



OHIO SUNSHINE LAWS CERTIFICATION TRAINING

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

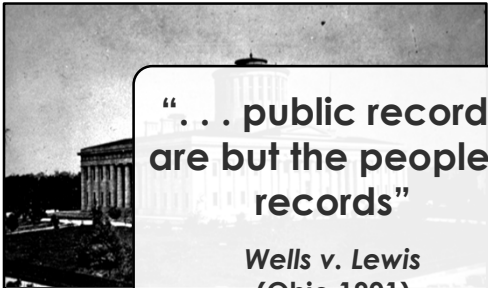
*A seminar for public officials, citizens, and the media
presented by Ohio Attorney General Dave Yost*

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CREDIT AND PROOF OF ATTENDANCE

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WHY ARE WE HERE?



**“ . . . public records
are but the people’s
records”**

***Wells v. Lewis
(Ohio 1901)***

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PRACTICAL REASONS FOR PUBLIC RECORDS TRAINING



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PUBLIC RECORDS TRAINING 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” or
“person responsible” for
public records

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WHAT IS A "PUBLIC OFFICE" SUBJECT TO THE PUBLIC RECORDS ACT?



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PUBLIC RECORDS ACT APPLIES TO "PERSONS RESPONSIBLE FOR PUBLIC RECORDS"



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A PRIVATE ENTITY CAN BE A "QUASI AGENT" OF A PUBLIC OFFICE

**(1) Did the private entity prepare
the records to carry out a public
office's duties or responsibilities?**

and

**(2) Do those records relate to
that delegated duty?**

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A PRIVATE ENTITY CAN BE A "QUASI-AGENT" OF A PUBLIC OFFICE



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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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"FUNCTIONAL EQUIVALENT" OF A LAW ENFORCEMENT AGENCY



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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 BY, RECEIVED BY, OR FALL UNDER PUBLIC OFFICE'S JURISDICTION



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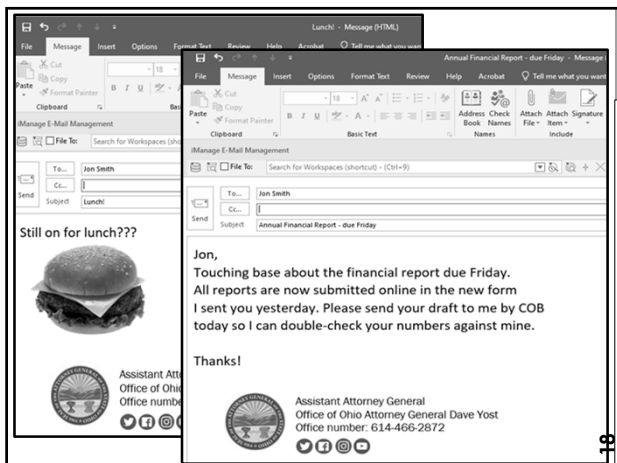
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PUBLIC RECORDS MUST DOCUMENT THE ACTIVITIES OF THE OFFICE



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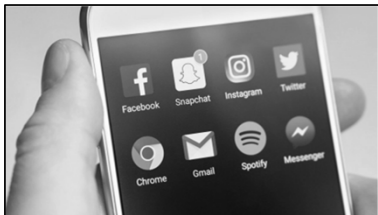
INFORMATION OR CONTENT DETERMINES WHETHER RECORDS ARE “PUBLIC RECORDS”



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

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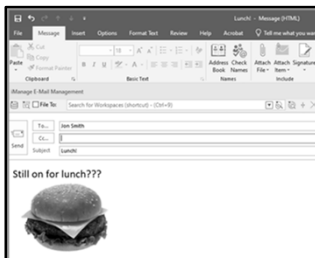
MESSAGES ON PERSONAL ACCOUNTS OR DEVICES CAN BE PUBLIC RECORDS



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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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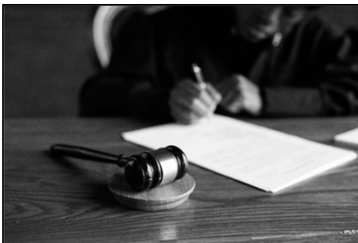
RECORDS KEPT FOR ADMINISTRATIVE USE OR CONVENIENCE



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A RECORD DOESN'T DOCUMENT THE ACTIVITIES OF THE OFFICE IF IT'S NOT USED



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A RECORD DOESN'T
DOCUMENT THE 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

- ✓ **Strictly 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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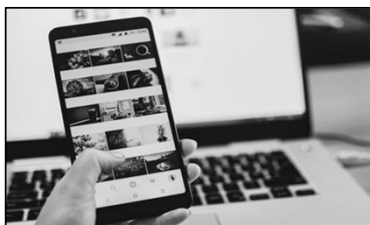
PUBLIC RECORDS MUST BE "KEPT BY" A PUBLIC OFFICE



