



SUNSHINE LAWS TRAINING AGENDA

I. Welcome and Introduction

A. Credit and proof of attendance

Note: We do not issue paper attendance certificates. For proof of attendance, please download an attendance report from www.OhioAttorneyGeneral.gov/Sunshine, about 72 hours after the training.

B. Why are we here: the importance of public records training

II. The Public Records Act: Important Terms and Definitions

A. What is a “public office” subject to the Public Records Act?

1. The Public Records Act applies to public offices and “persons responsible for public records”
 - *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654 (2001) (records of stadium cost were within jurisdiction of county board and were public records regardless of whether they were in the possession of the county or the construction company)
 - *State ex rel. Armatas v. Plain Twp. Bd. of Trs.*, 163 Ohio St.3d 304 (2021) (legal invoices of outside law firm public records)
2. A private entity may be considered the “functional equivalent” of a public office
 - *State ex rel. Oriana House v. Montgomery*, 2005-Ohio-3377 (10th Dist.), rev’d on other grounds, 110 Ohio St.3d 456, 2006-Ohio-4854 (community-based correctional facility not functional equivalent of public office)
 - *Sheil v. Horton*, 2018-Ohio-5240 (8th Dist.) (community college foundation is functional equivalent of a public office)
 - *State ex rel. Schiffbauer v. Banaszak*, 142 Ohio St.3d 535 (Otterbein University’s police department is functional equivalent of a public office)
 - *State ex rel. WTOL Television, L.L.C. v. Cedar Fair, L.P.*, Slip Op. No. 2023-Ohio-4593 (Cedar Point police are functional equivalent of public office)

B. What is a “record”?

1. A “public record” exists on a fixed medium
2. A “public record” is created by, received by, or comes under the jurisdiction of the public office
3. A “public record” documents the activities of the public office

C. When does a record “document the activities of the office”?

1. The information or content of a record—not the medium the record is stored on—determines whether a record is a “public record”
2. Messages on a personal account or device can be public records if the content or information documents the activities of the public office
 - *Sinclair Media v. City of Cincinnati*, 2019-Ohio-2623 (Ct. of Claims) (text messages between city council members about firing city manager public records)

3. A record does not document the activities of the office if it is purely personal
4. A record does not document the activities of the office if it is not used
 - *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61 (1998) (when judge read unsolicited letters but did not rely on them in sentencing, letters did not document any activity of the office and not public records)
 - *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37 (1998) (racist emails between employees not “records” because messages were not used by the public office)
 - *State ex rel. Bowman v. Jackson City School Dist.*, 4th Dist. No. 10CA3, 2011-Ohio- 2228 (personal emails on public system “records” when relied on for discipline)
5. Employee home addresses generally do not document the activities of the office
 - *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384 (home addresses of public employees generally do not document activities of the office, but may in certain circumstances)
6. Notes and drafts can be public records depending on how they are used
 - *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884 (notes taken during public employee’s pre-disciplinary conference not “records”)
 - *State ex rel. Doe v. Tetrault*, 2012-Ohio-3879 (12th Dist.) (notes used by public employee to track work hours were personal notes and not a record of the office)
7. Notes and drafts may be considered “transient records”

II. The Public Records Act: What is a Proper Request?

A. A proper request asks for existing records

1. A record might exist if it can be produced or created from information in a database
 - *State ex rel. Scanlon v. Deters*, 45 Ohio St.3d 376 (1989) (if public office already uses computer program that can perform search and produce compilation or summary requested, output already “exists” as a record for the purposes of Public Records Act)
 - *WCPO-TV v. Ohio Dept. of Health*, 2021-Ohio-1151 (Ct. of Claims) (Department of Health had to produce death certificate records when it could sort its database to produce the categories of records requested)
2. A proper request does not ask for information or research
 - *State ex rel. Morabito v. Cleveland*, 2012-Ohio-6012 (8th Dist.) (request for “why, how, when, and by whom” a video was destroyed, was a request for information)
 - *Kovach v. Geauga Cty. Auditor’s Office*, 2019-Ohio-5455 (Ct. of Claims) (office properly denied request for explanations for certain actions, and to admit or deny factual representations)

