



ORIENTATION GUIDE

FOR NEW BOARD OF HEALTH MEMBERS

Updated 3/5/19

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Welcome to the Board of Health

Being on the Board of Health is a unique opportunity to express community volunteerism. The Board oversees a governmental agency that has as its mission to improve the health and well-being of the people of Galion. We look forward to your ideas, input and energy.

The Mission, Vision, and Values/ Guiding Principles of GCHD

Mission Statement

To Promote, Improve and Protect the Health and Well-Being of the Community We Serve

Vision Statement

Inspire and Engage the Community We Serve to be Optimally Healthy

Values/ Guiding Principles

The Board, staff, and administration created the Values/ Guiding Principles of the Galion City Health Department. Every organization should be guided by a set of values. An organization's values are designed to provide an underlying framework and guideposts for activities and decision making (these are part of the organization's culture).

WE CARE

Work Together: Collaborating with stakeholders to build strong collaborative relationships that increase innovation.

Excellence: Striving for excellence through practical, data-driven, evidence-based decision making.

Customer Focused: Treating our diverse external and internal customers with respect while addressing their individual needs and concerns. We strive to maintain effective customer relations.

Accountability: Understanding that we are accountable for the health and safety of the community. We are also responsible for providing quality programming and services, fiscal integrity, and upholding the public's trust.

Respect: Providing respect by showing value equity, diversity, and inclusion of all.

Ensure: Ensuring that the community knows that our first priority is their health and wellbeing.

General Information

Board of Health (BOH) Meetings Locations/ Dates/ Times

Location

Galion City Health Department (Address):

113 Harding Way East

Galion OH 44833

419-468-1075

www.galionhealth.org

Dates/ Times

BOH meetings are held on the second Tuesday of each month, 5:00 p.m. unless otherwise notified.

BlueSky

Board meeting agenda and materials are available through software-as-a-service website:

https://galionhealthorg.blueskymeeting.com/meeting_groups/225

Prior to your first Board of Health meeting you will receive an email with information regarding your access to the BlueSky system. This is where all your BOH meeting materials will be accessed. The system will also send you notices of BOH meetings scheduled.

Contact Information

Board members must ensure that the Health Commissioner has all their most current contact information. This will be requested regularly but should be provided as often as necessary. This information is required to be provided to the Ohio Department of Health (ODH).

Mentors

Health Commissioner- The Health Commissioner is your regular line of communication regarding departmental operations. You can contact the Health Commissioner with any questions you may have on a regular basis. The Health Commissioner can answer questions and/or point you in the right direction.

BOH Mentor- At your first BOH meeting you will have the opportunity to be matched with a BOH mentor, this is another BOH member that can help walk you through the processes and procedures of the Board as well as be there to help answer any questions you may have.

Staff Mentor- You have the opportunity to request a staff mentor, this is a member of the staff that can help walk you through the program areas within the health department as well as be there to help answer any questions you may have or direct you to who or where to find the answer.

History of the Galion Board of Health

The Galion Board of Health has been in operation since the late 1860's. It began first as the Galion Board of Sanitation with some remarkable entries such as orders to "clean privies." The Galion Board of Health has seen the Spanish Flu epidemic of 1918, two world wars, H1N1 Flu epidemic of 2009-12, Ebola, and the introduction of antibiotics and vaccines. The average of death in 1911 was about 55 years of age. In 2018, it was about 76. Most of that increase in life-expectancy is attributable to vaccine-preventable diseases, especially for children. Epidemics of diseases such as measles, whooping cough (pertussis), and diphtheria are unheard of in Galion. Outbreaks of Typhoid Fever (salmonella) and other food-borne illness are likewise rare.

The Future Challenges of Galion Board of Health

While the infectious disease challenges of a hundred years ago would recur if sanitation and vaccination were unavailable, the task of the Board of Health nowadays is to prevent early death and disability from all causes (including environmental causes). From underweight births to smoking and other drugs of abuse, car safety, unsafe housing and heart disease, stroke and cancer all represent significant challenges as the Board tries to understand causes and proposes policies and programs to prioritize problems and address them. The small staff of Galion City Health Department can accomplish the goals of the Board only in relation to the Board's insistence on focused goal-setting, continuing education and quality assurance, wise use of resources and collaboration with all identified participants.

The Responsibility of the Galion Board of Health

The Galion Board of Health is responsible for determining the mission, vision and strategic plan of the Galion Health Department. The mission, vision and strategic plan are the Mission Policy. The Mission Policy is always (as it should be) under review. The Mission Policy as outlined by the Public Health Accreditation Board (PHAB - <http://www.phaboard.org/>) is to be informed by a community health assessment (CHA) and a community health improvement plan (CHIP). Following the strategic plan, the work of the health department is delegated to the health commissioner. The work of the health commissioner is evaluated based on his/her adherence to specific goals determined by the board.

Board of Health Basics

The board is responsible for determining the strategic direction of the health department. The Galion Board of Health as the governing entity must adhere to applicable laws pertaining to public notice of meetings, freedom of information and state and local laws governing finance, employment and safety. It is responsible for developing policy, coordination with the City of Galion and Crawford County, as well as with state of Ohio health strategies. The board must make the necessary relations with other health entities and others that are impacted by its decisions. It must pass ordinances and resolutions that clearly have a beneficial influence on health. It must adjudicate policy infractions fairly and publicly.

The board must determine financial, staffing and facility quality levels that are required to accomplish its goals. It is responsible for hiring and evaluating its employees. The Health Commissioner is its direct report with whom many tasks are delegated.

Public Health Accreditation

The state of Ohio, as administered by the Ohio Department of Health, is ultimately responsible for the performance of local health departments. The state has expressed interest in possible reform of public health delivery at the local level. While there is benefit in consolidating health departments, the state has made no explicit plans. It has expressed its desire for each existing local health department to demonstrate its value. In a general sense, one of the ways to express value is to evaluate the quality of a product and its cost compared to other similar products. For public health, the state has determined that public health accreditation is a measure of at least quality processes in the practice of public health. The state has agreed to accept the Public Health Accreditation Board (PHAB see: <http://www.phaboard.org/>) as an acceptable third-party opinion on the quality of processes for Ohio's local health departments. To quote PHAB: **Public health department accreditation is defined as the development of a set of standards, a process to measure health department performance against those standards, and reward or recognition for those health departments who meet the standards.**

Galion City Health Department is working to meet the requirements for accreditation set forth in ORC 3701.13. Specifically, *"As a condition precedent to receiving funding from the department of health, the director of health may require general or city health districts to apply for accreditation by July 1, 2018, and be accredited by July 1, 2020, by an accreditation body approved by the director."* In February of 2018, the GCHD submitted its formal application to the Public Health Accreditation Board.

PHAB Online Orientation

To learn more about the accreditation process Board members are recommended to complete the PHAB online orientation. The PHAB Online Orientation is explained on PHAB's website (<http://www.phaboard.org/education-center/phab-online-orientation/>), towards the bottom of the page it has a link to go to the Online Accreditation Orientation; that link will take you here (<https://www.cecentral.com/phab>). There are 4 modules and in order to get credit for completion you must take the evaluation (the one for all other participants). There are tests after each module.

Introduction to Public Health

Public health is the science of protecting and improving the health of people and their communities. This work is achieved by promoting healthy lifestyles, researching disease and injury prevention, and detecting, preventing and responding to infectious and chronic diseases, as well as disasters.

Overall, public health is concerned with protecting the health of entire populations. These populations can be as small as a local neighborhood or as big as an entire country or region of the world.

Public health professionals work with communities and partners to implement educational programs; recommend health policies; analyze data to promote health; provide population health services; and conduct research and evaluation to ensure health for all.

In the medical field, clinicians treat diseases and injuries one patient at a time. In public health, we prevent disease and injury by working with communities and populations. We identify the causes of unhealthy living conditions and practices, disease and disability. Large scale and, often, long term solutions are proposed and implemented at the community level.

Instead of treating a gunshot wound, we work to identify the causes of gun violence and develop interventions. Instead of treating premature or low birthweight babies, we investigate the factors at work, and we develop programs to keep babies healthy. And instead of prescribing medication for high blood pressure, we examine the links among obesity, diabetes and heart disease— and we use our data to influence policy and community programs aimed at reducing all three conditions.