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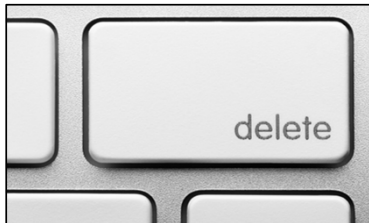
RECORDS ON PERSONAL DEVICES OR ACCOUNTS CAN BE RECORDS "KEPT BY" A PUBLIC OFFICE



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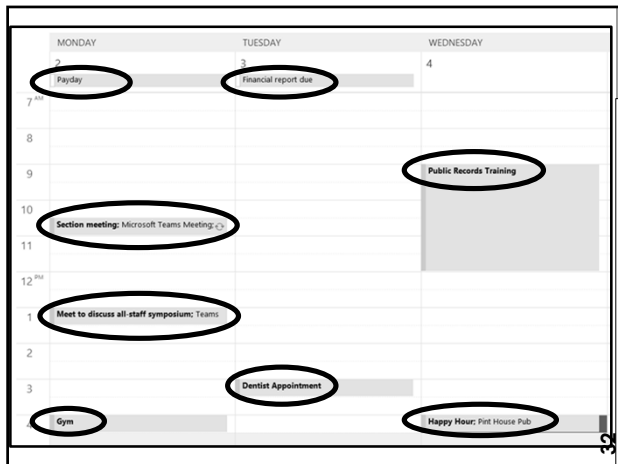
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RECORDS AREN'T "KEPT BY" PUBLIC OFFICE IF DESTROYED PER RECORDS RETENTION SCHEDULE



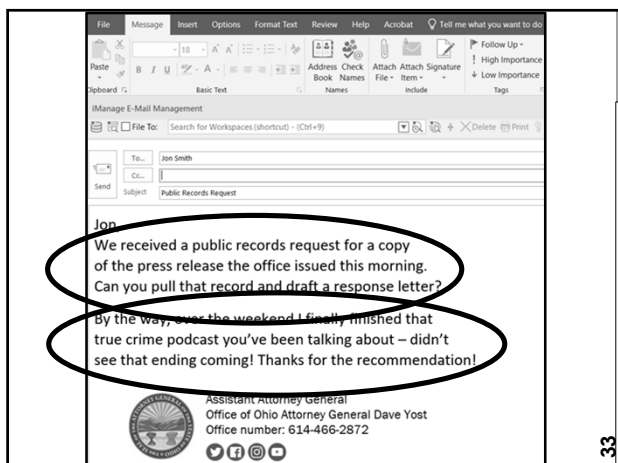
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IDENTITY AND MOTIVE OF REQUESTERS IRRELEVANT



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OFFICES CAN ASK A REQUESTER'S IDENTITY OR INTENDED USE IF:

The information would help the office respond to the request

AND

The office tells the requester the information is not required

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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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INSPECTION OF RECORDS

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INSPECTION OF RECORDS



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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
- ✓ Applies to final copy

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SOME PUBLIC OFFICES CAN CHARGE MORE THAN “ACTUAL COST”

- ✓ **BMV for
accident reports**
- ✓ **Coroners for
copies of records**



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LAW ENFORCEMENT CHARGES FOR PRODUCING VIDEO RECORDINGS



- ✓ **\$75/hour, up to \$750
total**
- ✓ **Includes time to review,
redact, produce, etc.**
- ✓ **May charge for staff
time and relevant
overhead**

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VIDEO RECORDINGS PREPAYMENT POLICY

| |
|--|
| MODEL PUBLIC RECORDS POLICY ON PRODUCTION OR INSPECTION OF VIDEO RECORDS |
| PURPOSE The purpose of this policy is to establish rules and guidelines for [PUBLIC OFFICE] when preparing video records for production or inspection. |
| PRODUCTION OR INSPECTION COSTS [PUBLIC OFFICE] may charge for the "actual cost" of preparing a video record for production or inspection. Actual cost includes the cost to review, blot or otherwise obscure, redact, upload, or produce a video record. Actual cost may also include the cost of the storage medium the office uses to produce a video record, staff time, and any other relevant overhead necessary to comply with the request. |
| PREPAYMENT [PUBLIC OFFICE] may require a requester to prepay the actual cost of preparing a video record for production or inspection. If prepayment is required, the office will provide an estimate of the actual cost within five business days of receiving the request. The office is not required to start preparing a video record for production or inspection until the requester pays the estimated actual cost in full. The office's obligation to produce a video record or make it available for inspection starts when the requester pays the estimated actual cost in full. The office will notify the requester if the final actual cost is more than the estimated actual cost. The requester may be required to pay the difference between the actual cost and the estimated cost if (1) the requester is notified in advance that the actual cost is more than the estimated actual cost; and (2) the actual cost is less than twenty per cent more than the estimated actual cost. The requester will not be required to pay the difference in the actual cost and the estimated actual cost if the difference is more than twenty per cent. |

www.ohioattorneygeneral.gov/Legal/Sunshine-Laws

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REQUESTER CAN CHOOSE FORMAT OF COPIES



