



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*

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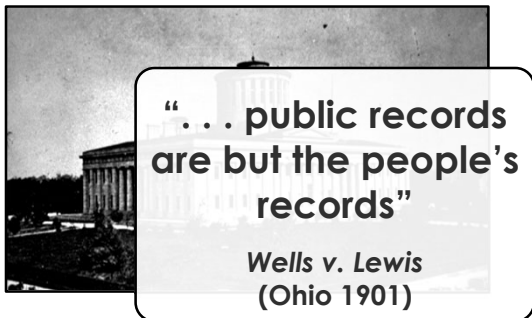
Credit and proof of attendance



www.OhioAttorneyGeneral.gov/Sunshine

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Why are we here?



**"... public records
are but the people's
records"**

*Wells v. Lewis
(Ohio 1901)*

3

Practical reasons for public records training



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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 remedies
- ✓ Records management and retention

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What is a “public record”?

- (1) every “record”
- (2) “kept by” a
- (3) “public office”

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



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

- (1) Did the private entity prepare the records to perform responsibilities normally belonging to the public office?
- (2) Can or does the office monitor the private entity's performance?
- (3) Can the office access the records itself?

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



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A private entity can be the “functional equivalent” of a public office

- (1) Does the entity perform a government function?
- (2) How much government funding does it get?
- (3) How much does public office control the day-to-day operations?
- (4) Was it created to avoid the Public Records Act?

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A private entity can be the “functional equivalent” of a public office



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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

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Public records must be on a fixed medium



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Public records must be created, received by, or under a public office's jurisdiction

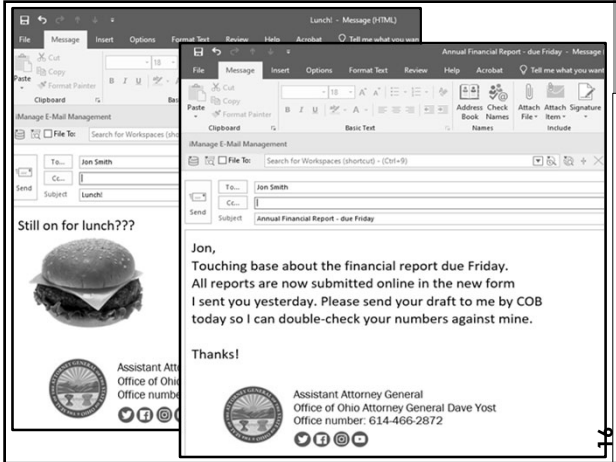


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Public records must document the activities of the office




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Information or content determines whether records are public records

 *What does the information tell the public about what the office does?*

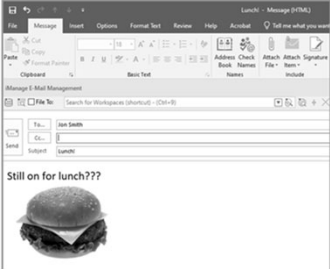
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Messages on personal accounts or devices can be public records



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Records don't document activities of the office if information is purely personal



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Records kept for administrative use or convenience



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Records kept for administrative use or convenience



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**A record doesn't document
activities of the office
if it's not used**



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**A record doesn't document
activities of the office
if it's not used**



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**Notes and drafts can be
public records**



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Notes can be public records depending on use

- ✓ Personal?
- ✓ Used for employee's own convenience?
- ✓ Accessed by others?

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Drafts can be public records depending on use



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Public records must be "kept by" a public office



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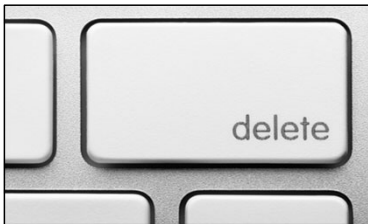
**Records on personal devices
or accounts are records
“kept by” a public office**



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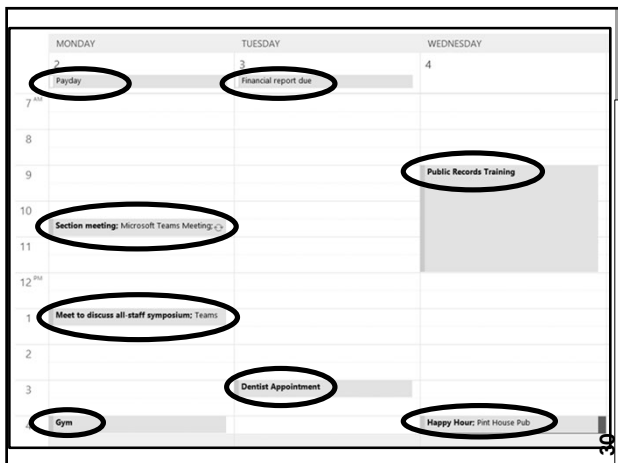
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**A record is not “kept by” a
public office if disposed of per
record retention schedule**



