videotape of television news reports, and a campaign committee finance report filed with the board of elections."), *overruled on other grounds*, *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 47.

[748] *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 47 (overruling *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, and *State ex rel. WLWT–TV5 v. Leis*, 77 Ohio St.3d 357, to the extent that they conflict with this decision). Under prior law, a law enforcement matter concluded only when all potential actions, trials, and post-trial proceedings in the matter had ended, including a direct appeal, post-conviction relief, or habeas corpus proceedings. See *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St.3d 357, 673 N.E.2d 1365 (1997); *Perry v. Onunwor*, 8th Dist. Cuyahoga No. 78398, 2000 Ohio App. LEXIS 5893 (Dec. 7, 2000) (including federal habeas corpus proceedings as one of the "possibilities for further proceedings and trials"); *State ex rel. Cleveland Police Patrolmen's Assn. v. Cleveland*, 84 Ohio St.3d 310, 311-12 (1999) (holding that, when a defendant signed an affidavit agreeing not to pursue appeal or post-conviction relief, trial preparation and investigatory work product exemptions were inapplicable).

[749] *State ex rel. Leonard v. White*, 75 Ohio St.3d 516, 518, 664 N.E.2d 527 (1996).

[750] *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 446, 732 N.E.2d 969 (2000); *Hilliard City Sch. Dist. v. Columbus Div. of Police*, Ct. of Cl. No. 2017-00450-PQ, 2017-Ohio-8052, ¶¶ 23-27 (concluding that investigatory work product exemption had not expired when investigation became inactive due to the exhaustion of available leads as it could become active again at any time based on new information), *adopted by* 2017-Ohio-8454.

[751] *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 355, 673 N.E.2d 1360 (1997).

[752] *State ex rel. Summers v. Fox,* 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625, ¶ 55.

[753] S*tate ex rel. Cleveland Police Patrolmen's Assn. v. Cleveland*, 122 Ohio App.3d 696, 701 (8th Dist. 1997) (holding a "Strike Plan" and related records prepared in connection with the possible strike by teachers were exempt because their release could endanger the lives of police personnel).

[754] R.C. 149.43(A)(2)(d); *see State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 156, 616 N.E.2d 886 (1993) (holding a document does not need to specify within its four corners the promise of confidentiality or threat to physical safety).

[755] *See e.g., State ex rel. Johnson v. Cleveland*, 65 Ohio St.3d 331, 333-34, 603 N.E. 1011 (1992), *overruled on other grounds, State ex rel. Steckman v. Jackson,* 70 Ohio St.3d 420, 639 N.E.2d 83 (1994).

[756] *See e.g., State ex rel. Johnson v. Cleveland*, 65 Ohio St.3d 331, 333-34, 603 N.E.2d 1011 (1992), *overruled on other grounds, State ex rel. Steckman v. Jackson,* 70 Ohio St.3d 420, 639 N.E.2d 83 (1994).

[757] *State ex rel. Musial v. City of N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, ¶¶ 26-28.

[758] *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 54, 552 N.E.2d 635 (1990) ("One purpose of the exemption in R.C. 149.43(A)(2) is to protect a confidential informant. This purpose would be subverted if a record (in which the informant's identity is disclosed) were deemed subject to disclosure simply because a period of time had elapsed with no enforcement action."); *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 157, 616 N.E.2d 886 (1993).

[759] *State ex rel. Broom v. Cleveland*, 8th Dist. Cuyahoga No. 59571, 1992 Ohio App. LEXIS 4548, at *39 (Aug. 27, 1992).

[760] *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 616 N.E.2d 886 (1993).

[761] Ohio Adm.Code 4501:2-10-06(C).

[762] R.C. 109.57 (D)(1)(b).

[763] R.C. 149.435.

[764] *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 13, citing *State ex rel. Beacon Journal Publishing Co. v. Maurer,* 91 Ohio St.3d 54 (2001) (referring to an "Ohio Uniform Incident Form").

[765] *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 13; *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 56-57, 741 N.E.2d 511 (2001) (noting that it ruled the way it did "despite the risk that the report may disclose the identity of an uncharged suspect").

[766] *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 57, 741 N.E.2d 511 (2001). B*ut see Gannett GP Media, Inc. v. Chillicothe, Ohio Police Dept.*, Ct. of Cl. No. 2017-00886PQ, 2018-Ohio-1552, ¶ 22 ("The term 'incident report' does not include later reports about the incident, or additional complaints arising from the same incident . . . After an investigation has been initiated, supplementary reports of investigators are 'investigatory' work product."); *Colahan v. Worthington Police Dept.*, Ct. of Cl. No. 2018-00928PQ, 2018-Ohio-4594 (holding letters received after initial incident report was created was investigative work product that could be withheld).

[767] *State ex rel. Miller v. Pinkney*, 149 Ohio St.3d 662, 2017-Ohio-1335, 77 N.E.3d 915 (incident reports were not exempt from disclosure under security record exemption and had to be released with redaction of exempt information); *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, 819 N.E.2d 1087, ¶ 55 (explaining that, "in *Maurer*, we did not adopt a per se rule that all police offense-and-incident reports are subject to disclosure notwithstanding the applicability of any exemption"), superseded by statute on other grounds; *State ex rel. Cincinnati Enquirer v. Ohio DOC, Div. of State Fire Marshall,* 10th Dist. Franklin No. 17AP-63, 2019-Ohio-4009, ¶27, (indicating the formatted fill-in-the-blank pages of the fire incident report were subject to disclosure while the narrative "Cause Determination" section that contained the investigator's conclusions and information regarding the cause of the fire did qualify as investigatory work product".)

[768] *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, 819 N.E.2d 1087, ¶¶ 44-45 (noting that 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)).

[769] *Sutelan v. Ohio State Univ.,* Ct. of Cl. No. 2019-00250PQ, 2019-Ohio-3675, ¶¶ 15-17, special master's recommendations adopted in part, 2019-Ohio-4026 (holding that an incident report need not be titled "incident report" or be printed out to be "created." If it is the "functional equivalent" of a pre-investigatory report. The CLEIRs exception cannot be used to withhold the document.

[770] *State ex rel. Standifer v. City of Cleveland,* 8th Dist. Cuyahoga No. 110200, 2021-Ohio-3100, ¶ 16 (holding use of force reports were law enforcement investigatory records and not CLEIRs exempt incident reports because (1) the reports were prepared pursuant to a settlement agreement and (2) each report is reviewed by the chain of command of police to determine whether use od force was appropriate).

[771] *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St.3d 172, 2005-Ohio-685, 824 N.E.2d 64; *State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St.3d 392, 2015-Ohio-974, 662 N.E.2d 334, ¶¶ 13-18 (holding that recording of return call by dispatcher to 911 caller was not exempt from disclosure either as trial preparation or confidential law enforcement investigatory records)

[772] *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996) (finding 911 tapes at issue had to be released immediately).

[773] *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St.3d 172, 2005-Ohio-685, 824 N.E.2d 64, ¶ 5.

[774] R.C. 128.99 establishes criminal penalties for violation of R.C. 128.32.

[775] The categories addressed in this section may not include all exemptions (or types of employment records) that could apply to every public office's personnel records.

[776] *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.

[777] The term "personnel file" has no single definition in public records law. *See State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 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*, 178 Ohio App.3d 345, 2008-Ohio-5011, ¶ 31 (5th Dist.) (finding that, when the appellant requested 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").

[778] *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 367 (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.").

[779] *But see State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 39 (finding 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*, 139 Ohio St.3d 423, 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.").

[780] R.C. 149.434(A).

[781] House Bill (H.B) 110.

[782] *Sengstock v. City of Twinsburg,* Ct. of Cl. No. 2021-00330PQ, 2021-Ohio-4438, ¶ 13, *adopted by Sengstock v. City of Twinsburg,* Ct. of Cl. No. 2021-0330PQ, 2022-Ohio-314 (juvenile employee names in a payroll record do not fall under any exemption and must be disclosed under R.C. 149.43).

[783] *State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 41; *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997).

[784] *State ex rel. Consumer News Servs. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 53 (noting opponents' argument that disclosing these materials would prevent the best candidates from applying). *But see State ex rel. The Plain Dealer Publishing Co. v. Cleveland*, 75 Ohio St.3d 31, 36 (1996) ("[I]t is not evident that disclosure of resumes of applicants for public offices like police chief necessarily prevents the best qualified candidates from applying.").

[785] *State ex rel. Consumer News Servs. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶¶ 40-47.

[786] *State ex rel. Consumer News Servs. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 46; *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997).

[787] *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997).

[788] For a discussion on "kept by," *see* Chapter One: C. 2. "What 'kept by' means."

[789] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Cincinnati Bd. of Edn.*, 99 Ohio St.3d 6, 2003-Ohio-2260, ¶¶ 11-15.

[790] *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); *Dinkins v. Ohio Div. of State Highway Patrol*, 116 F.R.D. 270, 272 (N.D. Ohio May 27, 1987).

[791] *See, e.g.*, R.C. 113.041(E) (providing for criminal history checks of employees of the state treasurer); R.C. 109.5721(E) (regarding 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) (addressing the results of criminal history checks of children's day care employees); R.C. 3319.39(D) (addressing the results of criminal history check of teachers). Note that statutes may also require dissemination of notice of an employee's or volunteer's conviction. *See, e.g.*, R.C. 109.576 (providing for notice of a volunteer's conviction when the volunteer has unsupervised access to a child).

[792] R.C. 109.57(D), (H); O.A.C. 4501:2-10-06(C); 34 U.S.C. 10231; 28 C.F.R. 20.33; *In the Matter of: C.C.*, 11th Dist. Geauga No. 2008-G-2838, 2008-Ohio-6776, ¶¶ 8-10 (providing that there are three different analyses of the interplay between Juv. R. 37 (juvenile court records) and O.A.C. 4501:2-10-06 (LEADS records and BMV statutes)); *Patrolman X v. Toledo*, 132 Ohio App.3d 381, 389 (Lucas C.P. 1996); *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 82 Ohio App.3d 202, 206-07 (8th Dist. 1992) (FBI and BCI rap sheets); *Ingraham v. Ribar*, 80 Ohio App.3d 29, 33-34 (9th Dist. 1992) (LEADS computer information); 1994 Ohio Atty.Gen.Ops. No. 046.

[793] *State ex rel. Medina Cty. Gazette v. Brunswick*, 109 Ohio App.3d 661, 664-665 (9th Dist. 1996).

[794] *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 49.

[795] *State ex rel. Freedom Communications, Inc. v. Elida Community Fire Co.*, 82 Ohio St.3d 578, 581-82 (1998) (holding that an investigation of an alleged sexual assault conducted internally as a personnel matter is not a law enforcement matter).

[796] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142 (1995) (finding personnel records of police officers reflecting the discipline of police officers are not confidential law enforcement investigatory records exempted from disclosure).

[797] R.C. 124.88(B).

[798] *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Lucas Cty. Sheriff's Office*, 6th Dist. Lucas No. L-06-1108, 2007-Ohio-101, ¶ 16 (a "fitness for duty evaluation" did not constitute a medical record).

[799] *State v. Hall*, 141 Ohio App.3d 561, 568 (2001) (4th Dist. 2001) (holding psychiatric reports compiled solely to assist the court with "competency to stand trial determination" were not medical records); *State v. Rohrer*, 4th Dist. Ross No. 14CA3471, 2015-Ohio-5333, ¶¶ 52-57 (finding psychiatric reports generated "for purposes of the continued commitment proceedings" were not medical records).

[800] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 144-145 (1995) (a police psychologist report obtained to assist the police hiring process is not a medical record).

[801] *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143 (1995), citing *State ex rel. Lorain Journal Co. v. Lorain*, 87 Ohio App.3d 112 (9th Dist. 1993).

[802] R.C. 149.43(A)(8)(c); *See also* Chapter Six: C. "Residential and Familial Information of Covered Professionals that Are not Public Records."

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

[804] 42 U.S.C. 12112; 29 C.F.R. 1630.14(b)(1), (c)(1).

[805] 29 C.F.R. 1630.14(c); *see also State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, ¶¶ 44, 47 (finding employer's questioning of court reporter and opposing counsel was properly redacted as inquiry into whether employee was able to perform job-related functions, as pertinent ADA provision does not limit the confidential nature of such inquiries to questions directed to employees or medical personnel).

[806] 29 C.F.R. 1630.14(b)(1), (c)(1).

[807] R.C. 1347.15(A)(1).

[808] R.C. 149.43(A)(1)(a), (A)(3).

[809] R.C. 149.43(A)(3) (extends to "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"); *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158 (1997) (emphasizing that both parts of this conjunctive definition must be met in order to fall under the medical records exemption: "a record must pertain to a medical diagnosis *and* be generated and maintained in the process of medical treatment" (quotation omitted)).

[810] *See* 45 C.F.R. 160.101, *et seq.*; 45 C.F.R. §§ 164.102, *et seq.*

[811] *See* 29 U.S.C. 2601, *et seq.*; 29 C.F.R. § 825.500(g).

[812] *See* 42 U.S.C. 12101 *et seq.*

[813] R.C. 3319.321; 20 U.S.C. 1232g; *see* Chapter Three: F. 3. "Student records."