Public health addresses areas as broad-ranging as the science of aging, chronic disease, mental health, disaster response, refugee health, injury prevention and tobacco control. Public health also works to limit health disparities and promotes healthcare equity, quality and accessibility.

(Sources: Centers for Disease Control and Prevention [CDC] <https://www.cdcfoundation.org/what-public-health> and Johns Hopkins Bloomberg School of Public Health <https://www.jhsph.edu/about/what-is-public-health>)



Ohio Local Health Departments

(Source: Ohio Department of Health [ODH],
<https://www.odh.ohio.gov/localhealthdistricts/lhdmain.aspx>)

The public health system in Ohio is comprised of the Ohio Department of Health, [114 local health departments](#) (LHDs), health care providers, and public health stakeholders who work together to promote and protect the health of all Ohioans.

Local health departments, like school districts, maintain independent governance, but often work together, along with the state and federal public health agencies. Depending on the type of health district (general or city jurisdiction), funding comes from the support of their community through levies, city general operating funds, contracts, county government, and [inside millage](#) (specific to county departments). To help support local health departments, ODH receives funds from federal agencies, state general revenue, and other sources and distributes many of these funds through contracts and grants that contribute toward public health programs and services. ODH also provides technical support, laboratory services, and other critical services to aid local health department efforts.

Local health departments strive to promote health by preventing and controlling disease, injury and disability. Services that a local health department provides may include immunization clinics, well-baby visits, pre-natal, health screenings, dental, health promotion activities, disease surveillance and other services and programs. Local health departments work to implement core environmental health programs such as food and water safety, pool and campground inspections, and environmental programs to prevent smoking, lead exposure, and asthma.

Local Health Departments are governed by [Chapter 3709](#) of the Ohio Revised Code (ORC) and [Chapter 3701-36](#) of the Ohio Administrative Code (OAC).



20th Century Public Health Achievements

(Source: Washington State Public Health Association <http://www.wspha.org/>)

According to the CDC, public health has been credited with adding 25 years to the life expectancy of people living in the U.S. in the 20th century. But, how?

The CDC created [Ten Great Public Health Achievements in the 20th Century](#) as an overview of all the great things public health has been able to achieve.



- **Vaccination to reduce epidemic diseases**
 - At the beginning of the 20th century, infectious diseases such as smallpox, measles, diphtheria, and pertussis were widely prevalent. Since there were few effective measures available, death tolls were high. Both the development and promotion of vaccinations against preventable diseases has resulted in dramatic declines in morbidity and mortality and even results in the eradication of smallpox.
- **Improved motor vehicle safety**
 - Since 1925, there has been a 90% decrease in the annual death rate due to motor vehicle travel. This is particularly impressive given the number of motor vehicles, drivers, and miles traveled in motor vehicles have all increased dramatically since 1925. Some of the biggest interventions include regulations developed and enforced regarding safety belts, alcohol-impaired drivers, young drivers, pedestrians, and child safety and booster seats.
- **Safer workplaces**
 - Data from CDC's National Institute for Occupational Safety and Health (NIOSH) National Traumatic Occupational Fatalities (NTOF) surveillance system indicate that the annual number of work-related deaths decreased 28% from 1980 to 1995 with a 43% decrease in occupational injuries during the same time.
- **Control of infectious diseases**
 - The leading causes of death in 1900 were pneumonia, tuberculosis (TB), and diarrhea and enteritis whereas in 1997, 4.5% of deaths were attributable to pneumonia, influenza, and HIV infection. Sanitation and hygiene, vaccination, and antibiotics are among the control measures responsible for this marked decrease.
- **Decline in death from cardiovascular disease**
 - While deaths due to infectious death have gone down dramatically, heart disease has been the leading cause of death for most of the 20th century. Since 1950, age-adjusted death rates from cardiovascular disease have been cut by more than half. Some of the key public health factors

contributing to this decline include the decline in tobacco use, changes in the U.S. diet, and better early detection and treatment of those at risk of cardiovascular disease (e.g. individuals with hypertension, high cholesterol)

- **Food Safety**

- Contaminated food and water resulted in many foodborne infections in early in the 20th century. Advances, such as refrigeration, pasteurization, pest control, animal control, and food safety regulations that promoted better hygiene and sanitation practices all contributed to decreases in foodborne infections.

- **Improvements in maternal and child health**

- Childbirth use to come with great risk to many mothers and infants. Over the span of the century, the infant mortality rate declined more than 90% and the maternal mortality rate declined almost 99%. Improvements in nutrition, standards of living, access to health care, and surveillance and monitoring of disease contributed to reducing risks to mothers and infants.

- **Family planning**

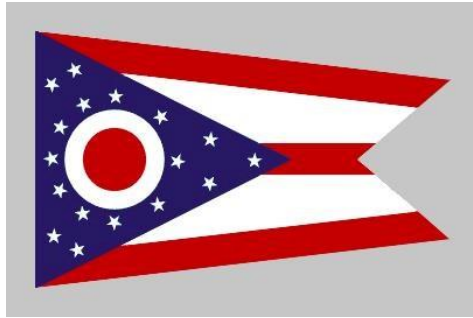
- Better family planning interventions have resulted in longer intervals between births and smaller family sizes, both of which have been associated with improved maternal and child health outcomes.

- **Fluoridation of drinking water**

- At the beginning of the century, extensive dental caries was common in the U.S. with tooth extraction being the main treatment option available. Several studies have suggested that water fluoridation has contributed to reductions in dental caries when compared to communities without fluoridated water.

- **Reductions in prevalence of tobacco use**

- Smoking has been associated with a number of morbidities including cardiovascular disease, cancer, chronic obstructive pulmonary disease, and low birth weight. According to the CDC, it is the leading preventable cause of death and disability in the United States. Due to massive public health efforts that include smoking cessation interventions and regulation of the purchase and use of tobacco, there have been substantial reductions in smoking.



Brief History of Public Health Law in Ohio

- 1826** Temporary Boards of Health established in populated areas to combat emergency situations such as cholera outbreaks.
- 1834** Authorized cities of Cincinnati and Columbus to establish Boards of Health in response to cholera epidemics.
- 1841** Dayton, Cleveland, Springfield and Zanesville permitted to establish Boards of Health.
- 1869** Galion City Health Department Formed
- 1886** State Board of Health organized.
- 1888** Law passed requiring all cities and villages of 500 or more to have a Board of Health: 306 were formed.
- 1893** Law amended to require all cities and villages to have Boards of Health and health officer: 715 formed.
- 1893** Township trustees were designated as the Board of Health for each township. 1902 Townships were required to appoint a Health Officer.
- 1917** State Board of Health abolished and replaced by Commissioner of Health and a four-member Public Health Council.
- 1918** 2,158 separate health departments in Ohio.
- 1919** Hughes Act passed – This important legislation established:
- Municipal Health Districts – Cities over 25,000
 - General Health Districts – In each county
 - Grandfathered cities between 10,000 and 25,000 approved by state health department became municipal health districts

- All districts to have full-time health commissioner, nurse and clerk appointed from civil service list

1919 Griswold Amendment to Hughes Act allowed for:

- Municipal Health Districts – Any city over 5,000 population • Part time health commissioner, nurse and clerk
- Civil Service requirements dropped.

1931 Griswold Amendment allowed either the municipal or general health district to take the lead in a combined district.

1951 Wheeler Act: Public health levy ability for a general health district.

1953 Cities allowed to contract with general health districts for services.

1959 Combined districts permitted to have more than five-member board.

1963 Director of Health to be appointed by Governor with concurrent terms.

1967 Permit local municipality or Boards of Health to contract for single services. Placed all employees of General Health Districts under State Civil Service.

1981 Public Health Council given authority to adopt Performance Standards for local public health and to base state subsidy (.32 cents per capita) on compliance to standards.

1990 General Health District commissioner can be licensed physician, licensed dentist, a licensed veterinarian, licensed podiatrist, licensed chiropractor, or the holder of a master's degree in public health or an equivalent master's degree in a related health field as determined by the members of the board of health in a general health district.

