

March 11, 2019

The Honorable Michael C. O'Malley
Cuyahoga County Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

SYLLABUS:

2019-010

1. A “draft audit report” prepared by the Cuyahoga County Director of Internal Auditing and presented to management of the county department or entity that is the subject of the audit for review and comment is a public record subject to disclosure pursuant to R.C. 149.43. Whether a particular document constitutes a draft audit report for the purpose of R.C. 149.43 and R.C. 4701.19(B) is a fact-intensive determination that cannot be resolved by means of an Attorney General opinion.
2. The exemption from the definition of public record for statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office, located at R.C. 4701.19(B), does not apply to a draft audit report prepared by the Cuyahoga County Director of Internal Auditing and presented to management of the county department or entity that is the subject of the audit for review and comment.



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OPINION NO. 2019-010

The Honorable Michael C. O'Malley
Cuyahoga County Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

Dear Prosecutor O'Malley:

You have requested an opinion whether a draft audit report prepared by Cuyahoga County's Director of Internal Auditing and presented to the management of a county department or entity that is the subject of the audit for review and comment is a public record subject to disclosure under R.C. 149.43. Cuyahoga County has adopted a charter pursuant to the authority provided to counties under Article X of the Ohio Constitution. Under its charter, Cuyahoga County has established a Department of Internal Auditing supervised by the Director of Internal Auditing. The Director of Internal Auditing must be a Certified Internal Auditor or member of the Institute of Internal Auditors, but is not required to be a certified public accountant (CPA) or registered public accountant (PA). The current Director of Internal Auditing is a licensed CPA in Ohio. A common practice of the Director of Internal Auditing is to present a draft audit report for review to the management of the county department or entity that is the subject of the audit prior to releasing a final audit report to the County Audit Committee. You indicate that the purpose of such draft review is to provide the management of an audited department or entity the opportunity to correct any errors or mischaracterizations contained in the draft report that may present the department or entity in an inaccurate light.

You note that, although there appears to be no law that directly governs whether such a draft audit report is a public record under R.C. 149.43, another statute governs the public record status of certain documents in the possession of certified public accountants, public accountants, and the Auditor of State. That statute, R.C. 4701.19(B), declares that "[t]he statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity, except reports submitted by the accountant to the client, are not a public record." The statute further declares that "[s]tatements, records, schedules, working papers, and memoranda that are so made in an audit by a certified public accountant or public accountant and that are in the possession of the auditor of state also are not a public record."

You ask the following questions related to these circumstances:¹

1. Is a draft audit report prepared by the Cuyahoga County Director of Internal Auditing for presentation to the county audit committee subject to disclosure upon a public record request under R.C. 149.43 at the point in time before it has been formally presented to the county audit committee and after it has been provided to county management for comment, but before management provides comments?
2. Does the exemption from the definition of “public record” in R.C. 4701.19 apply to draft audit reports prepared by the Cuyahoga County Director of Internal Auditing on behalf of the county audit committee?

Public Record Status of Draft Audit Report under R.C. 149.43

Determining whether a particular document is a public record “is a fact-specific inquiry that must be determined on a case-by-case basis.” 2014 Op. Att’y Gen. No. 2014-029, at 2-257. We emphasize that we cannot advise you whether a particular “draft audit report” is a public record subject to disclosure. “Resolution of that question involves factual findings that are beyond the scope of an Attorney General opinion; determinations of facts and their meanings must be made by local officials or the courts.” *Id.* at 2-260; *see* 1983 Op. Att’y Gen. No. 83-057, at 2-232. Accordingly, this opinion provides the legal analysis that should be considered when determining whether a particular draft audit report prepared by the Cuyahoga County Director of Internal Auditing is, in fact, a public record. For the purpose of this opinion, we consider a draft audit report to be a document prepared by the Cuyahoga County Director of Internal Auditing at or near the completion of the audit process. That is, we presume the report states, in draft form, the conclusions and recommendations of the Director of Internal Auditing, and that the Director presents the draft report to management of a county department that is the subject of the audit for the purpose of receiving feedback from the department.