B. A proper request describes the records sought with “reasonable clarity”

1. Whether a request is overly broad depends on the facts and circumstances of the request
 - *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752 (10th Dist.1989) (request for all traffic reports with no time or subject matter limitation was overbroad)
 - *State ex rel. Strothers v. Keenon*, 2016-Ohio-405 (8th Dist.) (request for all personnel files was overbroad)

- *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788 (request for all correspondence, including texts and emails, of employee for six-month period was overbroad)
 - *State ex rel. Cleveland Assn. of Rescue Emples. v. City of Cleveland*, Sup. Ct. No. 2022-1091, 2023-Ohio-3112 (request for all emails between two employees, and all emails two/from another employee, over 27 days, not overbroad)
2. A requester must ask for records based on how the office organizes and maintains its records
 - *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228 (request for all emails between two employees was overbroad when office did not organize emails by sender and recipient)
 - *DeCrane v. Cleveland*, 2018-Ohio-3476 (Ct. of Claims) (request for “all correspondence” overbroad because office did not organize and maintain its records by correspondence)
 - *State ex rel. Evans v. City of Parma*, 8th Dist. Cuyahoga No. 81236, 2003-Ohio-1159 (office properly denied request when its database could not be searched by geographic area)
 3. A public office is not required to organize and maintain its records in a particular way
 - *State ex rel. Bardwell v. City of Cleveland*, 126 Ohio St.3d 195, 2010-Ohio-3267 (while a police department could have a more efficient organizational method, it wasn’t required to organize its records in a particular way)
 4. A request might be ambiguous if the public office does not know what the requester wants or where to look for requested records
 - *Robinson v. Village of Alexandria*, 2018-Ohio-1581 (Ct. of Claims) (request for emails “concerning village business” ambiguous and unenforceable)
 5. If a public office denies a request because it’s overbroad or ambiguous, it must inform the requester of how its records are kept and give the requester a chance to revise the request
 - *State ex rel. Summers v. Fox*, 163 Ohio St.3d 217, 2020-Ohio-5585 (public office violated the Public Records Act when it raised overbreadth for the first time in litigation, and thus failed to give requester chance to revise request)
 6. How an office explains how its records are kept depends on how the office organizes its records

III. Exemptions to the Public Records Act

A. General principles of exemptions

1. Exemptions are only created by applicable state or federal law, never by contract
 - *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400 (1997) (contract provision between city and outside search firm that made resumes and application materials confidential was void as a matter of law)
2. Courts will always interpret and apply exemptions narrowly, erring on the side of disclosure
3. Two categories of exemptions: mandatory and discretionary

B. Mandatory exemption examples: FERPA and LEADS

- *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690 (FERPA applies to prohibit release of otherwise public records)
- *Ingraham v. Ribari*, 80 Ohio App.3d 29 (9th Dist. 1992) (LEADS confidentiality provision applies to preclude release of LEADS computer information)

C. Discretionary exemption example: Confidential Law Enforcement Investigatory Records (“CLEIRs”)

1. Applies to records that pertain to a law enforcement matter, including quasi-criminal, civil and administrative law enforcement matters
 - *State ex rel. Mahajan v. State Med. Bd.*, 127 Ohio St.3d 497, 2010-Ohio-5995 (CLEIRs applied to certain records compiled by medical board in investigation of physician)
2. CLEIRs: specific confidential investigatory techniques or procedures
 - *State ex rel. Summers v. Fox*, 163 Ohio St.3d 217, 2020-Ohio-5585 (interviews of assault victims not exempt under CLEIRs as specific investigatory techniques or procedures)
3. CLEIRs: investigatory work product
 - *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Public Safety*, 148 Ohio St.3d 433, 2016-Ohio-7987 (90 seconds of dash cam footage was “investigatory work product” under CLEIRs)
4. CLEIRs: investigatory work product exemption expires when law enforcement matter ends
5. CLEIRs exemption does not apply to 9-1-1 calls or initial incident reports
 - *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374 (1996) (content of 9-1-1 call is always public, even if it would disclose information otherwise protected under CLEIRs, such as the identity of an uncharged suspect, or would reveal SSNs)

