



OHIO SUNSHINE LAWS CERTIFICATION TRAINING

USING OHIO'S PUBLIC RECORDS ACT TO PROMOTE
OPEN AND ACCOUNTABLE GOVERNMENT

*A seminar for public officials, citizens, and the media
presented by Ohio Attorney General Dave Yost*

WHY DO WE CARE?



2



3

PUBLIC RECORDS ACT OVERVIEW

- Definitions
- Obligations
- Exceptions
- Liabilities

4

WHAT IS A PUBLIC RECORD?

Ohio Revised Code Section 149.43

① ②
“Public Record” means records kept by
any public office . . .”
③

5

WHO IS SUBJECT TO THE PRA?

- Public Offices
- Persons Responsible
- Functional Equivalents

6

PRIVATE ENTITIES PERFORMING GOVERNMENT WORK



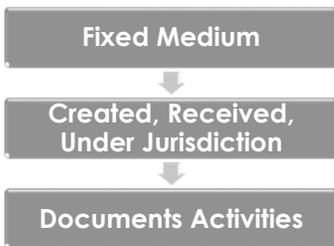
7

FUNCTIONAL EQUIVALENCE

1. Performing a governmental function
2. Level of government funding
3. Government involvement or regulation
4. Created to avoid requirements of the PRA

8

DEFINITION OF RECORD



9

Fixed medium:

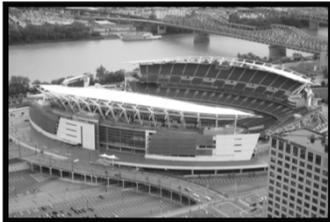


Not fixed medium:



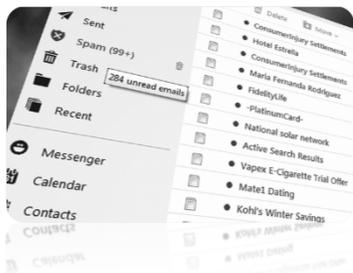
10

CREATED, RECEIVED BY, OR
COMING UNDER THE JURISDICTION
OF A PUBLIC OFFICE



11

DOCUMENTS ACTIVITIES OF THE OFFICE



12

DOCUMENTS ACTIVITIES OF THE OFFICE



13

PUBLIC RECORDS —
RECORDS “KEPT BY” ANY PUBLIC OFFICE



14

RECORD VS. NON-RECORD

- **PRA does not apply to non-records**
- **Non-record items can be redacted or removed**
- **Non-record ≠ confidential**

15

NOTES

Not records if:

1. Personal papers
2. Kept for convenience; and
3. Others did not use/access



16

DRAFTS



- Record?
- Transient?

17

QUIZ

"I'd like copies of all the pictures that the Attorney General has on his desk."



Record?



Non-record?

18

Fixed medium

Created, received, under jurisdiction of office

Documents activities of the office

Non-record



19

QUIZ



"Send me a copy of AAG Joe Smith's personal cell phone call detail statement - he receives a state employee discount on his bill!"

Record? Non-record?

20

Fixed medium

Created, received, under jurisdiction of office

Documents activities of the office

Non-record

21

WHO CAN MAKE A PUBLIC RECORDS REQUEST?



Any "person"

22

NO WRITING, OR SPECIAL FORMAT, OR PARTICULAR LANGUAGE REQUIRED



Verbal or Written



PUBLIC RECORDS REQUEST FORM

IDENTITY AND MOTIVE IRRELEVANT

Cannot ask for motive unless specifically authorized by law



Cannot demand the identity of the requester



24

REQUESTER'S RIGHTS TO:
INSPECT OR COPY



25

COPIES

Requester can choose:

1. Paper
2. Medium record is kept on
3. Any other reasonably available medium



26

INSPECTION: REASONABLE TIMES
DURING BUSINESS HOURS



27

TIME TO RESPOND

Includes time to:

1. Retrieve
2. Review
3. Obtain legal advice
4. Redact



28

PUBLIC RECORDS POLICIES

Model Public Records Policy available at www.OhioAttorneyGeneral.gov/Publications



29

A PROPER REQUEST

1. Seeks existing records
2. Not research or information



30

IS THE REQUEST AMBIGUOUS, OR OVERLY BROAD?