As noted, the analysis used to determine whether a particular document is a public record is a fact-intensive one. 2014 Op. Att’y Gen. No. 2014-029, at 2-257. A “public record” is any record “kept by any public office, including, but not limited to, state, county, city, village, township, and school district units,” as well as certain records pertaining to the delivery of educational services by an alternative school. *See* R.C. 149.43(A)(1). The word “records” is defined as follows:

“Records” includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in [R.C. 1306.01], created or received by or coming under the jurisdiction of any public office of the state or its

¹ For ease of discussion, we have reordered and rephrased your questions.

political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.²

R.C. 149.011(G) (footnote added). “R.C. 149.43(B) requires a public office to promptly prepare and make available for inspection or copying all public records that are responsive to a person’s request.” 2014 Op. Att’y Gen. No. 2014-029, at 2-252; R.C. 149.43(B). Several exceptions to the definition of public record are located at R.C. 149.43(A)(1)(a)-(hh) and elsewhere in the Revised Code.³ Something may constitute a record under R.C. 149.011(G) but not be considered a public record under R.C. 149.43(A) if it falls within a statutory exemption. *See State ex rel. Beacon Journal Publ. Co. v. City of Akron*, 70 Ohio St. 3d 605, 606-607, 640 N.E.2d 164 (1994) (the Social Security Numbers of a city’s employees were records under R.C. 149.011(G) but not public records subject to disclosure under R.C. 149.43(A)). Certain records are prohibited from being disclosed, such as communications between attorneys and their government clients pertaining to the attorneys’ legal advice. *State ex rel. Nix v. City of Cleveland*, 83 Ohio St. 3d 379, 383, 700 N.E.2d 12 (1998). For example, “[r]ecords the release of which is prohibited by state or federal law” are excepted from the definition of public record and may not be released. R.C. 149.43(A)(1)(v). Other records may be disclosed, but are not required to be disclosed, because they are excepted from the definition of public record. *See, e.g.*, 2000 Op. Att’y Gen. No. 2000-021, at 2-135. Exemptions to the definition of public record, however, are strictly construed and any doubts are resolved in favor of disclosure of public records. *State ex rel. Rucker v. Guernsey Cnty. Sheriff’s Office*, 126 Ohio St. 3d 224, 2010-Ohio-3288, 932 N.E.2d 327, at ¶ 6; *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 405, 732 N.E.2d 373 (2000).

The first step in determining whether something is a public record subject to disclosure pursuant to R.C. 149.43 is to decide whether it is a “record” as defined at R.C. 149.011(G). “The R.C. 149.011(G) definition of ‘records’ has been construed to encompass anything a governmental unit utilizes to carry out its duties and responsibilities.” *State ex rel. Beacon Journal Publ. Co. v. Whitmore*, 83 Ohio St. 3d 61, 63, 697 N.E.2d 640 (1998) (citation omitted). To be considered a record for purposes of R.C. Chapter 149, the “record” must satisfy three criteria: (1) it must be a document, device, or item, regardless of its form; (2) that is created or received by a public office; and (3) that serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office. *See* R.C. 149.011(G); *see also State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St. 3d 160, 2005-Ohio-4384,

² “‘Public office’ includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.” R.C. 149.011(A).

³ Amendments to R.C. 149.43 will take effect in March and April of 2019. Certain amendments exclude particular records from the definition of public record under R.C. 149.43(A)(1). None of these amendments, however, impacts the analysis in this opinion.

833 N.E.2d 274, at ¶ 19; 2014 Op. Att’y Gen. No. 2014-029, at 2-253. If the definition of “record” is satisfied, that record is a “public record” subject to disclosure under R.C. 149.43(A) if it is kept by a public office and not exempted from the definition of public record by R.C. 149.43 or another statute.

The Ohio Supreme Court has concluded that draft documents used by a public office are generally records under R.C. 149.011(G). “Unless otherwise exempted or excepted, almost all documents memorializing the activities of a public office can satisfy the definition of ‘record.’” *Kish v. City of Akron*, 109 Ohio St. 3d 162, 2006-Ohio-1244, 846 N.E.2d 811, at ¶ 20. “Indeed, any record that a government actor uses to document the organization, policies, functions, decisions, procedures, operations, or other activities of a public office can be classified reasonably as a record.” *Id.* The *Kish* Court concluded that the term ‘record’

may be a single document within a larger file of documents as well as a compilation of documents and can be any document, regardless of physical form or characteristic, *whether in draft*, compiled, raw, or refined form, that is created or received or used by a public office or official in the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

Id. (syllabus, paragraph 1) (emphasis added).

We are similarly of the opinion that the definition of record under R.C. 149.011(G) includes a draft audit report prepared by the Cuyahoga County Director of Internal Auditing. The draft audit report is a document that is created by the Cuyahoga County Department of Internal Auditing, a public office. *See* R.C. 149.011(A); Cuyahoga County Charter, art. XI, § 11.02 (establishing the Cuyahoga County Department of Internal Auditing). The report also serves to document the decisions of the Department of Internal Auditing. It is used by the Director of Internal Auditing in carrying out his responsibilities to guide the internal audit process in the county and to “prepare a preliminary financial and performance auditing report for the department being audited.” *See* Cuyahoga County Charter, art. XI, § 11.04(4); *see generally id.* at § 11.04 (listing the duties of the Department of Internal Auditing). Accordingly, a draft audit report is a record pursuant to R.C. 149.011(G) that is kept by the Cuyahoga County Department of Internal Auditing, a public office. *See id.* at § 11.02; 2012 Op. Att’y Gen. No. 2012-036, at 2-319 to 2-320. The exceptions to the definition of public record located at R.C. 149.43(A)(1)(a)-(hh) do not apply to a draft audit report. Therefore, a draft audit report prepared by the Cuyahoga County Director of Internal Auditing and provided to the management of a county department or entity for review and comment is a public record under R.C. 149.43(A), unless the draft report is exempted from the definition of public record by another statute such that the record may be released but is not required to be released. The exception to the definition of public record that we will consider is located at R.C. 4701.19(B).