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REQUESTER CAN CHOOSE DELIVERY METHOD



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PUBLIC RECORDS POLICY FOR MORE INFORMATION

THE PUBLIC RECORDS POLICY OF THE OHIO ATTORNEY GENERAL'S OFFICE

The public records policy of the Ohio Attorney General's Office guides employees in making available the materials to which the public is entitled by law. The policy, disseminated herein, appears in full in the Ohio Information Economy and Transparency Manual. Also, a copy of the most recent edition of the Ohio Information Economy and Transparency Manual, which contains copies of the policy, is available on the office's website.

MAKING RECORDS ACCESSIBLE

Public records are available for inspection during regular business hours. Records must be provided promptly for inspection, and copies must be made available within a reasonable period of time.

PROCESSING REQUESTS

and requests must be made available within a reasonable period of time.

DETERMINING COPYING AND MAILING CHARGES

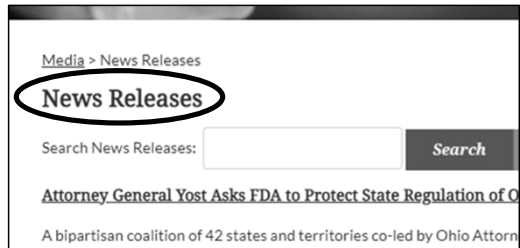
There is no charge to inspect public records. Copies of records are available at actual cost, excluding labor. The charge for paper copies is 5 cents per page. The charge for electronic files downloaded to a compact disc is \$1 per disc. The actual cost of postage, mailing supplies, or other delivery costs may be charged. There is no charge for emailed documents. It is permissible to require payment of all costs in advance of delivery.

The requester may choose whether to have the record copied on paper, on the same medium in which the public record is kept, or on any other medium upon which the Attorney General's Office determines that the record can reasonably be duplicated as an integral part of the office's normal operations.

and requests must be made available within a reasonable period of time.

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AN OFFICE MUST PROVIDE COPIES EVEN IF AVAILABLE ELSEWHERE



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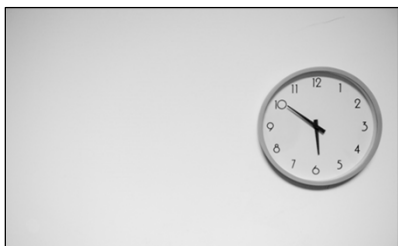
AN OFFICE MUST PROVIDE COPIES EVEN IF AVAILABLE ELSEWHERE



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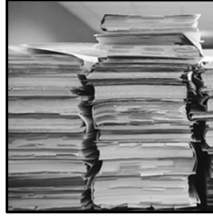
COPIES OF RECORDS MUST BE PRODUCED IN A “REASONABLE PERIOD OF TIME”



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A "REASONABLE PERIOD OF TIME" WILL DEPEND ON THE FACTS AND CIRCUMSTANCES



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REASONABLE PERIOD OF TIME: TYPE OF RECORD REQUESTED



| Incident Report Form - Motor Vehicle | |
|---|---|
| I. Policy Details | |
| Insurance Name | Policy Number |
| II. Incident Details | |
| Date of Incident | Time of Incident |
| Was the driver insured? <input type="checkbox"/> Yes <input type="checkbox"/> No | Was an investigation, review of interviewing reports? |
| Describe clearly everything from the accident occurred | Provide a diagram of damage to your vehicle |
| III. Vehicle Details | |
| Vehicle Year & Make | Did the police attend the scene? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Vehicle Registration | Was your vehicle insured? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Vehicle VIN Number | Where is the vehicle used? |
| Is your vehicle damaged? <input type="checkbox"/> Yes <input type="checkbox"/> No | |

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REASONABLE PERIOD OF TIME: CIRCUMSTANCES OF THE REQUEST



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COMMUNICATION WITH THE REQUESTER

42 public records requests



No response from public office



Requester sues

Not a reasonable period of time

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COMMUNICATION WITH THE REQUESTER

Voluminous public records request



Public office acknowledges receipt promptly and provides updates



Requester sues

Reasonable period of time

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TIPS FOR RESPONDING TIMELY

- ✓ **Acknowledge request promptly**
- ✓ **Keep a records request log**
- ✓ **Produce records on rolling basis**
- ✓ **Communicate with requester**

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A REQUESTER MUST ASK FOR EXISTING RECORDS