Requester has a responsibility to identify records with "reasonable clarity"



31

LIMITS ON REQUESTS



32

NEGOTIATE



Required when denying request as ambiguous or overly broad

Explain how records are maintained and accessed



33

OPTION TO ASK FOR PURPOSE, IDENTITY, OR WRITTEN REQUEST

Conditions:

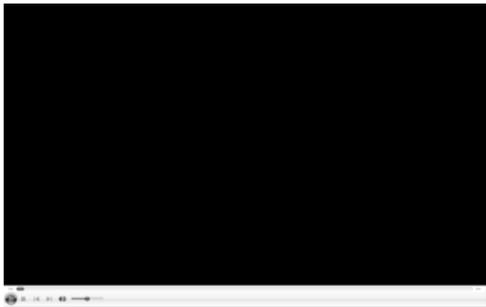
- 1. Must enhance ability to identify, locate, or deliver records

AND

- 2. Advise that providing information is not required

34

COMMUNICATE



35

CHARGING?



36

ACTUAL COST



37

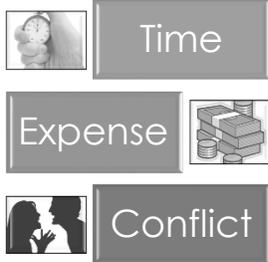
DELIVERY? Any available means



38

GO ABOVE AND BEYOND

Save...



39

LEGISLATURE CAN CHANGE RULES



40

MAKING NON-RECORDS RECORDS

Employee
birth dates



41

MORE ACCESS FOR CERTAIN
REQUESTERS

Journalists



Next of kin and Insurers
(coroners' records)



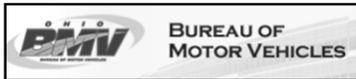
42

INMATES



43

SOME OFFICES CAN CHARGE MORE



44

EXCEPTIONS ARE ONLY CREATED BY APPLICABLE STATE OR FEDERAL LAW

NOT by contract



45

MANDATORY EXCEPTIONS



No choice but to withhold

46

EXAMPLES OF MANDATORY EXCEPTIONS

Family Educational Rights and Privacy Act (FERPA)



Law Enforcement Automated Data System (LEADS)



47

DISCRETIONARY



May withhold, but not required to

48

NO EXCEPTION?

Government job application materials

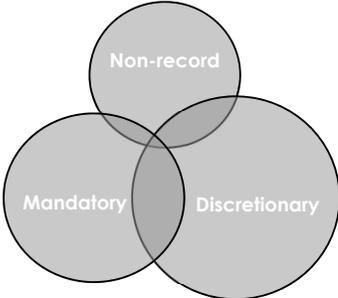
Juvenile records

General Privacy



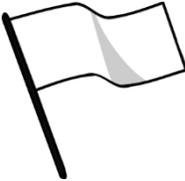
49

MULTIPLE/MIXED EXCEPTIONS



50

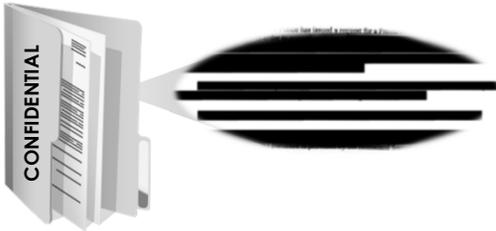
WAIVER?



Intentional disclosure
=
Permanent waiver

51

PROTECTED INFORMATION MAY BE WITHHELD



52

WITHHOLDING/REDACTING

- **Notify where you've withheld**
- **Provide explanation and the legal authority!**



53

WITHHOLD IN GOOD FAITH



54

EXAMPLE

Hi Sarah.

