Credit and proof of attendance

In This Section
- Online Sunshine Laws Training
- Sunshine Laws Training Schedule
- Sunshine Laws Training Attendance Reports
- Redaction Request Forms
- Sunshine Laws Manual Request Form

www.OhioAttorneyGeneral.gov/Sunshine
Sunshine@OhioAGO.gov

Why are we here?

"... public records are but the people's records"
Wells v. Lewis
(Ohio 1901)
Practical reasons for public records training

Public Records Act overview
- What is a “public office”
- What is a “public record”
- What is a proper, enforceable request
- How must a public office respond
- Exemptions and redactions
- Litigation and liabilities
- Records management and retention

What is a “public record”?
(1) every “record”
(2) “kept by” a
(3) “public office”
What is a “public office” subject to the Public Records Act?

Public Records Act applies to “persons responsible for public records”

Private entity can be the “functional equivalent” of a public office
What is a “record”? 

(1) Exists on a fixed medium

(2) Created, received by, or under jurisdiction of a public office

(3) Documents activities of the office

Public record: exists on a fixed medium

Public record: created, received by, or under jurisdiction of public office
Public record: documents the activities of the office

Information or content determines whether records are public records
Messages on personal account or device can be public records

Record doesn't document activities of the office if purely personal

Record doesn't document activities of the office if purely personal
Record doesn’t document activities of the office if not used

Record doesn’t document activities of the office if not used

Record doesn’t document activities of the office if not used
Notes and drafts can be public records

Notes can be public records depending on use
- Personal?
- Used for employee’s own convenience?
- Accessed by others?

Drafts can be public records depending on use
Notes and drafts can be transient records

<table>
<thead>
<tr>
<th>Record Series Title</th>
<th>Agency and Series Authority Numbers</th>
<th>Record Series Description</th>
<th>Confidential Description</th>
<th>Vital Description</th>
<th>Retention Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transit Records</td>
<td>GC-R-2564 RE1776</td>
<td>All informal communications which convey information of temporary importance in lieu of oral communication including telephone, email, text, notes, drafts, and general emails, social media posts, and other electronic documents. These communications have very low administrative value as they do not reflect policy, establish guidelines, settle procedures, verify a transaction, or become a receipt.</td>
<td>Electronic - retain until no longer of administrative value, then destroy.</td>
<td>Paper - retain until no longer of administrative value, then destroy.</td>
<td></td>
</tr>
</tbody>
</table>

Public record: “kept by” a public office

Records on personal devices or accounts are records “kept by” public office
Record not “kept by” public office if disposed of per retention schedule

We received a public records request for a copy of the press release the office issued this morning. Can you pull that record and draft a response letter?

By the way, have you guys watched that true crime podcast you’ve been talking about – didn’t see that ending coming! Thanks for the recommendation!
“Any person” can make public records request
No form or language required to make public records request

Submit a Public Records Request

Remember: You are not required to identify yourself in request records, but we do need at least one way to contact you (email or phone number) if you want to be notified when your records are available for pick-up.

Name (optional):

Mail address:

Contact phone number (optional):

Case number/issue:

Brief summary of request:

Identity and motive of requesters irrelevant

Identity relevant if requester is journalist, next of kin, or insurer
Identity relevant if requester is inmate seeking own criminal records

Request to inspect
- Records must be prepared promptly for inspection

Request for copies
- Copies must be produced in a reasonable period of time

Can an office charge for responding to requests?
- **YES** if the request is for copies of records.
- **NO** if the request is to inspect records.
What is “actual cost” of providing records?