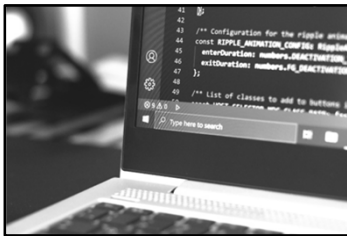
Records do not exist when:

- ✓ They have been disposed of per a records retention schedule
- ✓ They were never created

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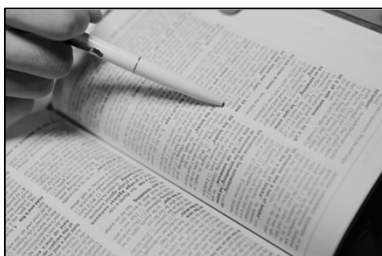
A RECORD MAY "EXIST" IF IT CAN BE PRODUCED FROM A DATABASE



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A REQUESTER CAN'T ASK FOR INFORMATION OR RESEARCH



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A REQUESTER MUST
DESCRIBE RECORDS SOUGHT
WITH "REASONABLE CLARITY"

Burden is on
requester to
properly frame
request

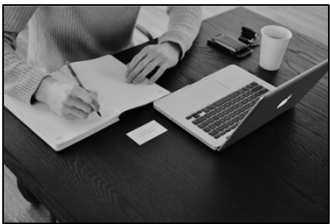
AND

Requester must
identify records
based on how
office organizes
and maintains

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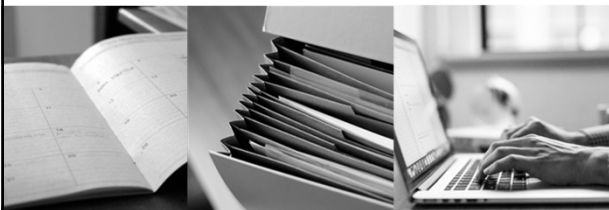
WHETHER A REQUEST IS
OVERLY BROAD DEPENDS
ON THE FACTS AND
CIRCUMSTANCES



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WHETHER A REQUEST IS
OVERLY BROAD DEPENDS
ON THE FACTS AND
CIRCUMSTANCES



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REQUESTERS MUST IDENTIFY
RECORDS BASED ON HOW THE
OFFICE ORGANIZES
AND MAINTAINS RECORDS



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OFFICE DOES NOT NEED TO
ORGANIZE RECORDS IN A
SPECIFIC WAY



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AN OFFICE MUST ORGANIZE
AND MAINTAIN RECORDS BUT
NOT IN A SPECIFIC WAY



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AMBIGUOUS REQUEST: OFFICE DOESN'T KNOW WHAT THE REQUESTER WANTS OR WHERE TO LOOK



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DENYING AN OVERBROAD OR AMBIGUOUS REQUEST

✓ **An office must give requester opportunity to revise request**

AND

✓ **Inform requester of how its records are maintained and accessed**

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OFFICE MUST INFORM REQUESTER OF HOW ITS RECORDS ARE KEPT

Incident Report Form - Motor Vehicle

I. Incident Details

Reported Name: _____ Policy Number: _____
 Date: _____

II. Incident Details

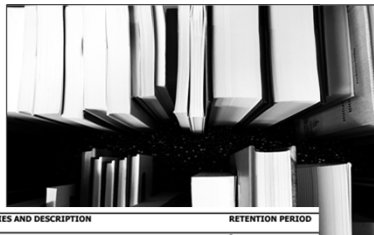
Date of Incident: _____
 Time of Incident: _____
 Where the incident occurred: ☐ Yes ☐ No
 If an accident, indicate if it was a collision: ☐ Yes ☐ No
 If an accident, indicate if it was a collision: ☐ Yes ☐ No

III. Vehicle Details

Vehicle Year & Make: _____
 Vehicle Description: _____
 Vehicle Color: _____
 Vehicle License: _____

IV. Vehicle Details

Vehicle Year & Make: _____
 Vehicle Description: _____
 Vehicle Color: _____
 Vehicle License: _____



| SCHEDULE NUMBER | POLICE RECORD SERIES AND DESCRIPTION | RETENTION PERIOD |
|-----------------|---|------------------|
| 100-14-001 | Accident Files Auto accident reports and computerized records | 3 yrs |
| 100-14-377 | Accident Files: Fatal Fatal auto accident reports and computerized records | Permanent |
| 100-92-005 | Accreditation Proofs of Compliance Records indicating that the department has complied with accreditation standards | 3 years |

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OFFICE MUST INFORM REQUESTER OF HOW ITS RECORDS ARE KEPT

Retention Schedules for Records Maintained by the Ohio Attorney General's Office

These retention schedules are organized by service division within the Office and apply only to the records kept by the respective service division. However, some schedules are organized by record type and may apply to records kept by any service division of the Office (see the General Schedules webpage for more information).