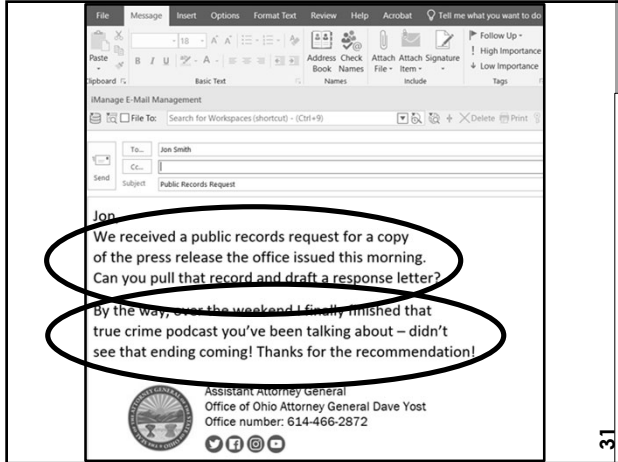
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No form or language is required to make a public records request

Submit a Public Records Request

Remember: You are not required to identify yourself to request records, but we do need at least one way to be notified when your records are available for pick-up.

Name (optional):

Email address:

Contact phone number (optional):

Case number/name:

Brief summary of request:

SAMPLE PUBLIC RECORDS REQUEST

How to Request: Submit a copy of this request for your files. If you eventually want to file a Request for Review with the Court of Claims, you will need to submit a copy of your public records request

Name and Address of Public Agency or Official Receiving Request:

Date Requested:

Request Submitted By: ☐ E-Mail ☐ U.S. Mail ☐ Fax ☐ In Person

Name of Requester:

Street Address:

City/State/County (Zip requested):

Telephone (Optional): ☐ E-mail (Optional):

Fax (Optional):

Records Requested: "Provide as much specific detail as possible so the public body can identify the information that you are seeking. Use your attach additional pages if necessary."

Do you want copies of the documents? ☐ YES ☐ NO

Do you want Electronic Copies or Paper Copies?

If you want Electronic Copies, in what format?

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Identity and motive of requesters irrelevant



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Identity and motive of requesters irrelevant



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Identity relevant if the requester is a journalist



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Identity relevant if the requester is a journalist



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Identity relevant if the requester is an insurer or next of kin



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Identity relevant if the requester is an inmate seeking criminal records



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Identity relevant if a court declared the requester a vexatious litigator



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Request to inspect

Records must be prepared promptly for inspection

Request for copies

Copies must be produced in a reasonable period of time

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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.

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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

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Some public offices can charge more than “actual cost”

- ✓ BMV for accident reports
- ✓ Coroners for copies of records
- ✓ Law enforcement agencies up to \$75/hour for reviewing/producing video recordings



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Responding to a request to inspect records



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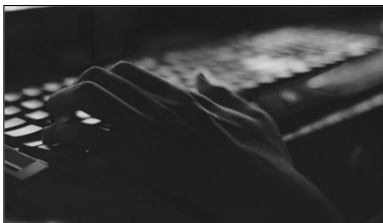
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Responding to a request for copies of records



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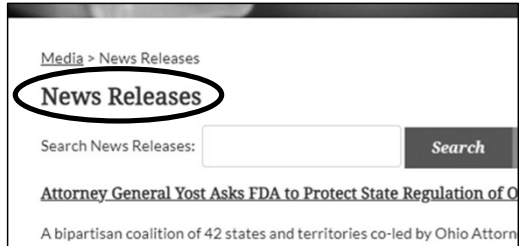
Responding to a request for copies of records



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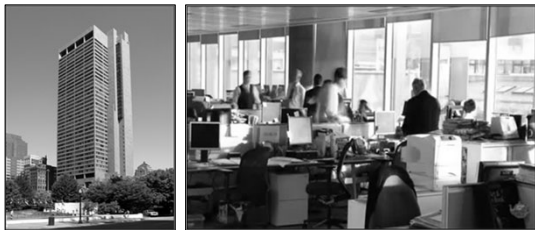
An office must provide copies even if available elsewhere



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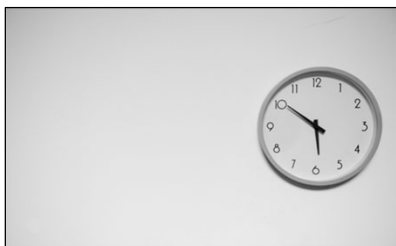
An office must provide copies even if available elsewhere



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Copies of records must be provided in a "reasonable period of time"



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What is a “reasonable period of time”?



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Reasonable period of time: type of record requested



Incident Report Form - Motor Vehicle	
I. Policy Details	
Insured Name	Policy Number
II. Incident Details	
Date of Incident	Name of Driver & Address where accident occurred
Time of Occurrence	Is an intersection, corner or driveway involved?
Where the event occurred? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is an intersection, corner or driveway involved?
Describe briefly, in writing, how the accident occurred.	Provide a diagram of the accident scene.
III. Vehicle Details	
Vehicle Year & Make	Did the police attend the event? <input type="checkbox"/> Yes <input type="checkbox"/> No
Vehicle Registration	Police Report No.
Vehicle VIN Number	Was your vehicle insured? <input type="checkbox"/> Yes <input type="checkbox"/> No
Is your vehicle insured? <input type="checkbox"/> Yes <input type="checkbox"/> No	Where is the vehicle used?