[814] R.C. 149.43(A)(1)(dd), 149.45(A)(1)(a); *see also State ex rel. Beacon Journal Publishing Co. v. Akron*, 70 Ohio St.3d 605, 612 (1994) (noting that there is a "high potential for fraud and victimization caused by the unchecked release of city employee SSNs"); *see also* Chapter Three: F. 1. c. "Social security numbers."
[815] *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).
[816] R.C. 149.45(B)(1) (providing that "[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").
[817] R.C. 149.45(C)(1) (providing that "[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").
[818] R.C. 718.13; *see also Reno v. Centerville*, 2d Dist. Montgomery No. 20078, 2004-Ohio-781, ¶¶ 25-26; Chapter Three: F. 1. e. "Income tax returns."
[819] 1992 Ohio Atty.Gen.Ops. No. 005.
[820] 1992 Ohio Atty.Gen.Ops. No. 005.
[821] 26 U.S.C. 6103.
[822] *See McQueen v. United States*, 264 F. Supp.2d 502, 516 (S.D. Tex.2003), *aff'd*, 100 F. App'x 964 (5th Cir.2004); *LaRouche v. Dept. of Treasury*, 112 F. Supp.2d 48, 54 (D.D.C.2000) (noting "[r]eturn information is defined broadly").
[823] R.C. 5747.18.
[824] *See* Chapter Six: C. "Residential and Familial Information of Covered Professions that are not Public Records."
[825] R.C. 149.43(A)(1)(p), (A)(8).
[826] R.C. 149.43(A)(1)(p), (A)(7).
[827] *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 40-43 (2000) (holding that the 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) (superseded by statute on other grounds).
[828] *See, e.g.,* R.C. 149.43(A)(7) (designated public service worker residential and familial information.)
[829] *See, e.g.,* R.C. 2151.142 (providing for confidentiality of residential address of public children services agency or private child placing agency personnel).
[830] Individuals in these covered professions can also request to have certain information redacted or prohibit its disclosure. For additional discussion, see Chapter Three: F. 1. b. "Personal information listed online."
[831] For purposes of this section, "covered professions" is the term used to describe all of the persons covered under the residential and familial exemption (i.e., peace officer, firefighter, etc.).
[832] R.C. 149.43(A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, 'peace officer' has the meaning defined in R.C. 109.71 and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.")
[833] R.C. 149.43(A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, '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.").
[834] R.C. 149.43(A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, 'county or multicounty corrections officer' means any corrections officer employed by any county or multicounty correctional facility.").
[835] R.C. 149.43 (A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, '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.").
[836] R.C. 149.43(A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, 'protective services worker' means any employee of a county agency who is responsible for child protective services, child support services, or adult protective services.").
[837] R.C. 149.43(A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, '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.").
[838] R.C. 149.43(A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, 'firefighter' means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.").
[839] R.C. 149.43(A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, 'EMT' means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. 'Emergency medical service organization,' 'EMT-basic,' 'EMT-I,' and 'paramedic' have the same meanings as in section 4765.01 of the Revised Code.").
[840] R.C. 149.43(A)(9) ("As used in divisions (A)(7) and (15) to (17) of this section, 'investigator of the bureau of criminal identification and investigation' has the meaning defined in section 2903.11 of the Revised Code.").
[841] R.C. 149.43(A)(9) ("As used in division (A)(7) and (15) to (17) of this section, 'emergency service telecommunicator' has the meaning defined in section 4742.01 of the Revised Code.").
[842] R.C. 149.43(A)(9) ("As used in division (A)(7) and (15) to (17) of this section, '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 section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code.").
[843] R.C. 149.43(A)(9) ("As used in division (A)(7) and (15) to (17) of this section, '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.").
[844] R.C. 149.43(A)(9) ("As used in division (A)(7) and (15) to (17) of this section, '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 section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code.").
[845] R.C. 149.43(A)(9) ("As used in division (A)(7) and (15) to (17) of this section, 'federal law enforcement officer' has the meaning defined in section 9.88 of the Revised Code.").
[846] R.C. 149.43(A)(1)(p), (A)(7)-(8). For discussion of application by public offices, see 2000 Ohio Atty.Gen.Ops. No. 21.

[847] R.C. 149.43(A)(8)(a). Because prosecuting attorneys and judges are elected officials, the actual personal residential addresses of elected prosecuting attorneys and judges not exempted from disclosure. R.C. 149.43(A)(8)(i).
[848] R.C. 149.43(A)(8)(f).
[849] R.C. 149.43(A)(8)(b).
[850] R.C. 149.43(A)(8)(c).
[851] R.C. 149.43(A)(8)(d).
[852] R.C. 149.43(A)(8)(e).
[853] R.C. 149.43(A)(8)(g); *State ex rel. McElrath v. City of Cleveland*, 8th Dist. Cuyahoga No. 106078, 2018-Ohio-1753, ¶ 20.
[854] R.C. 149.43(A)(8)(c), (f).
[855] R.C. 149.43(A)(8)(c), (f).
[856] R.C. 149.43(A)(8)(f).
[857] R.C. 2921.24(A) (prohibiting release of certain officers' home addresses by employer, court, or court clerk in a pending criminal case); R.C. 2921.25(A) (prohibiting disclosure of certain officers' home addresses during examination in court); *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 82 Ohio App.3d 202, 212 (8th Dist. 1992).
[858] *See, e.g.*, R.C. 2151.142(B), (C) (providing that, in addition to the "covered professions" listed above, certain residential addresses of employees of a public children services agency or private child placing agency and that employee's family members are exempt from disclosure).
[859] *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶ 5 ("[I]t is apparent that court records fall within the broad definition of a 'public record' ….").
[860] Sup.R. 2(B) (defining "court" as county court, municipal court, court of common pleas, and court of appeals). The Ohio Supreme Court 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 Ass'n. Certified Griev. Commt.,* 159 Ohio St.3d 211, 2019-Ohio-5157, 159 Ohio St.3d 211, ¶ 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*, 5th Dist. No. 15CA66, 2016-Ohio-4622, ¶ 9. *But see Fairley v. Cuyahoga Cty. Prosecutor,* Ct. of Cl. No. 2019-00955PQ, 2020-Ohio-1425. ¶ 17 (noting that R,C, 149.43 should apply to requests made to non-court public offices for their copies of court records).
[861] *State ex rel. Parisi v. Dayton Bar Assn. Certified Griev. Commt.,* 159 Ohio St.3d 211, 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. Husband v. Shanahan,* 157 Ohio St.3d 148, 2019-Ohio-1853, ¶ 5 ("When a requester seeks public records from a court, the Rules of Superintendence for the Courts of Ohio apply.") *But see State ex rel. Bey v. Byrd,* 160 Ohio St.3d 141, 2020-Ohio-2766, ¶ 15 ("Generally 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.").
[862] *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, ¶ 27 (holding that the 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" (Quotation omitted).).
[863] Sup.R. 47(A)(1), (2); Sup.R. 99; *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, ¶ 21, n.2; *State ex rel. Ware v. Byrd,* 8th Dist. Cuyahoga No. 110865, 2021-Ohio-4432, ¶ 7 & n.1.
[864] Sup.R. 47(A)(1). *State ex rel. Richfield v. Laria,* 138 Ohio St.3d 168, 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."); *State ex rel. Harris v. Pureval,* 155 Ohio St.3d 343, 2018-Ohio-4718, ¶ 11 (holding that, unlike the Public Records Act, "[t]he Rules of Superintendence do not authorize statutory damages under any circumstances."). *See also State ex rel. Ware v. Walsh,* 9th Dist. Summit No. 30051, 2021-Ohio-4585, ¶ 8 (holding that because relator's criminal case commenced before July 1, 2009. Sup.Rs. 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.); *State ex rel. Ware v. Kurt,* 2021-Ohio-2025, 173 N.E.3d 1268 (9th Dist.).
[865] Sup.R. 47(A)(3).
[866] *State ex rel. Beacon Journal Publishing Co. v. Waters*, 67 Ohio St.3d 321, 323-24 (1993).
[867] Crim.R. 6(E); *State ex rel. Beacon Journal Publishing Co. v. Waters*, 67 Ohio St.3d 321, 323-25 (1993); *Krouse v. Ohio State Univ.*, Ct. of Cl. No. 2018-00988PQ, 2018-Ohio-5014, ¶ 7, adopted by *Krouse v. Ohio State Univ.*, Ct. of Cl. No. 00988PQ, 2018-Ohio-5013 (Nov. 30, 2018).
[868] Juv.R. 37(B); *State ex rel. Cincinnati Enquirer v. Hunter*, 1st Dist. No. C-130072, 2013-Ohio-4459, ¶ 11.
[869] *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶¶ 12-13 (affirming the trial court's sealing order per R.C. 2953.52 and concluding sealed records not subject to release); *Dream Fields, L.L.C. v. Bogart*, 175 Ohio App.3d 165, 2008-Ohio-152, ¶¶ 5-6 (1st Dist.) ("Unless a court record contains information that is excluded from being a public record under R.C. 149.43, it shall not be sealed and shall be available for public inspection. And the party wishing to seal the record has the duty to show that a statutory exclusion applies…Just because the parties have agreed that they want the records sealed is not enough to justify the sealing."); *State ex rel. Cincinnati Enquirer v. Lyons*, 140 Ohio St.3d 7, 2014-Ohio-2354, ¶¶ 30-31 (sealing records not valid when judge did not follow the proper statutory procedure).
[870] *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 6, 9, 28, 43 (holding that response, "There 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,* 8th Dist. Cuyahoga Nos. 107312, 107321, 107322, 2019-Ohio-3758, ¶ 67 ("It should only be in the rarest circumstances that a court seals a case from public scrutiny."). *But see, e.g.*, R.C. 2953.38(G)(2) (establishing that, for expunged records of human trafficking victims, "upon any inquiry" court "shall reply that no record exists").
[871] *Pepper Pike v. Doe*, 66 Ohio St.2d 374 (1981) (decided prior to enactment of legislation addressing the sealing of records when there was no conviction). *But see State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 11 (holding divorce records are not properly sealed when the order results from an agreed judgment entry and are not exempt from disclosure under R.C. 149.43); *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529 (holding that court may exercise inherent authority to seal records relating to a dissolved civil protection order without express statutory authority).
[872] *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235, ¶27.
[873] *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235.
[874] *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235.
[875] *State v. Vanzandt*, 142 Ohio St.3d 223, 2015-Ohio-236, ¶ 15 ("R.C. 2953.53(D) expressly prohibits access to sealed records for purposes other than those specifically listed in the statute's enumerated exceptions, and those exceptions should not have been expanded through the exercise of judicial discretion in this case.").
[876] *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, ¶ 34; *see also State ex rel. Cincinnati Enquirer v. Hunter*, 1st Dist. No. C-130072, 2013-Ohio-4459 (holding that the Rules of Superintendence do not permit a court to substitute initials for the full names of juveniles in delinquency cases, and judge failed to present requisite clear and convincing evidence to justify substitution); *Woyt v. Woyt,* 8th Dist.