2008 The board of health of a city or general health district may, by rule, establish a uniform system of fees to pay the costs of any services provided by the board.

2013 As a condition precedent to receiving funding from the department of health, the director of health may require general or city health districts to apply for accreditation by July 1, 2018 and be accredited by July 1, 2020 by an accreditation body approved by the director (<http://codes.ohio.gov/orc/3701.13>).

2014 Requirement for annual completion of two hours of continuing education by each member of a board of health. Each continuing education credit shall pertain to one or more of the following topics: ethics, public health principles, and a member's responsibilities (<http://codes.ohio.gov/oac/3701-36-03>).

Select Ohio Revised Code (ORC)

(Source: LAWriter® Ohio Laws and Rules, <http://codes.ohio.gov/orc/3709> and <http://codes.ohio.gov/orc/3707>)

State Department of Health (Ohio Department of Health) – Is established by ORC Chapter 3701 to include a Director of Health and a Public Health Council, also establishing the powers and duties of each.

Local Boards of Health – are established by ORC Chapter 3709 which outlines the powers of the local Boards of Health. Select sections below are from this Chapter, but Board members should review all of the ORC pertaining to Board of Health governance (<http://codes.ohio.gov/orc/3709>).

Local Health Districts – Established by ORC Chapter 3709, powers and duties of Boards of Health and Health Commissioners are outlined in ORC Chapter 3707 (<http://codes.ohio.gov/orc/3707>). This is another good section for Board review.

3709.01 Health districts.

The state shall be divided into health districts. Each city constitutes a health district and shall be known as a "city health district."

The townships and villages in each county shall be combined into a health district and shall be known as a "general health district."

As provided for in sections 3709.051, 3709.07, and 3709.10 of the Revised Code, there may be a union of two or more general health districts, a union of two or more city health districts to form a single city health district, or a union of a general health district and one or more city health districts located within or partially within such general health district.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 12-11-1967.

3709.02 Board of health of general health district - term - expenses - vacancies - quorum.

(A) In each general health district there shall be a board of health consisting of five members to be appointed as provided in section 3709.03 and 3709.41 of the Revised Code. The term of office of the members shall be five years from the date of appointment, except that of those first appointed one shall serve for five years, one for four years, one for three years, one for two years, and one for one year, and thereafter one shall be appointed each year. This paragraph does not apply to a combined board of health created under section 3709.07 of the Revised Code.

(B) Each member of the board shall be paid a sum not to exceed eighty dollars a day for the member's attendance at each meeting of the board. No member shall receive compensation for attendance at more than eighteen meetings in any year.

(C) Each member of the board shall receive travel expenses at rates established by the director of budget and management pursuant to section 126.31 of the Revised Code to cover the actual and necessary travel expenses incurred for travel to and from meetings that take place outside the county in which the member resides, except that any member may receive travel expenses for registration for any conference that takes place inside the county in which the member resides.

(D) A vacancy in the membership of the board shall be filled in the same manner as an original appointment and shall be for the unexpired term. When a vacancy occurs in a position to be filled by the district advisory council, the council shall hold a special meeting pursuant to section 3709.03 of the Revised Code for the purpose of appointing a member to fill the vacancy.

(E) A majority of the members of the board constitutes a quorum.

Effective Date: 11-21-2001.

3709.20 Orders and regulations of board of city health district - hearing referees or examiners.

(A) The board of health of a city health district may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. Orders and regulations not for the government of the board, but intended for the general public, shall be adopted, advertised, recorded, and certified as are ordinances of municipal corporations and the record thereof shall be given in all courts the same effect as is given such ordinances. In cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, the board may declare such orders and regulations to be emergency measures, and such orders and regulations shall become effective immediately without such advertising, recording, and certifying.

(B) In any hearing conducted by the board of health of a city health district, general health district, or combined health district, the board may appoint a referee or examiner to conduct the hearing. In a hearing conducted by a board of health of a city health district, a combined health district, or a general health district at least one member of the board shall be present.

The referee or examiner appointed to conduct the hearing shall have the same powers and authority in conducting the hearing as is granted to the board. The referee or examiner shall have been admitted to the practice of law in the state and be possessed of such additional qualifications as the board may require. The referee or examiner shall submit to the board a written report setting forth his findings of fact and conclusions of law and a recommendation of the action to be taken by the board. A copy of such written report and recommendation of the referee or examiner shall, within five days of the date of filing thereof, be served upon the party or his attorney or other representative of record, by certified mail. The party may, within ten days of receipt of the copy of the written report or recommendation, file with the board written objections to the report and recommendation, which objections shall be considered by the board before approving, modifying, or disapproving the recommendation. The board may grant extensions of time to the party within which to file such objections.

No recommendation of the referee or examiner shall be approved, modified, or disapproved by the board until ten days after the service of the report and recommendation as provided in this section. The board may order additional testimony to be taken or permit the introduction of further documentary evidence. No recommendation shall be final until approved by a quorum of the entire board as indicated by an order on its record of proceedings.

Effective Date: 08-06-1976

3709.21 Orders and regulations of board of general health district.

The board of health of a general health district may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. Such board may require that no human, animal, or household wastes from sanitary installations within the district be discharged into a storm sewer, open ditch, or watercourse without a permit therefor having been secured from the board under such terms as the board requires. All orders and regulations not for the government of the board, but intended for the general public, shall be adopted, recorded, and certified as are ordinances of municipal corporations and the record thereof shall be given in all courts the same effect as is given such ordinances, but the advertisements of such orders and regulations shall be by publication in a newspaper of general circulation within the district. Publication shall be made once a week for two consecutive weeks or as provided in section 7.16 of the Revised Code, and such orders and regulations shall take effect and be in force ten days from the date of the first publication. In cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, the board may declare such orders and regulations to be emergency measures, and such orders and regulations shall become effective immediately without such advertising, recording, and certifying.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.
Effective Date: 10-01-1953

3709.21 Duties of board of city or general health district.

Each board of health of a city or general health district shall study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The board may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and county homes, and other charitable, benevolent, and correctional institutions. The board may also provide for the inspection of dairies, stores, restaurants, hotels, and other places where food is manufactured, handled, stored, sold, or offered for sale, and for the medical inspection of persons employed therein. The board may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease.

In the medical supervision of school children, as provided in this section, no medical or surgical treatments shall be administered to any minor school child except upon the written request of a parent or guardian of such child. Any information regarding any diseased condition or defect found as a result of any school medical examination shall be communicated only to the parent or guardian of such child and if in writing shall be in a sealed envelope addressed to such parent or guardian.

Effective Date: 10-01-1953.

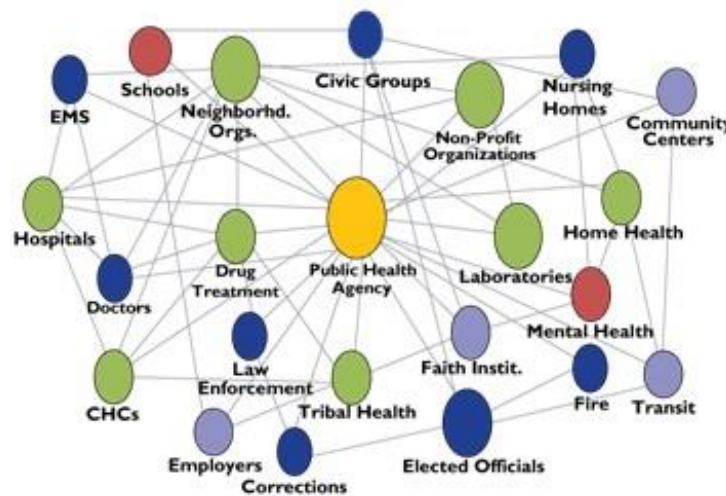


The Public Health System and the Ten Essential Public Health Services

The Public Health System

Public health systems are commonly defined as “all public, private, and voluntary entities that contribute to the delivery of essential public health services within a jurisdiction.” This concept ensures that all entities’ contributions to the health and well-being of the community or state are recognized in assessing the provision of public health services. The public health system includes:

- Public health agencies at state and local levels
- Healthcare providers
- Public safety agencies
- Human service and charity organizations
- Education and youth development organizations
- Recreation and arts-related organizations
- Economic and philanthropic organizations
- Environmental agencies and organizations



The Public Health System

(Source <https://www.cdc.gov/stltpublichealth/publichealthservices/essentialhealthservices.html>)

The 10 Essential Public Health Services¹

The 10 Essential Public Health Services describe the public health activities that all communities should undertake:

1. Monitor health status to identify and solve community health problems
2. Diagnose and investigate health problems and health hazards in the community
3. Inform, educate, and empower people about health issues
4. Mobilize community partnerships and action to identify and solve health problems
5. Develop policies and plans that support individual and community health efforts
6. Enforce laws and regulations that protect health and ensure safety
7. Link people to needed personal health services and assure the provision of health care when otherwise unavailable
8. Assure competent public and personal health care workforce
9. Evaluate effectiveness, accessibility, and quality of personal and population-based health services
10. Research for new insights and innovative solutions to health problems



The 10 Essential Public Health Services

(Source <https://www.cdc.gov/stltpublichealth/publichealthservices/essentialhealthservices.html>)

¹ Note: The Core Public Health Functions Steering Committee developed the framework for the Essential Services in 1994. The committee included representatives from US Public Health Service agencies and other major public health organizations.