- Blank record medium (i.e., paper or disc)
- Ink or toner
- Packaging, delivery, or transmission
- Final copy provided to requester

Responding to request to inspect records

Responding to request for copies of records
Office must provide copies even if available elsewhere

Records must be provided in a “reasonable period of time”

What is a “reasonable period of time”?
Reasonable period of time:
type of record

Reasonable period of time:
circumstances of request

Reasonable period of time:
communication with requester

- 42 public records requests
- No response from public office
- Requester sues

Not a reasonable period of time
Reasonable period of time: communication with requester

- Voluminous public records request
- Public office acknowledges receipt promptly and provides updates
- Requester sues

Reasonable period of time

Burden of responding **not** excuse for delay

Tips for responding timely

- Acknowledge request promptly
- Produce records on rolling basis
- Update requester on progress
Proper request: asks for existing records

Records do not exist when
✓ They have been disposed of
✓ They were never created

Record might “exist” if it can be produced from a database

Proper request: doesn’t ask for information or research
Proper request: describes records sought with “reasonable clarity”

Burden is on requester to properly frame request

Requester must identify records based on how office organizes and maintains

Proper request: identifies records based on how office organizes and maintains

Proper request: doesn’t ask for complete duplication or entire category

All emails

All traffic reports

All personnel files

All letters
Proper request: doesn’t ask for complete duplication or entire category

Ambiguous request: office doesn’t know what requester wants or where to look

Denying an overbroad or ambiguous request

✓ Must give requester opportunity to revise request
✓ Must inform requester of how office’s records are maintained and accessed
Dear Requester,

I am writing in response to the public records request you submitted to the Ohio Attorney General’s Office on DATE. Specifically, you requested “all emails between the Attorney General and the Solicitor General during the Attorney General’s administration.”

Please note that this office is denying your request as overly broad because it does not provide enough information to allow us to identify responsive records based on the manner in which this office organizes and accesses the records it keeps. “[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.” State ex rel. Zidonis v. Columbus State Cmty. College, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶ 21.

In general, the Ohio Attorney General’s Office organizes its records by service division and by case name or overarching topic to which the record relates. The current records retention schedules for the Attorney General’s Office, which further demonstrate how records are ordinarily maintained and accessed by our office, can be found on our office’s website at: http://www.ohioattorneygeneral.gov/About-Ag/Public-Records-Access.

You can also find a listing of the various service divisions of our office, including descriptions of what they each do, on our website at: https://www.ohioattorneygeneral.gov/About-AG/Service-Divisions.

We would be happy to work with you to revise your request so that we can identify the records you seek based on the manner in which public records are organized and maintained by the Ohio Attorney General’s Office. Please feel free to contact us.

Very respectfully yours,

Ohio Attorney General’s Office
Exemptions: only created by state or federal law

Exemptions: always narrowly construed

Mandatory exemptions: office must withhold

AND

Discretionary exemptions: office may withhold but not required to
Mandatory exemptions: FERPA and LEADS

Discretionary exemption: confidential law enforcement investigatory records ("CLEIRs")

CLEIRs: specific confidential investigatory technique or procedures
CLEIRs: investigatory work product

Investigatory work product is time limited

- Law enforcement matter pending
  - Investigatory work product can be withheld
- Law enforcement matter concluded
  - Investigatory work product must be produced

CLEIRs does not apply to 9-1-1 calls or initial incident reports
Discretionary exemption: security and infrastructure records

Infrastructure records:
Records disclosing configuration of critical systems

Security records:
Records used to protect against attack
No exemption for certain categories of records

- Job application materials
- Juvenile records
- Right to privacy

Discretionary exemptions can be waived

More than one exemption may apply
Exempted records or information may be withheld or redacted

Non-record information may be withheld or redacted

Redactions must be plainly visible and supported by legal authority
Use “cheat sheets” with common exemptions

Items from Personnel Files that May or Must Be Withheld

- Social security numbers (R.C. 149.43(A)(13)(b), 149.43(A)(13)(c))
- Public employee home addresses, phone numbers, and personal email addresses, generally (as non-record)
- Residential and familial information of a peace officer, parole officer, probation officer, bailiff, prosecuting attorneys, assistant prosecuting attorneys, criminal sheriff, county coroner, metropolitan sheriff, jailer, or jail employee, county or metropolitan correctional facility employee, parole officer, member of the board of the administrative state agency, cooperating physician advisory board, board of pharmacy employee, judge, mediator, or federal use enforcement officer, other than the address of the individual (see R.C. 149.43(A)(13)(b) and (4)(7)(d))
- Employee ID numbers if the number is part of the public officer's identity (R.C. 149.43)
- Charitable deductions and employment benefit deductions such as health insurance (as non-record)
- Beneficiary information (as non-record)

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Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested “a copy of the job application for Public Employee Candidate.”

