

Ohio Attorney General's
Administrative Law Newsletter
Highlighting Recent Cases in Administrative and Sunshine Law



WINTER 2018

This newsletter highlights recent developments in Ohio administrative and sunshine law. Clients of the Ohio Attorney General's Office with questions on specific cases should contact their designated assistant attorney general.

Administrative Procedure: Notice of Opportunity for Hearing—content

[*Langdon v. Ohio Dept. of Edn.*](#), 12th Dist. Butler No. CA2017-025, 2017-Ohio-8356.

Charging notice with details within each count, albeit with incorrect dates, allowed the respondent to determine what specific instance was being addressed and what details created the basis for the charges. Due process requires fair notice, not perfect notice.

Administrative Procedure: Proof of Charges—malfeasance, misfeasance and nonfeasance.

[*Hand & Hand MRDD Residential Servs., Inc. v. Ohio Dept. of Dev. Disabilities*](#), 10th Dist. Franklin No. 17AP-116, 2017-Ohio-9287.

In order to prove an administrative charge of malfeasance, misfeasance or nonfeasance, the agency need not prove actual harm or injury.

Administrative Procedure: Certifying a Class

[*Wood v. Simmers*](#), 10th Dist. Franklin No. 17AP-269, 2017-Ohio-8718.

Agencies are creatures of statute; their powers and duties extend only so far as the statute's grant of authority. Because the statutes governing the Oil and Gas Commission do not authorize the Commission to certify a class, it cannot certify a class of respondents.

Administrative Procedure: Judicial Review—final appealable order

[*Golf Village N., L.L.C. v. Powell*](#), 5th Dist. Delaware No. 17 CAH 04 0024, 2018-Ohio-151.

Letter by zoning official directing applicant to file a complete application for zoning variance approval is not a final appealable order.

Administrative Procedure: Judicial Review—new evidence, R.C. 2506.03(A)

[*Steck's Buckeye Storage Unit, L.L.C. v. Catawba Island Twp. Bd. of Trustees*](#), 6th Dist. Ottawa No. OT-17-014, 2018-Ohio-886.

On appeal taken pursuant to R.C. Chapter 2506, Court of Common Pleas erred by failing to hear additional evidence when administrative board members considered, in their decision-making conversations held outside the hearing, conversations to which the applicant was not able to offer refuting evidence. R.C. 2506.03(A)(12).

Administrative Procedure: Judicial Review—deference to agency

[*Langdon v. Ohio Dept. of Edn.*](#), 12th Dist. Butler No. CA2017-025, 2017-Ohio-8356.

Common pleas court abused its discretion when it found a lack of reliable, probative, and substantial evidence without showing where witnesses' testimony was contradictory, lacked credibility, or was internally inconsistent.

Administrative Procedure: Judicial Review—applicability of civil rules, Civ.R. 59

[*Gallick v. Franklin Cty. Bd. of Revision*](#), 10th Dist. Franklin, 2018-Ohio-818.

Civ.R. 59 (motion for new trial) can be applicable to the common pleas appeal of an administrative decision, but only when a proceeding took place in which the parties or counsel presented evidence and argument in court to a trial judge or magistrate.

Public Records: Overly Broad Request

[*State ex rel. Bristow v. Wilson*](#), 6th Dist. Erie Nos. E-17-060, E-17-067, E-17-070, 2018-Ohio-1973.

Request for all emails sent and received by an official and his employees over a one-month period is overbroad. One month period does not make request less broad. The requirement to explain how records are maintained is met by the agency's offer of an opportunity to narrow request "by specific topics or subject matter."

Public Records: Format of Record

[*Parks v. Webb*](#), Ct. of Clms. No. 2017-00995PQ, Special Master's Rep. and Rec., 2018-Ohio-1578, adopted 2018-Ohio-1716.

If the requestor specifies the format desired, and the public office maintains the record in that format, the public office must produce the record in that format. The public office erred in converting the file to an Adobe PDF file from the Word format in which it existed.