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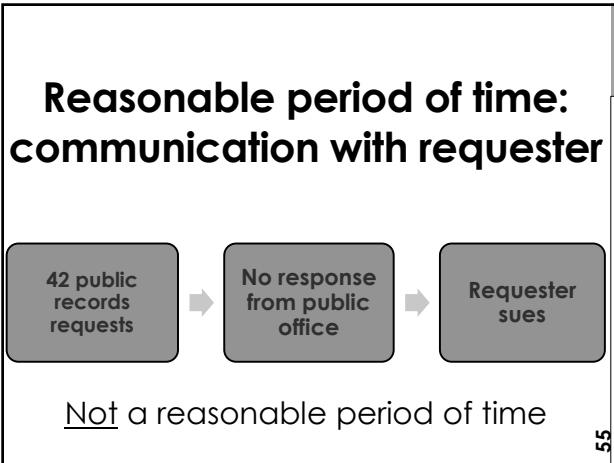
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Reasonable period of time: circumstances of the request

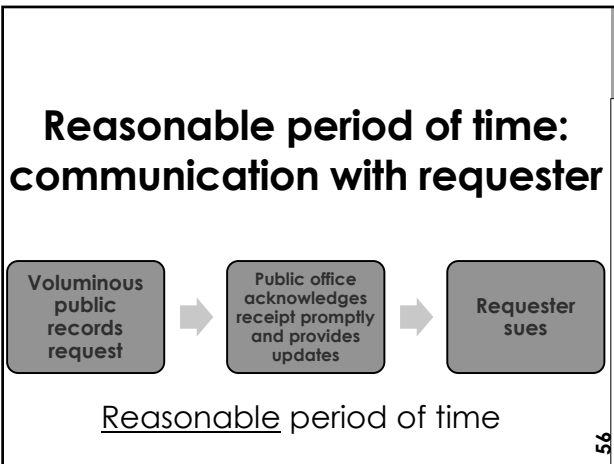


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Tips for responding timely

- ✓ Acknowledge request promptly
- ✓ Produce records on rolling basis
- ✓ Communicate with requester

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A proper request must ask for existing records

Records do not exist when

- ✓ They have been disposed of
- ✓ They were never created

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



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Proper request: doesn't ask for information or research



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A proper request must describe records sought with “reasonable clarity”

Burden is on
requester to
properly frame
request

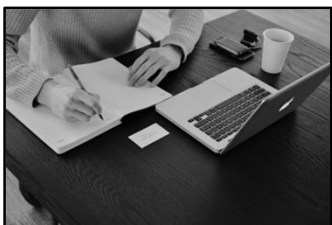
AND

Requester must
identify records
based on how
office organizes
and maintains

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Whether a request is overly broad depends on the facts and circumstances



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Whether a request is overly broad depends on the facts and circumstances



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A proper request must identify records based on how the office organizes and maintains records



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A proper request must identify records based on how the office organizes and maintains records



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A proper request must identify records based on how the office organizes and maintains records



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Ambiguous request: office doesn't know what the requester wants or where to look for records



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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**

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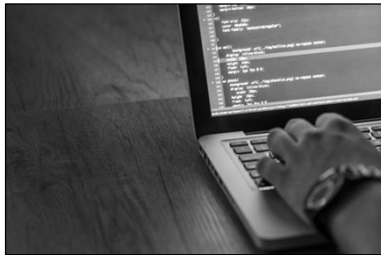
A public office must inform requester of how its records are kept



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A public office must inform requester of how its records are kept



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

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**Exemptions can only
be created by state or
federal law**



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**Exemptions are
always narrowly construed**



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Mandatory exemptions:
office must withhold

AND

Discretionary exemptions:
office may withhold but
not required to

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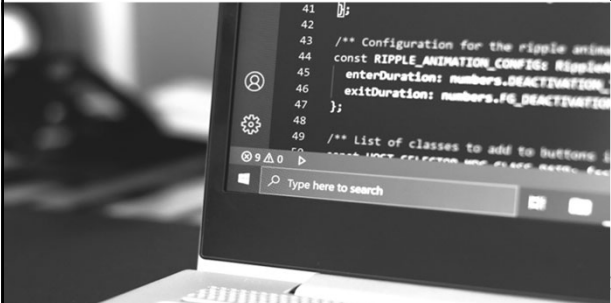
Mandatory exemption: FERPA



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Mandatory exemption: LEADS



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



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Types of CLEIRs information:

- ✓ Identity of an uncharged suspect or confidential source
- ✓ Specific confidential investigatory techniques or procedures
- ✓ Investigatory work product
- ✓ Information that would endanger life or physical safety of law enforcement personnel, victim, witness, or confidential informant

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CLEIRs information: specific confidential investigatory techniques or procedures

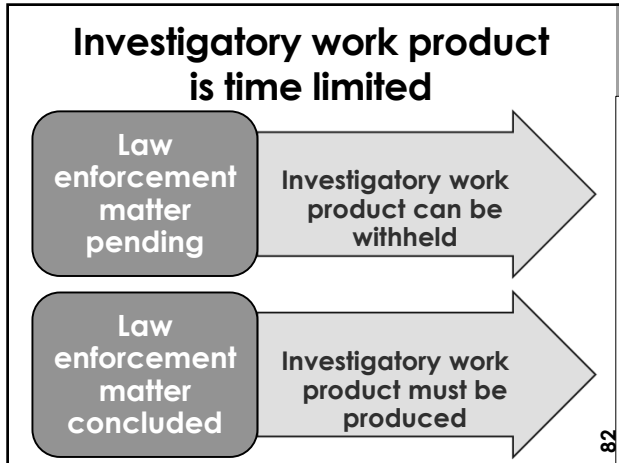


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CLEIRs information: investigatory work product