Roles and Responsibilities of the Board of Health

What is a Board of Health?

A local board of health is the policy-making, rule-making, and adjudicatory body for public health in the general or city health district jurisdiction. Since state statute gives boards of health specific powers and duties, the local board may make local public health rules that apply throughout the board's jurisdiction as long as these rules do not conflict with governing documents. Each board has limited authority to set fees for public health services and also influences the day-to-day administration of the local public health agency.

- Governing body for local health department
- Composed of at least five or more members
- Members serve five or more years; selected geographically
- One member of the general health district Board of Health must be a physician
- District Advisory Council appoints general health district (county) board members
- The chief executive with the approval of the city council appoints city board members

The board is an important part of the public health department organization because it:

- Sets policy for strategic direction
- Enacts resolutions to carry out day-to-day business of the organization
- Approves rules and regulations for department operations
- Employs and evaluates the health commissioner
- Reviews operational data for patterns and trends
- Approves health department programs
- Approves key financial actions for the department including the budget that is submitted to county budget commission or to a city council

Boards of Health decisions are a matter of public record and readily visible to the community. The board must ensure that it is operating within its legal responsibilities as well as under the principles of good faith and ethical conduct.

Board of Health Action Examples

Policy Decisions

A policy is a deliberate system of principles to guide decisions and achieve rational outcomes. A policy is a statement of intent and is implemented as a procedure or protocol. Policies are generally adopted by the board as resolutions.

To make policy decisions, the board must follow applicable Ohio Revised and Administrative Code, consider the LHD's strategic plan, and assure that there are specific goals and objectives to accomplish and evaluate the policy implementation.

Appointment of Key Health Department Staff

The board is directly responsible for hiring and annually evaluating the health commissioner and defining performance criteria. The board, on the recommendations of the health commissioner, hires other staff members and assures alignment of the department's table of organization with mission/goals.

Review of Operational Data

Individual board members must stay well-informed of the activities of the board and the department. Board members should review and query operational data on the basis of organizational plans, goals, and objectives, ensuring the achievement of organizational outcomes related to the board and the department.

Approval of Health Department Programs

The board should approve all programs to ensure their consistency with the department's mission, priorities, community needs and resources.

Approval of the Budget

Boards of Health need to approve and adopt the budget for the department. The staff supplies pertinent information. Board members should study and question budget information and make suggestions for changes if appropriate. Furthermore, a budget to address training for both the Board members and staff should be adopted.

Accreditation through PHAB

The Board is responsible for the department achieving success in initial and subsequent accreditation recognition through the Public Health Accreditation Board.

TO~DO list for Board of Health Members

Fully understand the mission of public health and your organization's service delivery to that end.

Gain a working familiarization with the policies, guidelines and rules of the LHD and fully understand the board of health's role in local public health.

Be regular and punctual at board and committee meetings, fully prepared in advance by reviewing meeting materials.

Provide a leadership voice, ask questions for clarification, join the discussion and participate fully both in and outside of Board of Health meetings.

Be informed about the background of issues, speaking out on ideas you do not favor and prepared to provide your rationale.

Understand the delineation between the roles and responsibilities of the board, key department leadership, and department staff (i.e., governance is not management).

Know and maintain appropriate lines of communication between board and department personnel.

Develop a working knowledge of all financial statements presented as well as the budget development cycle.

Maintain confidentiality at all times while understanding [Ohio Sunshine Law](#).

Participate in recruiting new board members, ensuring they are fully oriented and mentored to the governance process.

Work on levy passage (if applicable) and advocate at the community or state level for public health funding.

Liaison between the county, city, village, townships and other municipalities and the health department.

Advocate for public health and health equity in your community.

Complete the required two (2) hours of continuing education.

Responsibilities of Board Members

Specific expectations of board of health members:

Assess

- Educate yourself on the city of Galion and its public health status. As a city resident, you are in an excellent position to know Galion's problems and needs.
- Educate yourself on the Galion Board of Health and Galion City Health Department's history, goals, achievements, and current situation.

Develop Policy

- Review statutes, administrative rules and local policies.
- Attend board meetings regularly and promptly.
- Review all meeting materials in advance of meeting.
- Do assigned work between meetings.
- Participate fully in open, constructive dialogue regarding local public health both in and out of meetings.
- Ask critical questions; seek clarity and implications of decisions before voting.
- Function as a policy-maker not as an administrator.
- Link the community and the Galion City Health Department.
- Represent a broad cross-section of the community to the board.
- Represent public health to the community.
- Speak for the board only when delegated to do so.
- Actively participate in political activities at local, state, and national level concerning local public health.

Assure

- Keep decision-making at the primary and secondary policy levels.
- Stand behind decisions of the board and its health commissioner.
- Inform the community of public health financial backing.
- Anticipate trends likely to affect the local health department.

Who is Responsible

The Galion Board of Health is directly responsible for the performance of the Galion City Health Department.

AREA	BOARD	HEALTH COMMISSIONER
Long Term Goals (More than 1 yr)	Approves	Recommends and provides input
Short Term Goals (Less than 1 yr)	Monitors	Establishes and carries out
Day to Day Operations	No Role	Makes all management decisions
Budget	Approves	Develops and recommends
Capital Purchases	Approves	Prepares requests
Decisions on Building, Renovations, Leasing, Expansion	Makes Decisions and Assumes Responsibility	Recommends (could sign contracts if given authority)
Supply Purchases	Establishes Policies and Budgets	Purchases according to policy and maintains adequate audit trail
Major Repairs	Approves	Obtains estimates and prepares Recommendations
Minor Repairs	Establish Policy on Dollar Amount	Authorizes repairs up to prearranged amount
Emergency Repairs	Work with Health Commissioner	Notifies chairperson and acts with concurrence from the chair
Cleaning/Maintenance	Oversight only	Sets up schedule
Fees	Adopts Policy	Develops fee schedule
Billing, Credit, Collection	Adopts Policy	Proposes policy and implements
Hiring Staff	No Role (Approves new positions)	Approves all hiring
Staff Development and Assignment	No Role	Establishes
Firing Staff	No Role	Makes termination decisions
Staff Grievances	No Role	Grievances stop with Health Commissioner
Personnel Policies	Adopts Policies	Recommends and administers
Staff Salaries	Allocates Line Item in Budget	Approves salaries with recommendations from supervisory staff
Staff Evaluations	Evaluates Health Commissioner Only	Evaluates other staff

A Health Commissioner Expects A Board Will:

1. Counsel and advise using professional expertise and familiarity with the community.
2. Consult with the Health Commissioner on issues the Board is considering.
3. Delegate responsibility for all administrative functions.
4. Refrain from micromanaging administrative details.
5. Recognize that agency staff is responsible to the Health Commissioner.
6. Share all communications with the Health Commissioner.
7. Support the Health Commissioner and staff in carrying out their professional duties.
8. Support the Health Commissioner in all decisions and actions consistent with policies of the Board and the standards of the agency.
9. Hold the Health Commissioner accountable for the supervision of the agency.
10. Evaluate and recognize the work of the Health Commissioner.