- Administration
- Audit
- Bureau of Criminal Investigation (BCI)
- Charitable Law
- Civil Rights
- Collection Enforcement
- Consumer Services
- Constitutional Offices
- Consumer Protection
- Court of Claims
- Crime Victims Services
- Criminal Justice
- Data Services
- Education
- Employment Law
- Environmental Enforcement
- Finance
- General Services
- Health and Human Services
- Health Care Fund
- Human Resources
- Information Technology Services
- Insurance Audit

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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.

Don't hesitate to contact us at records@ohioattorneygeneral.gov.

Ohio Attorney General

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SOME INFORMATION IN A
RECORD, OR AN ENTIRE
RECORD, MAY BE EXEMPT



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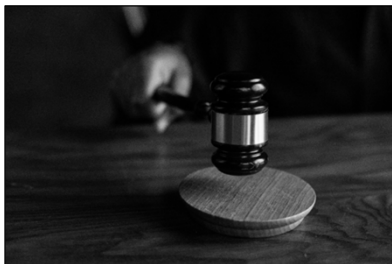
EXEMPTIONS CAN ONLY
BE CREATED BY STATE OR
FEDERAL LAW



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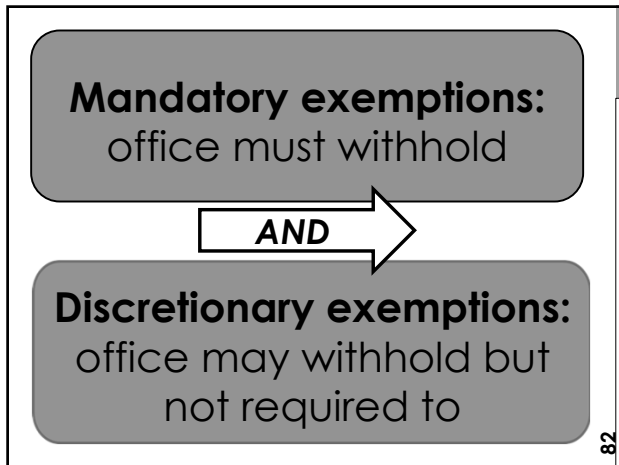
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COURTS WILL ALWAYS
INTERPRET EXEMPTIONS
NARROWLY



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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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INVESTIGATORY WORK PRODUCT IS TIME LIMITED

Law
enforcement
matter
pending

Investigatory work
product can be
withheld

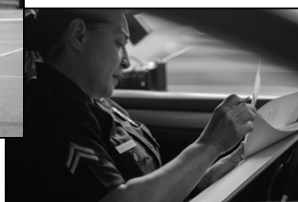
Law
enforcement
matter
concluded

Investigatory work
product must be
produced

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ROUTINE OFFENSE AND INCIDENT REPORTS MAY NOT BE COVERED BY CLEIRS



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CLEIRS DOES NOT APPLY TO 9-1-1 CALLS



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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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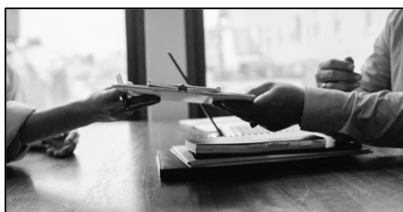
NO EXEMPTION FOR SOME CATEGORIES OF RECORDS

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

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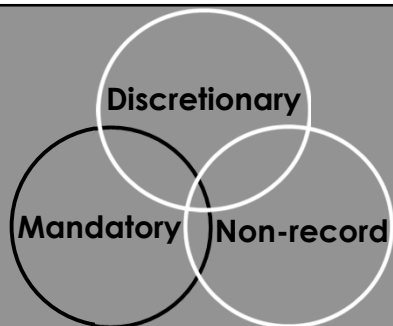
DISCRETIONARY EXEMPTIONS CAN BE WAIVED



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MORE THAN ONE EXEMPTION MAY APPLY



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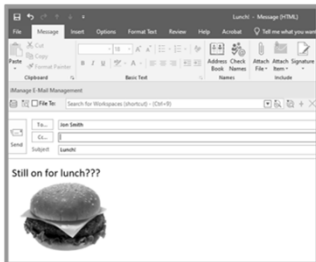
EXEMPTED RECORDS OR INFORMATION MAY BE WITHHELD OR REDACTED



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NON-RECORD INFORMATION MAY BE WITHHELD OR REDACTED



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REDACTIONS MUST BE PLAINLY VISIBLE

| MONDAY | TUESDAY | WEDNESDAY |
|---|---------------------------|-------------------------|
| 2 Friday | 3 Financial report due | 4 |
| 7 ^{PM} | | |
| 8 | | |
| 9 | | Public Records Training |
| 10 Section meeting: Microsoft Teams Meeting | | |
| 11 | | |
| 12 ^{PM} | | |
| 1 Meet to discuss all staff symposium: Teams | | |
| 2 | | |
| 3 | | |
| 4 | | |

