



# Members Only

AN INFORMATIONAL BRIEF PREPARED FOR MEMBERS OF THE OHIO GENERAL ASSEMBLY BY THE LEGISLATIVE SERVICE COMMISSION STAFF

Volume 131 Issue 2  
January 27, 2016

## Public Records Law in Ohio\*

PREPARED BY: MICHAEL J. O'NEILL, LSC DIVISION CHIEF  
REVIEWED BY: JULIE A. RISHEL, LSC DIVISION CHIEF

### **General duty to maintain, and provide access to, records**

The Ohio Public Records Law<sup>1</sup> generally requires every public office, when requested, to promptly prepare public records and make them available for inspection at all reasonable times during regular business hours. Upon request and within a reasonable period of time, a public office or person responsible for public records<sup>2</sup> generally must make copies available at cost. Public records must be maintained in such a manner that they can be made available for inspection and copying.

### **What is a public record?**

**Public record** means any record kept by any public office and any record pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for-profit entity operating the school.<sup>3</sup>

A **public office** includes any state agency, political subdivision, or other organized body established by Ohio law for the exercise of any function of government. State, county, city, village, township, and school district units are “public offices.”<sup>4</sup>

A **record** includes any document, device, or item, regardless of physical form or characteristic that (1) is created or received by or coming under the jurisdiction of any public office and (2) serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. Electronic records are “records.”<sup>5</sup>

The definitions of “record” and “public record” must be read together. Not every document or piece of information maintained by a public office is a “record” subject to the Public Records Law. Matter that does not serve to document the organization, functions, policies, decisions,

---

*The Public Records Law affords citizens with both inspection and copying rights in connection with public records.*

---

\*This Members Only brief is an update of earlier briefs on this subject, the latest dated October 23, 2008 (Volume 127 Issue 13).



procedures, operations, or other activities of a public office is not subject to inspection or copying under the Law. For example, the contents of allegedly racist email messages that do not serve any of a public office's specified functions are not public records, even though they are transmitted to and maintained by the public office. Similarly, letters from the public attempting to influence a judge's sentencing decision, and that the judge did not rely upon, do not document the functions of the judicial office and are not obtainable as public records.<sup>6</sup>

In addition, certain records are exempt from the Public Records Law under state or federal statutory or case law (see *Ohio Sunshine Laws: An Open Government Resource Manual* published by the Attorney General, commonly called the *Yellow Book*, for a thorough list of exemptions to the Public Records Law).<sup>7</sup>

There is one important caveat to exemptions. Under certain circumstances, journalists may access information that is otherwise generally exempt from inspection or copying because it relates to the residential and family information of certain law enforcement officers and first responders.<sup>8</sup> If a journalist submits a signed written request in a specified form that includes a statement that disclosure of the information is "in the public interest," the public office employing the law enforcement officer or first responder must disclose (1) the officer's or responder's personal residence address, and (2) if the

officer's or responder's spouse, former spouse, or child is employed by a public office, that employer's name and address. This journalist access requirement also applies to requests for customer information maintained by a municipally owned or operated public utility, but it does not authorize access to Social Security numbers or private financial information.<sup>9</sup>

## **Procedure**

### ***Upon receiving a request for records***

If a document falls under the definition of a "record" and is not exempt from the definition of a "public record," the public office generally must permit its inspection or copying. Even if a document does fall under an exemption, the public office has the burden of proving that the record is exempt.<sup>10</sup> And, if a public record contains information that is exempt, the public office must redact the exempt information and make available all of the remaining information.<sup>11</sup> The Public Records Law is to be liberally construed, and exceptions to it are to be strictly construed against the records custodian.<sup>12</sup>

A person's request for a copy of a public record need not be in writing, and the requestor generally need not give a reason for making it. The public office may ask that the request be in writing, for the requester's identity, or for the intended use of the records,

---

*A public office has the burden of proving that a record is exempt from public inspection or copying.*

---

*The Public Records Law is to be liberally construed in favor of access, and exceptions to it are to be strictly interpreted.*



but only after notifying the requester that providing the information is voluntary.<sup>13</sup>

If a requester chooses to obtain a copy of a public record, the public office must permit the requester to choose to have the public record duplicated (1) on paper, (2) on the same medium on which it is kept, or (3) on another medium on which the public office determines that it reasonably can be duplicated as an integral part of normal operations. When the requester makes a choice of medium, the public office must comply with the choice.