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A Board Expects Its Health Commissioner Will:

1. Serve as Chief Executive Officer of the agency.
2. Advise the Board on issues under discussion.
3. Develop and recommend policies for consideration.
4. Effectively implement Board policies.
5. Keep the Board informed fully and accurately on activities of the agency.
6. Make professional recommendations on all problems and issues being considered by the Board.
7. Develop the agency budget with the finance committee and keep the Board advised of budget problems.
8. Recruit and retain the most competent personnel and supervise accordingly.
9. Devote time to professional development for the staff and Health Commissioner.

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Fiscal Management

Galion City Health Department is funded through a combination of fees for services (such as licensing, immunizations, grants, official documents, school health services contracts, and other service contracts) and city of Galion general funds. The revenue of Galion City Health is received by the city's general fund. Annually, anticipated costs for the coming year are reflected in the health department's budget. It is anticipated that major budget items for the coming year be developed by August and finalized by October of each year. Generally, the overall cost of the annual operation of the health department is about \$650,000. Of that amount, the city contributes approx. 40% (although that percentage ranges dependent on the year). The five major categories of municipal budgets are personal (salaries), benefits, capital, contractual, and materials and supplies. The largest single category of expense is personal, followed by benefits.

The Board of Health is required by law to approve retrospectively each month's expenses, labeled "monthly bills."

Board Evaluation

Boards need to rate their own performance. Did the board set a long-range work plan? How well did it do in accomplishing its objectives? What did the board do that was not listed as a target? What remains to be done? What is the new work plan?

Boards should also assess the meeting evaluations from the past year. What are common problems? Where has improvement been made? What goals should be set for next year?

Board members need to address this question; each board must find its own answer. Individually, members should ask themselves certain simple, but searching, questions about their continued involvement:

1. Am I still interested?
2. Do I participate actively and responsibly in board matters?
3. Do I attend the regularly scheduled board meetings?
4. Do I have confidence in the board, the administrator, and the health department staff?
5. Is my service on the board at least as satisfying and rewarding as any other service to which I might devote similar time and effort?

Health Commissioner/Medical Director Evaluation

The Galion Board of Health intends to annually evaluate the work of its health commissioner and/or medical director. Currently the two positions are combined.

The health commissioner's job is to make the board's policies come to life. Therefore, evaluating the health commissioner is also evaluating the Galion City Health Department. The Galion Board of Health hires the health commissioner to run the health department and to achieve its public health goals. While the board should be clear about what results it wants to see in the community, it should not direct the health commissioner in day-to-day management of the health department.

Performance-based evaluation is an excellent way for boards to evaluate a health commissioner and to evaluate themselves. Such evaluations allow individuals and organizations to see how well responsibilities are being fulfilled. The board could look at statements in the job description and indicate how the health commissioner fulfills that expectation. It is unfair to judge or rate a health commissioner on things that are not included in his or her job description. Additionally, the board needs to state clearly its standard of performance for each evaluation item. A review of this type may reveal that job descriptions need to be created or updated.

Compare the health commissioner job description and any work plans to his or her accomplishments. Stick to the direct evidence and be clear about what is to be evaluated. If the board, in the absence of policy prohibiting such activities, disapproves of certain methods used to complete a task, the board has identified a policy need, not a health commissioner failing. Boards must look at outcomes of staff work, not at how staff does its work. Standardized forms are appropriate for most evaluation situations but may be inadequate or inappropriate for a board's evaluation of its health commissioner. Standard

forms must be general enough to apply to many positions, so they may omit important or specific aspects of more complex positions.

Several things are important to stress in evaluation:

- The evaluation must correlate to the actual job.
- Schedule the evaluation activities into the board agenda over the year.
- Summarize the evaluation in writing and provide an opportunity for the commissioner to record his or her comments.
- Stick to job performance, not personal characteristics.

Responsibilities of a president or chairperson of a board of health:

- Chair all meetings.
- Facilitate discussion and decision making.
- Work with health commissioner to set agenda for meetings.
- Counsel and consult with the health commissioner.
- Speak for the board as delegated by the board.
- Represent the board to other groups.
- Consult with board members who are not fulfilling their responsibilities or who are violating law, policy, or practice.
- Initiate annual evaluation of the health commissioner.
- Initiate annual evaluation of the board.

The president or chairperson of the board must exhibit leadership ability and provide direction to the health commissioner and the health department staff. The president of the Galion Board of Health is the mayor of the City of Galion. The board also has a president *pro tempore* and a Vice- President.

Tips on Being a Good Board Member

Here are ten tips on being a Galion Board of Health Member

1. Get to know the Galion City Health Department
2. Know your responsibilities as a board of health member
3. Avoid conflict of interest
4. Support the board's final decisions
5. Maintain confidentiality
6. Don't get on too many boards
7. Be open minded
8. Learn how municipal budgeting and finance are practiced
9. Be prepared to participate in board discussions
10. Be prepared to obtain board-specific training

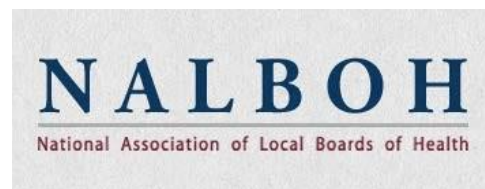
Reference: <http://communitysector.nl.ca/voluntary-sector-resources/board-development/ten-tips-becoming-more-effective-board-member>

Resources

NALBOH

The National Association of Local Boards of Health (NALBOH)

The National Association of Local Boards of Health (NALBOH) informs, guides, and serves as the national voice for boards of health. In today's public health system, the leadership role of boards of health makes them an essential link between public health services and a healthy community. Uniquely positioned to deliver technical expertise in governance and leadership, board development, health priorities, and public health policy, NALBOH strives to strengthen good governance where public health begins—at the local level ([Six Functions of Governance](#)).



Websites – Select Resource List

Public Health ~ Galion

Galion City Health Department Website	http://galionhealth.org/
Galion City Board of Health Meeting Materials	https://galionhealthorg.blueskymeeting.com/meeting_groups/225

Public Health ~ Ohio

Association of Ohio Health Commissioners	www.aohc.net
Ohio Association of Local Boards of Health	Coming soon
Ohio Public Health Association	https://ohioph.org/
Ohio Department of Health	www.odh.ohio.gov
The Ohio State University Center for PH Practice	https://u.osu.edu/cphp/

Public Health ~ National

American Public Health Association	www.apha.org
Association of Schools of Public Health	https://www.aspph.org/
Association of State and Territorial Health Officials	www.astho.org
National Assoc of County and City Health Officials	www.naccho.org
National Association of Local Boards of Health	www.nalboh.org
Public Health Foundation	www.phf.org
National Leadership Academy for the Public's Health	http://healthleadership.org/program_nlaph

Federal Agencies

Agency for Toxic Substances and Disease Registry	https://www.atsdr.cdc.gov/
Centers for Disease Control and Prevention	www.cdc.gov
Centers for Medicare and Medicaid Services	https://www.cms.gov/
Health and Human Services	www.hhs.gov
Food and Drug Administration	www.fda.gov
Health Resources and Services Administration	www.hrsa.gov
National Institutes of Health	www.nih.gov

WHAT IS PUBLIC HEALTH?

“The science and art of preventing disease, prolonging life, and promoting health through the organized efforts and informed choices of society organizations, public and private communities, and individuals.”

—CEA Winslow, 1920

Attachments

Attachment 1: Public Health Futures Report

Attachment 2: How a Bill Becomes a Law

Attachment 3: Ohio Sunshine Laws FAQ's

Attachment 4: Ohio Sunshine Laws Manual

 *Protecting Ohio's Families*



OHIO SUNSHINE LAWS 2018

An Open Government
Resource Manual



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★



HIO SUNSHINE LAWS

An Open Government Resource Manual
2018

Ohio Sunshine Laws 2018

Dear Ohioans,

My number one priority as Attorney General is to protect Ohio families. My office does this in a variety of ways, but one important way is by fostering a spirit of open government and by promoting Ohio's Public Records Law and Open Meetings Law. Together, these laws are known as the "Ohio Sunshine Laws," and they are among the most comprehensive open government laws in the nation.