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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 exhaustive, 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 than information or information 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)(1)(B))
- Public employee home addresses, phone numbers, and personal email addresses, generally (as non-records)
- Residential and family information of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board or 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)(1)(B) and (A)(7)(B))
- State employee ID numbers pursuant to R.C. 1.306.23 (ID numbers of other public employees may be exempt as "security records" under R.C. 149.43(B)(1), if that definition applies)

Available in 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 |
| 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 (Optional) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No [REDACTED] | | LEGAL RIGHT TO WORK IN THE U.S.: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

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| |
|---|
| <p>Dear Requester,</p> <p>I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested:</p> <p>A copy of the job application for Public Employee Candidate</p> <p>Please find attached the records responsive to your request. Note that we have redacted information that is subject to the following:</p> <ul style="list-style-type: none"> • Information that is not a record of this office, pursuant to <i>State ex rel. Dispatch Printing Co. v. Johnson</i>, 2005-Ohio-4384; and • Drivers' license numbers pursuant to R.C. 149.43(A)(1)(dd) and R.C. 149.45(A)(1)(c) <p>If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.</p> <p>Very respectfully yours,</p> <p><i>Public Office Employee</i></p> |
|---|

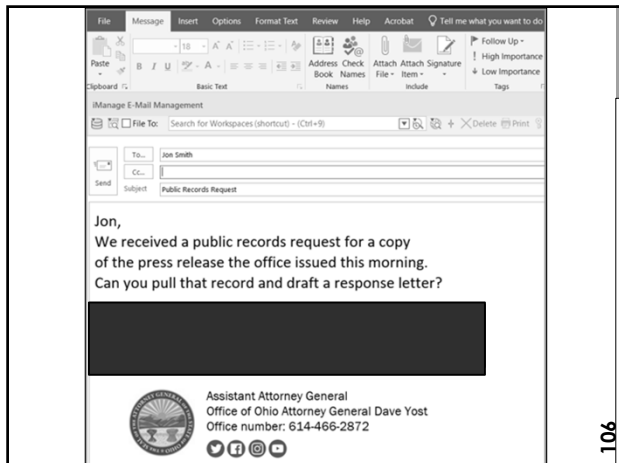
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| MONDAY | TUESDAY | WEDNESDAY |
|--|---------------------------|-------------------------|
| 2 Payday | 3 Financial report due | 4 |
| 7 ^{AM} | | |
| 8 | | |
| 9 | | Public Records Training |
| 10 Section meeting: Microsoft Teams Meeting, c/ | | |
| 11 | | |
| 12 ^{PM} | | |
| 1 Meet to discuss all staff symposium: Teams | | |
| 2 | | |
| 3 | [REDACTED] | |
| 4 [REDACTED] | | [REDACTED] |

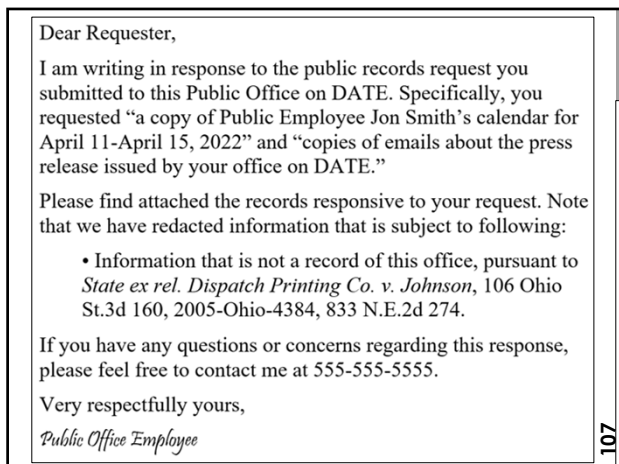
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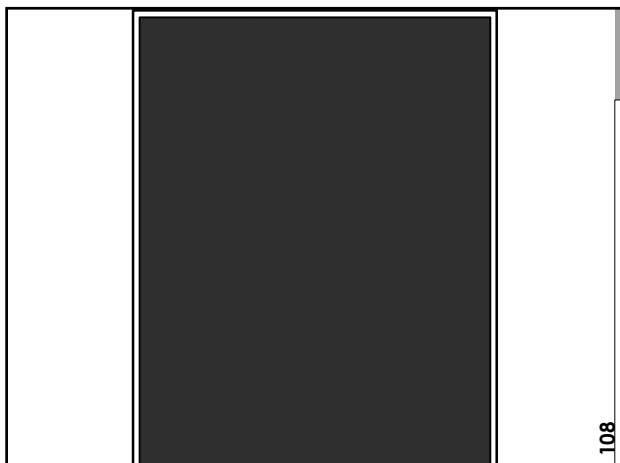
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THE PUBLIC RECORDS ACT IS A "SELF-HELP" STATUTE