Application of R.C. 4701.19(B) to Draft Audit Report Prepared by the Cuyahoga County Director of Internal Auditing

Having concluded that a draft audit report prepared by the Cuyahoga County Director of Internal Auditing would otherwise fall within the definition of public record under R.C. 149.43(A), we must now determine whether the exception to the definition of public record found at R.C. 4701.19(B) for certain documents and material prepared in connection with the audit of a public office applies to such a draft audit report. If the exception applies, then the draft audit report is not a public record and is not required to be disclosed pursuant to R.C. 149.43(B). See 2014 Op. Att’y Gen. No. 2014-029, at 2-258 to 2-259. If the exception does not apply, then the draft audit report is a public record pursuant to R.C. 149.43(A) that shall be disclosed to the public upon request.

R.C. 4701.19(B) provides as follows:

The statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity, except reports submitted by the accountant to the client, are not a public record. Statements, records, schedules, working papers, and memoranda that are so made in an audit by a certified public accountant or public accountant and that are in the possession of the auditor of state also are not a public record. As used in this division, “public record” has the same meaning as in [R.C. 149.43].

The statute therefore exempts from the definition of public record all “statements, records, schedules, working papers, and memoranda” that a certified public accountant (CPA) or public accountant (PA) prepares in the course of auditing a public office. At the same time, the statute expressly declines to exempt “reports submitted by the accountant to the client” from the definition of public record. In other words, reports by an accountant submitted to a client that detail the results of an audit of a public office are public records subject to disclosure. You ask whether R.C. 4701.19(B) applies to a draft audit report prepared by the Cuyahoga County Director of Internal Auditing and presented to the management of a county department or entity for review and comment.

“The paramount consideration in determining the meaning of a statute is legislative intent.” *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68, at ¶ 34. “To determine the legislative intent, [courts] first review the statutory language.” *State ex rel. Wolfe v. Delaware Cnty. Bd. of Elections*, 88 Ohio St. 3d 182, 184, 724 N.E.2d 771 (2000). “[W]hen the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply the rules of statutory interpretation.” *State ex rel. Jones v. Conrad*, 92 Ohio St. 3d 389, 392, 750 N.E.2d 583 (2001). “In reviewing the statutory language, [courts] accord the words used their usual, normal, or customary meaning.” *State ex rel. Wolfe v. Delaware Cnty. Bd. of Elections, supra*, at 184. However, “[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” R.C. 1.42. “It is established law in Ohio that, where a word has a technical definition differing from its dictionary definition, it shall be construed

according to the former.” *Youngstown Sheet & Tube Co. v. Lindley*, 56 Ohio St. 2d 303, 309, 383 N.E.2d 903 (1978).

Statement, Record, Schedule, Working Paper, or Memorandum

Initially, it must be determined whether R.C. 4701.19(B) applies generally to records produced by a CPA who is employed directly by a public body, as is the case in this context. Our inquiry is enhanced by a review of the circumstances that gave rise to the enactment of the statute. In 1990, the Ohio Supreme Court concluded that R.C. 4701.19 should be interpreted to require the disclosure of draft documents used in the preparation of an audit of a public office, even when those documents were in the possession of a private independent certified public accountant (ICPA). *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St. 3d 37, 40, 550 N.E.2d 464 (1990). At the time of the *Mazzaro* decision, R.C. 4701.19(B) had not yet been enacted.⁴ See 1989-1990 Ohio Laws, Part II, 1868, 1872 (Sub. S.B. 374, eff. Apr. 10, 1991). In *Mazzaro*, the City of Euclid hired an ICPA, a private accounting firm, to conduct the city’s biennial audit after the Auditor of State notified the city that he would be unable to complete the audit.⁵ *Id.* at 37. The private accounting firm was required to

⁴ At the time *Mazzaro* was decided, R.C. 4701.19 declared, in language functionally equivalent to the current language of R.C. 4701.19(A), as follows:

All statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant or public accountant to a client, shall be and remain the property of such accountant, in the absence of an express agreement between such accountant and the client to the contrary. No such statement, record, schedule, working paper or memorandum shall be sold, transferred or bequeathed, without the consent of the client or his personal representative or assignee, to anyone other than one or more surviving partners or new partners of such accountant.