The Attorney General's Office and its Public Records Unit stand as one of the state's foremost authorities on open government law. The 2018 Ohio Sunshine Laws Manual draws on that expertise and is a one-stop resource for up-to-date information on Ohio's Sunshine Laws. The electronic version of this edition has clickable links to court decisions and other online resources to help readers quickly find the information they need.

Additionally, my office provides a number of other Ohio Sunshine Laws resources:

- Along with the Ohio Auditor of State's Office, we provide Ohio Sunshine Laws training across the state for elected officials and the public. This training is also available in a convenient online option.
- My office has created a model public records policy that local governments can use as a guide for creating their own public records policies.

By providing elected officials, public employees, and Ohio citizens with information about public records and compliance, we help ensure accountability and transparency in the conduct of public business. Please visit my office's Ohio Sunshine Laws website, www.OhioAttorneyGeneral.gov/Sunshine, to find all of these resources.

This manual is intended as a guide. Because much of open government law comes from interpretation of the Ohio Sunshine Laws by the courts, we encourage local governments to seek guidance from their legal counsel for specific questions.

Thank you for your part in promoting open government in Ohio.

Very respectfully yours,



Mike DeWine
Ohio Attorney General



Ohio Sunshine Laws 2018

Readers may find the latest edition of this publication and the most updated public records and open meetings laws by visiting the following web sites. To request additional paper copies of this publication, contact:

Ohio Attorney General
Public Records Unit
Re: Sunshine Manual Request
30 E. Broad St., 16th Floor
Columbus, Ohio 43215
(800) 282-0515 or (614) 466-2872
www.OhioAttorneyGeneral.gov/Sunshine

or

Ohio Auditor of State
Open Government Unit
Legal Division
88 E. Broad St., 9th Floor
Columbus, Ohio 43215
(800) 282-0370 or (614) 466-4514
www.OhioAuditor.gov

We welcome your comments and suggestions.

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Glossary

When learning about the Ohio Sunshine Laws, you may confront some legal terms that are unfamiliar to you. Below are the more common terms used in this handbook.

Charter

A charter is an instrument established by the citizens of a municipality, which is roughly analogous to a state's constitution. A charter outlines certain rights, responsibilities, liberties, or powers that exist in the municipality.

Discovery

Discovery is a pre-trial practice by which parties to a lawsuit disclose to each other documents and other information in an effort to avoid any surprises at trial. The practice serves the dual purpose of permitting parties to be well prepared for trial and enabling them to evaluate the strengths and weaknesses of their case.

In camera

In camera means "in chambers." A judge will often review records that are at issue in a public records dispute *in camera* to evaluate whether they are subject to any exemptions or defenses that may prevent disclosure.

Injunction

An injunction is a court order commanding that a person act or cease to act in a certain way. For instance, a person who believes a public body has violated the Open Meetings Act will file a complaint seeking injunctive relief. The court may then issue an order enjoining the public body from further violations of the act and requiring it to correct any damage caused by past violations.

Litigation

The term "litigation" refers to the process of carrying on a lawsuit, i.e., a legal action and all the proceedings associated with it.

Mandamus

The term means literally "we command." In this area of law, it refers to the legal action that a party files when they believe they have been wrongfully denied access to public records. The full name of the action is a petition for a writ of mandamus. If the party filing the action, or "relator," prevails, the court may issue a writ commanding the public office or person responsible for the public records, or "respondent," to correctly perform a duty that has been violated.

Pro se

The term means "for oneself," and is used to refer to people who represent themselves in court, acting as their own legal counsel.

The Ohio Public Records Act

Overview of the Ohio Public Records Act

Ohio law has long provided for public scrutiny of state and local government records.¹

Ohio's Public Records Act details how to request public records. The Act also excludes certain records from disclosure and enforces production when an office denies a proper public records request. The pages that follow will explain the details of this process; below is an overview of the basic principles.

Any person may request to inspect or obtain copies of public records from a public office that keeps those records. A public office must organize and maintain its public records in a manner that meets its duty to respond to public records requests and must keep a copy of its records retention schedules at a location readily available to the public. When it receives a proper public records request, and unless part or all of a record is exempt from release, a public office must provide inspection of the requested records promptly and at no cost or provide copies at cost within a reasonable period of time.

Unless a specific law states otherwise, a requester does not have to provide a reason for wanting records, provide his or her name, or make the request in writing. However, the request does have to be clear and specific enough for the public office to reasonably identify what public records the requester seeks. A public office can refuse a request if the office no longer keeps the records (pursuant to their records retention schedules), if the request is for documents that are not records of the office, or if the requester does not revise an ambiguous or overly broad request.

The Ohio General Assembly has passed a number of laws that protect certain records by requiring or permitting a public office to withhold them from public release. When a public office invokes one of these exemptions, the office may only withhold a record or part of a record clearly covered by the exemption and must tell the requester on what legal authority it is relying to withhold the record.

A person aggrieved by the alleged failure of a public office to comply with an obligation of the Public Records Act may choose to either (1) file a complaint against the public office in the Court of Claims, or (2) file a mandamus lawsuit against the public office. The new Court of Claims procedures were established by the General Assembly in September 2016 to provide an expedited process for resolving public records disputes. To commence an action in the Court of Claims, the requester must file a specified complaint form, attaching the original public records request and any written responses. The case will first be referred to mediation, and then, if mediation is unsuccessful, proceed on a "fast track" resolution process that is overseen by a special master. In a mandamus lawsuit, the requester will have the burden of showing that he or she made a proper public records request, and the public office will have the burden of showing the court that it complied with the obligation(s) allegedly violated. If it cannot, the court will order the public office to provide any improperly withheld record, and the public office may be required to pay a civil penalty and attorney fees.

¹ Ohio's state and local government offices follow Ohio's Public Records Act, found at R.C. 149.43. The federal Freedom of Information Act, 5 U.S.C. § 552, does not apply to state and local offices. See *State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶ 38.

The Ohio Public Records Act

Chapter One: Public Records Defined

I. Chapter One: Public Records Defined

The Public Records Act applies only to “public records,” which the Act defines as “records kept by a public office.”² When making or responding to a public records request, it is important to first establish whether the items sought are really “records,” and if so, whether they are currently being “kept by” an organization that meets the definition of a “public office.” This chapter will review the definitions of each of these key terms and how Ohio courts have applied them.

One of the ways that the Ohio General Assembly removes certain records from the operation of the Public Records Act is to simply remove them from the definition of “public record.” Chapter Three addresses how exemptions to the Act are created and applied.

A. What Is a “Public Office”?

1. Statutory definition – R.C. 149.011(A)

“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.”³ An organization that meets the statutory definition of a “public body” (see Open Meetings Act, Chapter One: A. “Public Body”) does not automatically meet the definition of a “public office.”⁴

This definition includes all state and local government offices, and also many agencies not directly operated by a political subdivision, such as police departments operated by private universities.⁵ Examples of entities that previously have been determined to be “public offices” (prior to the *Oriana House*⁶ decision) include:

- Some public hospitals;⁷
- Community action agencies;⁸
- Private non-profit water corporations supported by public money;⁹
- Private non-profit PASSPORT administrative agencies;¹⁰
- Private equity funds that receive public money and are essentially owned by a state agency;¹¹
- Non-profit corporations that receive and solicit gifts for a public university and receive support from taxation;¹²
- Private non-profit county ombudsman offices;¹³ and
- County emergency medical services organizations.¹⁴

² R.C. 149.43(A)(1).

³ R.C. 149.011(A). JobsOhio, the non-profit corporation formed under R.C. 187.01, is not a public office for purposes of the Public Records Act, pursuant to R.C. 187.03(A) and R.C. 149.011(A).

⁴ *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶¶ 35-38.

⁵ *State ex rel. Schiffbauer v. Banaszak*, 142 Ohio St.3d 535, 2015-Ohio-1854, ¶ 12 (finding the Otterbein University police department to be public office because it “is performing a function that is historically a government function”).

⁶ *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854. Similar entities today should be evaluated based on the functional-equivalency test adopted in *Oriana House*.