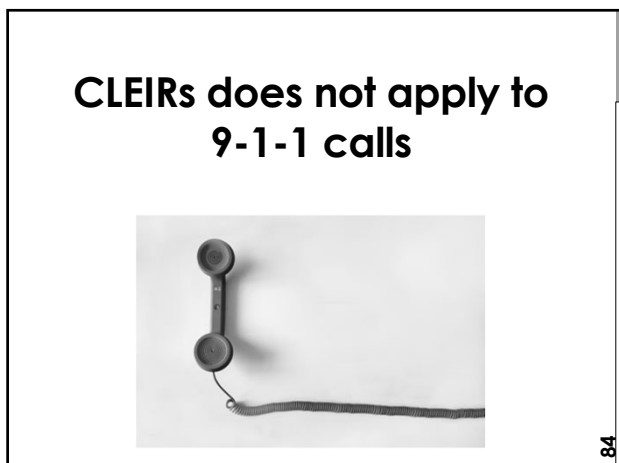
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**Discretionary exemption:
security and infrastructure records**

Infrastructure records:
Records disclosing configuration of
critical systems

Security records :
Records used to protect against attack

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**Discretionary exemption:
security records**



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**Discretionary exemption:
infrastructure records**



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No exemption for some categories of records

- ✓ Job application materials
- ✓ Juvenile records
- ✓ Right to privacy

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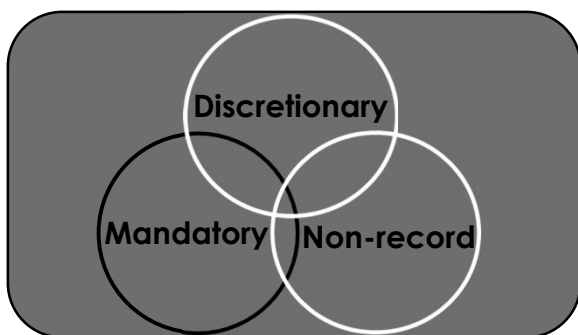
Discretionary exemptions can be waived



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More than one exemption may apply



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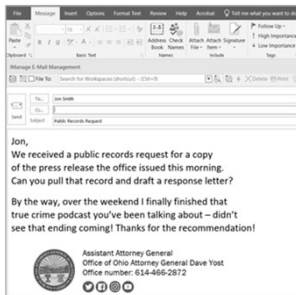
Exempted records or information may be withheld or redacted



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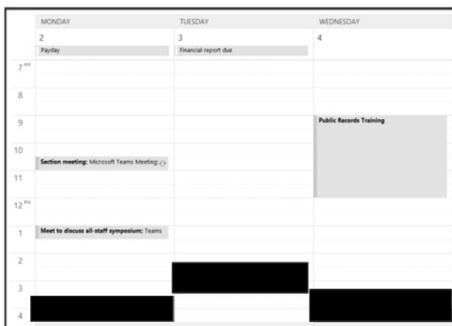
Non-record information may be withheld or redacted



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Redactions must be plainly visible



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Redactions must be supported by legal authority

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PERSONNEL FILES

The following lists are intended as a starting point for public officers when compiling lists appropriate to their employee records. The lists are not exclusive, and public officers should consult with their legal counsel or conduct independent legal research to decide if these exemptions, or other exemptions, apply.

Information in Personnel Files Subject to Release with Appropriate Redaction

- Payroll records
- Timesheets
- Employment application forms
- Resumes
- Training course certificates
- Position descriptions
- Performance evaluations
- Leave conversion forms
- Letters of support or complaint
- Forms documenting receipt of office policies, directives, etc.
- Forms documenting hiring, promotions, job classification changes, separation, etc.
- Background checks, other data information or throughput from Law Enforcement Automated Data System (LEADS), the National Crime Information Center system (NCIC), and Computerized Criminal History (CCH)
- Disciplinary investigation/action records, unless exempt from disclosure by law
- Limited access files

Information in Personnel Files that May or Must Be Withheld

- Social security numbers (R.C. 149.43(A)(1)(B), 149.45(A)(3)(A))
- Public employee home addresses, phone numbers, and personal email addresses, generally (as non-records)
- Residential and familial information of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or municipality corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, parole services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the Bureau of Criminal Identification and Investigation, emergency services telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer, other than actual personal residence address of a prosecuting attorney or judge (R.C. 149.43(A)(2)(C) and (A)(7)(B))
- State employee ID numbers pursuant to R.C. 1306.23 (ID numbers of other public employees may be exempt as "security records" under R.C. 149.43(B)(2) if that definition applies)

Use "cheat sheets" of common exemptions

Page 89 of the Sunshine Laws Manual

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Ohio Civil Service Application
for State and County Agencies
GEN-4268 (REVISED 3/16)
The State of Ohio is an Equal Opportunity Employer and provider of ADA services.