1989-1990 Ohio Laws, Part II, 1868, 1871-1872 (Sub. S.B. 374, eff. Apr. 10, 1991); see R.C. 4701.19(A).

⁵ Public offices may hire an ICPA to conduct an audit whenever the Auditor of State informs the office that he will be unable to conduct an audit at least once every two fiscal years. R.C. 117.11(C) states, in relevant part:

The auditor of state shall identify any public office in which the auditor of state will be unable to conduct an audit at least once every two fiscal years as required by [R.C. 117.11(A)] and shall provide immediate written notice to the clerk of the legislative authority or governing board of the public office so identified. Within six months of the receipt of such notice, the legislative

submit a preliminary and final draft audit report to the Auditor of State, and was also required to keep any working papers used in the preparation of such audit reports and to make them available for the Auditor's review. *Id.* The Auditor of State, therefore, had access to the underlying documents of the ICPA's audit reports. *Id.* at 40. The court concluded that "when a private entity carries out the duties or responsibilities of a public office and the public office has a right of access to records documenting this, the records are within the public office's jurisdiction and the public office must make them available for public inspection per R.C. 149.43(B)." *Id.* Under the court's ruling, therefore, the Auditor of State was required to produce the requested working papers and draft audit reports that the plaintiff asked to inspect. *Id.*

Following the *Mazzaro* decision, the General Assembly enacted R.C. 4701.19(B). After the enactment, division (B) of R.C. 4701.19 provided, in full:

The statements, records, schedules, working papers, and memoranda *made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity*, except reports submitted by the accountant to the client, are not a public record as defined in section 149.43 of the Revised Code.

1989-1990 Ohio Laws, Part II, 1868, 1872 (Sub. S.B. 374, eff. Apr. 10, 1991) (emphasis added).

Although *Mazzaro* involved private ICPAs hired by a political subdivision to conduct an audit pursuant to R.C. 117.11(C), the language of R.C. 4701.19(B) applies more generally to the underlying documents produced by CPAs and PAs during the course of an audit of a public office. The plain language not only exempts from disclosure the types of records listed in the statute when those documents are in the possession of an independent certified public accountant (ICPA), as in *Mazzaro*; it also exempts the enumerated records from disclosure when they are in the possession of a CPA employed directly by a government organization. Had the General Assembly wished to exempt from the definition of public record the kind of documents listed in R.C. 4701.19(B) only when those documents were in the possession of ICPAs, it could have enacted language to that effect. However, the General Assembly enacted language exempting from the definition of public record certain documents in the hands of all CPAs and PAs, whether in private practice like the ICPAs in *Mazzaro*, or employed directly by a government agency or body.⁶

authority or governing board may engage *an independent certified public accountant* to conduct an audit pursuant to [R.C. 117.12].

R.C. 117.11(C)(1) (emphasis added).

⁶ In 1997, the Ohio Supreme Court reaffirmed the general holding of *Mazzaro* that documents prepared in the course of an audit of a public office are public records subject to disclosure. *See State ex rel. Gannett Satellite Info. Network v. Petro*, 80 Ohio St. 3d 261, 264-267, 685 N.E.2d 1223 (1997). The court concluded that documents in the possession of the Auditor of State were public records

The language of R.C. 4701.19(B) thus applies to statements, records, schedules, working papers, and memoranda made by the Cuyahoga County Director of Internal Auditing in the course of performing an audit of a public office. The Director of Internal Auditing is employed directly by the Cuyahoga County Council, a government body, and is a licensed Ohio CPA. *See* Cuyahoga County Charter, art. XI, § 11.03; eLicense Ohio Professional Licensure, *License Look-Up*, available at https://elicense.ohio.gov/oh_verifylicensedetails?pid=a0Rt0000001EXQWEA4 (CPA license verification for Cory A. Swaisgood, Cuyahoga County Director of Internal Auditing) (last visited Feb. 26, 2019).⁷ The Director of Internal Auditing is required to “[g]uide the internal audit process” and

subject to disclosure, *id.* at 267, noting that “[i]n general, audits, audit drafts, and working papers and notes relating to audits of public offices are public records which are subject to disclosure under R.C. 149.43, even where the audit was performed by a private entity on behalf of a public office.” *Id.* at 264.

