



# Ohio Legislative Service Commission

## Bill Analysis

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### S.B. 226

129th General Assembly  
(As Introduced)

**Sens.** LaRose, Burke, Balderson, Seitz, Hite, Patton

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## BILL SUMMARY

- Exempts from the definition of "public record," and thus from required disclosure under the Public Records Law, any videotape or other visual media taken by law enforcement personnel that shows the killing of a peace officer, subject to specified limited exceptions.

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## CONTENT AND OPERATION

### Access to public records under Public Records Law

The state's Public Records Law provides that, upon request and subject to an exception regarding certain incarcerated persons, all "public records" (see "**Definition of "public records" and exclusions,"**" below) responsive to the request must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request and subject to that exception, a public office or person responsible for public records must make copies of the requested public record available at cost and within a reasonable period of time. 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 must make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record must notify the requester of any redaction or make the redaction plainly visible. A redaction is deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction. The Law sets forth other procedures regarding the maintenance of public records and the making and the satisfaction of a request for them, provides for a mandamus action for persons aggrieved by a failure to comply with its provisions, and provides sanctions that apply

if a judgment in a mandamus action is rendered against a public office or person responsible for the public record.<sup>1</sup>

## **Definition of "public records" and exclusions**

### **Existing law**

As used in the Public Records Law, except as described in the next paragraph, "public record" means "records" (see below) kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for profit entity operating the alternative school.<sup>2</sup> As used in this definition, "records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, that serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.<sup>3</sup>

The Public Records Law excludes many types of records from the definition of public record, including "confidential law enforcement investigatory records."<sup>4</sup> Some of the other types of excluded records other than confidential law enforcement investigatory records include, but are not limited to, medical records, records related to parole, probation, and community control and post-release control sanction proceedings, adoption proceeding records, trial preparation records, DNA records in the DNA Database, intellectual property records, donor profile records, certain trade secrets of county and municipal hospitals, certain records related to child fatality review boards, and records the release of which is prohibited by state or federal law.

As used in the Public Records Law, "confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:<sup>5</sup>

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

<sup>2</sup> R.C. 149.43(A)(1).

<sup>3</sup> R.C. 149.011(G).

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

<sup>5</sup> R.C. 149.43(A)(2).

(1) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(2) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(3) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(4) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

### **Operation of the bill**

The bill expands the definition of "confidential law enforcement investigatory record" to also include any videotape or other visual media taken by law enforcement personnel that shows the killing of a peace officer, except that such videotape or other visual media must be released in any of three specified situations. The first specified situation requires the release of the videotape or other visual media in accordance with a subpoena, search warrant, or other court order. The second requires the release to a law enforcement officer acting in the scope of the officer's law enforcement duties who is investigating a matter involving the killing of the peace officer. The third requires the release to any other person who requests the videotape or visual media under the access provisions of the Public Records Law, as described above in "**Access to public records under Public Records Law.**" In the third specified situation, the videotape or other visual media may only be inspected by the person who makes the request in the public office and in the presence of the person responsible for the videotape or other visual media, and no copy of the videotape or visual media may be made for or provided to the person who makes the request.<sup>6</sup>

Because "confidential law enforcement investigatory records" are excluded from the definition of "public records" and because the Public Records Law's access provisions, as described above, apply only to "public records," the effect of the bill's change described in the preceding paragraph is to exclude from the application of the Public Records Law's access provisions all videotapes and other visual media taken by law enforcement personnel that show the killing of a peace officer, subject to the specified limited exceptions described in the preceding paragraph.

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<sup>6</sup> R.C. 149.43(A)(2)(b).

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## HISTORY

ACTION

DATE

Introduced

09-20-11

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