POSITION: ADMINISTRATIVE ASSISTANT	AGENCY: OHIO AGENCY	POSITION NUMBER: 123456
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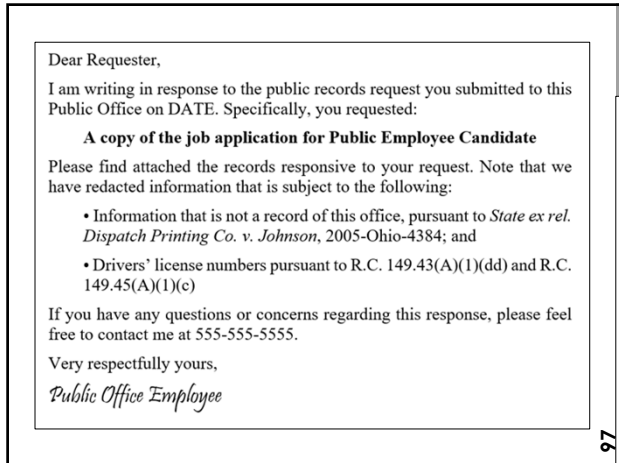
Please submit one application per position or examination to the address indicated on the job posting or examination announcement. Copies are acceptable. Applications lacking sufficient information will not be processed. Please ensure your application is received or postmarked by the closing date, as required by the hiring agency. Please be sure to complete the entire application. Also note that once submitted to a governmental agency, this completed form will be subject to all applicable public records laws.

PLEASE TYPE OR PRINT IN INK

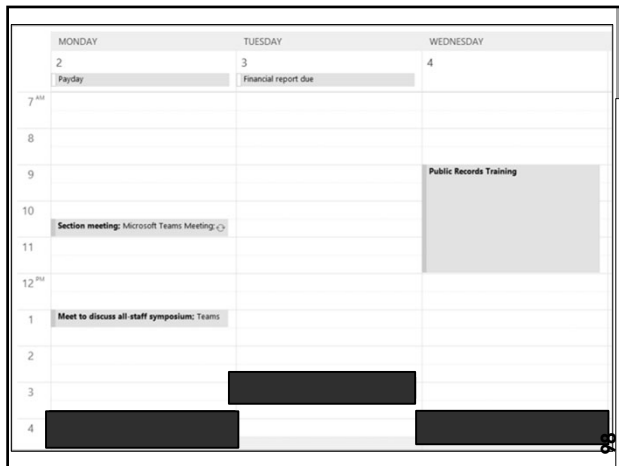
NAME (Last, First, Middle) CANDIDATE, PUBLIC EMPLOYEE	DATE OF BIRTH - Year Not Required Month 01 Day 01	
ADDRESS (Street, City, State, ZIP Code) [REDACTED]		
HOME PHONE: [REDACTED]	ALTERNATE PHONE: [REDACTED]	E-MAIL ADDRESS: [REDACTED]
DRIVER'S LICENSE (if available) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	LEGAL RIGHT TO WORK IN THE U.S.: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

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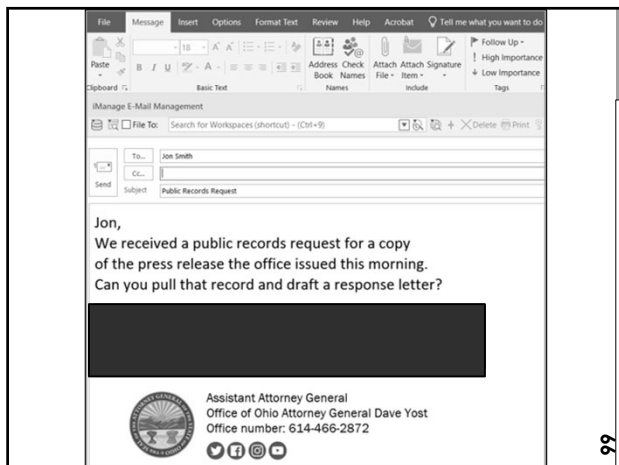
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Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested "a copy of 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

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[Redacted Content]

101

101

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

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**Withhold in good faith,
talk to attorney when in doubt**



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**The Public Records Act is a
“self-help” statute**



*Individuals can sue a public office
themselves or through a private attorney*

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Two litigation options:

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

OR

**Public records procedure in
Ohio Court of Claims**

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Pre-filing complaint requirement

- ✓ Requesters must serve a pre-filing complaint on the public office before they can sue
- ✓ Court of Claims provides the complaint form



<https://ohiocourtclaims.gov/public-records/>

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Pre-filing complaint requirement

- ✓ If alleged violation not resolved requester can file in mandamus or Court of Claims after three-day period expired
- ✓ Must file affirmation that pre-filing complaint process followed, otherwise court will automatically dismiss

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Mandamus asks court to order office to comply with Public Records Act



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Statutory damages may be awarded in successful mandamus lawsuit



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Statutory damages: requirements for service of request, not available to inmates



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Attorney fees in successful mandamus lawsuit

- ✓ Court order to comply with PRA
- ✓ Fails to respond in reasonable period of time
- ✓ Promises records in certain timeframe
- ✓ Office acted in bad faith in providing records after lawsuit filed