In addition to the choice of medium, the requester may have it mailed or sent by other means. The public office must then mail or send the public record within a reasonable period of time. The public office, however, may require the requester to first pay the associated postage or delivery costs.<sup>14</sup>

### ***Rules and policy***

The public office is permitted to adopt rules regulating its public records obligations. It may adopt reasonable rules necessary to:

- Protect the safety of its records;
- Ensure that everyone has equal access to them; and
- Prevent inspection and copying activities from unreasonably interfering with its orderly and efficient operation.

However, these rules cannot arbitrarily or wholly close the public's

The public office also may adopt a policy that it will follow in transmitting public records. The policy can limit to ten per month the number of records that it will mail to a particular requester, unless that requester certifies in writing that the requester does not intend to use or forward the requested records, or the information in them, for commercial purposes. The term “commercial” must be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.<sup>16</sup>

### ***What the public office is not required to do***

While a public office has the duty to provide access to public records, this duty is limited. In order to meet a request to inspect or copy public records, the Public Records Law does not require a public office to:

- Create new records;
- Create a new analysis of existing information;
- Store records in a particular medium; or
- Reprogram a computer to produce a particular compilation of information.<sup>17</sup>

Similarly, a general request for all of a public office's records is unenforceable. The Public Records Law does not contemplate that any person has the right to a complete duplication of the voluminous files kept by government agencies.<sup>18</sup>

---

*A citizen may choose to receive a copy of a public record by mail and also may have a choice as to the medium on which the public record is duplicated.*

---

*Public offices may adopt reasonable rules governing the manner in which public records are made accessible.*

---

*A public office need not create new records if none exist in order to fulfill a demand for information.*



The Public Records Law also generally does not require a public office to permit an incarcerated adult or delinquent child to inspect or obtain a copy of a public record concerning a criminal or delinquent child investigation or prosecution. Only if a request is for the purpose of acquiring information that is subject to release as a public record, and only if the sentencing or adjudicating court finds that the information sought is necessary to support what appears to be a “justiciable claim” of the person, is the public office required to comply with the request.<sup>19</sup>

***If the public office denies the request***

If a public office ultimately denies a public records request, in whole or part, it must provide the requester with an explanation, including legal authority, setting forth why the request was denied. And, if a requester makes an ambiguous or overly broad request, the public office may deny the request but must provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained and accessed in the ordinary course of the public office’s duties.

If a requester allegedly is aggrieved by failure to comply with the Public Records Law, the requester may sue to compel the public office to comply with the law, to pay the requester’s court costs and reasonable attorney’s fees, and, in certain cases, to pay statutory damages. The requester

may sue in the court of common pleas of the county in which the failure allegedly occurred, the court of appeals for that county, or the Ohio Supreme Court.<sup>20</sup>

***Retention of public records***

A public office cannot remove, destroy, mutilate, transfer, or otherwise damage or dispose of its records except as provided by law or under rules adopted by the State Records Administration or a records commission.<sup>21</sup>

But the head of each public office need maintain only necessary records. Records are necessary if they are needed to adequately and properly document the organization, functions, policies, decisions, procedures, and essential transactions of the public office or to protect the legal and financial rights of the state and persons directly affected by the public office’s activities.<sup>22</sup> If the records are kept in a form other than paper, the public office must keep and make readily available the means to reproduce the records, and information in them, in a readable form.<sup>23</sup>

In addition, governmental agencies, and most private nonprofit corporations or associations that contract with a unit of state government or any political subdivision to provide services, must keep accurate and complete financial records of any public money spent in relation to those services. These financial records