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

112

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 pre-filing complaint form



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

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PRE-FILING COMPLAINT REQUIREMENT

- ✓ **After three business days, requester may sue**
- ✓ **Requester must affirm that pre-filing complaint process was followed**

115

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MANDAMUS ASKS COURT TO ORDER OFFICE TO COMPLY WITH PUBLIC RECORDS ACT



116

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MEDIATION MAY BE AVAILABLE IN MANDAMUS ACTIONS



117

STATUTORY DAMAGES MAY BE AWARDED IN A MANDAMUS LAWSUIT



✓\$100/business day,
starting with the
filing of the
mandamus action,
until the office
complies

✓Capped at \$1,000

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TO GET DAMAGES, THE REQUEST MUST BE DELIVERED TO THE PUBLIC OFFICE:



Certified
mail



By hand



Electronically
(email)

119



INMATES
CANNOT GET
STATUTORY
DAMAGES,
EVEN IF THEY
WIN
THE LAWSUIT

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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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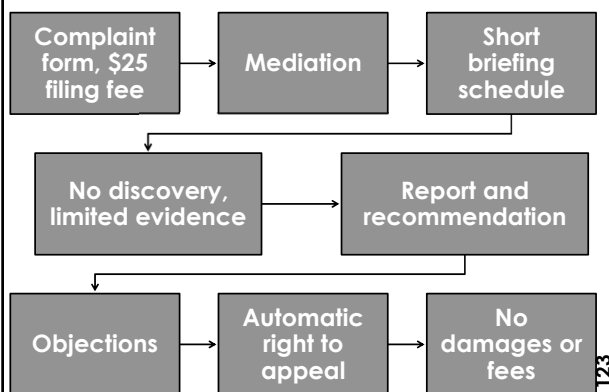
COMPLAINT IN COURT OF CLAIMS



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COURT OF CLAIMS PROCESS



123

123

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/Sunshine

129

129

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

132

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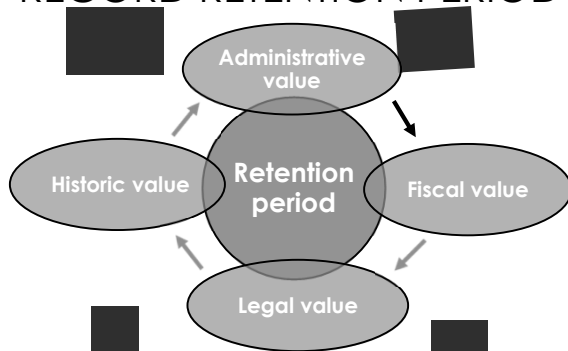
CONTENTS OF RECORDS RETENTION SCHEDULES

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

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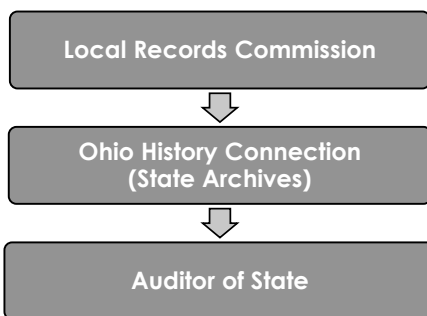
FACTORS DETERMINING RECORD RETENTION PERIOD



134

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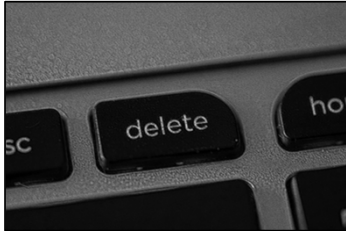
RETENTION SCHEDULE APPROVAL PROCESS



135

135

OFFICES CAN ONLY DISPOSE OF RECORDS PURSUANT TO AN APPROVED RETENTION SCHEDULE



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KEEP UP WITH RECORDS RETENTION SCHEDULES



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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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UPDATE RETENTION

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.

| Record Series Title | Agency Series Author Number | Retention Period |
|---------------------|-----------------------------|---|
| Transient Documents | GAR-4, 105517 | Electronic – Retain until no longer of administrative value, then destroy. Paper – Retain until no longer of administrative value, then destroy. |

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MANAGING TRANSIENT RECORDS

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

Applicable records retention schedule in place

No records retention schedule in place

Delete immediately

Retain indefinitely

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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. | | | Electronic – Retain until no longer of administrative value, then destroy. Paper – Retain until no longer of administrative value, then destroy. |

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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

DAS General Retention Schedule

Ohio Electronic Records Committee (OhioERC)

Ohio County Archivists and Records Managers Assoc.