Public Records: Responding Person

[*Neff v. Knapp*](#), Ct. of Clms. No. 2017-00876PQ, Special Master's Rep. and Rec., 2018-Ohio-2357, adopted and modified in part, 2018-Ohio-2910.

Township fiscal officer is responsible for maintaining the township records pursuant to R.C. 507.04. When the fiscal officer had copies of responsive emails, and yet forwarded the request for response to another person, he delayed the response beyond a reasonable period of time.

Public Records: Employer's Records of Employee Garnishments

[*Sandine v. Argyle*](#), Ct. of Clms. No. 2017-00891-PQ, Special Master's Rep. and Rec., 2018-Ohio-1537, adopted Feb. 21, 2018.

Agency records showing employees with judgments or garnishments are not records of that agency. The records do not document the governmental function of the employing agency.

Public Records: Evaluation Surveys

[*State ex rel. The Community Press v. Blue Ash*](#), 1st Dist. Hamilton No. C-170281, 2018-Ohio-2506.

Surveys of city employees regarding their managers' performance are not records of the public office as they were not utilized by the city to carry out its duties and responsibilities.

Public Records: CLEIRs Work Product Exception

[*Gannett GP Media Inc. v. Chillicothe Police Dept.*](#), Ct. of Clms. No. 2017-00886-PG, Special Master's Rep. and Rec., 2018-Ohio-1552, adopted Mar. 7, 2018.

Supplemental reports created after the initial report and not physically attached to, referenced by, or incorporated into the initial report are distinguishable from the original report. "Incident report" does not include later reports or the incident or additional victim complaints arising from the same incident. After an investigation has been initiated, supplementary investigative reports are "investigatory" work product regardless of the media or manner in which they are stored.

Public Records: 14th Amendment Due Process Exception for Privacy

[*Ohio Crime Victim Justice Ctr. v. Cleveland Police Div.*](#), Ct. of Clms. No. 2016-00872-PQ, Special Master's Rep. and Rec., 2017-Ohio-8950, adopted Dec. 12, 2017.

Records held by police department that reveal intimate detail of alleged sexual assault are exempt from disclosure pursuant to the 14th Amendment's due process privacy exception.

Public Records: Personal Student Information, FERPA and R.C. 3319.321

[*Patton v. Solon City School Dist.*](#), Ct. of Clms. No. 2017-00570-PQ, Special Master's Rep. and Rec., 2017-Ohio-9415.

In video showing altercation among students, images of involved students that are used for disciplinary purposes are educational records that must be redacted under FERPA. Images of students not involved in altercation are not educational records under FERPA, but R.C. 3319.321 prohibits a school from releasing any student's personally identifiable information, regardless of whether the student was disciplined. Any feature from which a student could be identified, such as faces, hair, clothing, etc., must be redacted.

Public Records: Mandamus, Prohibitory Injunction

[*State ex rel. Gaddell-Newton v. Husted*](#), Slip Opinion No. 2018-Ohio-1854.

A court lacks jurisdiction in mandamus when complaint asks for a prohibitory injunction. Here, the request for a declaration that digital ballot images are public records subject to R.C. 149.351(A) and for a writ of mandamus ordering boards of elections to refrain from deleting digital ballot images was dismissed for lack of subject-matter jurisdiction.

Open Meetings: Informational Purposes

[State ex rel. Ames v. Portage Cty. Bd. of Comm.](#), 11th Dist. Portage No. 2017-P-0093, 2018-Ohio-2888.

Meeting of task force, whose purpose was to inform the county board of commissioners of the residents' ideas on the opiate crises, where no deliberations took place was not a meeting for purposes of R.C. 121.22.

Open Meetings: Executive Session, Settlement Agreement

[State ex rel. Huth v. Village of Bolivar](#), 5th Dist. Tuscarawas No. 2018 AP 03 0013, 2018-Ohio-3460.

Council properly discussed settlement agreement in executive session as part of pending litigation, as long as any action taken on the settlement agreement was made in public session.