We got a call from a constituent with a public records question. Can you please call her back at 123-456-7890?



Redact?

Release?

55

DAVE YOST
OHIO ATTORNEY GENERAL

On behalf of Ohio Attorney General Dave Yost, I am writing in response to your public records request letter dated December 10, 2018, which our office received on December 12, 2018. A copy of your letter is attached for reference.

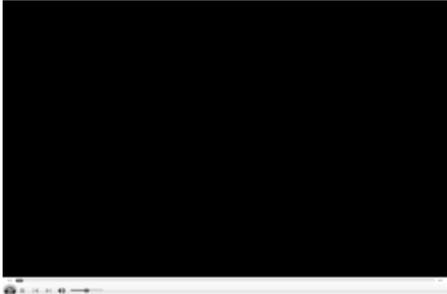
Please find attached the records responsive to your request. Note that we have redacted or withheld information that is not a record of our office, pursuant to *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E. 2d 274 and *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 610 N.E. 2d 997 (1993).

If you have any questions or concerns regarding this request, please feel free to contact the Public Records Unit at 614-466-2872.

30 E. Broad Street, Columbus, Ohio 43220
www.OhioAttorneyGeneral.gov

56

REDACTING VS. WITHHOLDING



57

EXAMPLE

all applicable public records laws.

NAME: [REDACTED] POSITION: INVESTIGATOR

DATE OF BIRTH - Year Not Required: [REDACTED]

Redact?

R.C. 149.43(A)(1)(dd),
to wit: R.C. 149.45

EXAMPLE

ADDRESS: (Street, City, State, ZIP Code) 1971 BROWNS BLVD.

POSITION: INVESTIGATOR

Redact?

Also consider
protections for certain
covered professionals,
R.C. 149.43(A)(7)

PREPARATION

- Training
- Lists
- Records Retention Schedules
- Resources



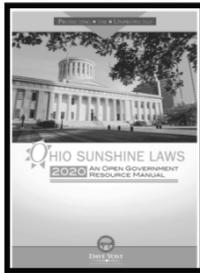
CONSULT YOUR LEGAL COUNSEL



61

OHIO SUNSHINE LAWS MANUAL

www.OhioAttorneyGeneral.gov/YellowBook



62

OHIO ELECTRONIC RECORDS COMMITTEE

www.OhioERC.org



63

DO MORE THAN IS REQUIRED



64

NEGOTIATE TO A WIN-WIN SOLUTION

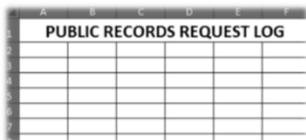


65

DOCUMENTING REQUESTS

Benefits:

- Defending litigation
- Duplicative requests



66

WHAT TO DOCUMENT:

1. The request itself
2. Acknowledgement of request
3. Communication with requester
4. All steps taken
5. Records provided

- AOS Bulletin 2011-006

67

OTHER PRACTICAL TIPS



- Contact legal counsel *early*
- Negotiate if appropriate

68

POTENTIAL LIABILITIES

- Mandamus or Court of Claims proceeding
- Order to produce records
- Statutory damages
- Attorney fees
- Court costs



69

REQUIREMENTS FOR
STATUTORY DAMAGES

-
- 1. Certified mail, hand delivery, or electronic submission
-

AND

-
- 2. Lost use of records
-

70

ATTORNEY FEES

- **Available if:**
 - Court order to comply with PRA
 - Failure to respond "affirmatively or negatively" in time allowed
 - Promise of records in certain timeframe
 - Public office acted in bad faith in providing records after mandamus lawsuit filed

71

ATTORNEY FEES

- **Not available if:**
 - Any well-informed person would have reasonably believed at the time that the conduct of your office was not violating the letter or spirit of the PRA