Please find attached the records responsive to your request. Note that we have redacted information that is subject to following:

- Information that is not a record of this office, pursuant to State ex rel. Dispatch Printing Co. v. Johnson, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274; and
- Driver’s license numbers, pursuant to R.C. 149.45(A)(1)(c).

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,

Public Office Employee
Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested “a copy of Public Employee Jon Smith’s calendar for April 11-April 15, 2022” and “copies of emails about the press release issued by your office on DATE.”

Please find attached the records responsive to your request. Note that we have redacted information that is subject to following:

- Information that is not a record of this office, pursuant to State ex rel. Dispatch Printing Co. v. Johnson, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274.

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,

Public Office Employee

Jon,
We received a public records request for a copy of the press release the office issued this morning. Can you pull that record and draft a response letter?
Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested “a copy of the personnel file for Public Employee.”

Please find attached the records responsive to your request. Note that we have withheld records that are subject to the following:

• Medical records, pursuant to R.C. 149.43(A)(1)(a) and R.C. 149.43(3).

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,

Public Office Employee
Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested “a copy of the personnel file for Public Employee.”

Please find attached the records responsive to your request. Note that we have withheld records that are subject to the following:

- Documents that are not a record of this office, pursuant to State ex rel. Fant v. Enohrt, 66 Ohio St.3d 186 (1993).

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,

Public Office Employee

Withhold in good faith, talk to attorney when in doubt

Public records litigation

Mandamus lawsuit in court of common pleas, court of appeals, or Supreme Court of Ohio

OR

Public records procedure in Ohio Court of Claims
Mandamus asks court to order office to comply with Public Records Act

Statutory damages in successful mandamus lawsuit

Attorney fees in successful mandamus lawsuit

- Court order to comply with PRA
- Fails to respond “affirmatively or negatively” in time allowed
- Promises records in certain timeframe
- Office acted in bad faith in providing records after lawsuit filed
Complaint in Court of Claims

- Complaint form
- $25 filing fee
- Mediation
- No discovery
- Short briefing schedule

Best practices to avoid litigation

Document all requests office receives
Document all requests office receives

- Request
- Communications
- Steps taken
- Response

Be prepared

- Attend trainings
- Keep lists of common issues and exemptions
- Have a process for receiving and responding to requests
- Know your resources

Stay up-to-date on public records law
Public offices must have public records policy

Public records policy

**DO NOT:**
- Limit number of records available to one person
- Limit number of records available in fixed period of time
- Establish fixed period before office will respond to request

**DO:**
- Distribute policy
- Include policy in existing manual of policies
- Display poster of policy conspicuously in office

Office must organize and maintain records for inspection and copying
Importance of good records management

- More records means more work
- Identification of records that can be destroyed
- Defensible and consistent disposition of records
- Removal of inactive or useless records from public office
- Compliance with laws and regulations

Contents of records retention schedules

- Title
- Description of purpose/function of records and types of information
- Retention period
- Retention format
- Disposal method

Factors determining record retention period

- Historical Value
- Admin. Value
- Legal Value
- Fiscal Value
Retention schedule approval process

- Local Records Commission
- Ohio History Connection (State Archives)
- Auditor of State

Office can only dispose of records pursuant to approved retention schedule

Managing electronic records

- General correspondence
  - Emails
  - Letters
  - Text messages
Managing electronic records

Avoid using personal devices and accounts for work

Update retention schedules to keep up with technology
Include electronic records in public records policy

C. Electronic Records

1. Records in the form of e-mail, text messaging, and instant messaging, including those sent and received via a hand-held communications device, are to be treated in the same fashion as records in other formats, such as paper or audio/visual.

2. Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All employees or representatives of this office are required to retain their e-mail records and other electronic records in accordance with applicable records retention schedules.

Managing transient records

"Thank you" emails, accepted/declined meeting requests, read receipts, etc.