Seemingly in response to the *Gannett* decision, the General Assembly enacted the current version of R.C. 4701.19(B). 1997-1998 Ohio Laws, Part IV, 8616, 8650 (Sub. S.B. 200, eff. Mar. 30, 1999). The statute now exempts from the definition of public record the specified documents prepared in the course of a public audit and that are in the possession of the Auditor of State. *See* Ohio Legislative Serv. Comm’n, Final Bill Analysis, Sub. S.B. 200 (1998) (the addition to R.C. 4701.19(B) relative to certain draft documents of ICPAs “in the Auditor of State’s possession may have some implications for the *Mazzaro* holding”) (emphasis in original). In light of this legislative history, it could be argued that the General Assembly intended to exempt only those documents from the definition of public record when they are produced by an independent certified public accountant. Based on the legislative history, it appears to us, however, that the General Assembly intended to exempt from the definition of public record all statements, records, schedules, working papers, and memoranda produced by CPAs and PAs in the course of an audit of a public office, including those documents produced by ICPAs hired to perform an audit pursuant to R.C. 117.11(C). The General Assembly did not limit the exclusion from the definition of public record to only those documents produced by ICPAs. Rather, R.C. 4701.19(B) applies to documents produced by any CPA or PA.

⁷ The Cuyahoga County Charter does not require the Director of Internal Auditing to hold a CPA certificate or PA registration, although the current Director does, in fact, hold a CPA license. *See* Cuyahoga County Charter, art. XI, § 11.03; eLicense Ohio Professional Licensure, *License Look-Up*, available at https://elicense.ohio.gov/oh_verifylicensedetails?pid=a0Rt0000001EXQWEA4 (CPA license verification for Cory A. Swaisgood, Cuyahoga County Director of Internal Auditing) (last visited Feb. 26, 2019). The only requirement under the Cuyahoga County Charter is that the Director be a licensed Certified Internal Auditor or member of the Institute of Internal Auditors, which does not require the licensee to hold a CPA certificate or PA registration. *See* Cuyahoga County Charter, art. XI, § 11.03; *see also* The Institute of Internal Auditors, *Certified Internal Auditor® (CIA®) Eligibility Requirements*, available at <https://na.theiia.org/certification/cia-certification/pages/eligibility-requirements.aspx> (last visited Feb. 26, 2019) (listing the eligibility requirements for obtaining certification to practice as a

prepare audit reports for various county departments and entities, which are public offices. Cuyahoga County Charter, art. XI, § 11.04(3)-(4); *id.* at § 11.01. Accordingly, the exemption from the definition of public record in R.C. 4701.19(B) applies to documents produced by the Cuyahoga County Director of Internal Auditing, a licensed CPA, in the course of his audit of a department or entity of Cuyahoga County government. Next, we must determine whether a draft audit report prepared by the Director of Internal Auditing constitutes a statement, record, schedule, working paper, or memorandum, as those terms are used in the statute.

R.C. Chapter 4701 regulates the practice of public accounting in Ohio. Although the terms used in R.C. 4701.19(B) are not defined in R.C. Chapter 4701 or the Ohio Administrative Code, R.C. Chapter 4701 indicates that technical terms shall be defined by the meanings they have acquired through professional public accounting standards. R.C. 4701.01(U) states that “[t]echnical terms that define specific public accounting engagements have the same meanings as in the professional standards promulgated by the American institute of certified public accountants.” Accordingly, we look to the technical definitions of those terms to discern their meaning for purposes of R.C. 4701.19(B). If the draft audit report can be characterized as a statement, record, schedule, working paper, or memorandum, then the draft report is not a public record under R.C. 4701.19(B).

An audit report is “[a] report issued *as a result* of a financial audit, attestation engagement, review of financial statements, or performance audit conducted in accordance with [Generally Accepted Government Auditing Standards].” United States Gov’t Accountability Office, *Government Auditing Standards* 212 (2018 rev. ed.) (emphasis added), available at <https://www.gao.gov/assets/700/693136.pdf> (last visited Feb. 26, 2019). A report is synonymous with an “overall opinion,” which has been defined as “[t]he rating, conclusion, and/or other description of results provided by the chief audit executive addressing, at a broad level, governance, risk management, and/or control processes of the organization.” The Institute of Internal Auditors, *International Standards for the Professional Practice of Internal Auditing* 24 (eff. Jan. 2017), available at <https://na.theiia.org/standards-guidance/Public%20Documents/IPPF-Standards-2017.pdf> (last visited Feb. 26, 2019). “An overall opinion is the professional judgment of the chief audit executive based on the results of a number of individual engagements and other activities for a specific time interval.” *Id.*

“Working papers,” by contrast, are not final products that contain the auditor’s conclusions resulting from an audit. For example, working papers are defined by the Public Accounting Oversight Board as follows:

Certified Internal Auditor). If the Director of Internal Auditing were not a CPA or PA, the plain language of R.C. 4701.19(B) would not apply because that division applies only to the listed documents when those documents are prepared by a CPA or PA in the course of an audit of a public office. Accordingly, we consider the application of R.C. 4701.19(B) to a draft audit report prepared by the Cuyahoga County Director of Internal Auditing in light of the current Director’s status as a licensed CPA.