⁷ *State ex rel. Dist. 1199, Health Care & Social Serv. Union v. Lawrence Cty. Gen. Hosp.*, 83 Ohio St.3d 351 (1998). But see *State ex rel. Stys v. Parma Community Gen. Hosp.*, 93 Ohio St.3d 438 (2001) (deeming a particular hospital not a “public office”); *State ex rel. Farley v. McIntosh*, 134 Ohio App.3d 531 (2d Dist. 1998) (finding court appointed psychologist not a “public office”).

⁸ *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn.*, 61 Ohio Misc.2d 631 (Lucas C.P. 1990).

⁹ *Sabo v. Hollister Water Assn.*, 4th Dist. No. 93 CA 1582 (1994).

¹⁰ 1995 Ohio Op. Att’y Gen. No. 001.

¹¹ *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers’ Comp.*, 106 Ohio St.3d 113, 2005-Ohio-3549 (holding that limited-liability companies organized to receive state-agency contributions were public offices for purposes of the Public Records Act); see also *State ex rel. Repository v. Nova Behavioral Health, Inc.*, 112 Ohio St.3d 338, 2006-Ohio-6713, ¶ 42.

¹² *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St.3d 258 (1992).

¹³ *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155 (1997).

¹⁴ 1999 Ohio Op. Att’y Gen. No. 006.

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2. Private entities can be “public offices”

If there is clear and convincing evidence that a private entity is the “functional equivalent” of a public office, that entity will be subject to the Public Records Act.¹⁵ Under the functional-equivalency test, a court must analyze all pertinent factors, including: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government or to avoid the requirements of the Public Records Act.¹⁶ The functional-equivalency test “is best suited to the overriding purpose of the Public Records Act, which is ‘to allow public scrutiny of public offices, not of all entities that receive funds that at one time were controlled by the government.’”¹⁷ In general, the more it can be shown that a private entity is performing a government function, as well as the extent to which the entity is funded, controlled, regulated, and/or created by the government, the more likely a court will determine that it is a “public institution,” and therefore, a “public office” subject to the Public Records Act.

3. Quasi-agency – A private entity, even if not a “public office,” can be “a person responsible for public records”

When a public office contracts with a private entity to perform government work, the resulting records may be public records, even if they are solely in the possession of the private entity.¹⁸ These records are public records when three conditions are met: (1) the private entity prepared the records to perform responsibilities normally belonging to the public office; (2) the public office is able to monitor the private entity’s performance; and (3) the public office may access the records itself.¹⁹ Under these circumstances, the public office is subject to requests for these public records under its jurisdiction, and the private entity itself may have become a “person²⁰ responsible for public records”²¹ for purposes of the Public Records Act.²² For example, a public office’s obligation to turn over application materials and resumes extends to records of private search firms the public

¹⁵ *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, paragraph one of syllabus; *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶ 51 (holding that no clear and convincing evidence that private groups were functionally equivalent to public office when groups were comprised of unpaid, unguided county leaders and citizens, not created by governmental agency, and submitted recommendations as coalitions of private citizens).

¹⁶ *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, paragraphs one and two of syllabus; see also *State ex rel. Repository v. Nova Behavioral Health, Inc.*, 112 Ohio St.3d 338, 2006-Ohio-6713.

¹⁷ *State ex rel. Repository v. Nova Behavioral Health, Inc.*, 112 Ohio St.3d 338, 2006-Ohio-6713, ¶ 24; *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, ¶ 36 (“It ought to be difficult for someone to compel a private entity to adhere to the dictates of the Public Records Act, which was designed by the General Assembly to allow public scrutiny of public offices, not of all entities that receive funds that at one time were controlled by the government.”); *State ex rel. Bell v. Brooks*, 130 Ohio St.3d 87, 2011-Ohio-4897, ¶¶ 15-29 (finding joint self-insurance pool for counties and county governments not to be the functional equivalent of a public office); see also *State ex rel. Dayton Tea Party v. Ohio Mun. League*, 129 Ohio St.3d 1471, 2011-Ohio-4751 (granting a motion to dismiss without opinion, based on the argument that the Ohio Municipal League and Township Association were not the functional equivalents of public offices); *State ex rel. Dist. Eight Regional Organizing Comm. v. Cincinnati-Hamilton Cty. Community Action Agency*, 192 Ohio App.3d 553, 2011-Ohio-312 (1st Dist.) (finding home-weatherization program administered by private non-profit community action agency not to be functional equivalent of public office); *State ex rel. Luken v. Corp. for Findlay Mkt. of Cincinnati*, 1st Dist. No. C-100437, 2012-Ohio-2074, ¶ 27 (finding non-profit corporation that manages the operation of a public market is not the functional equivalent of a public office).

¹⁸ *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 660 (2001); *State ex rel. Gannett Satellite Information Network v. Shirey*, 76 Ohio St.3d 1224 (1996).

¹⁹ *State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, ¶ 36 (finding that firefighter-promotional examinations kept by testing contractor were still public records); *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 657 (2001); *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37 (1990) (outcome overturned by subsequent amendment of R.C. 4701.19(B)). But see *State ex rel. Am. Civ. Liberties Union of Ohio v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶¶ 52-54 (holding that quasi-agency theory did not apply when private citizen group submitted recommendations but owed no duty to government office to do so).

²⁰ “Person” includes an individual, corporation, business trust, estate, trust, partnership, and association. R.C. 1.59(C).

²¹ *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers’ Comp.*, 106 Ohio St.3d 113, 2005-Ohio-3549, ¶ 20 (“R.C. 149.43(C) permits a mandamus action against either ‘a public office or the person responsible for the public record’ to compel compliance with the Public Records Act. This provision ‘manifests an intent to afford access to public records, even when a private entity is responsible for the records.’”), citing *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 39 (1990); *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 658 (2001); *State ex rel. Dist. Eight Regional Organizing Comm. v. Cincinnati-Hamilton Cty. Community Action Agency*, 192 Ohio App.3d 553, 2011-Ohio-312 (1st Dist.) (finding home weatherization program administered by private non-profit community-action agency not to be person responsible for public records); *State ex rel. Doe v. Tetrault*, 12th Dist. No. CA2011-10-070, 2012-Ohio-3879, ¶ 26 (finding township employee who tracked hours on online management website and then submitted those hours was not “particular official” charged with duty to oversee public records and cannot be the “person responsible” for the records requested under R.C. 149.43”); *State ex rel. Am. Ctr. For Economic Equality v. Jackson*, 8th Dist. No. 102298, 2015-Ohio-4981, ¶ 33 (deeming private company that entered into contract with city to conduct study and make recommendations to ensure equal opportunities for minorities a person responsible for records).

²² See, e.g., R.C. 149.43(B)(1)-(9), (C)(1), (C)(2).

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office used in the hiring process.²³ Even if the public office does not have control over or access to such records, the records may still be public.²⁴ A public office cannot avoid its responsibility for public records by transferring custody of records or the record-making function to a private entity.²⁵ However, a public office may not be responsible for records of a private entity that performs related functions that are not activities of the public office.²⁶ A person who works in a governmental subdivision and discusses a request is not thereby a “person responsible” for records outside of his or her own public office within the governmental subdivision.²⁷

4. Public office is responsible for its own records

Only a public office or person who is actually responsible for the record sought is responsible for providing inspection or copies.²⁸ When statutes impose a duty on a particular official to oversee records, that official is the “person responsible” within the meaning of the Public Records Act.²⁹ A requester may wish to avoid any delay by initially asking a public office to whom in the office they should make the public records request, but the courts will construe the Public Records Act liberally in favor of broad access when, for example, the request is served on any member of a committee from which the requester seeks records.³⁰ The same document may be kept as a record by more than one public office.³¹ One appellate court has held that one public office may provide responsive documents on behalf of several related public offices that receive the same request and are keeping identical documents as records.³²

B. What are “records”?

1. Statutory definition – R.C. 149.011(G)

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

2. Records and non-records

If a document or other item does not meet all three parts of the definition of a “record,” then it is a non-record and is not subject to the Public Records Act or Ohio’s records retention requirements. The next paragraphs explain how items in a public office might meet or fail to meet the three parts of the definition of a record in R.C. 149.011(G).³³

²³ *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400 (1997); *State ex rel. Carr v Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, ¶¶ 36-37; for additional discussion, see Chapter Six: B. “Employment Records.”