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OPEN MEETINGS ACT TRAINING 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”



147

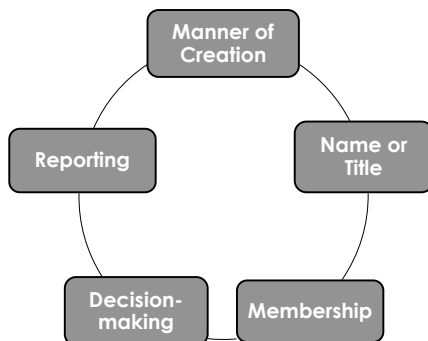
COMMITTEES OF A PUBLIC BODY



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WHAT IS A "PUBLIC BODY"?



149

149

WHAT IS A "PUBLIC BODY"?



150

150

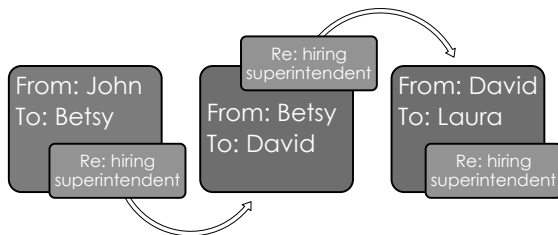
WHAT IS A "MEETING"?

- (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"?



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WHEN IS A MEETING "PREARRANGED"?



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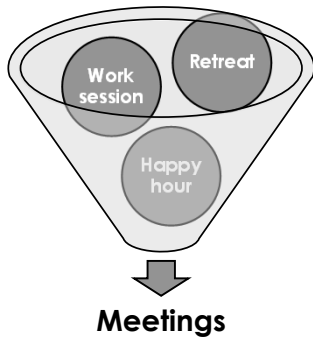
153

A "MEETING" HAS DISCUSSION
AND DELIBERATION OF
"OFFICIAL BUSINESS"



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A MEETING
IS STILL A
MEETING
EVEN IF
CALLED
SOMETHING
ELSE

155

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WHEN A PUBLIC BODY
MEETS IT MUST:

Give notice

Keep meetings
open

Keep minutes

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OPEN MEETING OBLIGATION 1: NOTICE



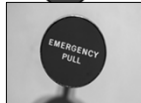
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Regular meeting:
prescheduled intervals, e.g.,
first Thursday of every month

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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Regular
meeting

Time

Place

Special
meeting

Time

Place

Purpose

Virtual
meeting

Time

Location

Agenda

How

159

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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

164

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A PUBLIC BODY CANNOT MEET BY VIDEO CONFERENCE OR OTHER ELECTRONIC MEANS IF ITS MEMBERS:

- ✓ *Are compensated
for their positions*
- OR
- ✓ *Are 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



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VOTING PROCEDURE TO CONVENE EXECUTIVE SESSION

Motion



Second



Roll Call Vote

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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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PERSONNEL MATTERS



** Laws vary by appellate district on whether public body can discuss more than one person*

** Cannot consider discipline or removal of an elected official*

175

EXECUTIVE SESSION TOPIC: PENDING OR IMMINENT COURT ACTION



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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

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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



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DISCUSSION AND DOCUMENTS IN EXECUTIVE SESSION MAY NOT BE CONFIDENTIAL



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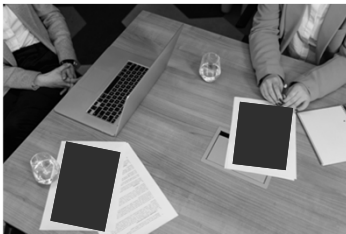
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DO NOT HAVE TO KEEP MINUTES IN EXECUTIVE SESSION



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DOCUMENTS DISCUSSED IN EXECUTIVE SESSION MAY BE PUBLIC RECORDS



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THE OPEN MEETINGS ACT IS A “SELF-HELP” STATUTE

*Citizens can sue a public body
themselves or through a private attorney*



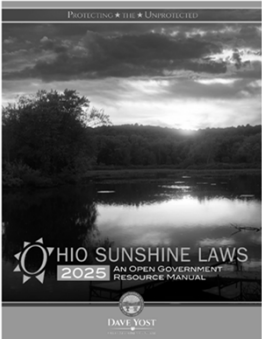
183

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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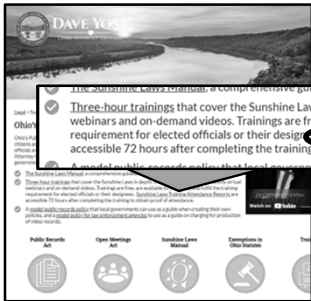
ATTORNEY GENERAL'S OFFICE
PUBLIC RECORDS UNIT

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



The *Sunshine Laws Training*, a comprehensive guidebook published annually.

Three-hour trainings that cover the Sunshine Laws in depth. Trainings are offered as bimonthly virtual webinars and on-demand videos. Trainings are free and accessible to the public. Attendance reports are accessible 72 hours after completing the training.

[Sunshine Laws Training Attendance Reports](#)

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