72

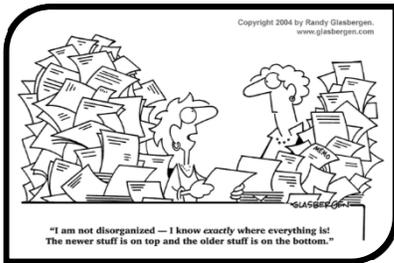
RECORDS CREATION

"Shall make" only necessary records



73

ORGANIZE AND MAINTAIN



74

RECORDS RETENTION APPROVAL



75

CONTENTS OF RETENTION SCHEDULES

Series Title	Series Description	Retention Period
Retention Format	Disposal Method	

76

FACTORS DETERMINING RETENTION PERIOD

Administrative Purpose	Fiscal Tracking
Legal Value	Historical Value

77

RESOURCES

 Ohio History Connection State Archives

 Department of Administrative Services General Schedules

78

HAVE RETENTION SCHEDULES
READILY AVAILABLE



79

DISPOSE OF RECORDS PROPERLY

As provided for by:

- Law
- Records retention schedules



80

LIABILITIES FOR IMPROPER DISPOSAL

**Potential
Consequences:**

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



81

"PERSON AGGRIEVED"



82

~~GOTCHA!~~

R.C. 149.351

Not "aggrieved" if request was contrived to create liability

83

OPEN MEETINGS ACT OVERVIEW

- Definitions
- Obligations
- Executive Session
- Liabilities

84

WHO IS SUBJECT AND WHEN?

Applies to "public bodies" when:

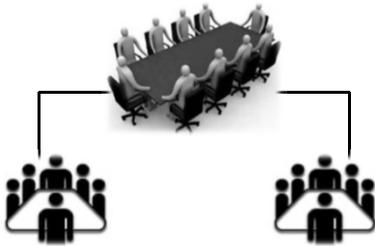
- ① there is a prearranged gathering of
- ② a majority of the members of a public body
- ③ conducting or discussing public business



85

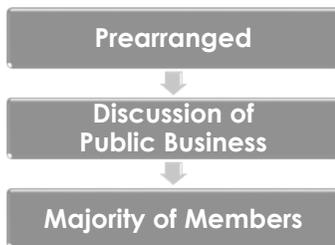
"PUBLIC BODIES"

Includes committees and sub-committees



86

"MEETING"



87

RETREATS, WORK SESSIONS, ETC.?



88

MEETING MUST BE USED FOR DISCUSSION AND DELIBERATION OF "OFFICIAL BUSINESS"

NOT NECESSARILY FOR ...



Information gathering



Presentations



Isolated conversations between employees

89

MEETING OBLIGATIONS

- 1. Notice
- 2. Openness
- 3. Minutes



90

NOTICE RULE REQUIREMENTS

1. Be consistent

AND

2. Actually reach the public

91

OBLIGATION 1: NOTICE

Public bodies establish their own notice rules



92

NOTICE REQUIREMENTS DEPEND ON TYPE OF MEETING

Two Types of Meetings:

Regular	Special
Prescheduled Intervals	Anything other than Regular

93

NOTICE: REGULAR MEETINGS

Regular	
Time	Place

94

NOTICE: SPECIAL MEETINGS

Special		
Time	Place	Purpose

95

SPECIAL MEETINGS: MEDIA

At least 24 hours notice to all media outlets that have requested it



96

EMERGENCY MEETINGS

Immediate Notice Required



- Type of special meeting
- Must include media with notice

97

NOTICE TO PUBLIC OF PLANNED DISCUSSION OF PARTICULAR TOPIC

1. Public body must have a method to sign up for such notice
2. May require payment of reasonable fee



98

OBLIGATION 2: OPENNESS



99

OPENNESS

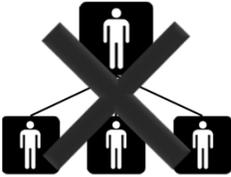
Vote and take official actions in public



100

OPENNESS

No round-robin meetings



No voting by secret ballot



101

OPENNESS

Forum requirements:

1. Public
2. In area public body serves
3. Large enough



102

RECORDING AND SPEAKING?