Working papers are *records kept by the auditor of the procedures applied*, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement. Examples of working papers are audit programs, analyses, *memoranda*, letters of confirmation and representation, abstracts of company documents, and *schedules or commentaries prepared or obtained by the auditor*. Working papers also may be in the form of data stored on tapes, films, or other media.

Pub. Co. Accounting Oversight Bd., *Working Papers*, AU § 339A.03, available at <https://pcaobus.org/Standards/Archived/Pages/AU339A.aspx> (last visited Feb. 26, 2019) (emphasis added); see also *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St. 3d 37, 37, n.1, 550 N.E.2d 464 (1990) (citing an identical definition of working papers adopted by the American Institute of Certified Public Accountants). Examples within the definition of “working papers” include records, memoranda, schedules, and statements, which are the same types of documents enumerated in R.C. 4701.19(B) that are exempted from disclosure as public records. See *Webster’s New World College Dictionary* 300 (5th ed. 2014) (defining “commentary” as “a series of explanatory notes or annotations” and “a series of remarks or observations, usually connected in a loose narrative”); *Webster’s Third New International Dictionary of the English Language* 2229 (unabridged ed. 1993) (defining “statement” as “a single declaration or remark” and “a financial record or accounting”). “Working papers serve mainly to ... [p]rovide the principal support for the auditor’s report, including his representation regarding observance of the standards of field work, which is implicit in the reference in his report to generally accepted auditing standards.” Pub. Co. Accounting Oversight Bd., *Working Papers*, at AU § 339A.02a. In other words, working papers are not equivalent to reports and draft reports. Rather, working papers provide support for a report and are synonymous with statements, records, schedules, and memoranda, as those terms are used in R.C. 4701.19(B).

These definitions demonstrate that the types of documents listed in R.C. 4701.19(B) are documents upon which a CPA or PA relies in drawing his or her conclusions in an audit report, rather than the report itself.⁸ Therefore, a draft audit report, according to the presumptions we have outlined

⁸ Professional accounting organizations have similarly defined “source documents” to indicate that such documents are relied upon by an auditor in making his or her final report, and that such documents are not themselves final reports. See Am. Inst. of Certified Pub. Accountants, *Code of Professional Conduct* 16 (eff. Dec. 15, 2014), available at <https://pub.aicpa.org/codeofconduct/ethicsresources/et-cod.pdf> (last visited Feb. 26, 2019) (defining “source documents” as “[t]he documents upon which evidence of an accounting transaction are initially recorded. Source documents are often followed by the creation of many additional records and reports that do not, however, qualify as initial recordings. Examples of source documents are purchase orders, payroll time cards, and customer orders”); see also United States Gov’t Accountability Office, *Government Auditing Standards* 219 (2018 rev. ed.) (defining “source documents” as “[d]ocuments providing evidence that transactions have occurred (for example, purchase orders, payroll time records, customer orders, and contracts). Such records also include an audited entity’s general ledger and subsidiary record or equivalent”).

in this opinion, does not constitute a “statement, record, schedule, working paper, or memorandum” prepared by a CPA in the course of an audit of a public office under R.C. 4701.19(B).

Report Submitted by an Accountant to a Client

Having concluded that a draft audit report prepared by the Director of Internal Auditing does not constitute a statement, record, schedule, working paper, or memorandum, as those terms are used in R.C. 4701.19(B), we must determine whether the draft audit report is a report submitted by an accountant to a client,⁹ which would subject the report to disclosure as a public record. On the one hand, a draft audit report is a document that is more complete than the statements, records, schedules, working papers, and memoranda that are used in the preparation of an audit report. On the other hand, a draft audit report is not a final audit report because the management of a department or entity that is the subject of the audit report has the opportunity to review and comment on the report before the report is released.¹⁰ Accordingly, we must determine whether a draft audit report constitutes a “report submitted by an accountant to a client” as that phrase is used in R.C. 4701.19(B).

R.C. Chapter 4701 defines “report” in various ways. For example, an “opinion report” is defined as follows:

“Opinion report” means any opinion on a financial statement that is expressed in accordance with generally accepted auditing standards as to the fairness of presentation of information and that is used for guidance in financial transactions, for

⁹ “Client” has been defined as “[a]ny person or entity, other than the [auditor’s] employer that engages a[n auditor] ... to perform professional services (engaging entity) and also, a person or entity with respect to which a[n auditor] ... performs professional services (subject entity).” See Am. Institute of Certified Pub. Accountants, *Code of Professional Conduct* 9-10 (eff. Dec. 15, 2014) (emphases omitted). In the context of the Director of Internal Auditing submitting a report to a department, organization, agency, or institution of Cuyahoga County government, the client is the department, organization, agency, or institution that is the subject of the audit (the subject entity).

