PUBLIC RECORD AND OPEN MEETING PROVISIONS

Automated license plate recognition systems

- Exempts images and data captured by an automated license plate recognition system that are maintained in a law enforcement database from the Public Records Law.

Specific investigatory work product

- Modifies the definition of specific investigatory work product that is protected from public records request disclosure.
- Specifies the duration for which specific investigatory work product records are exempt from disclosure under the Public Records Law.

Attorney work product records

- Creates an exemption under the Public Records Law for attorney work product records.

Trial preparation records

- Clarifies the duration for which trial preparation records are exempt from disclosure under the Public Records Law.
- Specifies that a trial preparation record is any record that is not a confidential law enforcement investigatory record or attorney work product record.

Personal notes and assistive devices or applications

- Exempts from the definition of "record" the personal notes or any document device or item, regardless of physical form or whether an assistive device or application was used, of a public official or, the public official's attorney, employee, or agent.

Elected officials' public calendars

- Exempts entries for future dates on an elected official's public calendar from disclosure as a public record.

Legislative documents

- Creates a limited exemption from the Public Records Law for documents prepared by General Assembly members or General Assembly staff for other General Assembly members or staff.
- Exempts those documents from disclosure until the General Assembly in which they were created adjourns *sine die,* unless the documents would be privileged under the "speech or debate" clause of the Ohio Constitution.

Video public records

- Authorizes a prosecuting attorney's office to assess certain charges for preparing a video public record.

- Prohibits a state or local law enforcement agency or a prosecuting attorney's office from charging a victim a fee for a video public record.

ABLE account records

- Exempts from Public Records Law any record of the Treasurer of State indicating ABLE account beneficiaries, balances, and activity on ABLE accounts.

Procurement law and public records

- Clarifies that all documents related to a competitive selection (including competitive sealed bidding, competitive sealed proposals, reverse auctions, and electronic procurement) are not public records until after the contract has been awarded.
- Eliminates law that specifies such documents are public records after a competitive selection is canceled.

The act includes a number of new or revised exceptions to the Public Records Law. Although some are discussed in context of larger provisions earlier in the analysis, several are addressed in this chapter together.

Automated license plate recognition systems

(R.C. 149.43)

The act exempts from the Public Records Law images and data captured by an automated license plate recognition systems (ALPRS) that are maintained in a law enforcement database. ALPRS are typically used by law enforcement agencies to capture an image of a vehicle's license plate as the vehicle passes by. The license plate image is then translated into letters and numbers using specialized software. The software assists law enforcement in identifying stolen vehicles or persons of interest.

Specific investigatory work product

(R.C. 149.43)

The act defines "specific investigatory work product" as that term pertains to the Public Records Law to mean information assembled by law enforcement officials in connection with a probable or pending criminal or civil proceeding. The definition specifically excludes routine incident reports. Additionally, the act specifies that these records are exempt during the following time frame:

- Until after the conclusion of all direct appeals;
- If no appeal is filed, before the expiration of the time during which an appeal may be filed;
- If no trial has occurred, until the civil or criminal action or proceeding has ended without the possibility of direct appeal or each agency, office, or official responsible for the matter has made a decision not to proceed with the matter.

Under continuing law, "confidential law enforcement investigatory records" are not considered public records. A record is a "confidential law enforcement investigatory record" if it pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of certain types of information, including "specific investigatory work product."

Attorney work product record

(R.C. 149.43)

The act creates an exemption under the Public Records Law for attorney work product record. Attorney work product record is defined as "a record created by or for an attorney or agent of an attorney in reasonable anticipation of or for litigation, trial, or administrative proceedings, when acting in an official capacity on behalf of the state, a political subdivision of the state, a state agency, a public official, or a public employee that documents the independent thought processes, mental impressions, legal theories, strategies, analysis, or reasoning of an attorney or agent of the attorney." Additionally, the act specifies that "attorney work product record" does not include "specific investigatory work product" or "trial preparation records."

Trial preparation records

(R.C. 149.43)

Continuing law exempts trial preparation records under the Public Records Law. The act clarifies that these records are exempt during the following time frame:

- Until after the conclusion of all direct appeals;
- If no appeal is filed, before the expiration of the time during which an appeal may be filed;
- If no trial has occurred, until the civil or criminal action or proceeding has ended without the possibility of direct appeal or each agency, office, or official responsible for the matter has made a decision not to proceed with the matter.

Additionally, the act specifies that the exemption is any record that is not a confidential law enforcement investigatory record or attorney work product record created by or for another party or for that other party's representative, in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, and that contains *factual* information that is specifically compiled for that proceeding. Former law included in the definition "the independent thought processes and personal trial preparation of an attorney."

Personal notes and assistive devices or applications

(R.C. 149.011)

The act specifies, with respect to Public Records Law, that "records" does not include personal notes or any document, device, or item, regardless of physical form or whether an assistive device or application was used, of a public official, or of the official's attorney, employee, or agent, that is used, maintained, and accessed solely by the individual who creates it or causes its creation, thereby exempting such material from inspection and copying under the law.