Cuyahoga Nos. 107312, 107321, 107322, 2019-Ohio-3758, ¶ 66 (holding that in divorce proceedings, "the 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), " and, "by sealing the entire case file, the court failed to use the lease restrictive means available as required by Sup.R 45(E)(3)").
[877] *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439, 439 (1993) ("A trial judge's personal handwritten notes made during the course of a trial are not public records.").
[878] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 25 (finding the personal information of jurors used only to verify identification, not to determine competency to serve on the jury, such as SSNs, telephone numbers, and driver's license numbers, may be redacted); *State v. McDuffie*, 8th Dist. No. 105614, 2017-Ohio-8490, ¶ 12 (addresses of jurors are not public records and because the jury verdict form contains the jurors' names, the verdict form is not a public record); *State v. Carr,* 2d Dist. Montgomery No. 28193, 2019-Ohio-3802, ¶ 22 (holding that jury verdict forms that contain names of jurors are not public records).
[879] *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶¶ 18, 21 (holding that SSNs in court records do "not shed light on any government activity").
[880] *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63-64 (1998) (finding that, when a judge read unsolicited letters but did not rely on them in sentencing, the letters did not serve to document any activity of the public office and were not "records").
[881] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶¶ 14-20; *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶¶ 8-13; *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas, Juv. Div.*, 73 Ohio St.3d 19, 20 (1995).
[882] *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶ 9 ("The right, however, is not absolute.").
[883] *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas, Juv. Div.*, 73 Ohio St.3d 19, 20 (1995), citing *In re. T.R.*, 52 Ohio St.3d 6 (1990), paragraph two of the syllabus; *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986).
[884] *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶ 8; *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas*, *Juv. Div.*, 73 Ohio St.3d 19, 21 (1995).
[885] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Winkler*, 149 Ohio App.3d 350, 2002-Ohio-4803, ¶ 11 (1st Dist.), citing *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas*, *Juv. Div.*, 73 Ohio App.3d 19, 21 (1995).
[886] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Winkler*, 149 Ohio App.3d 350, 2002-Ohio-4803, ¶ 15 (1st Dist.).
[887] *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Winkler*, 149 Ohio App.3d 350, 2002-Ohio-4803, ¶ 15 (1st Dist.).
[888] *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App.3d 725, 730 (1st Dist. 2001); Hodge v. Montgomery Cty. Prosecutor's Office, Ct. of Cl. No. 2019-01111PQ, ¶10, *adopted by Hodge v. Montgomery Cty. Prosecutor's Office,* Ct. of Cl. No. 2019-01111PQ, 2020-Ohio-4904.
[889] *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, ¶ 34 (finding there must be clear and convincing evidence of the prejudicial effect of pretrial publicity sufficient to prevent defendant from receiving a fair trial in order to overcome the presumptive right of access under Sup.R. 45(A)); *State ex rel. Vindicator Printing Co. v. Watkins*, 66 Ohio St.3d 129, 137-39 (1993) (prohibiting disclosure of pretrial court records prejudicing rights of criminal defendant); *see also State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St.3d 392, 2015-Ohio-974, ¶¶ 24-25 (holding that protective order preventing dissemination of 911 call recording did not satisfy criteria for closure because there was no evidence that any disclosure of recording would endanger right to a fair trial).
[890] *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App.3d 725, 733 (1st Dist. 2001) (holding that a trial judge was required to determine whether the release of records would jeopardize the defendant's right to a fair trial).
[891] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117.
[892] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, paragraph one of the syllabus ("Juror names, addresses, and questionnaire responses are not 'public records' ….").
[893] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, paragraph two of the syllabus ("The First Amendment qualified right of access extends to juror names, addresses, and questionnaires ….").
[894] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 11, citing *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365 (2000); *see also State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶ 21 (holding that SSNs in court records do "not shed light on any governmental activity").
[895] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117.
[896] *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 17, quoting *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984); *see also* 2004 Ohio Op. Att'y Gen. No. 045.
[897] *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662.
[898] *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶ 21 (citation omitted).
[899] 45 C.F.R. 160 *et seq.*; 45 C.F.R. 164 *et seq.*
[900] Health Information Technology Economic Clinical Health Act, Public Law No. 111-5, Division A, Title XIII, Subtitle D (2009).
[901] 45 C.F.R. 160.103.
[902] 45 C.F.R. 160.103.
[903] 45 C.F.R. 160.103.
[904] 45 C.F.R. 164.512(a).
[905] *E.g.,* R.C. 149.43(A)(1)(a) (providing for an exemption for "medical records").
[906] 45 C.F.R. 164.512(a).
[907] *State ex rel. Cincinnati Enquirer v. Daniels,* 108 Ohio St.3d 518, 2006-Ohio-1215, ¶ 25. *But see Cuyahoga Cty. Bd. Of Health v. Lipson O'Shea Legal Group,* 145 Ohio St.3d 446, 2016-Ohio-556, ¶ 9 (noting that the public records request in *Daniels* was not "inextricably linked to 'protected health information.'").
[908] *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶ 25 (alterations in original); *see also Dissell v. City of Cleveland*, Ct. of Cl. No. 2017-00855PQ, 2018-Ohio-5444, ¶ 19 (relying on *State ex rel. Cincinnati Enquirer v. Daniels* to hold that "no content of the EMS/Fire event summaries is subject to withholding under HIPAA."), *reversed on other grounds,* Ct. of Cl. No. 2017-00855PQ, 2019-Ohio-471 (Jan. 23, 2019).
[909] R.C. 149.43(a)(1)(v); *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶ 25.
[910] *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶¶ 26, 34.
[911] R.C. Chapter 1347.
[912] R.C. 1347.05.
[913] R.C. 149.011(G).
[914] R.C. 1347.04(A)(1)(a).
[915] R.C. 1347.04(B).
[916] R.C. 1347.04(B).
[917] R.C. 1347.15(A)(1) (emphasis added).
[918] R.C. 1347.01(E).

[919] R.C. 1347.15(A)(1) (emphasis added)).
[920] R.C. 1347.01(F).
[921] R.C. 1347.01(F).
[922] R.C. 1347.01 *et seq.*
[923] 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 Op. Att'y Gen. No. 016 (determining that the Ohio Bd. of Tax Appeals is a "judicial agency" for purposes of R.C. 1347.15).
[924] R.C. 1347.15(B).
[925] R.C. 1347.15(H)(1).
[926] R.C. 1347.15(H)(2).
[927] R.C. 1347.15(H)(3).
[928] R.C. 1347.05(G).
[929] R.C. 1347.10, 1347.15, 1347.99.

The Ohio Open Meetings Act

Overview of the Ohio Open Meetings Act

What is a "public body"?[930]

- 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"?[931]

- 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 OMA requirements apply even if the gathering is called a "work session," "retreat," etc.

What is "discussion" or "deliberation" of public business?[932]

- "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?[933]

- A public body must give appropriate 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.
- A public body must make all of its meetings open to the public at all times.
    - 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. Meeting minutes do not need to be verbatim transcripts, but must 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"?[934]

- Proper procedure must be followed to move into an executive session, including a motion, second, and roll call vote in 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 Ohio Open Meetings Act

The Open Meetings Act requires public bodies in Ohio to take official action and conduct all deliberations upon official business only in open meetings where the public may attend and observe. Public bodies must provide advance notice to the public indicating 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 persons 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.

The Open Meetings Act is a "self-help" statute. This means that a person who believes that the Act has been violated must independently pursue a remedy, rather than asking a public official (such as the Ohio Attorney General) to initiate action on his or her behalf. If any person believes that a public body has violated the Open Meetings Act, that person may file an action in a common pleas court to compel the public body to obey the Act. If an injunction is issued, 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, that 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*.[935]

A Note about Case Law

When the Ohio Supreme Court issues a decision interpreting a statute, that decision must be followed by all lower Ohio courts. Ohio 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 Ohio 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 Ohio Supreme Court, and rarely do. Consequently, the bulk of case law on the Open Meetings Act comes from courts of appeals, whose opinions are binding only on lower courts within their district, but they may be cited for the persuasive value of their reasoning in cases filed in other districts.

The Ohio Open Meetings Act

Temporary Changes to the Open Meetings Act Due to the COVID-19 Pandemic, Effective until June 30, 2022

In response to the COVID-19 pandemic, the Ohio General Assembly passed legislation that includes temporary changes to the Open Meetings Act. House Bill (H.B.) 51 generally allows public bodies to conduct meetings and hearings virtually/electronically subject to the specific terms below. These temporary changes are effective until June 30, 2022.

Meetings and Attendance

- Members of a public body may hold and attend public meetings and hearings by teleconference, video conference, or other electronic means.
- For purposes of establishing a quorum of the public body and to vote, any member of a public body who participates virtually/electronically is considered present as if he or she were present in person.
- All actions taken in a virtual/electronic meeting held during the time period covered by H.B. 51 have the same effect as if they were conducted during an in-person meeting.

Notice

- Public bodies must continue to provide notice to the public of their meetings. Public bodies conducting virtual/electronic meetings or hearings are required to provide public notice of the meeting or hearing at least 24 hours in advance.
- Public bodies must notify the public, media that have requested notification, and parties required to be notified of a hearing by reasonable methods.
- In the event of an emergency requiring immediate official action, public bodies may conduct emergency public meetings virtually/electronically by giving notice as soon as it is practicable to do so.
- Notice must include the time, location, and manner in which the meeting or hearing will be conducted.

Public Access

- Public bodies must provide public access to any virtual/electronic meeting or hearing that the public would otherwise be entitled to attend.
- Access can be provided through live-streaming, local radio, television, cable, public access channels, call-in information for a teleconference, or by other similar electronic means.
- Public bodies must ensure that the public is able to hear discussions and deliberations, and the votes of all members of the body participating, whether a member is doing so in-person or virtually/electronically.

- For hearings, public bodies must establish a means, through the use of electronic equipment widely available to the general public, to converse with witnesses and receive documentary testimony and physical evidence.

- As has always been the law, public bodies are not required to afford citizens the right of "public speech" during public meetings. However, as to public hearings, public bodies must provide an electronic mechanism for the provision of public input and interaction.

Note: This information is current as of publication of this manual and is subject to change. H.B. 51, by its terms, is effective until June 30, 2022. Legal counsel should be consulted if there is any uncertainty about whether these changes apply

[930] *See* Chapter Seven: A "Public Body".
[931] *See* Chapter Seven: B "Meeting".
[932] *See* Chapter Seven: B.1.c. "Discussing public business".
[933] *See* Chapter Eight "Duties of a Public Body".
[934] *See* Chapter Nine "Executive Session".
[935] "[The Ohio Supreme Court 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.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶ 38 (alteration in original).

VII. Chapter Seven: "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.[936]

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;[937]

b. Any committee or subcommittee thereof;[938] or

c. A court[939] 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.[940]

2. Identifying public bodies

The term "public body" applies to many different decision-making bodies at the state and local level. If a statute does not specifically identify an entity as a "public body," Ohio courts have applied several factors in determining what constitutes a "public body," including:

a. The manner in which the entity was created;[941]

b. The name or official title of the entity;[942]

c. The membership composition of the entity;[943]

d. Whether the entity engages in decision-making;[944] and

e. Who the entity advises or to whom it reports.[945]

3. Close-up: applying the definition of "public body"

Using the above factors, the following entities have been found by some courts of appeals to be public bodies:

a. 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.[946]

b. An urban design review board that provided advice and recommendations to a city manager and city council about land development.[947]

c. A board of hospital governors of a joint township district hospital.[948]

d. A citizens' advisory committee of a county children services board.[949]

e. A board of directors of a county agricultural society.[950]

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.[951] 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.[952]

However, at least one court has determined 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.[953]

4. When the Open Meetings Act applies to private bodies

Some private entities are considered "public bodies" for purposes of the Open Meetings Act when they are organized pursuant to state statute and are statutorily authorized to receive and expend government funds for a governmental purpose.[954] For example, one trial court found an economic opportunity planning association to be a public body within the meaning of the Act based on the following factors: (1) its designation by the Ohio Department of Development as a community action organization pursuant to statute;[955] (2) its responsibility for spending substantial sums of public funds in the operation of programs for the public welfare; and (3) its obligation to comply with state statutory provisions in order to keep its status as a community action organization.[956]

5. Public bodies/officials that are NEVER subject to the Open Meetings Act:[957]

- The Ohio General Assembly;[958]
- Grand juries;[959]
- 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;[960]
- The Organized Crime Investigations Commission;[961]
- County child fatality review boards or state-level reviews of deaths of children;[962]
- 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;[963] and
- 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.[964]

6. Public bodies that are SOMETIMES subject to the Open Meetings Act:

a. Public bodies meeting for particular purposes

Some public bodies are not subject to the Open Meetings Act when they meet for particular purposes, 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;[965]
- The State Medical Board,[966] the State Board of Nursing,[967] the State Chiropractic Board[968] when determining whether to suspend a license or certificate without a prior hearing;[969]
- 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); [970] or when determining whether to restrict a person from obtaining further information from the drug database without a hearing;[971]
- The Emergency Response Commission's executive committee when meeting to determine whether to issue an enforcement order or to decide whether to bring an enforcement action;[972] and
- 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.[973]

b. Public bodies handling particular 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 in order to protect the interest of the applicant or the possible investment of public funds.[974]

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.[975]

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).[976]

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.[977] 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.[978]

a. Prearranged

The Open Meetings Act governs prearranged discussions,[979] but it does not prohibit unplanned encounters between members of public bodies, such as hallway discussions. One court has found 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.[980] 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.[981]

b. Majority of members

For there to be a "meeting" as defined under the Open Meetings Act, "a majority of a public body's members must come together."[982] 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.[983] For instance, 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 in person

A member of a public body must be present in person at a meeting in order to be considered present, vote, or be counted as part of a quorum.[984]A small number of public bodies have statutory authority to conduct meetings via teleconference, videoconference, or other remote means.[985] In the absence of specific statutory authority, however, public bodies may not conduct a meeting via electronic or telephonic conferencing.[986] (NOTE: In-person attendance requirements were temporarily suspended due to the COVID-19 pandemic.[987] As of this manual's publication, the suspension is effective until June 30, 2022. A public body should consult legal counsel with any questions about the temporary changes to the Open Meetings Act.)

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.[988] However, a public body may not "circumvent the requirements of the statute by setting up back-to-back meetings of less than a majority of its members, with the same topics of public business discussed at each."[989] Such conversations may be considered multiple parts of the same, improperly private, "meeting."[990] Serial meetings may also occur over the telephone or through electronic communications, like email.[991]

c. Discussing public business

With narrow exemptions, the Open Meetings Act requires the members of a public body to discuss and deliberate on official business only in open meetings.[992] "Discussion" is the exchange of words, comments, or ideas by the members of a public body.[993] "Deliberation" means the act of weighing and examining reasons for and against a choice.[994] One court has 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.[995] 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."[996] Discussions of public business may also be conducted over any other media, such as the telephone, video conference, email, text, or tweet.[997] 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 particular gatherings of public officials constituted "meetings," several courts of appeals have 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." [998] Under this analysis, those 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.[999] More importantly, the Ohio Supreme Court 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.