---

*Citizens may sue to compel compliance with the Public Records Law.*

---

*The Revised Code also provides for the orderly retention and disposition of public records.*



must be kept according to generally accepted accounting principles. Those contracts and financial records generally are public records subject to inspection and copying under the Public Records Law.<sup>24</sup>

A person who is aggrieved by a public office that improperly disposes of a record may sue for either or both (1) injunctive relief that orders the public office to comply with the retention law, plus reasonable attorney's fees, or (2) a forfeiture of \$1,000 for each violation (not to exceed \$10,000), plus reasonable attorney's fees.<sup>25</sup>

### **Training and records policies**

To ensure that all employees of public offices know their duties under the Public Records Law, all elected officials or their designees must attend approved public records training. Additionally, all public offices must adopt a public records policy for responding to public record requests and give a copy of that policy to the office's records custodian. This policy also must appear on a poster in a conspicuous place in the office, must appear in any procedures manual or handbook the office has, and may be included on the office's website.<sup>26</sup> Finally, a public office also must make a copy of its records retention schedule available at a location readily accessible by the public.<sup>27</sup>

### **Confidentiality of certain legislative documents**

#### **Covered relationships**

Legislative staff must maintain a confidential relationship with each General Assembly member, and with each member of the General Assembly staff, with respect to communications between them. Generally, a legislative document arising out of this confidential relationship is not a public record for purposes of the Public Records Law.<sup>28</sup>

**A legislative document** includes:

- A working paper, work product, correspondence, preliminary draft, note, proposed legislation, proposed amendment to legislation, analysis, opinion, memorandum, or other document in whatever form prepared by legislative staff for a legislator or General Assembly staff;
- Any document or material provided by a legislator or General Assembly staff to legislative staff that requests, or that provides information or materials to assist in, the preparation of any of the items described above; or
- Any summary of legislation or an amendment that is prepared by or in the possession of a legislator or General Assembly staff, if the summary is prepared before the legislation or amendment is filed for introduction or presented at a committee hearing or floor session.

---

*A distinct statute, section 101.30 of the Revised Code, creates an exception to the Public Records Law pertaining to certain documents arising out of the confidential relationship between Legislative Service Commission staff, on the one hand, and members of the General Assembly and their staff, on the other hand.*



**Legislative staff** means the staff of the Legislative Service Commission, Correctional Institution Inspection Committee, Legislative Information Systems Office, Ohio Constitutional Modernization Commission, Criminal Justice Recodification Committee, and Legislative Task Force on Redistricting, and any other legislative agency included in LSC's budget group.

**General Assembly staff** means an officer or employee of either house of the General Assembly who acts on behalf of a General Assembly member or of a committee or either house of the General Assembly.<sup>29</sup>

### ***When legislative documents are public records***

A legislative document is a public record if (1) it is an analysis, synopsis, fiscal note, or local impact statement that is prepared by legislative staff, (2) it is required to be prepared for the benefit of the members of either or both houses or any legislative committee, and (3) it has been presented to those

members. A legislative document also is a public record if a legislator for whom legislative staff prepared the document does any of the following:

- Files it for introduction (bills and resolutions);
- Presents it at a committee hearing or floor session (amendments or substitute bills or resolutions);
- Releases it, or authorizes General Assembly staff or legislative staff to release it, to the public.

The LSC Director, when it is in the public interest and with the LSC's consent, also may release to the public any legislative document in the possession of LSC staff arising out of a confidential relationship with a former legislator or former member of the General Assembly staff (1) who is not available to make the document a public record as described above because of death or disability, (2) whom the Director is unable to contact for that purpose, or (3) who fails to respond to the Director after the Director has made a reasonable number of attempts to make contact for that purpose.<sup>30</sup> 

### ***Endnotes***

<sup>1</sup> R.C. 149.43.

<sup>2</sup> While, for ease of reading, this brief uses only "public office," please note that an entity responsible for public records is not necessarily a public official, and may be a private entity if it can be shown, by clear and convincing evidence, that the private entity is the functional equivalent of a public office (*State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854). But, the statute expressly excludes the JobsOhio corporation from the definition of "public office" (R.C. 149.011).