D. Discretionary exemption example: security and infrastructure records

1. Security records are records used to protect against attack or sabotage
 - *McDougald v. Greene*, 162 Ohio St.3d 250, 2020-Ohio-4268 (prison shift-assignment rosters were security records)
 - *Welsh-Huggins v. Jefferson Cty. Prosecutor’s Office*, 163 Ohio St.3d 337, 2020-Ohio- 5371 (exterior courthouse security camera video capturing shooting of a judge not a security record)
 - *State ex rel. Cincinnati Enquirer v. Wilson*, Slip Op. No. 2022-0425, 2024-Ohio-182 (records of governor’s security detail were security records)
2. Infrastructure records are records that disclose configuration of critical systems
 - *State ex rel. Rogers v. Dept. of Rehab. & Correction*, 155 Ohio St.3d 545, 2018-Ohio-5111 (security camera footage of use-of-force incident not an infrastructure security record)
 - *McDougald v. Greene*, 162 Ohio St.3d 250, 2020-Ohio-4268 (prison shift-assignment rosters not an infrastructure record)

E. No exemption for certain categories of records: job application materials, juvenile records, and based on a right to privacy

F. Discretionary exemptions can be waived

G. More than one exemption may apply

H. Exempted records or information may be withheld or redacted

1. Non-record information may be redacted or withheld
2. Public office must make redactions plainly visible and provide the legal basis
3. Use lists or “cheat sheets” to help with common exemptions
4. Always redact/withhold in good faith and talk to your attorney when in doubt

IV. Litigation and potential liabilities for violating the Public Records Act

A. Litigation option one: mandamus lawsuit

1. Asks court to order the public office to comply with the Public Records Act
2. Statutory damages may be awarded to a requester
3. Attorney fees may be awarded to a requester

B. Litigation option two: Court of Claims, fast-track procedure specific to public records

C. Follow best practices to avoid litigation

1. Document all requests your office receives
2. Be prepared by taking trainings and using resources
3. Stay up to date on public records law

V. Records Management

A. Public offices are required to adopt a public records policy

B. Records management practices

1. Public offices are required to organize and maintain records to be made available for inspection and copying
2. Contents of records retention schedules: (1) title, (2) description, (3) retention period, (4) retention format, (5) disposal
3. Factors determining record retention period: (1) historical value, (2) administrative value, (3) legal value, (4) fiscal value
4. Records retention schedule approval process
5. A public office can only dispose of records pursuant to an approved retention schedule
6. Managing electronic records: retain records based on the content of the record, not the type of device or the format of the record
7. Managing electronic records: issues specific to texts, emails, and personal accounts
8. Update retention schedules to keep up with new technology and include electronic records in your public records policy
9. Manage transient records and have a transient records retention schedule

C. Litigation and potential liabilities for improper disposal of public records

- *State ex rel. Crenshaw v. King*, 2021-Ohio-4433 (8th Dist.) (requester who failed to first make public records request could not bring writ of mandamus action; requester should have brought a civil action in common pleas court under R.C. 149.351 for the destruction of records)

D. Records management resources

VI. The Open Meetings Act

A. The Open Meetings Act applies to the “meetings” of “public bodies”

B. What is a “public body”?

- *State ex rel. Massie v. Lake Cty. Bd. of Commrs.*, 2021-Ohio-786 (11th Dist.) (visitors bureau not found to be public body)

- *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (urban design review board found to be public body)