Those courts that have distinguished "discussions" or "deliberations" that must take place in public from other exchanges between a majority of its members at a prearranged gathering, have opined that the following are not "meetings" subject to the Open Meetings Act:

- 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*;[1000]
- Conversations among staff members employed by a city council;[1001]
- A presentation to a public body by its legal counsel when the public body receives legal advice;[1002] and
- A press conference.[1003]

2. Close-up: applying the definition of "meeting"

If a gathering meets all three elements of this definition, a court will consider it a "meeting" for the purposes of the Open Meetings Act, 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 to be separate "meetings" of each public body.[1004]

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. [1005] When conducting any meeting, the public body must comply with its obligations under the Open Meetings Act: openness, notice, and minutes.[1006]

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 Ohio Supreme Court 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."[1007] 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.[1008] 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.[1009]

c. County political party central committees

The convening of a county political party central committee for the purpose of conducting purely internal party affairs, unrelated to the committee's duties of making appointments to vacated public offices, is not a "meeting" as defined by R.C. 121.22(B)(2). Thus, R.C. 121.22 does not apply to such a gathering.[1010]

d. Collective bargaining

Collective bargaining meetings between public employers and employee organizations are private and are not subject to the Open Meetings Act.[1011]

Notes:

[936] R.C. 121.22(B)(2).
[937] R.C. 121.22(B)(1)(a).
[938] R.C. 121.22(B)(1)(b); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001) ("R.C. 121.22(B)(1)(b) includes 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 c. Medina Cty. Facilities Taskforce Subcommt.,* 9th Dist. Medina No. 19VA0083-M, 2020-Ohio-5561, ¶¶ 18-20, *discretionary appeal not allowed,* 162 Ohio St.3d 1438, 2021-Ohio-1399 (finding that subcommittee can be sued for Open Meetings Act violation even though it is not a "decision-making body" and does not have "decision-making authority.")
[939] With the exception of sanitation courts, the definition of "public body" does not include courts. *See Walker v. Muskingum Watershed Conservancy Dist.*, 5th Dist. Tuscarawas No. 2007 AP 01 0005, 2008-Ohio-4060, ¶ 27.
[940] R.C. 121.22(B)(1)(c). NOTE: R.C. 121.22(G) prohibits executive sessions for sanitation courts as defined in R.C. 121.22(B)(1)(c).
[941] *State ex rel. Mason v. State Employment Relations Bd.*, 133 Ohio App.3d 213 (10th Dist. 1999); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that 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 and was immaterial). *But see State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶ 44 (finding that 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 County Bd. Of Commrs.,* 11th Dist. Lae No. 2020-L-087, 2021-Ohio-786, ¶ 41 (finding that 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).
[942] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that a selection committee was a "public body" and that 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) (considering it pertinent 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).
[943] *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).
[944] *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (finding tasks such as making recommendations and advising involve decision-making); *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding that 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 because the board actually made decisions in the process of formulating its advice); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that the selection committee made decisions in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission).
[945] *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding an urban design review board that advised not only the city manager, but also the city council, to be a public body).
[946] *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).
[947] *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding that 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).
[948] *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 102-03 (3d Dist. 1985) (finding 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).
[949] *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (finding that the committee was a public body because the subject matter of the committee's operations is the public business, each of its duties involves decisions as to what will be done, 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).
[950] 1992 Ohio Atty.Gen.Ops. No. 078.
[951] *Smith v. Cleveland*, 94 Ohio App.3d 780, 784-785 (8th Dist. 1994) (finding a city safety director is not a public body and may conduct disciplinary hearings without complying with the Open Meetings Act).
[952] *Beacon Journal Publishing Co. v. Akron*, 3 Ohio St.2d 191 (1965) (finding 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) (finding 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 (determining that, 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, such a committee is not a public body for purposes of R.C. 121.22(B)(1) and is not subject to the requirements of the Open Meetings Act).
[953] *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460 (10th Dist. 2001).
[954] *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn. of Greater Toledo*, 61 Ohio Misc.2d 631 (C.P. 1990); *see also Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100 (3d Dist. 1985).
[955] R.C. 122.69.
[956] *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn. of Greater Toledo,* 61 Ohio Misc.2d 631, 640 (C.P. 1990) ("The language of the [Open Meetings Act] and its role in the organization of public affairs in Ohio make clear that this language is to be given a broad interpretation to ensure that the official business of the state is conducted openly. Consistent with that critical objective, a governmental decision-making body cannot assign its decisions to a nominally private body in order to shield those decisions from public scrutiny.").
[957] R.C. 121.22(D).
[958] While the General Assembly as a whole is not governed by the Open Meetings Act, 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)).

[959] R.C. 121.22(D)(1).
[960] R.C. 121.22(D)(2).
[961] R.C. 121.22(D)(4).
[962] R.C. 121.22(D)(5).
[963] R.C. 121.22(D)(11).
[964] R.C. 121.22(D)(12).
[965] R.C. 121.22(D)(3).
[966] R.C. 4730.25(G); R.C. 4731.22(G).
[967] R.C. 4723.281(B).
[968] R.C. 4734.37.
[969] R.C. 121.22(D)(6)-(7), (9).
[970] 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).
[971] R.C. 121.22(D)(8)(b); R.C. 4729.75; R.C. 4729.86(C).
[972] R.C. 121.22(D)(10).
[973] R.C. 121.22(D)(13)-(15); R.C. 4755.11; R.C. 4755.47; R.C. 4755.64.
[974] R.C. 121.22(E).
[975] R.C. 121.22(E)(1)-(5).
[976] R.C. 1724.11(B)(1) (providing that the board, committee, or subcommittee shall consider no other information during the closed session).
[977] R.C. 121.22(A), (B)(2), (C).
[978] R.C. 121.22(B)(2).
[979] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544 (1996) (holding that the back-to-back, prearranged discussions of city council members constitute a "majority," but clarifying that the statute does not prohibit impromptu meetings between council members or prearranged member-to-member discussion).
[980] *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Hamilton Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 7.
[981] *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶¶ 15-20.
[982] *Berner v. Woods*, 9th Dist. Lorain No. 07CA009132, 2007-Ohio-6207, ¶ 17; *Tyler v. Batavia*, 12th Dist. Clermont No. CA2010-01-005, 2010-Ohio-4078, ¶ 18 (finding no "meeting" occurred when only two of five commission members attended a previously scheduled session).
[983] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001).
[984] R.C. 121.22(C); NOTE: This rule is temporarily suspended due to the COVID-19 pandemic, effective until June 30, 2022.
[985] *See, e.g.,* R.C.3333.02; R.C. 3316.05(K) (school district financial planning and supervision commission); R.C. 3307.091 (State Teachers Retirement Board); R.C. 6133.041(A) (joint board of county commissioner of joint county ditches); R.C. 940.39(B) (board of trustees of a regional airport); R.C. 4582.60(A) (board of directors of a port authority); R.C. 5123.35(F) (developmental disabilities council); NOTE: This rule is temporarily suspended due to the COVID-19 pandemic, effective until June 30, 2022.
[986] *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Hamilton Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 9 (noting that in a 2002 revision of the Open Meetings Act, the legislature did not amend the statute to include "electronic communication" in the definition of a "meeting," and that this omission indicates the legislature's intent not to include email exchanges as potential "meetings"). NOTE: This rule is temporarily suspended due to the COVID-19 pandemic, effective until June 30, 2022.
[987] *See* page 102, Temporary Changes to the Open Meetings Act Due to the COVID-19 Pandemic, Effective until June 30, 2022.
[988] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544 (1996) ("[The statute] does not prohibit member-to-member prearranged discussions."); *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Hamilton Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 11 (finding that 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); *Master v. Canton*, 62 Ohio App.2d 174, 178 (5th Dist. 1978) (agreeing that the legislature did not intend to prohibit one committee member from calling another to discuss public business).
[989] *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 543 (1996).
[990] *See generally State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 542-44 (1996) (noting the very 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. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶¶ 16-17, 43 (noting that board president conceded that pre-meeting decision of school board president and superintendent to narrow field of applicants should have occurred in executive session); *State ex rel. Floyd v. Rock Hill Local School Bd. of Edn.*, 4th Dist. Lawrence No. 1862, 1988 Ohio App. LEXIS 471 **4, 13-16 (Feb. 10, 1988) (finding 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 then, without discussion, voted to approve); *Wilkins v. Harrisburg*, 10th Dist. Franklin No. 12AP-1046, 2013-Ohio-2751 (finding that two presentations were not serial meetings where 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).
[991] *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶¶ 16-18 ("Allowing public bodies to avoid the requirements of the Open Meetings Act by discussing public business via serial electronic communications subverts the purpose of the act.").
[992] R.C. 121.22(A); R.C. 121.22(B)(2), (C).
[993] *DeVere v. Miami Univ. Bd. of Trustees*, 12th Dist. Butler No. CA85-05-065, 1986 Ohio App. LEXIS 7171 (June 10, 1986); *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.); *State ex rel. Ames v. Brimfield Twp. Bd. Of Trustees,* 11th Dist. Portage No. 2019-P-0018, 2019-Ohio-5311, ¶ 14.
[994] *Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emps.*, 106 Ohio App.3d 855, 864 (9th Dist. 1998); *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.); *Berner v. Woods*, 9th Dist. Lorain No. 07CA009132, 2007-Ohio-6207, ¶ 15.
[995] *Theile v. Harris*, 1st Dist. Hamilton No. C-860103, 1986 Ohio App. LEXIS 7096 (June 11, 1986); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees,* 11th Dist. Portage No. 2019-P-0018, 2019-Ohio-5311, ¶ 15.
[996] *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 14 (4th Dist.).
[997] *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶ 16.
[998] *Holeski v. Lawrence*, 85 Ohio App.3d 824, 829 (11th Dist. 1993).
[999] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 11th Dist. Portage No. 2017-P-0093, 2018-Ohio-2888, ¶ 25 ("The evidence presented at trial uniformly demonstrated that the Board convened . . . for informational purposes . . . [a]nd, perhaps most significantly, there was no evidence that the Board members who attended the meetings exchanged any ideas amongst one another . . . Thus, the evidence overwhelmingly supported the trial court's conclusion that no 'deliberations,' as contemplated by the OMA, occurred[.]"); *Theile v. Harris*, 1st Dist. Hamilton No. C-860103, 1986 Ohio App. LEXIS 7096 (June 11, 1986) (finding a prearranged discussion between a prosecutor and the majority of township trustees did not violate Open Meetings Act because the gathering was conducted for investigative and information-seeking purposes); *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶¶ 14-18 (4th Dist.) (finding it permissible for a board to gather information on proposed school district in private, but it cannot deliberate privately in the absence of specifically authorized purposes); *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. Warren No. CA2012-08-076, 2013-Ohio-2396, ¶ 24 (finding that, while information-gathering and fact-finding

meetings for ministerial purposes do not violate the Open Meetings Act, whether a township's pre-meeting meetings violated the Open Meetings Act was a question of fact when there was conflicting testimony about whether the meetings were prearranged, what the purpose of the meeting was, and whether deliberations took place); *State ex rel. Massie v. Lake County Bd. Of Commrs.,* 11th Dist. Lake No. 2020-L-087, 2021-Ohio-786, ¶ 27 (evidence supported finding that commission members' gathering was for information-seeking and was not a "meeting" under the Open Meetings Act).

[1000] *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.) (holding that, in the absence of deliberations or discussions by board members during a non-public information-gathering and investigative session with legal counsel, the session was not a "meeting" as defined in the Open Meetings Act, and was not required to be held in public); *Holeski v. Lawrence*, 85 Ohio App.3d 824, 830 (11th Dist. 1993) ("The Sunshine Law is instead intended to prohibit the majority of a board from meeting and discussing public business *with one another*.").

[1001] *Kandell v. City Council of Kent*, 11th Dist. Portage No. 90-P-2255, 1991 Ohio App. LEXIS 3640 (Aug. 2, 1991); *State ex rel. Bd. of Edn. for Fairview Park School Dist. v. Bd. of Edn. for Rocky River School Dist.*, 40 Ohio St.3d 136, 140 (1988) (finding an employee's discussions with a superintendent did not amount to secret deliberations within the meaning of R.C. 121.22(H)).

[1002] *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.); *Theile v. Harris*, 1st Dist. Hamilton No. C-860103, 1986 Ohio App. LEXIS 7096 (June 11, 1986).

[1003] *Holeski v. Lawrence*, 85 Ohio App.3d 824 (11th Dist. 1993).

[1004] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *State ex rel. Wengerd v. Baughman Twp. Bd. of Trustees*, 9th Dist. Wayne No. 13CA0048, 2014-Ohio-4749.

[1005] *State ex rel. Singh v. Schoenfeld*, 10th Dist. Franklin Nos. 92AP-188, 92AP-193, 1993 Ohio App. LEXIS 2409 (May 4, 1993).

[1006] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990).

[1007] *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998).

[1008] *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*, 125 Ohio St.3d 438, 445, 2010-Ohio-2167; *see also Pennell v. Brown Twp.*, 5th Dist. Delaware No. 15 CAH 09 0074, 2016-Ohio-2652, ¶¶ 34-37 (finding that board of zoning appeals hearing was quasi-judicial and therefore Open Meetings Act did not apply); *Walker v. Muskingum Watershed Conservancy Dist.*, 5th Dist. Tuscarawas No. 2007 AP 01 0005, 2008-Ohio-4060; *Angerman v. State Med. Bd. of Ohio*, 70 Ohio App.3d 346, 352 (10th Dist. 1990); *Wightman v. Ohio Real Estate Comm.*, 10th Dist. Franklin No. 16AP-466, 2017-Ohio-756, ¶ 26 (finding that state professional licensing board was quasi-judicial and therefore Open Meetings Act did not apply).