<sup>3</sup> R.C. 149.43(A)(1).

<sup>4</sup> R.C. 149.011(A) and 149.43(A)(1).

<sup>5</sup> R.C. 149.011(G).

<sup>6</sup> *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37 (1998); and *State ex rel. Beacon Journal Pub. Co. v. Whitmore*, 83 Ohio St.3d 61 (1998).



<sup>7</sup> *Ohio Attorney General, Ohio Sunshine Laws 2015: An Open Government Resource Manual*, [www.ohioattorneygeneral.gov/YellowBook](http://www.ohioattorneygeneral.gov/YellowBook).

<sup>8</sup> The caveats apply to the residential and family information of peace officers, parole officers, probation officers, bailiffs, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, youth services employees, firefighters, emergency medical technicians, and Bureau of Criminal Identification and Investigation investigators.

<sup>9</sup> R.C. 149.43(B)(9).

<sup>10</sup> *State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St.3d 41 (1990);\* and *State ex rel. Natl. Broadcasting Co. v. Cleveland*, 38 Ohio St.3d 79 (1988).

<sup>11</sup> R.C. 149.43(B)(1). If the exempt and nonexempt information in the record are so intertwined that it would be virtually impossible to separate out the information to be disclosed without disclosing the confidential information, the public record need not be disclosed. *State ex rel. Master v. City of Cleveland*, 76 Ohio St.3d 340, 1996-Ohio-300; *State ex rel. Rocker v. Guernsey County Sheriff's Office*, 126 Ohio St.3d 224, 2010-Ohio-3288; and *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761.

<sup>12</sup> *State ex rel. Natl. Broadcasting Co.*, supra.; *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770.

<sup>13</sup> R.C. 149.43(B)(4) and (5).

<sup>14</sup> R.C. 149.43(B)(6) and (7).

<sup>15</sup> *State ex rel. Beacon Journal Pub. Co. v. Andrews*, 48 Ohio St.2d 283, 287-289 (1976), quoting *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371 (1960).

<sup>16</sup> R.C. 149.43(B)(7).

<sup>17</sup> *State ex rel. Scanlon v. Deters*, 45 Ohio St.3d 376 (1989)\*; *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197 (1991); and 1976 Op. Att'y Gen. No. 76-011.

<sup>18</sup> *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752 (1989).

<sup>19</sup> R.C. 149.43(B)(8).

<sup>20</sup> R.C. 149.43(B)(2), (B)(3), and (C).

<sup>21</sup> R.C. 121.211 and 149.351. Each county, municipal corporation, township, school district, educational service center, library, and special taxing district is required to have a records commission, which helps regulate the retention and disposal of local records (R.C. 149.38 to 149.42).

<sup>22</sup> R.C. 149.40.

<sup>23</sup> R.C. 9.01.

<sup>24</sup> R.C. 149.431. Slightly different rules apply for political subdivision individual or joint self-insurance programs and political subdivision joint self-insurance pools (R.C. 9.833(C) and 2744.081(A)).

<sup>25</sup> R.C. 149.351.

<sup>26</sup> R.C. 149.43(E).

<sup>27</sup> R.C. 149.43(B)(2).

<sup>28</sup> R.C. 101.30(B).

<sup>29</sup> R.C. 101.30(A).

<sup>30</sup> R.C. 101.30(B) and (C).

\* *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, overruled this case on issues unrelated to this brief. That decision “only affects public records involved in pending criminal proceedings . . .” (*Steckman*, p. 426).

**PUBLISHED BY THE OHIO  
LEGISLATIVE SERVICE  
COMMISSION STAFF**

9th Floor  
Vern Riffe Center  
Columbus, Ohio  
614/466-3615

Director  
Mark Flanders

Deputy Director  
Jim Kelly

Contributing Author  
Michael J. O'Neill,  
LSC Division Chief

Reviewer  
Julie A. Rishel,  
LSC Division Chief

Layout & Design  
Linda Bayer