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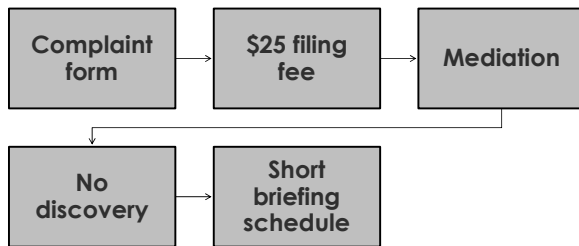
Complaint in Court of Claims



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Complaint in Court of Claims



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Best practices to avoid litigation



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Document all requests the office receives

(NAME OF AGENCY/DEPARTMENT/SUBDIVISION)
LOG OF PUBLIC RECORDS REQUESTS
(PERIOD OF TIME COVERED BY LOG)

Date Rec'd	Form of Request	Date of Response	Name of Requesting Person or Entity	Description of Records Requested	Copy of Released Records		Exemption Reduction		Legal Authority for Exemption Reduction	Name of Person Fulfilling Request
					Yes	No	Yes	No		
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
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Sample public records request log

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Document all requests the office receives

- ✓ Request
- ✓ Communications
- ✓ Steps taken
- ✓ Response

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Stay up-to-date on public records law



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Public offices must have a public records policy



www.OhioAttorneyGeneral.gov/Publications

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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

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Offices must organize and maintain records for inspection and copying



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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

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Contents of records retention schedules

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

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Factors determining record retention period

Historical Value	Admin. Value
Legal Value	Fiscal Value

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Was just told we need to start putting the new cover sheets on the TPS reports. You should be getting a memo about it. If you could start using the new cover sheets on all TPS reports that would be great!

Managing electronic records

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Best practices for managing electronic records



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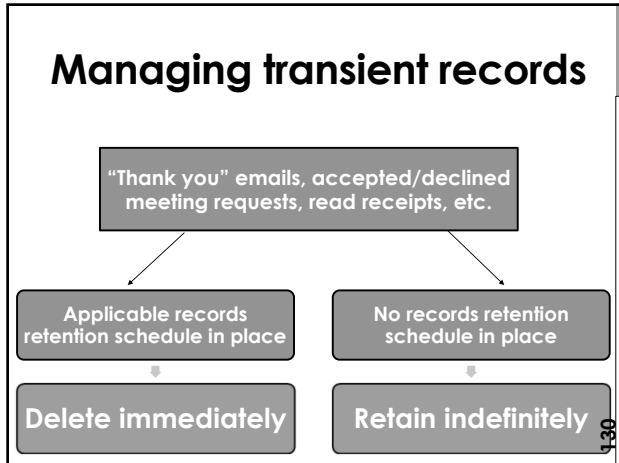
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Update retention schedules to keep up with technology

Record Series Title	Agency and Series Authorization Numbers	Record Series Description	Confidential Description	Vital Description	Retention Period	Retention Justification	Method of Disposal	Date Schedule Approved
AGO Podcasts	88-0462-11 10551681	Outward-facing communications to the public to educate or relay information concerning the work/services of the AGO. Records include, but are not limited to, emails, draft scripts, and podcast recordings.			Machine Readable -- Retain 4 years, prior to destroying have reviewed by State Archives.		Machine Readable -- Delete	4/26/2018

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Transient records retention schedule

Record Series Title	Agency and Series Authorization Numbers	Record Series Description	Confidential Description	Vital Description	Retention Period
Transient Documents	GAR-CM-04 10551778	All informal communications which convey information of temporary importance in lieu of oral communication including telephone voicemail, chats, posts, instant, and text messages, post-it notes, drafts, generic emails, social media posts, and shared departmental calendars. These communications have very little administrative value as they do not set policy, establish guidelines, define procedures, certify a transaction, or become a receipt.			<div style="border: 1px solid black; padding: 5px;"> Electronic – Retain until no longer of administrative value, then destroy. Paper – Retain until no longer of administrative value, then destroy. </div>

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- ## Litigation and remedies for improper disposal
- ✓ Civil lawsuit
 - ✓ Court of Claims proceeding
 - ✓ Forfeiture of \$1,000 per violation
 - ✓ Attorney fees

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Records management resources



Ohio History Connection
& State Archives



Ohio
Department of
Administrative
Services



OhioERC
OHIO
ELECTRONIC
RECORDS
COMMITTEE



CARMA

DAS General Retention
Schedule

Ohio County Archivists
and Records Managers
Assn.

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Open Meetings Act overview

- ✓ What is a “public body”
- ✓ What is a “meeting”
- ✓ Obligations of public bodies
- ✓ Executive session
- ✓ Litigation and liabilities