[1009] *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 125 Ohio St.3d 438, 2010-Ohio-2167 (holding that, because R.C. 121.22 did not apply to the elections board's quasi-judicial proceeding, the board neither abused its discretion nor clearly disregarded the Open Meetings Act by failing to publicly vote on whether to adjourn the public hearing to deliberate and by 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*, 6th Dist. Ottawa No. OT-12-008, 2013-Ohio-722, ¶ 15 (holding that 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.*, 8th Dist. Cuyahoga No. 99770, 2013-Ohio-5585, ¶¶ 44-46 (holding that 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.*, 10th Dist. Franklin No. 17AP-510, 2018-Ohio-716, ¶¶ 20-28 (holding that the consideration of hearing officer's recommendation was a quasi-judicial function and therefore no Open Meetings Act violations could occur); *Howard v. Ohio State Racing Comm.,* 10th Dist. Franklin No. 18AP-349, 2019-Ohio-4013, ¶ 46 (proceedings before Ohio State Racing Commission were quasi-judicial in nature and Commission not obligated to deliberate in public).

[1010] 1980 Ohio Atty.Gen.Ops. No. 083; *see also Jones v. Geauga Cty. Republican Party Cent. Commt.*, 11th Dist. Geauga No. 2016-G-0056, 2017-Ohio-2930, ¶ 35 (upholding the trial court's dismissal of the case because the meeting at issue concerned purely internal affairs, not public business, and was therefore not subject to the Open Meetings Act); *State ex rel. Ames v. Geauga Cty. Republican Cent. & Executive Commts.,* 11th Dist. Geauga No. 2021-G-0004, 2021-Ohio-2888 (holding that the Open Meetings Act does not apply to meeting of county political party central committee when purpose of the meeting is to conduct internal party business), *discretionary appeal not allowed,* 165 Ohio St.3d 1457, 2021-Ohio-4033.

[1011] 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) (finding that 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.*, 12th Dist. Butler No. CA2007-03-066, 2007-Ohio-4218, ¶¶ 6-10 (finding that school board's consideration of a proposed collective bargaining agreement with the school district's teachers was properly held in a closed session because the meeting was not an executive session but was a "collective bargaining meeting," which, under RC. 4117.21, was exempt from the Open Meetings Act's requirements).

VIII. Chapter Eight: 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 declares all meetings of a public body to be public meetings open to the public at all times.[1012] 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."[1013]

1. Where meetings may be held

A public body must conduct its meetings in a venue that is open to the public.[1014] 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[1015] that is within the geographical jurisdiction of the public body.[1016] Clearly, a meeting is not "open" when the public body has locked the doors to the meeting facility.[1017]

Where space in the facility is too limited to accommodate all interested members of the public, closed-circuit television may be an acceptable alternative.[1018] Federal law requires that a meeting place be accessible to individuals with disabilities.[1019]

2. Method of voting

Unless a particular statute requires a specific method of voting, the public cannot insist on a particular form of voting. The body may use its own discretion in determining the method it will use, such as voice vote, show of hands, or roll call.[1020] 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.[1021] The Ohio Supreme Court has held that the Act precludes a public body from taking official action by way of secret ballot.[1022] Voting by secret ballot contradicts the openness requirement of the Open Meetings Act by hiding the decision-making process from public view.[1023]

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 acts as a way around the openness requirement of the Open Meetings Act.[1024] A public body is also prohibited from voting on a consent agenda when the public has no way of knowing all the items that consent agenda contains.[1025]

3. Right to hear but not to be heard or to disrupt

All meetings of any public body are declared to be public meetings open to the public *at all times*.[1026] A 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.[1027] However, the Open Meetings Act does not provide (or prohibit) attendees the right to be heard at meetings. Note that other laws may apply to limit the restrictions the public body can place on the public's ability to speak during meetings.[1028] Further, a disruptive person waives his or her right to attend meetings, and the body may remove that person from the meeting.[1029]

4. Audio and video recording

A public body cannot prohibit the public from audio or video recording a public meeting.[1030] 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.[1031]

5. Executive sessions

Executive sessions (discussed below in Chapter Nine), are an exemption to the requirement that public bodies conduct public business in meetings that are open to the public; however, public bodies may not vote or take official action in an executive session.[1032]

B. Notice

Every public body must establish, by rule, a reasonable method for notifying the public in advance of its meetings.[1033] The public body's notice rule must provide for "notice that is consistent and actually reaches the public."[1034] The requirements for proper notice vary depending upon 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.[1035] A public body must establish, by rule, a reasonable method that allows the public to determine the *time* and *place* of regular meetings.[1036]

b. Special meetings

A "special meeting" is any meeting other than a regular meeting.[1037] A public body must establish, by rule, a reasonable method that allows the public to determine the *time*, *place*, and *purpose* of special meetings[1038] and conforms with the following requirements:

- A public body must provide at least 24-hours advance notification of a special meetings to all media outlets that have requested such notification,[1039] except in the event 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 may only discuss those specified issues at that meeting.[1040] 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."[1041] 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.[1042]

c. Emergency meetings

An emergency meeting is a type of special meeting that a public body convenes when a situation requires immediate official action.[1043] 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.[1044] The purpose statement must comport with the specificity requirements discussed above.

2. Rules requirements

The Open Meetings Act requires every public body to adopt rules establishing reasonable methods for the public to determine the time and place of all regularly scheduled meetings, and the time, place, and purpose of all special meetings.[1045] 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.[1046] The statute suggests 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.[1047]

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.[1048] 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.[1049] Courts have addressed situations in which the media misprints meeting information and have not found a violation of the notice requirement.[1050] 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.[1051] Those minutes are not required to be a verbatim transcript of the proceedings, but they must include enough facts and information to permit the public to understand and appreciate the rationale behind the public body's decisions.[1052] The Ohio Supreme Court has held that minutes must include more than a record of roll call votes, and that minutes are inadequate when they contain inaccuracies that are not corrected.[1053] A public body cannot rely on sources other than their approved minutes to argue that their minutes contain a full and accurate record of their proceedings.[1054]

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," discussed later in Chapter Nine).[1055] Including details of members' pre-vote discussion following an executive session may prove helpful, though. At least one court has found that the lack of pre-vote comments reflected by the minutes supported the trial court's conclusion that the public body's discussion of the pros and cons of the matter at issue must have improperly occurred during executive session.[1056]

2. Making minutes available "promptly" as a public record

A public body must promptly prepare, file, and make available its minutes for public inspection.[1057] 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.[1058] The final version of the official minutes approved by members of the public body is a public record.[1059] Note that a draft version of the meeting minutes that the public body circulates for approval,[1060] as well as the clerk's handwritten notes used to draft minutes,[1061] 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 determination for itself. Some public bodies document that choice by adopting a formal rule or by passing a resolution or motion at a meeting.[1062] 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.[1063]

D. Modified Duties of Public Bodies under Special Circumstances

1. Declared emergency[1064]

During a declared emergency, 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.[1065] 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. Even in an emergency, however, there is no exemption to the "in person" meeting requirement of R.C. 121.22(C), and the provision does not permit the public body to meet by teleconference, unless the public body otherwise has a specific statutory authority to do so.[1066] (NOTE: In-person attendance require ments were temporarily suspended due to the COVID-19 pandemic.[1067] As of this manual's publication, the suspension is effective until June 30, 2022. A public body should consult legal counsel with any questions about the temporary changes to 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.[1068] A charter municipality has the right to determine by charter the manner in which its meetings will be held.[1069] Charter provisions take precedence over the Open Meetings Act when the two conflict.[1070] If a municipal charter includes specific guidelines regarding the conduct of meetings, the municipality must abide by those guidelines.[1071] 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.[1072]

Notes:

[1012] R.C. 121.22(C).
[1013] R.C. 121.22(A).
[1014] 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.*, 11th Dist. Trumbull No. 2012-T-0035, 2013-Ohio-881, ¶ 22 (finding that a public body may place limitations on the time, place, and manner of access to its meetings, as long as the restrictions are content neutral and narrowly tailored to serve a significant governmental interest).
[1015] *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No. 2012-T-0035, 2013-Ohio-881, ¶ 24 ("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.
[1016] 1992 Ohio Atty.Gen.Ops. No. 032; 1944 Ohio Op. Att'y Gen. No. 7038.
[1017] *Specht v. Finnegan*, 149 Ohio App.3d 201, 2002-Ohio-4660, ¶¶ 33-35 (6th Dist.).
[1018] *Wyse v. Rupp*, 6th Dist. Fulton No. F-94-19, 1995 Ohio App. LEXIS 4008 (Sept. 15, 1995) (finding the Ohio Turnpike Commission dealt with the large crowd in a reasonable and impartial manner).
[1019] 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).
[1020] *But see State ex rel. Roberts v. Snyder*, 149 Ohio St. 333, 335 (1948) (finding that council was without authority to adopt a conflicting rule where enabling law limited council president's vote to solely in the event of a tie under statute that preceded enactment of Open Meetings Act).
[1021] R.C. 121.22(G).
[1022] *State ex rel. More Bratenahl v. Bratenahl,* 157 Ohio St.3d 309, 2019-Ohio-3233, ¶¶ 8-20; 2011 Ohio Atty.Gen.Ops. No. 038 (concluding that secret ballot voting by a public body is antagonistic to the ability of the citizenry to observe the workings of their government and to hold their government representatives accountable).
[1023] *State ex rel. Bratenahl v. Village of Bratenahl,* 157 Ohio St.3d 309, 2019-Ohio-3233, ¶ 15.
[1024] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio-2374, ¶ 19 (holding that public body violated the Open Meetings Act when it approved multiple consent agendas in a single vote; use of a consent agenda in this way "constructively closes its public meetings and is an impermissible end run around the Open Meetings Act").
[1025] *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio-2374, ¶ 19.
[1026] R.C. 121.22(C); *Wyse v. Rupp*, 6th Dist. Fulton No. F-94-19, 1995 Ohio App. LEXIS 4008 (Sept. 15, 1995); *Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals*, 66 Ohio St.3d 452 (1993); 1992 Ohio Atty.Gen.Ops. No. 032; *see also* 2007 Ohio Atty.Gen.Ops. No. 019; *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No. 2012-T-0035, 2013-Ohio-881, ¶¶ 15, 19-29 (finding that while the Public Records Act permits a requester to remain anonymous when making a public records request, the Open Meetings Act does not have a similar anonymity requirement; as a result, 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 governmental interest).
[1027] *Manogg v. Stickle*, 5th Dist. Licking No. 97CA00104, 1998 Ohio App. LEXIS 1961 (Apr. 8, 1998).
[1028] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (holding that R.C. 121.22 does not require that a public body provide the public with 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*, 3d Dist. Seneca No. 13-87-12, 1988 Ohio App. LEXIS 3405 (Aug. 8, 1988) (R.C. 121.22 guarantees the right to observe a meeting, but not necessarily the right to be heard); *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No 2012-T-0035, 2013-Ohio-881, ¶¶ 19-29.
[1029] *Froehlich v. Ohio State Med. Bd.*, 10th Dist. Franklin No. 15AP-666, 2016-Ohio-1035, ¶¶ 25-27 (no violation of Open Meetings Act where disruptive person is removed); *Forman v. Blaser*, 3d Dist. Seneca No. 13-87-12, 1988 Ohio App. LEXIS 3405, *8 (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) (holding no violation of First and Fourteenth Amendments when disruptive person was removed from a public meeting).
[1030] *McVey v. Carthage Twp. Trustees*, 4th Dist. Athens No. 04CA44, 2005-Ohio-2869, ¶¶ 14-15 (finding trustees violated R.C. 121.22 by banning videotaping).
[1031] *Kline v. Davis*, 4th Dist. Lawrence Nos. 00CA32, 01CA13, 2001-Ohio-2625 (finding blanket prohibition on recording a public meeting not permissible); 1988 Ohio Attty.Gen.Ops. No. 087 (opining that trustees have authority to adopt reasonable rules for use of recording equipment at their meetings); *see also Mahajan v. State Med. Bd. of Ohio*, 10th Dist. Franklin Nos. 11AP-421, 11AP-422, 2011-Ohio-6728 (holding that, when rule allowed board to designate reasonable location for placement of recording equipment, requiring appellant's court reporter to move to the back of the room was reasonable, given the need to transact board business).
[1032] R.C. 121.22(A); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03CA55, 2003 Ohio App. LEXIS 6654, *12 (Dec. 24, 2003) (reaching a consensus to take no action on a pending matter, as reflected by members' comments, is impermissible during an executive session).
[1033] 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 ….").
[1034] *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 3d Dist. Putnam No. 12-13-05, 2014-Ohio-2717, ¶ 24; *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002).
[1035] 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).
[1036] R.C. 121.22(F); *see also Wyse v. Rupp*, 6th Dist. Fulton No. F-94-19, 1995 Ohio App. LEXIS 4008, *21 (Sept. 15, 1995) (finding a public body must specifically identify the time at which a public meeting will commence).
[1037] *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").
[1038] R.C. 121.22(F); *see also Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272-73 (2d Dist. 2002) (holding that a board violated R.C. 121.22(F) 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) (holding that policy adopted pursuant to R.C. 121.22(F) that required notice of "specific or general purposes" of special meeting was not violated when general notice was given that nonrenewal of contract would be discussed, even though ancillary matters were also discussed).
[1039] R.C. 121.22(F); 1988 Ohio Atty.Gen.Ops. No. 029.
[1040] *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 35-36, 40-43 (finding 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.,* 12th Dist. Warren No. CA2012-02-013, 2013-Ohio-1111 (finding 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"); *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805 (June 30, 1995); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees,* 11th Dist. Portage No. 2019-P-0019, 2019-Ohio-5412, ¶ 56 (finding special meeting notice of "budget approval" was sufficiently specific to cover discussion of invoice payments).