Applicable records retention schedule in place

Delete immediately

No records retention schedule in place

Retain indefinitely

Transient records retention schedule

<table>
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<tr>
<th>Record Series Title</th>
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<th>Vital Description</th>
<th>Retention Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transient Documents</td>
<td>GIR/CM-04</td>
<td>0000776</td>
<td>All informal communications which convey information of importance to local and national government agencies concerning administrative, personnel, and fiscal matters, such as memos, letters, messengers, reports, memos, phone calls, and similar departmental activities. These communications have no administrative value as they do not involve policy, ministerial policies, or personal, administrative, or transaction, or bureau's records.</td>
<td>Electronic, Retain and use.</td>
<td>7 years.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Paper, Retain and use.</td>
<td>7 years.</td>
</tr>
</tbody>
</table>
Litigation and liabilities for improper disposal

- Civil lawsuit
- Court of Claims proceeding
- Forfeiture of $1,000 per violation
- Attorney fees

Records management resources

- Ohio Department of Administrative Services
- Ohio County Archivists and Records Managers Assn.
- CARMA

Open Meetings Act Overview

- What is a “public body”
- What is a “meeting”
- Obligations of public bodies
- Executive session
- Litigation and liabilities
Open Meetings Act applies to the “meetings” of “public bodies”

What is a “public body”?

What is a “public body”?
What is a “meeting”? 

(1) A prearranged 
(2) Discussion of public business 
(3) By a majority of members of public body

When is a meeting “prearranged”? 

A meeting has discussion and deliberation of “official business”
A “meeting” can occur in a series of meetings, each with less than a majority present

A “meeting” can occur over a series of emails

From: John
To: Betsy
Re: hiring superintendent

From: Betsy
To: David
Re: hiring superintendent

From: David
To: Laura
Re: hiring superintendent

A meeting is still a meeting even if called something else

Meetings
“Meeting” obligations

(1) Notice
(2) Openness
(3) Minutes

Open meeting obligation 1: Notice

Type of notice required depends on type of meeting

Regular
- Prescheduled Intervals
- Time and Place

Special
- Anything other than Regular
- Time, Place, and Purpose
Notice to public of planned discussion of particular topic

Open meeting obligation 2: Openness

- Deliberate in public
- Vote in public
- Take official actions in public

Openness: forum requirements
Openness: deliberation and decision-making

Openness: no secret ballots or whispering

Openness: consent agendas

Consent agenda example
✓ Approve meeting minutes
✓ Approve subcommittee actions
✓ Renew contracts
✓ Update policies
Members of public body **cannot** participate in meetings virtually

*Unless specifically authorized by law!*

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Recording and speaking at open meetings

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**Open meeting obligation 3: Minutes**

- Minutes must be
  - Promptly prepared
  - Filed
  - Maintained by public body
Content must allow public to understand rationale behind a decision

Meeting minutes are public records

Openness exception: executive session
Voting procedure to convene executive session

Motion
Second
Roll Call Vote

Executive session must occur after meeting opens and before meeting closes

Nine permissible executive session topics

1) Certain personnel matters (must be specific)
2) Purchase or sale of property
3) Pending or imminent court action
4) Collective bargaining matters
5) Matters required to be kept confidential
6) Security matters
7) Hospital trade secrets
8) Confidential business information of an applicant for economic development assistance
9) Veterans Service Commission applications
Executive session topic: personnel matters

Executive session topic: pending or imminent court action

Who can be present in executive session?

- Members of the public body
- Majority cannot exclude minority
- Anyone else members invite
Do not vote or make decisions in executive session

Discussion and documents in executive session not necessarily confidential

Disclosure of executive session discussion or information

- Executive session doesn’t itself create confidentiality
- Surrounding circumstances can create duty of confidentiality
- Same confidentiality doesn’t apply to documents
Anyone can enforce the Open Meetings Act

Litigation and liabilities for violating Open Meetings Act

- Fine
- Attorney fees
- Invalidation of action(s)
- Removal from office

Ohio Sunshine Laws Manual

[Link: www.OhioAttorneyGeneral.gov/YellowBook]
Trainings offered through the Attorney General’s Office

✓ Certified Training Online
✓ Certified Training Virtual Webcast
✓ Certified Training In-Person

Attorney General’s Office
Sunshine Laws webpage

www.OhioAttorneyGeneral.gov/Sunshine

Attorney General’s Office
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Credit and proof of attendance

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