Cannot ban non-disruptive recording



Do not have to allow public participation



103

QUIZ

Township trustees hold a regular meeting, where all the members attend, and provide the proper notice to the public. But the doors to the meeting room are accidentally locked while the meeting is ongoing.



Open?



Not open?

104



Proper notice was given



Minutes were taken



Openness denied to latecomers

Potential OMA violation



105

OBLIGATION 3: MINUTES

Requirements:

- 1. Promptly prepared
- 2. Filed
- 3. Maintained
- 4. Open to public



106

REQUIRED CONTENT

- Not verbatim transcript, but ...
- Must allow public (including those who did not attend) to understand decisions of the public body

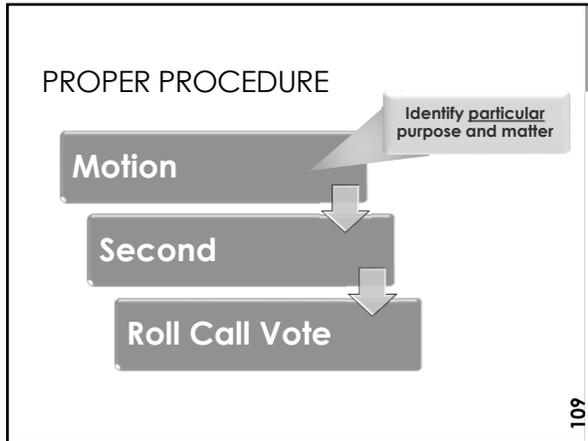


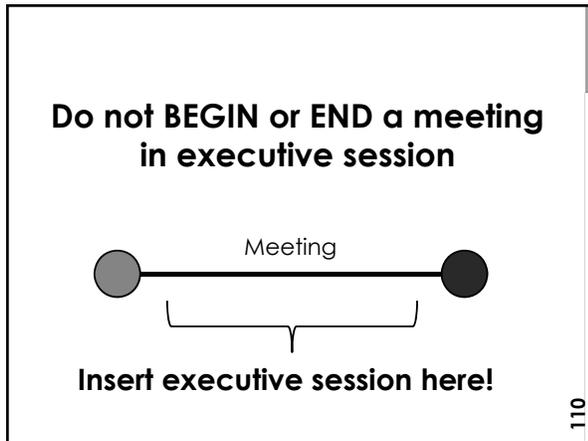
107

EXECUTIVE SESSION



108





- NINE ACCEPTABLE 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
- 111

QUIZ

Township trustees want to go into executive session to discuss a general OMA issue. Chair moves to adjourn with the board's attorney to "discuss some legal matters with the attorney for the trustees." Roll call vote.



Appropriate?



Not appropriate?

112



Started in open session



Roll call vote to enter executive session



Pending or imminent legal action



113

WHO CAN BE PRESENT?

1. Members

- But cannot exclude minority!



2. Anyone else the members invite

114

CONFIDENTIALITY?

- No confidentiality provisions created in OMA
- Other laws, like Ethics Law, may require confidentiality (but only of the members!)



115

WHAT NOT TO DO IN EXECUTIVE SESSION

	Vote
Make Any Decisions	
WRONG WAY	Discuss Other Matters

116

VIRTUAL PARTICIPATION?



**Not unless *specifically* authorized
by law...**

117

WHO ENFORCES THE OMA?

- “Any person” by filing a lawsuit
- No public entity enforces the OMA



118

POTENTIAL LIABILITIES

1. Fine
2. Attorney fees
3. Invalidation of action(s) taken
4. Removal from office



119

QUESTIONS?



120

ANSWERS

Ohio Attorney General's Sunshine Laws Webpage

www.OhioAttorneyGeneral.gov/Sunshine

Ohio Sunshine Laws Manual

www.OhioAttorneyGeneral.gov/YellowBook

Ohio Attorney General Dave Yost
Public Records Unit
614-466-2872

121