[1041] *Jones v. Brookfield Twp. Trustees*, 11th Dist. TrumbullNo. 92-T-4692, 1995 Ohio App. LEXIS 2805 (June 30, 1995); *see also Satterfield v. Adams Cty. Ohio Valley School Dist.*, 4th Dist. Adams No. 95CA611, 1996 Ohio App. LEXIS 4897, *17 (Nov. 6, 1996) (holding that, although specific agenda items may be listed, use of agenda term "personnel" is sufficient for notice of special meeting).

[1042] *State ex rel. Jones v. Bd. of Edn. of the Dayton Pub. Schs.*, 2d Dist. Montgomery No. 27649, 2018-Ohio-676, ¶¶ 51-66 (finding action taken in open session of special meeting exceeded the scope of the notice); *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. Lucas No. L-97-1240, 1998 Ohio App. LEXIS 1496, *13 (Apr. 10, 1998) (finding 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.*, 11th Dist. Portage No. 2-16-P-0057, 2017-Ohio-4237, ¶ 46 (finding that the board did not exceed the scope of the special meeting notice when it went into executive session, which was held in compliance with the R.C. 121.22(G)(1) requirements for an executive session, because there is no prohibition on public bodies holding executive sessions in emergency meetings).

[1043] *State ex rel. Bates v. Smith*, 147 Ohio St.3d 322, 2016-Ohio-5449, ¶¶ 13-17 (holding that "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.*, 11th Dist. Geauga No. 919, 1981 Ohio App. LEXIS 14641, **2-4 (Jun. 29, 1981) (finding the meetings were not emergencies since there was evidence that matters could have been scheduled any time in the preceding two or three months, and 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.*, 11th Dist. Portage No. 2-16-P-0057, 2017-Ohio-4237, ¶ 39 (finding no support for relator's 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").

[1044] R.C. 121.22(F).

[1045] R.C. 121.22(F).

[1046] R.C. 121.22(F); *State ex rel. Patrick Bros v. Putnam Cty. Bd. of Commrs.*, 3d Dist. Putnam No. 12-13-05, 2014-Ohio-2717, ¶¶ 33-37.

[1047] These requirements notwithstanding, many courts have found that actions taken by a public body are not invalid simply because the body failed to 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.*, 147 Ohio App.3d 268, 271 (2d Dist. 2002); *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. Lucas No. L-97-1240, 1998 Ohio App. LEXIS 1496 (Apr. 10, 1998); *Barbeck v. Twinsburg Twp.*, 73 Ohio App.3d 587 (9th Dist. 1992).

[1048] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993); *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002) ("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).")

[1049] *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002).

[1050] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (finding chairman of zoning commission testified that he correctly reported to newspaper the meeting time but newspaper mispublished it); *Swickrath & Sons, Inc. v. Elida*, 3d Dist. Allen No. 1-03-46, 2003-Ohio-6288, ¶ 19 (finding 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).

[1051] *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 420 (1996); *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 3d Dist. Putnam No. 12-13-05, 2014-Ohio-2717; *State ex rel. Ames v. Portage Cty. Board of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio-2374, ¶ 23 (public body failed to keep full and accurate minutes when minutes referenced attachment that was not in the approved minutes or produced to requester).

[1052] *See generally State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 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); *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 (2001); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶¶ 9-11 (finding that, absent evidence as to any alleged missing details or discussions, meeting minutes providing the resolution number being voted on and noting that a vote was taken were not too generalized).

[1053] *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 419 (1996); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54,58 (2001).

[1054] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58 (2001); *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 3d Dist. Putnam No. 12-13-05, 2014-Ohio-2717, ¶¶ 33-37. *But see Shaffer v. W. Farmington*, 82 Ohio App.3d 579, 585 (11th Dist. 1992) (holding that minutes may not be conclusive evidence as to whether roll call vote was taken); *State ex rel. MORE Bratenahl v. Bratenahl*, 8th Dist. Cuyahoga No. 105281, 2018-Ohio-497, ¶ 25 ("[T]he meeting minutes in question, along with the transcripts of the subsequent Bratenahl Council meetings, provide an accurate and adequate record[.]"), *rev'd on other grounds,* 157 Ohio St.3d 309, 2019-Ohio-3233.

[1055] R.C. 121.22(C).

[1056] *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 380, 2005-Ohio-2868 (4th Dist.).

[1057] R.C. 121.22(C); *see also White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416 (1996); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990) (finding that, because the members of a public body had met as a majority group, R.C. 121.22 applied, and minutes of the meeting were therefore necessary); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 57 (2001) (finding that audiotapes that are later erased do not meet requirement to maintain minutes).

[1058] *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. Warren No. CA2012-02-013, 2013-Ohio-1111, ¶ 33 (reading R.C. 121.22 in pari materia 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).

[1059] R.C. 121.22(C).

[1060] *State ex rel. Doe v. Register*, 12th Dist. Clermont No. CA2008-08-081, 2009-Ohio-2448, ¶ 28.

[1061] *State ex rel. Verhovec v. Marietta*, 4th Dist. Washington No. 12CA32, 2013-Ohio-5415, ¶¶ 19-30.

[1062] In *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 57 (2001), the Ohio 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.

[1063] 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 R.C. 149.43, that the audio tape 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).

[1064] "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." R.C. 5502.21 (F). "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." R.C. 5502.21(C).

[1065] R.C. 5502.24(B).
[1066] 2009 Ohio Atty.Gen.Ops. No. 034; R.C. 5502.24(B). NOTE: This rule is temporarily suspended due to the COVID-19 pandemic, effective until June 30, 2022.
[1067] *See* page 102, Temporary Changes to the Open Meetings Act Due to the COVID-19 Pandemic, Effective until June 30, 2022
[1068] Ohio Constitution, Article XVIII, Sections 3, 7; *see also State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164 (1995); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *State ex rel. Craft v. Schisler*, 40 Ohio St.3d 149 (1988); *Fox v. Lakewood*, 39 Ohio St.3d 19 (1988).
[1069] *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) (finding a charter municipality, in the exercise of its sovereign powers of local self-government as established by the Ohio Constitution, need not adhere to the strictures of R.C. 121.22; 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").
[1070] *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*, 8th Dist. Cuyahoga No. 104375, 2017-Ohio-1038 (holding that the 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*, 11th Dist. Trumbull No. 2016-T-0010, 2017-Ohio-7957, ¶¶ 32-35.
[1071] *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728, 736 (1st Dist. 1989); *Johnson v. Kindig*, 9th Dist. Wayne No. 00CA0095, 2001 Ohio App. LEXIS 3569, **8-9 (Aug. 15, 2001) (finding that, 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).
[1072] *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676 (1996); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165 (1998); *see also State ex rel. Gannett Satellite Information Network, Inc. v. Cincinnati City Council*, 137 Ohio App.3d 589, 592 (1st Dist. 2001) (finding that, when a city charter mandates all meetings be open, rules of council cannot supersede this mandate).

IX. Chapter Nine: Executive Session

Executive Session Overview

- Executive session is a portion of an open meeting from which the public can be excluded.
- Proper procedure is required to move into executive session:
  - Meeting must always begin and end in 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 one of 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.
- Discussions in executive session are 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.[1073] The public body, however, may *invite* anyone it chooses to attend an executive session.[1074] The Open Meetings Act strictly limits the use of executive sessions. First, the Open Meetings Act limits the matters that a public body may discuss in executive session.[1075] Second, the Open Meetings Act requires that a public body follow a specific procedure to adjourn into an executive session.[1076] 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.[1077]

A public body may only discuss matters specifically identified in R.C. 121.22(G) in executive session and may only hold executive sessions at regular and special meetings.[1078] One court has held that a public body may discuss other, related issues if they have a direct bearing on the permitted matter(s).[1079] If a public body is challenged in court over the nature of discussions or deliberations held in executive session, the burden of proof lies with the public body to establish that one of the statutory exemptions permitted the executive session.[1080]

The Open Meetings Act does not prohibit the public body or one of its members from disclosing the information discussed in executive session.[1081] However, other provisions of law may prohibit such disclosure.[1082] 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.[1083] Public officials should seek legal counsel to determine whether ethics laws prohibit them from disclosing topics discussed during executive session.

Note: 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. In other words, an executive session under the Open Meetings Act is not an exemption for public records under the Public Records Act. For instance, 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.[1084]

B. Permissible Discussion Topics in Executive Session

There are very limited topics that the members of a public body may consider in executive session:

1. Certain personnel matters when particularly named in motion[1085]

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; and
- To consider the investigation of charges or complaints against a public employee, official, licensee, or regulated individual,[1086] unless the employee, official, licensee, or regulated individual requests a public hearing;[1087]

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 *particular* 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**.[1088] One court has 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)."[1089] The motion need not include the name of the person involved in the specified personnel matter[1090] or disclose "private facts."[1091]

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.[1092] 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,"[1093] meaning any exemptions to openness should be drawn narrowly. A different appellate court, however, looked to 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.[1094] It is important for a public body to consult the case law within its own appellate district in order 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.[1095] A public body may also adjourn into executive session to consider 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.[1096] No member of a public body may use this exemption as subterfuge to provide covert information to prospective buyers or sellers.[1097]

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.[1098] Court action is "pending" if a lawsuit has been commenced, and it is "imminent" if it is on the brink of commencing.[1099] Courts have concluded that threatened litigation is imminent and may be discussed in executive session.[1100] Additionally, a general discussion of legal matters is not a sufficient basis for invoking this provision.[1101] 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.[1102]

4. Collective bargaining matters

A public body may adjourn into executive session to prepare for, conduct, or review a collective bargaining strategy.[1103]

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.[1104] 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.[1105]

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.[1106]

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.[1107]

8. Confidential business information of an applicant for economic development assistance[1108]

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.[1109] "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."[1110]

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.[1111] Note that, 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.[1112] In order to begin an executive session, there must be a proper motion approved by a majority[1113] of a quorum of the public body, using a roll call vote.[1114]

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."[1115] 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.").[1116] The public body must specifically identify which of the listed personnel matters set forth in R.C. 121.22(G)(1) it will discuss. It is not sufficient to simply state "personnel" as a reason for executive session.[1117] The motion does not need to specify by name the person whom the public body intends to discuss.[1118] 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.[1119]

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.[1120] The vote may not be by a show of hands, and the public body should record the vote in its minutes.[1121]

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 take minutes during executive session. Note that any minutes taken during executive session may be subject to the Public Records Act.[1122] 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:

[1073] *Weisel v. Palmyra Twp. Bd. of Zoning Appeals*, 11th Dist. Portage No. 90-P-2193, 1991 Ohio App. LEXIS 3379 (July 19, 1991); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. Lorain No. 89-CA004624, 1990 Ohio App. LEXIS 2190 (May 23, 1990). NOTE: R.C.121.22(G) prohibits executive sessions for sanitation courts as defined in R.C. 121.22(B)(1)(c).

[1074] *Chudner v. Cleveland City School Dist.*, 8th Dist. Cuyahoga No. 68572, 1995 Ohio App. LEXIS 3303, **8-9 (Aug. 10, 1995) (inviting select individuals to attend an executive session is not a violation as long as no formal action of the public body will occur); *Weisel v. Palmyra Twp. Bd. of Zoning Appeals*, 11th Dist. Portage No. 90-P-2193, 1991 Ohio App. LEXIS 3379 (July 19, 1991); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. Lorain No. 89-CA004624, 1990 Ohio App. LEXIS 2190 (May 23, 1990).

[1075] R.C. 121.22(G)(1)-(8), (J); *see also Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 28-29 (finding evidence showed that discussion in executive sessions was about proposed school closing and not the purpose stated in the executive session motions).

[1076] R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion); *see also State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding respondents violated R.C. 121.22(G)(1) 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)); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 473 (10th Dist. 2001) (finding a majority of a quorum of the public body must determine, by roll call vote, to hold executive session); *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805, *8 (June 30, 1995) (holding that "police personnel matters" does not constitute substantial compliance because it does not refer to any of the specified purposes listed in R.C. 149.43(G)(1)); *Vermillion Teachers' Assn. v. Vermillion Local School Dist. Bd. of Edn.*, 98 Ohio App.3d 524, 531-32 (6th Dist. 1994) (finding a board violated 121.22(G) when it went into executive session to discuss a stated permissible topic but proceeded to discuss another, non-permissible topic); 1988 Ohio Atty.Gen.Ops. No. 029.

[1077] R.C. 121.22(H); *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 37-39 (finding 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.*, 4th Dist. Pike No. 00CA647, 2001 Ohio App. LEXIS 1677, *10 (Jan. 4, 2001) (holding that a 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) (holding that, 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); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03 CA 55, 2003 Ohio App. LEXIS 6654 (Dec. 24, 2003); *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 19 (4th Dist.) (finding that, although a resolution to adopt proposal to create a new school district was later adopted in open session, the resolution was invalid because board members gave personal opinions and indicated how they would vote on the proposal in an executive session);*State ex rel. Ames v. Brimfield Twp. Bd. of Trustees,* 11th Dist. Portage No. 2019-P-0018, 2019-Ohio-5311, ¶ 20 (finding that while in executive session, the board improperly discussed and deliberated on several issues outside permissible executive session topics).

[1078] R.C. 121.22(G).