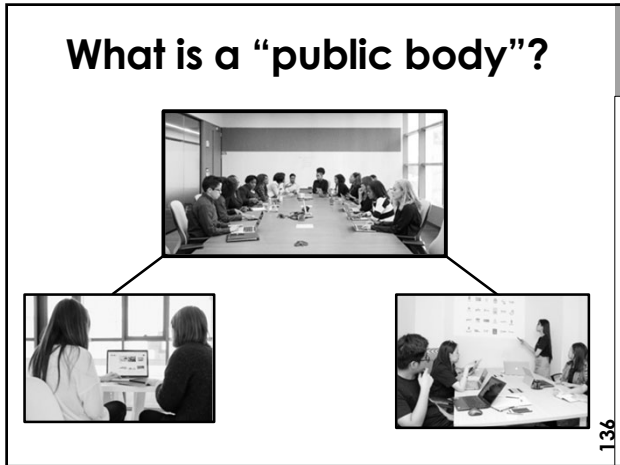
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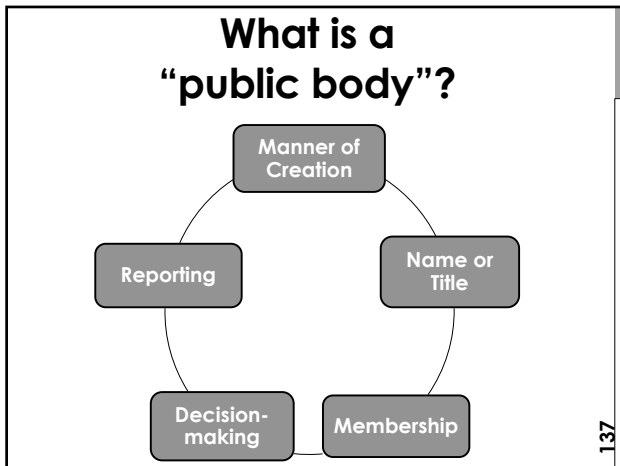
The Open Meetings Act applies to the “meetings” of “public bodies”



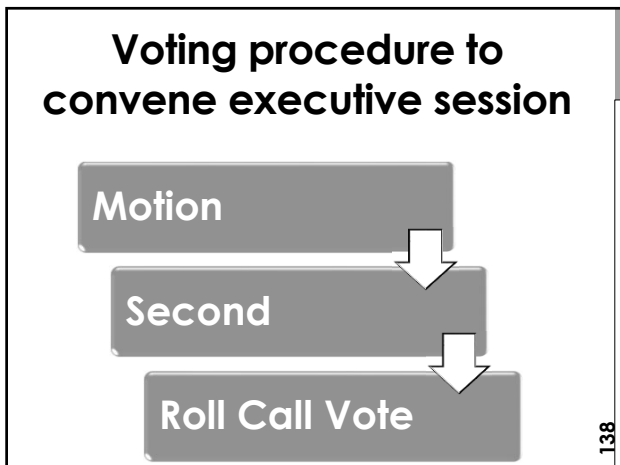
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What is a “public body”?



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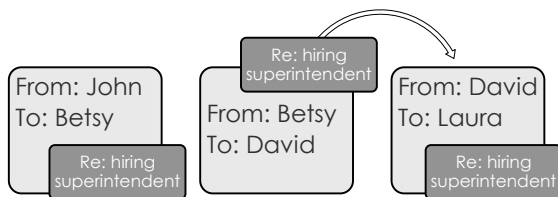
What is a “meeting”?

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

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When is a meeting “prearranged”?



141

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**When is a meeting
“prearranged”?**



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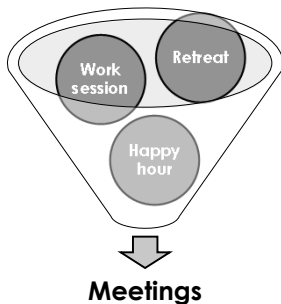
**A “meeting” has discussion
and deliberation of
“official business”**



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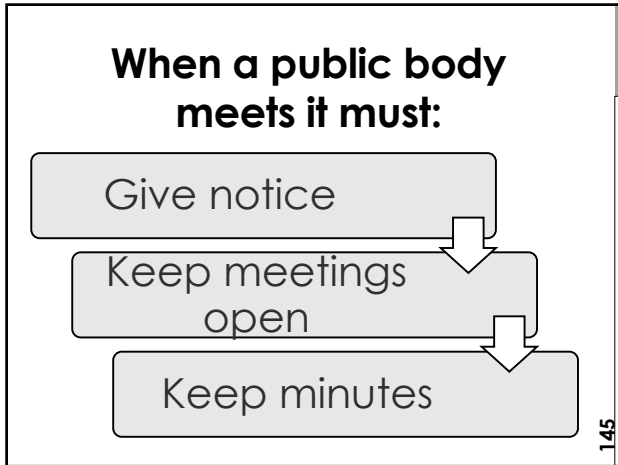
143

**A meeting is still a meeting
even if called something else**

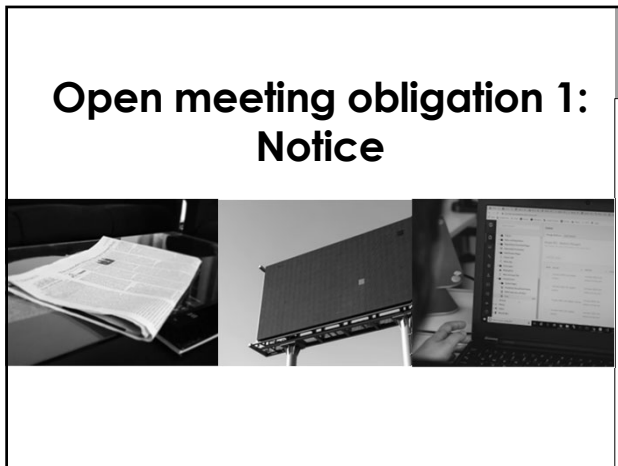


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Regular meeting: prescheduled intervals, e.g., first Thursday of every month