¹⁰ It is an accepted practice for government auditors to submit draft audit reports to those responsible for the governance of an audited entity for review and comment. “Auditors should obtain and report the views of responsible officials of the audited entity concerning the findings, conclusions, and recommendations in the audit report, as well as any planned corrective actions.” United States Gov’t Accountability Office, *Government Auditing Standards* 123 (2018 rev. ed.). “Providing a draft report with findings for review and comment by responsible officials of the audited entity and others helps the auditors develop a report that is fair, complete, and objective.” *Id.* at 124. “In cases in which the audited entity provides technical comments ..., auditors may disclose in the report that such comments were received. Technical comments address points of fact or are editorial in nature and do not address substantive issues, such as methodology, findings, conclusions, or recommendations.” *Id.*

accounting, or for assessing the status or performance of commercial and noncommercial enterprises, whether public, private, or governmental.

R.C. 4701.01(C). A “review report” may be a “report on a financial statement that is issued with respect to ... [i]nterim financial information in accordance with generally accepted auditing standards” or any other review report on a financial statement “that is issued in accordance with standards promulgated by the American institute of certified public accountants.” See R.C. 4701.01(E)(1)-(2). Finally, an “attest report” includes an opinion report and review report or “any similar report prepared in accordance with standards established by the American institute of certified public accountants with respect to a financial statement or other financial information.” R.C. 4701.01(S); see Am. Inst. of Certified Pub. Accountants, *Code of Professional Conduct* 9 (eff. Dec. 15, 2014), (defining “attest engagement” as “[a]n engagement that requires *independence*”) (emphasis in original); *id.* at 12 (defining “independence”); see also generally R.C. 4701.01(F)-(H) (defining “compilation report,” “examination report,” and “agreed-upon procedures report”). In other words, an audit report or overall opinion is the final product that an auditor prepares, containing the auditor’s conclusions from an audit of a particular entity.

Here, we pause to again emphasize that the determination of whether a particular document is a public record subject to disclosure involves a fact-intensive inquiry and our office cannot, definitively, determine whether any particular document is indeed a public record. See 2014 Op. Att’y Gen. No. 2014-029 (syllabus, paragraph 1); 1983 Op. Att’y Gen. No. 83-057, at 2-232. As we have explained, we presume for the purpose of this opinion that a draft audit report contains the conclusions and recommendations of the Cuyahoga County Director of Internal Auditing. We further presume, as you explain, that the purpose of presenting a draft audit report to the management of the county department or entity that is the subject of the audit is to provide “management an opportunity to comment upon and correct possible errors and mischaracterizations in the draft audit [report].” Such an opportunity allows the final audit report to “present the entity being audited in an accurate light.” It does not appear to us, therefore, that the management of a county department or entity being audited provides substantive comments as to the Director of Internal Auditing’s findings, conclusions, or recommendations contained in the draft audit report. Rather, we presume that the comments offered by management are in the form of technical comments that “address points of fact or are editorial in nature and do not address substantive issues, such as methodology, findings, conclusions, or recommendations.” See United States Gov’t Accountability Office, *Government Auditing Standards* 124 (2018 rev. ed.); *supra*, note 10.

Pursuant to the Cuyahoga County Charter, a draft audit report contains the preliminary findings, conclusions, and/or recommendations of the Director of Internal Auditing regarding the financial or performance status of the department or entity being audited. See Cuyahoga County Charter, art. XI, § 11.04(4) (the Director of Internal Auditing shall “[p]repare a preliminary financial and performance auditing report for the department being audited”). The report is prepared in accordance with professional accounting standards, including standards established by the American Institute of Certified Public Accountants and other professional accounting organizations. See *id.* at § 11.04(3). Therefore, a draft audit report of the Director of Internal Auditing constitutes an “opinion report” as that term is defined at R.C. 4701.01(C) because it is an “opinion on a financial statement

that is expressed in accordance with generally accepted auditing standards as to the fairness of presentation of information and that is used ... for accounting, or for assessing the status or performance of commercial and noncommercial enterprises, whether public, private, or governmental.” Accordingly, we conclude that a draft audit report is a “report submitted by an accountant to a client” as that phrase is used in R.C. 4701.19(B). *See Webster’s New World College Dictionary* 1445 (5th ed. 2014) (defining “submit” as “to present or refer to others for decision, consideration, etc.” and “to offer as an opinion; suggest; propose”).