[1079] *Chudner v. Cleveland City School Dist.*, 8th Dist. Cuyahoga No. 68572, 1995 Ohio App. LEXIS 3303 (Aug. 10, 1995) (finding that issues discussed in executive session each had a direct bearing on topic that was permissible subject of executive session discussion).

[1080] *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728, 736 (1st Dist. 1989); *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. Warren No. CA2012-02-013, 2013-Ohio-1111, ¶ 61 (holding that board violated Open Meetings Act when the board minutes failed to indicate the stated purpose for the executive session); *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Clermont Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶ 25 (adopting burden shifting analysis). *But see Brenneman Bros v. Allen Cty. Commrs.*, 3d Dist. Allen No. 1-14-15, 2015-Ohio-148, ¶¶ 18-19 (holding that party asserting violation has the burden to prove it, and public officials are presumed to have followed the law).

[1081] *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").

[1082] *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*, S.D. Ohio No. 1:10-cv-749, 2012 Ohio App. LEXIS 168038. **14-15 (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*, S.D. Ohio No. 3:16-cv-285, 2017 U.S. Dist. LEXIS 90290, **6-7 (June 9, 2017) (holding that when city council entered executive session to discuss pending litigation—this case—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).

[1083] *See* OEC Adv.Op. 20-02, 2020 Ohio Ethics Comm. LEXIS 2.

[1084] *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 138, 1997-Ohio-353 ("'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.'") (quoting *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 664 (8th Dist. 1990))).

[1085] R.C. 121.22(G)(1).

[1086] 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).

[1087] This provision does not create a substantive right to a public hearing. *Matheny v. Frontier Local Bd. of Edn.*, 62 Ohio St.2d 362, 368 (1980) ("[T]he term 'public hearing' in subdivision (G)(1) of [R.C. 121.22] 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. *Id.*; *Schmidt v. Newton*, 1st Dist. Hamilton No. C-110470, 2012-Ohio-890, ¶ 26 ("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.*, 4th Dist. Washington No. 89 CA 26, 1990 Ohio App. LEXIS 3878, *13 (Aug. 28, 1990) (finding that, 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.*, 1st Dist. Hamilton No. C-130263, 2013-Ohio-5513; *State ex rel. Harris v. Indus. Comm. of Ohio*, 10th Dist. Franklin No. 95APE07-891, 1995 Ohio App. LEXIS 5491 (Dec. 14, 1995).

[1088] 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) (finding respondents violated R.C. 121.22(G)(1) 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.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶¶ 18-21 (finding that non-specific reference to "personnel matters" or "personnel issues" does not satisfy R.C. 121.22(G)); *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805, *8 (June 30, 1995) (stating that "[p]olice personnel matters" does not constitute substantial compliance because it does not refer to any of the specific purposes listed in R.C.

149.43(G)(1)); 1988 Ohio Atty.Gen.Ops. No. 88-029, 2-120 to 2-121, n.1; *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 25 (finding that minutes stating that executive session was convened for "personnel issues" do not comply with R.C. 121.22(G)(1)); *see also State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. Warren No. CA2012-02-013, 2013-Ohio-1111, ¶¶ 63-65.

[1089] *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 19; *see also Lawrence v. Edon*, 6th Dist. Williams No. WM-05-001, 2005-Ohio-5883 (holding that the 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 constitute proper contexts for considering employee evaluations include "employment," "promotion," "demotion," or "compensation."

[1090] R.C. 121.22(G)(1).

[1091] *Smith v. Pierce Twp.*, 12th Dist. Clermont No. CA2013-10-079, 2014-Ohio-3291, ¶¶ 50-55 (finding 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).

[1092] *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 3d Dist. Putnam No. 12-13-05, 2014-Ohio-2717, ¶ 36; *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.*, 9th Dist. Lorain No. 89-CA004624, 1990 Ohio App. LEXIS 2190 (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).

[1093] R.C. 121.22(C).

[1094] *Wright v. Mt. Vernon City Council*, 5th Dist. Knox No. 97-CA-7, 1997 Ohio App. LEXIS 4931 (Oct. 23, 1997) (finding it permissible for a public body to discuss merit raises for exempt city employees in executive session without referring to individuals in particular positions).

[1095] R.C. 121.22(G)(2); *see also* 1988 Ohio Atty.Gen.Ops. No. 003.

[1096] R.C. 121.22(G)(2); *see also* 1988 Ohio Atty.Gen.Ops. No. 003.

[1097] R.C. 121.22(G)(2).

[1098] R.C. 121.22(G)(3); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees,* 11th Dist. Portage No. 201-P-0018, 2019-Ohio-5311, ¶ 32 (finding 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).

[1099] *State ex rel. Cincinnati Enquirer v. Hamilton Cty. Commrs.*, 1st Dist. Hamilton No. C-010605, 2002-Ohio-2038, ¶ 20 (determining that "imminent" is satisfied when a public body has moved beyond mere investigation and assumed an aggressive litigative posture manifested by the decision to commit government resources to the prospective litigation); *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728 (1st Dist. 1989); *cf. Greene Cty. Guidance Ctr., Inc. v. Greene-Clinton Community Mental Health Bd.*, 19 Ohio App.3d 1, 5 (2d Dist. 1984) (finding a discussion with legal counsel in executive session under 121.22(G)(3) is permitted when litigation is a "reasonable prospect").

[1100] *Maddox v. Greene Cty. Children Servs. Bd.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 22 (finding letter expressly threatening litigation if a settlement is not reached "reasonably made a lawsuit appear imminent"); *Warthman v. Genoa Twp. Bd. of Trustees*, 5th Dist. Delaware No. 10CAH040034, 2011-Ohio-1775, ¶ 104.

[1101] *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 25 (finding minutes stating that executive session was convened for "legal issues" do not comply with R.C. 121.22(G)(1)); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees,* 11th Dist. Portage No. 2019-P-0019, 2019-Ohio-5412, ¶ 36 (finding that 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).

[1102] *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 185 Ohio App.3d 707, 2009-Ohio-6993, ¶¶ 66-69 (10th Dist.) (finding three 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* 127 Ohio St.3d 511, 2010-Ohio-6207, ¶¶ 8, 27-29; *Awadalla v. Robinson Mem. Hosp.*, 11th Dist. Portage No. 91-P-2385, 1992 Ohio App. LEXIS 2838, *7 (June 5, 1992) (finding executive session improper when a board's "attorney" was identified as "senior vice president" in meeting minutes).

[1103] R.C. 121.22(G)(4); *see also Back v. Madison Local School Dist. Bd. of Edn.*, 12th Dist. Butler No. CA2007-03-006, 2007-Ohio-4218, ¶ 8 (finding 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, under R.C. 4117.21, was exempt from the Open Meetings Act's requirements).

[1104] R.C. 121.22(G)(5).

[1105] *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Clermont Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶¶ 75-79; *State ex rel. Cincinnati Enquirer v. Hamilton Cty. Commrs.*, 1st Dist. Hamilton No. C-010605, 2002-Ohio-2038, 2002 Ohio App. LEXIS 1977, *5; *Dispatch Printing Co. v. Columbus City School Dist. Bd. of Edn.*, Franklin C.P. No. 12CVH10-12707, ¶¶ 3-5 (Feb. 28, 2013); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees,* 11th Dist. Portage No. 2019-P-0018, 2019-Ohio-5311, ¶ 27; *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees,* 11th Dist. Portage No. 2019-P-0019, 2019-Ohio-5412, ¶¶ 39-42.

[1106] R.C. 121.22(G)(6).

[1107] R.C. 121.22(G)(7).

[1108] R.C. 121.22(G)(8).

[1109] R.C. 121.22(G)(8)(a).

[1110] R.C. 121.22(G)(8)(b); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees,* 11th Dist. Portage No. 2019-P-0019, 2019-Ohio-5412, ¶ 79 (finding that board failed to comply with R.C. 121.22(G)(8)(a) and (b) when meeting minutes reflected merely that the board moved into executive session "to discuss economic development assistance concerning" a development contract).

[1111] R.C. 121.22(J).

[1112] R.C. 121.22(G); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013 CA 38, 2014-Ohio-2312, ¶¶ 24-26.

[1113] 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).

[1114] *Vermillion Teachers' Assn. v. Vermillion Local School Dist. Bd. of Edn.*, 98 Ohio App.3d 524 (6th Dist. 1994); 1988 Ohio Atty.Gen.Ops. No. 029 (detailing proper procedure for executive session).

[1115] R.C. 121.22(G)(1), (8).

[1116] *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805 (June 30, 1995); 1988 Ohio Atty.Gen.Ops. No. 029; *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001).

[1117] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding that 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*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805, *8 (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."); 1988 Ohio Atty.Gen.Ops. No. 029, 2-120 to 2-121, fn.1.

[1118] R.C. 121.22(G)(1); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. Columbiana No. CA-678, 1990 Ohio App. LEXIS 3761 (Aug. 29, 1990).

[1119] *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.,* 11th Dist. Portage No. 2019-P-0015, 2019-Ohio-3729, ¶ 63.

[1120] R.C. 121.22(G).
[1121] R.C. 121.22(G); 1988 Ohio Atty.Gen.Ops. No. 029; *State ex rel. MORE Bratenahl v. Bratenahl*, 8th Dist. Cuyahoga No. 105281, 2017-Ohio-8484, ¶ 29 (finding evidence in the record and on audio recording of the village council meeting that a roll call vote that took place before the council went in to executive session was sufficient to show compliance with the Open Meetings Act, even though the roll call vote technically took place before the court reporter began recording the transcript), *reversed on other grounds,* 157 Ohio St.3d 309, 2019-Ohio-3233.
[1122] *See* Chapter Three: A. "General Principles."

X. Chapter Ten: Enforcement and Remedies

The Open Meetings Act is a "self-help" statute. This means that if any person believes a public body has violated or intends to violate the Open Meetings Act, that person may file suit in a common pleas court to enforce the law's provisions.[1123] A person does not need to ask a public official (such as the Ohio Attorney General) to initiate legal action on their behalf, and no state or local government official has the authority to enforce the Act.

The Open Meetings Act states that its provisions "shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law."[1124] The executive session exemptions contained in R.C. 121.22(G) are to be strictly construed.[1125]

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."[1126] There must still be an actual, genuine controversy at the time the action is filed, or the claim may be dismissed as moot.[1127] 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.

a. Who may file and against whom

"Any person" has standing to file for an injunction to enforce the Open Meetings Act.[1128] The person need not demonstrate a personal stake in the outcome of the lawsuit.[1129]

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 found that the public body itself is not "sui juris" (capable of being sued) for violations of the Act.[1130] Other courts find that public bodies are "sui juris" for purposes of suits alleging violations of the Act.[1131] 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.[1132]

One court has 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.[1133] Courts have reached different conclusions as to whether a trial court may consider an alleged violation of the Act as a claim made within an administrative appeal.[1134] 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.[1135] When the plaintiff first shows that a meeting of a majority of the members of a public body occurred and alleges that the public was improperly excluded from all or part of that meeting, the burden shifts to the public body to produce evidence that the challenged meeting fell under one of the Act's exemptions.[1136] 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.[1137] 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[1138] and will issue an injunction.[1139]

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.[1140] 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.[1141] One court has 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."[1142] The Ohio Supreme Court has 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.[1143]

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.[1144] Mandamus is also the appropriate action to order a public body to give notice of meetings to the person filing the action.[1145]

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.[1146]

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.[1147] However, courts have refused to allow public bodies to benefit from their own violations of the Open Meetings Act.[1148] 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.[1149]

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.[1150] 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.[1151] 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.[1152] 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.[1153]

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.[1154]

c. Minutes

At least one court has found that minutes are merely the record of actions; they are not actions in and of themselves.[1155] Thus, failure to properly approve minutes does not invalidate the actions taken during the meeting.[1156]

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.[1157] Courts that find that a public body has violated the law on repeated occasions have awarded a $500 civil forfeiture for each violation.[1158]

3. Court costs and attorney fees

If the court issues an injunction, it will order the public body to pay all court costs[1159] and the reasonable attorney fees of the person who filed the action.[1160] 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.[1161]

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 of the public body's court costs and reasonable attorney fees as determined by the court.[1162] A public body is entitled to attorney fees even when those fees are paid by its insurance company.[1163]

Notes:

[1123] R.C. 121.22(I)(1).
[1124] R.C. 121.22(A).
[1125] *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Clermont Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶ 15; *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218 (4th Dist. 1988), paragraphs one and two of the syllabus; *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013 CA 38, 2014-Ohio-2312, ¶ 17.
[1126] R.C. 121.22(I)(1); *see also Mollette v. Portsmouth City Council*, 179 Ohio App.3d 455, 2008-Ohio-6342 (4th Dist.); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 16.
[1127] *Tucker v. Leadership Academy*, 10th Dist. Franklin No. 14AP-100, 2014-Ohio-3307, ¶¶ 14-17 (finding closure of charter school rendered allegedly improper resolution under Open Meetings Act moot); *State ex rel. Crilley v. Lowellville Bd. of Educ.,* 7th Dist. Mahoning No. 20 MA 0128, 2021-Ohio-3333 (finding Relators' Open Meetings Act claim for relief moot).
[1128] R.C. 121.22(I)(1); *McVey v. Carthage Twp. Trustees*, 4th Dist. Athens No. 04CA44, 2005-Ohio-2869.
[1129] *Doran v. Northmont Bd. of Edn.*, 153 Ohio App.3d 499, 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*, 5th Dist. Stark No. CA-8133, 1991 Ohio App. LEXIS 291, *5 (Jan. 7, 1991) (finding a 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).
[1130] *Mollette v. Portsmouth City Council*, 169 Ohio App.3d 557, 2006-Ohio-6289 (4th Dist.) (finding suit should have been filed against the individual council members in their official capacities), *holding reaffirmed, Mollette v. Portsmouth City Council*, 179 Ohio App.3d 455, 2008-Ohio-6342 (4th Dist.); *Krash v. Alliance*, 5th Dist. Stark Nos. CA-0846, CA-8058, 1990 Ohio App. LEXIS 2778 (July 2, 1990).
[1131] *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013-CA-38 , 2014-Ohio-2312, ¶¶ 10-14; *Krueck v. Kipton Village Council*, 9th Dist. Lorain No. 11CA009960, 2012-Ohio-1787, ¶¶ 3-4, 16; *State ex rel. Maynard v. Medina Cty. Facilities Taskforce Subcommt.,* 9th Dist. Medina No. 19CA0083-M, 2020-Ohio-5561, ¶¶ 18-21 (finding that 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), *discretionary appeal not allowed,* 162 Ohio St.3d 1438, 2021-Ohio-1399.
[1132] R.C. 121.22(I)(1).
[1133] *State ex rel. Savko & Sons v. Perry Twp. Bd. of Trustees*, 10th Dist. Franklin No. 14AP-204, 2014-Ohio-1181.
[1134] **Courts finding jurisdiction:** *Brenneman Bros. v. Allen Cty. Commrs.*, 3d Dist. Allen No. 1-13-14, 2013-Ohio-4635; *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*, 11th Dist. Ashtabula No. 2009-A-0044, 2010-Ohio-2282; *Fahl v. Athens*, 4th Dist. Athens No. 06CA23, 2007-Ohio-4925; *Pfeffer v. Bd. of Cty. Commrs. of Portage Cty.*, 11th Dist. Portage No. 2000-P-0030, 2001 Ohio App. LEXIS 3185 (July 13, 2001).
[1135] *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No. 2012-T-0035, 2013-Ohio-881, ¶ 18 (requiring proof by clear and convincing evidence); *State ex rel. Masiella v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage No. 2016-P-0038, 2017-Ohio-2934, ¶ 53 (finding 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").
[1136] *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Clermont Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶¶ 20-27; *Carver v. Deerfield Twp.*, 139 Ohio App.3d 64, 70 (11th Dist. 2000); *State ex rel. Hicks v. Clermont Cty. Bd. of Commrs.*, 12th Dist. Clermont No. CA2020-06-032, 2021-Ohio-998 (holding that after plaintiff shows that a public body met, held an executive session, and excluded the public from that session, "the burden shifts to the public body to produce or go forward with evidence that the challenged meeting fell under one of the exceptions" under the Open Meetings Act), *discretionary appeal accepted*, 163 Ohio St.3d 1504, 2021-Ohio-2401.
[1137] *Sea Lakes, Inc. v. Lipstreu*, 11th Dist. Portage No. 90-P-2254, 1991 Ohio App. LEXIS 4615, *12 (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*, 5th Dist. Morgan No. CA-90-11, 1991 Ohio App. LEXIS 2409, *2 (May 15, 1991) (finding violation when county commission emerged from executive session held "to discuss legal matters" and announced decision to remove Smith from Board of Mental Health, there was no county attorney present in executive session, and a request for public hearing on removal decision was pending).
[1138] R.C. 121.22(I)(3); *Ream v. Civil Serv. Comm. of Canton*, 5th Dist. Stark No. CA-8033, 1990 Ohio App. LEXIS 2184 (Nov. 26, 1990).
[1139] R.C. 121.22(I)(1); *see also Doran v. Northmont Bd. of Edn.*, 153 Ohio App.3d 499, 2003-Ohio-4084, ¶ 21 (2d Dist.) (holding that 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) (finding injunction mandatory even though challenged board action was nullified and there was no need for an injunction).
[1140] *McVey v. Carthage Twp. Trustees*, 4th Dist. Athens No. 04CA44, 2005-Ohio-2869, ¶ 9 ("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."); *Doran v. Northmont Bd. of Edn.*, 153 Ohio App.3d 499, 2003-Ohio-4084 (2d Dist.); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. Monroe No. CA-678, 1990 Ohio App. LEXIS 3761 (Aug. 29, 1990).
[1141] **Courts finding that violation was not cured:** *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 44-46 (finding that 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) (finding 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*, 3d Dist. No. 1-87-46, 1988 Ohio App. LEXIS 493, *9 (Feb. 12, 1988) (finding that, as a result of a 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*, 3d Dist. Putnam No. 12-94-9, 1995 Ohio App. LEXIS 1269, *8 (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."); *Carpenter v. Bd. of Allen Cty. Commr.*, 3d Dist. Allen No. 1-81-44, 1982 Ohio App. LEXIS 15269 (Aug. 10, 1982); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. Monroe No. CA-678, 1990 Ohio App. LEXIS 3761, **6-7 (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).
[1142] *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.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 36 (finding Open Meetings Act violation in termination of an employee did not afford employee life time employment but the public body has to re-deliberate "at least enough to support a finding that its discharge decision did not result from prior improper deliberations").
[1143] *Fox v. Lakewood*, 39 Ohio St.3d 19 (1998); *see also Skindell v. Madigan*, 8th Dist. Cuyahoga No. 103976, 2017-Ohio-398, ¶ 5.
[1144] *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54 (2001); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *Ames v. Portage Cty. Bd. Commrs.*, 11th Dist. Portage No. 2019-P-0125, 2022-Ohio-336, ¶ 54 (finding that, while requester established public body

violated the Open Meetings Act in failing to prepare full and accurate minutes, the same actions did not constitute failure to comply with the Public Records Act; petition for writ of mandamus under the Public Records Act denied and requester not entitled to statutory damages).
[1145] *State ex rel. Vindicator Printing Co. v. Kirila*, 11th Dist. Trumbull No. 91-T-4550, 1991 Ohio App. LEXIS 6413 (Dec. 31, 1991).
[1146] R.C. 121.22(I)(4); R.C. Chapter 2733 (Quo Warranto); *State ex rel. Bates v. Smith*, 147 Ohio St.3d 322, 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*, 118 Ohio St.3d 138, 2008-Ohio-1965, ¶¶ 8-14 (finding that, 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; further, this duty applies to alleged violations of the open meeting provisions of R.C. 121.22); *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 in violation of the Act); *McClarren v. Alliance*, 5th Dist. Stark No. CA-7201, 1987 Ohio App. LEXIS 9211 (Oct. 13, 1987) (finding that an injunction must be issued upon the finding of a violation to allow for removal from office after any future knowing violation).
[1147] R.C. 121.22(H); *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 127 Ohio St.3d 511, 2010-Ohio-6207, ¶¶ 28-29; *State ex rel. Holliday v. Marion Twp. Bd. of Trustees,* 3d Dist. Marion No. 9-2000-22, 2000 Ohio App. LEXIS 4416 (Sept. 27, 2000).
[1148] *Jones v. Brookfield Twp. Trustees*, 11th Dist. Trumbull No. 92-T-4692, 1995 Ohio App. LEXIS 2805 (June 30, 1995); *Roberto v. Brown Cty. Gen. Hosp.*, 12th Dist. Brown No. CA87-06-009, 1988 Ohio App. LEXIS 372 (Feb. 8, 1988).
[1149] *Roberto v. Brown Cty. Gen. Hosp.*, 12th Dist. Brown No. CA87-06-009, 1988 Ohio App. LEXIS 372 (Feb. 8, 1988).
[1150] R.C. 121.22(A), (C), and (H).
[1151] R.C. 121.22(H); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03 CA 55, 2003 Ohio App. LEXIS 6654 (Dec. 24, 2003); *see also Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 19 (4th Dist.) (finding that resolution to adopt proposal to create new school district 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.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 37-39 (finding 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.*, 4th Dist. Pike No. 00CA647, 2001 Ohio App. LEXIS 1677 (Jan. 4, 2001) (holding that a 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) (holding that, 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).
[1152] R.C. 121.22(H); *Keystone Commt. v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 30-31 (holding that action by the public body that resulted from improper discussion in executive session was invalid); *Mansfield City Council v. Richland Cty. Council AFL-CIO,* 5th Dist. Richland No. 03 CA 55, 2003 Ohio App. LEXIS 6654 (Dec. 24, 2003) (finding council reached its conclusion based on comments in executive session and acted according to that conclusion); *State ex rel. Holliday v. Marion Twp. Bd. of Trustees*, 3d Dist. Marion No. 9-2000-22, 2000 Ohio App. LEXIS 4416 (Sept. 27, 2000); *see also State ex rel. Delph v. Barr*, 44 Ohio St.3d 77 (1989); *State ex rel. Masiella v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage No. 2016-P-0038, 2017-Ohio-2934, ¶¶ 48-52.
[1153] *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03 CA 55, 2003 Ohio App. LEXIS 6654 (Dec. 24, 2003).
[1154] R.C. 121.22(H); *see also State ex rel. Stiller v. Columbiana Exempted Village School Dist. Bd. of Edn.*, 74 Ohio St.3d 113, 118 (1995). *But see Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. Lucas No. L-97-1240, 1998 Ohio App. LEXIS 1496, *10-11 (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.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 35-36 (finding 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*, 5th Dist. Tuscarawas No. 2014 AP 02 0005, 2014-Ohio-4889, ¶¶ 20-23 (holding that, even if notice was flawed, the second reading of a proposed ordinance was not "formal action").
[1155] *Davidson v. Hanging Rock*, 97 Ohio App.3d 723, 733 (4th Dist. 1994).
[1156] *Davidson v. Hanging Rock*, 97 Ohio App.3d 723, 733 (4th Dist. 1994).
[1157] R.C. 121.22(I)(2)(a). *But see State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 32 (2013) (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).
[1158] *Specht v. Finnegan*, 6th Dist. Lucas No. 2-02-1012, 2002-Ohio-4660; *Manogg v. Stickle*, 5th Dist. Licking No. 98CA00102, 1999 Ohio App. LEXIS 1488 (Mar. 15, 1999); *Weisbarth v. Geauga Park Dist.*, 11th Dist. No. 2007-G-2780, 2007-Ohio-6728, ¶ 30 (holding that 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.*, 2d Dist. Greene No. 2013 CA 38, 2014-Ohio-2312, ¶¶ 40-51 (stacking forfeitures for certain violations but not others). *But see Doran v. Northmont Bd. of Edn.*, 2d Dist. Montgomery No. 19956, 2003-Ohio-7097, ¶ 18, n.3 (determining that the failure to adopt rule is one violation with one $500 fine – fine not assessed for each meeting conducted in absence of rule where meetings were, in fact, properly noticed and held in an open forum).
[1159] R.C. 121.22(I)(2)(a).
[1160] 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 a citizen over $17,000 in attorney fees); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.,* 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶ 60 ("[T]he OMA is structured such that an injunction follows a violation and attorney fees follow an injunction."); *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001). *But see State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. Fairfield No. 12-CA-8, 2013-Ohio-2295, ¶ 32 (2013) (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).
[1161] R.C. 121.22(I)(2)(a)(i), (ii); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. Greene No. 2013-CA-38, 2014-Ohio-2312, ¶¶ 61-62 (holding that 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); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richalnd No. 03 CA 55, 2003 Ohio App. LEXIS 6654 (Dec. 24, 2003) (declining to reduce fee award); *Mathews v. E. Local School Dist.,* 4th Dist. Pike No. 00CA647, 2001 Ohio App. LEXIS 1677 (Jan. 4, 2001) (holding that, when two board members knew not to take formal action during executive session, the board was not entitled to reduction); *State ex rel. Jones v. Bd. Of Edn.of Dayton Pub. Schs.,* 2d Dist. Montgomery No. 28637, 2020-Ohio-4931, ¶¶ 61-62, 71 (finding that when no well-informed board would believe it could publish a misleading notice of a special meeting or alter a published agenda after meeting, award of attorney fees for Open Meetings Act violation is appropriate; whether public body's actions were "egregious" or benefited the public is irrelevant), *discretionary appeal not allowed*, 163 Ohio St.3d 1422, 2021-Ohio-1580; State ex rel. Hicks v. Clermont Cty. Bd. of Commrs., 12th Dist. Clermont No. CA2020-06-032, 2021-Ohio-998 (finding that no well-informed public body would believe that it could recite multiple permissible reasons for moving into executive session instead of describing a specific reason), *discretionary appeal accepted*, 163 Ohio St.3d 1504, 2021-Ohio-2401; *State ex rel. Crilley v. Lowellville Bd. of Educ.,* 7th Dist. Mahoning No. 20 MA 0128, 2021-Ohio-3333 (awarding attorneys' fees where OMA claim was moot).
[1162] R.C. 121.22(I)(2)(b); *McIntyre v. Westerville City School Dist. Bd. of Edn.*, 10th Dist. Franklin Nos. 90AP-1024, 90AP-1063, 1991 Ohio App. LEXIS 2658, *9 (June 6, 1991) (finding a 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.*, 12th Dist. Warren No. CA2013-03-025, 2014-Ohio-252, ¶ 19 (upholding award of attorney fees when "there was no possible violation of the OMA as alleged in Relator's first four allegations").
[1163] *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. Warren No. CA2013-03-025, 2014-Ohio-252, ¶ 23.

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