Elected officials' public calendars

(R.C. 149.43(A)(1)(aaa), (A)(19), and (A)(20))

The act exempts entries for future dates on an elected official's public calendar from disclosure as a public record. In other words, entries for events from the current or a past date are considered public, but not entries for events that have yet to occur.

For this purpose, an "elected official" is a person who is elected or appointed to an elective office of the state or a political subdivision. "Public calendar" means a calendar or appointment book maintained by an elected official to schedule the person's activities in relation to the person's position as an elected official. The term does not include a personal calendar or appointment book maintained solely for the official's personal convenience that does not serve to document the person's official activities or functions or the official activities or functions of the person's public office.

Legislative documents

(R.C. 101.30)

The act creates a limited exemption from the Public Records Law for documents prepared by General Assembly members or General Assembly staff for other General Assembly members or staff. "General Assembly staff" means an officer or employee of the House or Senate who acts on behalf of a legislator, on behalf of a committee, or on behalf of the House or Senate. Specifically, the act applies to the following types of documents:

- A working paper, work product, correspondence, preliminary draft, note, proposed bill or resolution, proposed amendment to a bill or resolution, analysis, opinion, memorandum, or other document in whatever form or format prepared by a member of the General Assembly or General Assembly staff for a General Assembly member or staff member;
- Any document or material in whatever form or format provided by a member of the General Assembly or General Assembly staff to a General Assembly member or staff member that requests, or that provides information or materials to assist in, the preparation of any of the items described above.

For instance, these documents would appear to include a memorandum drafted by a legislative aide for a legislator or an email exchange between legislators.

Under the act, such a document is exempt from disclosure during the General Assembly in which the document was created. After that General Assembly adjourns *sine die* (typically in December of an even-numbered year), the document is considered a public record, unless it would be privileged under Article II, Section 12 of the Ohio Constitution. The act also specifies that the Public Records Law and the section of law governing confidential legislative documents do not diminish, extinguish, or otherwise limit or restrict the privileges set forth in, or that emanate from, Article II, Section 12.

That section of the Constitution specifies that ". . . for any speech, or debate, in either house, [legislators] shall not be questioned elsewhere." Among other protections, this provision conveys an evidentiary privilege that prevents statements, discussions, and debate made in the

course of the legislative process from being used as evidence in court. However, the privilege does not necessarily cover all types of documents related to the legislative process. In the few instances in which the issue has come before Ohio's courts, the courts determined on a case-by-case basis whether particular communications were privileged.[195]

The act does not affect the confidentiality of documents LSC prepares for members of the General Assembly or their staff, or of documents legislators and their staff provide to LSC for that purpose. Under continuing law, those documents are exempt from the Public Records Law indefinitely, unless a legislator chooses to make them public or unless a narrow exception applies with respect to a former legislator or staff member who has died or is otherwise unavailable.

Video public records

(R.C. 149.43(B))

The act authorizes a prosecuting attorney's office to assess certain charges for preparing a video public record. Under continuing law, actual costs associated with preparing a video record for inspection or production may be charged, not to exceed $75 per hour of video produced, nor $750 total. Under former law, such fees only could be assessed by a state or local law enforcement agency.

The act prohibits a state or local law enforcement agency or a prosecuting attorney's office from charging a fee for preparing a video record for inspection, or producing a copy of a video record, when the requester of the video record is a victim, who has provided an affidavit, and who reasonably asserts that the video recording relates to the act or omission that caused the harm or loss, or who is a victim who suffered loss and could seek remedy through a tort action, or who is the legal counsel or insurer of the victim. Victim means a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act. Victim does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim (Section 10a, Article I, Ohio Constitution). Under the act, the state or local law enforcement agency or prosecuting attorney's office may only waive the fee upon the receipt of an affidavit by the victim or the victim's legal counsel identifying that the use of the video is to investigate harm or damages that may have been captured on the video. For this purpose, the act defines "legal counsel of the victim" as an attorney who, at the time of making the request, produces to the state or local law enforcement agency or a prosecuting attorney's office a signed retention agreement or letter of representation that establishes that the attorney is representing the victim.

[195] See *Dublin v. State of Ohio*, 138 Ohio App.3d 753 (10th Dist. Ct. App. 2000); *Plain Local School District Board of Education v. DeWine,* 464 F.Supp.3d 915 (S.D. Ohio 2020); and *Columbus City School District v. State of Ohio,* Case No. 22-CV-67 (C.P. Franklin Co. December 21, 2023).

ABLE account records not public records

(R.C. 113.51)

The act exempts any record of the Treasurer of State indicating the account beneficiaries and the balances and activity in ABLE accounts from the Public Records Law, meaning that these records are not available to the public, by request or otherwise.

Achieving a Better Life Experience ("ABLE") accounts are tax exempt accounts created by the IRS, and established by the state, for people with disabilities to pay the costs of qualified disability expenses.

Procurement law and public records

(R.C. 9.28, 125.071, and 125.11)

The act clarifies that all documents related to a competitive selection (including competitive sealed bidding, competitive sealed proposals, reverse auctions, and electronic procurement) are not public records until after the contract has been awarded.

The act eliminates law that specifies such documents are public records after a competitive selection is canceled. Therefore, under the act, if a solicitation is canceled before the award of a contract, the related documents do not become public records.