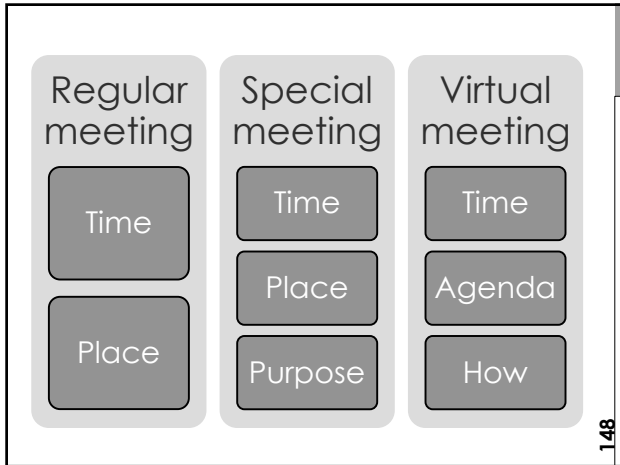
Special meeting: any meeting that is not held on the regular meeting date

Emergency meeting: a special meeting when an issue requires immediate action

Virtual meeting: meeting via video- or teleconference (only bodies with authority)

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Open meeting obligation 2: Openness

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

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Forum requirements of open meetings



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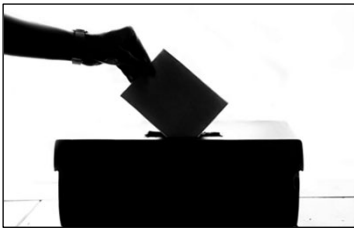
All deliberation and decision-making must be in open meetings



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No secret ballots, whispering, and caution if voting on a consent agenda



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Some public bodies have statutes that authorize them to meet virtually

153

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A public body can meet by video conference or other electronic means if its members:

✓ Are not compensated for their positions

OR

✓ Are not elected by the general public



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Virtual Meeting Policy Requirements:

✓At least 72-hours' notice with time, location, agenda, and how meeting will be conducted

✓A way for the public to see and hear the meeting, e.g., livestreaming or other similar electronic technology

✓All votes taken by roll call unless a unanimous consent motion is adopted

✓Members attending remotely must notify chair at least 48 hours before meeting

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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

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Meeting minutes (including drafts) are public records



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Openness exception: executive session



159

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Voting procedure to convene executive session

Motion

Second

Roll Call Vote

160

160

**Executive session must occur
after meeting opens and
before meeting closes**



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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

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Executive session topic: personnel matters



- ✓ Appointment
- ✓ Employment
- ✓ Dismissal
- ✓ Discipline
- ✓ Promotion
- ✓ Demotion
- ✓ Compensation

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Executive session topic: pending or imminent court action



164

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Executive session topic: matters required to be confidential



*There must be a
state or federal law
or regulation that
makes the matter
confidential*

165

Who can be present in executive session?

- ✓ Members of the public body
- ✓ Majority cannot exclude minority
- ✓ Anyone members invite

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Do not vote or make decisions in executive session



167

167

Discussion and documents in executive session may not be confidential



168

168



Documents discussed in executive session may be public records

169

The Open Meetings Act is a “self-help” statute

Individuals can sue a public body themselves or through a private attorney




170

Remedies for violating the Open Meetings Act

- ✓ Fine of \$500 per violation
- ✓ Attorney fees (if applicable)
- ✓ Invalidation of action(s)
- ✓ Removal from office


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**Ohio
Sunshine
Laws
Manual**

www.OhioAttorneyGeneral.gov/YellowBook

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**Attorney
General's
Office
Sunshine
Laws
webpage**

www.OhioAttorneyGeneral.gov/Sunshine


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**Attorney General's Office
Public Records Unit**

**Public Records Unit
Ohio Attorney General's Office
30 East Broad Street
Columbus, Ohio 43215
614-466-2872
Sunshine@OhioAGO.gov**

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Credit and proof of attendance



QUICK LINKS

- Register for Sunshine Laws Training
- Sunshine Laws Training Attendance Reports
- Online Sunshine Laws Training**
- Sunshine Laws Manual Request Form

Legal - Sunshine Laws

Ohio's Sunshine Laws and the role of the Attorney General

Ohio's Public Records and Open Meetings laws, collectively known as the Sunshine Laws, ensure that government records and meetings are accessible to the public. These laws allow citizens, businesses, and governmental agencies at every level, including those in government, to obtain records and attend meetings. The Ohio Attorney General's Office (AGO) is committed to these laws and helps citizens understand how to use them.

- ☑ The Sunshine Laws Manual, a comprehensive guidebook published every two years, provides detailed information on the Sunshine Laws, including the laws themselves and on-demand videos. Trainings are available to the public upon request for elected officials or their employees.
- ☑ A public records request is a written request for records from a public agency, and a public records law is a legislative act that gives the public the right to access records.

Public Records Act **Open Meetings Act** **Sunshine Laws Manual** **Exemptions to Ohio's Laws**

www.OhioAttorneyGeneral.gov/Sunshine

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