C. What is a “meeting”?

1. 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.
2. When is a meeting “prearranged”?
 - *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770 (Open Meetings Act does not require face-to-face interaction to constitute a “prearranged” meeting)
 - *State ex rel. Post v. City of Cincinnati*, 76 Ohio St.3d 540 (1996) (serial meetings, each with less than a majority of members of the public body, was a “prearranged” meeting)
3. What is discussion and deliberation of official business?
4. A “meeting” can occur in a series of meetings, each with less than a majority of members present
 - *State ex rel. Post v. City of Cincinnati*, 76 Ohio St.3d 540 (1996) (back-to-back meetings discussing the same issues of public business were a “meeting” for purposes of the Open Meetings Act)
5. A “meeting” can occur over a series of emails
 - *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770 (discussion of public business in a series of emails violated Open Meetings Act)
6. A meeting can still be a meeting even if it’s called something else

D. Three “meeting” obligations: (1) notice, (2) openness, and (3) minutes

E. Notice

1. The specific type of notice required depends on the type of meeting
2. Three types of meetings: regular meetings, special meetings, and emergency meetings
3. Notice to public of planned discussion of particular topic

F. Openness

1. Forum requirements
2. Deliberation and decision-making requirements
3. No secret ballots or whispering of public business
 - *State ex rel. Bratenahl v. Village of Bratenahl*, 157 Ohio St.3d 309, 2019-Ohio-3233 (the Open Meetings Act prohibits voting by secret ballot)
 - *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770 (discussion of public business by private electronic means, such as a series of emails, can violate the Open Meetings Act)
4. Consent agendas
 - *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio- 2374 (consent agendas may not be used to constructively close a meeting)
5. The Open Meetings Act does not provide for virtual/electronic meetings and participation, unless specifically authorized by law
6. Recording and speaking at open meetings

G. Minutes

1. Content of minutes must allow the public to understand the rationale behind a decision
 - *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio- 2374 (a public body violates the OMA when its minutes are greatly inaccurate)
2. Meeting minutes (including drafts and recordings) are public records
 - *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 165 Ohio St.3d 292, 2021-Ohio- 2374 (the Open Meetings Act requires preparation of meeting minutes, the Public Records Act requires the production of meeting minutes, and mandamus is the appropriate remedy to force the preparation and production of meeting minutes)

H. Executive session

1. Proper procedure to convene into executive session: motion on the record, second, roll call vote
2. Executive session must occur after meeting opens and before meeting closes
3. Must put reason for executive session on the record, reason can only be one or more of the nine permissible executive session topics listed in the Open Meetings Act
 - *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2019-Ohio-3730 (11th Dist.) (reading the entire executive session statute not specific enough to go into executive session)
4. Executive session topic: personnel matters
 - *State ex rel. Dunlap v. Violet Twp. Bd. of Trs.*, 2013-Ohio-2295 (5th Dist.) (citing “personnel matters” was insufficiently specific to go into executive session)
 - *Maddox v. Bd. of Dirs. Children Servs. Bd.*, 2014-Ohio-2312 (2d Dist.) (“dismissal or discipline of a public employee” sufficiently specific to go into executive session)
5. Executive session topic: pending or imminent court action
 - *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 2013-Ohio-2295 (5th Dist.) (minutes stating that executive session was convened for “legal issues” do not comply with Open Meetings Act)
 - *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 185 Ohio App.3d 707, 2009-Ohio-6993 (10th Dist.) (three board members and executive director who were attorneys not acting as legal counsel for the board when they discussed legal matters in executive session)
6. Who can be present in executive session?
7. Do not vote or make any decisions in executive session
8. Discussion and documents in executive session are not necessarily confidential
9. Ethical obligations governing the disclosure of executive session discussion or information

I. Anyone can enforce the Open Meetings Act

J. Litigation and potential liabilities for violating the Open Meetings Act

VII. Resources

- A. Ohio Sunshine Laws Manual, www.OhioAttorneyGeneral.gov/Yellowbook**
- B. Ohio Attorney General’s Office, www.OhioAttorneyGeneral.gov/Sunshine**
- C. Public Records Unit, 614-466-2872 or Sunshine@OhioAGO.gov**