If there is any doubt that a draft audit report is a report submitted by an accountant to a client under R.C. 4701.19(B), that doubt must be resolved in favor of disclosure of the draft audit report. *State ex rel. Rucker v. Guernsey Cnty. Sheriff’s Office*, 126 Ohio St. 3d 224, 2010-Ohio-3288, 932 N.E.2d 327, at ¶ 6 (“[w]e construe the Public Records Act liberally in favor of broad access and resolve any doubt in favor of disclosure of public records”); *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 405, 732 N.E.2d 373 (2000) (exemptions from disclosure of public records are construed narrowly and any doubt is resolved in favor of disclosure). Indeed, the General Assembly has determined that draft audit reports prepared by the Auditor of State are not public records until they are certified and transmitted to the clerk of the legislative authority for the audited public office. *See* R.C. 117.26. Had the General Assembly wished to make a similarly clear distinction in the case of draft audit reports prepared by an internal auditor of a county or other public body, it could have done so.¹¹ Therefore, while we believe that the plain language of R.C. 4701.19(B) and the definitions of report used in R.C. 4701.01 compel the conclusion that a draft audit report is a “report submitted by an accountant to a client,” the strong public policy in Ohio in favor of public record disclosure resolves any doubt that a draft audit report is a public record subject to disclosure.

Finally, our conclusion that a draft audit report prepared by the Cuyahoga County Director of Internal Auditing is a public record pursuant to R.C. 149.43(A) is consistent with the weight of other Ohio court decisions finding that draft documents are generally public records subject to disclosure. *See Kish v. City of Akron*, 109 Ohio St. 3d 162, 2006-Ohio-1244, 846 N.E.2d 811, at ¶ 26 (the “people’s right to know includes not merely the right to know a governmental body’s final decision on a matter, but the ways by which those decisions were reached”) (citation omitted); *see also State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St. 3d 126, 2002-Ohio-7041, 781 N.E.2d 163, at ¶¶ 12-14 (proposed settlement agreement between the City and Cincinnati and Department of Justice (DOJ) that was kept by city officials and “used by them in attempting to reach a settlement in the DOJ investigation of the city’s police department constituted a public record” that was subject to

¹¹ The conclusions in this opinion do not impact the public record status of draft audit reports prepared by independent certified public accountants under rules established by the Auditor of State or draft audit reports prepared by the Auditor of State’s office. *See* R.C. 117.11; R.C. 117.12(A); R.C. 117.21. Those draft audit reports are expressly exempted from the definition of public records pursuant to R.C. 117.26. The conclusions in this opinion relate only to draft audit reports prepared by an internal auditor who works directly for a governmental body, such as the Cuyahoga County Director of Internal Auditing.

disclosure); *State ex rel. Calvary v. City of Upper Arlington*, 89 Ohio St. 3d 229, 232-233, 729 N.E.2d 1182 (2000) (tentative collective bargaining agreement resulting from closed-door negotiations is a public record subject to disclosure); *State ex rel. Dist. 1199, Health Care & Social Serv. Union, SEIU, AFL-CIO v. Gulyassy*, 107 Ohio App. 3d 729, 734-739, 669 N.E.2d 487 (Franklin County 1995) (drafts of legislation created by a state agency for circulation among interested parties are public records subject to disclosure).

In sum, it is our opinion that the plain language of the R.C. 4701.19(B), the meaning of report under R.C. Chapter 4701, and the Ohio public policy that favors liberal disclosure of records kept by government officials, compel the conclusion that a draft audit report prepared by the Cuyahoga County Director of Internal Auditing is a report submitted by an accountant to a client under R.C. 4701.19(B). Accordingly, we conclude the exemption from the definition of public record under R.C. 4701.19(B) does not apply to a draft audit report prepared by the Cuyahoga County Director of Internal Auditing for review and comment by management of the county department or entity that is the subject of the audit. Rather, a draft audit report is a report submitted by an accountant to a client, subjecting the report to disclosure as a public record under R.C. 149.43(B).

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A “draft audit report” prepared by the Cuyahoga County Director of Internal Auditing and presented to management of the county department or entity that is the subject of the audit for review and comment is a public record subject to disclosure pursuant to R.C. 149.43. Whether a particular document constitutes a draft audit report for the purpose of R.C. 149.43 and R.C. 4701.19(B) is a fact-intensive determination that cannot be resolved by means of an Attorney General opinion.
2. The exemption from the definition of public record for statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office, located at R.C. 4701.19(B), does not apply to a draft audit report prepared by the Cuyahoga County Director of Internal Auditing

and presented to management of the county department or entity that is the subject of the audit for review and comment.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping "D" and "Y".

DAVE YOST
Ohio Attorney General