²⁴ *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 402-03 (1997) (finding that, despite a lack of proof of public office’s ability to access search firm’s records or monitor performance, requested resumes were still public records).

²⁵ *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 659 (2001); *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997).

²⁶ *State ex rel. Rittner v. Foley*, 6th Dist. No. L-08-1328, 2009-Ohio-520 (finding school system not responsible for alumni rosters kept only by private alumni organizations); *Hurt v. Liberty Twp.*, 5th Dist. No. 17 CAI 05 0031, 2017-Ohio-7820, ¶ 42 (investigator was the functional equivalent of a public office because he was performing a governmental function and was even paid by the township with public tax dollars).

²⁷ *State ex rel. Keating v. Skeldon*, 6th Dist. No. L-08-1414, 2009-Ohio-2052 (finding assistant prosecutor and county public affairs liaison not “persons responsible” for records of county dog warden).

²⁸ *Cvijetinovic v. Cuyahoga Cty. Aud.*, 8th Dist. No. 96055, 2011-Ohio-1754.

²⁹ *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St.3d 30 (1985), paragraph two of the syllabus.

³⁰ *State ex rel. Am. Civ. Liberties Union of Ohio v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St. 256, 2011-Ohio-625, ¶¶ 33-34.

³¹ *State v. Sanchez*, 79 Ohio App.3d 133, 136 (6th Dist. 1992).

³² *State ex rel. Cushion v. Massillon*, 5th Dist. No. 2010CA00199, 2011-Ohio-4749, ¶¶ 81-86, *appeal not allowed* 2012-Ohio-136.

³³ See *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, ¶¶ 28-41 (detailing application of the definition of “records” to the electronic records of one public office).

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Part 1: “[A]ny document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code ...”

This first element of the definition of a record focuses on the existence of a recording medium; in other words, something that contains information in fixed form. The physical form of an item does not matter so long as it can record information. A paper or electronic document, email,³⁴ video,³⁵ map, blueprint, photograph, voicemail message, or any other reproducible storage medium could be a record. This element is fairly broad. With the exemption of one’s thoughts and unrecorded conversation, most public office information is stored on a fixed medium of some sort. A request for unrecorded or not-currently-recorded information (a request for advice, interpretation, referral, or research)³⁶ made to a public office, rather than a request for a specific, existing document, device, or item containing such information, would fail this part of the definition of a “record.”³⁷ A public office has discretion to determine the form in which it will keep its records.³⁸ Further, a public office has no duty to fulfill requests that do not specifically and particularly describe the records the requester is seeking. (See Chapter Two: A. 4. “A request must be specific enough for the public office to reasonably identify responsive records”).

Part 2: “...created or received by or coming under the jurisdiction of any public office ...”

It is usually clear when items are created or received by a public office. However, even if an item is not in the public office’s physical possession, it may still be considered a “record” of that office.³⁹ If records are held or created by another entity that is performing a public function for a public office, those records may be “under the public office’s jurisdiction.”⁴⁰

Part 3: “...which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.”

In addition to obvious non-records such as junk mail and electronic “spam,” some items found in the possession of a public office do not meet the definition of a record because they do not “document the activities of a public office.”⁴¹ It is the message or content, not the medium on which it exists, that makes a document a record of a public office.⁴² The Ohio Supreme Court has noted that “disclosure [of non-records] would not help to monitor the conduct of state government.”⁴³ Some items that have been found not to document the activities, etc., of public offices include public employee home addresses kept by the employer solely for administrative (i.e., management) convenience,⁴⁴ retired municipal government employee home addresses kept by the municipal retirement system,⁴⁵ mailing lists,⁴⁶ personal calendars and appointment books,⁴⁷ juror contact

³⁴ *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 21 (finding email messages constitute electronic records under R.C. 1306.01(G)).

³⁵ *State ex rel. Harmon v. Bender*, 25 Ohio St.3d 15, 17 (1986).

³⁶ *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 1998-Ohio-242 (determining that names and documents of a class of persons who were enrolled in the State Teachers Retirement System did not exist in record form); *State ex rel. Lanham v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 425, 427, 1997-Ohio-104 (relating to inmates’ request for “qualifications of APA members”).

³⁷ *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999) (finding that a public office has “no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records,” and that requested records of peremptory strikes during relator’s trial did not exist, and the court had no obligation to create responsive records); *Capers v. White*, 8th Dist. No. 80713 (2002) (holding that requests for information are not enforceable in a public records mandamus action).

³⁸ *State ex rel. Recodot Co. v. Buchanan*, 46 Ohio St.3d 163, 164 (1989).

³⁹ *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 660 (2001) (finding requested stadium cost-overrun records were within jurisdiction of county board and were public records regardless of whether they were in the possession of the county or the construction companies).

⁴⁰ *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654 (2001); *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 39 (1990) (“[W]e hold that the records [of an independent certified public account] are within the Auditor’s jurisdiction and that he is subject to a writ of mandamus ordering him to make them available for inspection.”).

⁴¹ *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 29 (quotation omitted); *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188 (1993) (“To the extent that any item ... is not a ‘record,’ i.e., does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed.”).

⁴² *State ex rel. Margolius v. Cleveland*, 62 Ohio St.3d 456, 461 (1992).

⁴³ *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 27, citing *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 369, 2000-Ohio-345 (noting that names, addresses, and other personal information kept by city recreation and parks department regarding children who used city’s recreational facilities are not public records).

⁴⁴ *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384 (holding that home addresses of employees generally do not document activities of the office, but may in certain circumstances).

⁴⁵ *State ex rel. DeGroot v. Tilsley*, 128 Ohio St.3d 311, 2011-Ohio-231, ¶¶ 6-8.

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information and other juror questionnaire responses,⁴⁸ personal information about children who use public recreational facilities,⁴⁹ personal identifying information in housing authority lead-poisoning documents⁵⁰ and non-record items and information contained in employee personnel files.⁵¹ The names and contact information of some licensees,⁵² contractors,⁵³ lessees,⁵⁴ customers,⁵⁵ and other non-employees of a public office⁵⁶ have been found to be “records” when they actually document the formal activities of a particular office. Proprietary software needed to access stored records on magnetic tapes or other similar format, which meets the first two parts of the definition, is a means to provide access, not a record because it does not itself document the activities, etc., of a public office.⁵⁷ Personal correspondence or personal email addresses that do not document any activity of the office are non-records.⁵⁸ Finally, the Attorney General has opined that a piece of physical evidence in the hands of a prosecuting attorney (e.g., a cigarette butt) is not a record of that office.⁵⁹

3. The effect of “actual use”

An item received by a public office is not a record simply because the public office *could* use the item to carry out its duties and responsibilities.⁶⁰ However, if the public office *actually* uses the item, it may thereby document the office’s activities and become a record.⁶¹ For example, where a school board invited job applicants to send applications to a post office box, any applications received in that post office box did not become records of the office until the board retrieved and reviewed, or otherwise used and relied on them.⁶² Personal, otherwise non-record correspondence that is actually used to document a decision to discipline a public employee qualifies as a “record.”⁶³

⁴⁶ *Bibles v. Oregon Natural Desert Assn.*, 519 U.S. 355 (1997) (finding that a mailing list of the Bureau of Land Management’s newsletter was not subject to FOIA request); see also *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385 (1999) (holding that city was not required to create mailing list it did not regularly keep in its existing records).

⁴⁷ *Internatl. Union, United Auto., Aerospace & Agricultural Implement Workers of Am. v. Voinovich*, 100 Ohio App.3d 372, 378 (10th Dist. 1995). However, work-related calendar entries are manifestly items created by a public office that document the functions, operations, or other activities of the office, and are records. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor’s Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, ¶ 33.

⁴⁸ *State ex rel. Beacon Journal Printing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 51.

⁴⁹ *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 369, 2000-Ohio-345; R.C. 149.43(A)(1)(r).

⁵⁰ *State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶ 36 (holding that personal identifying information in lead-poisoning documents, such as the names of parents and guardians; their Social Security and telephone numbers; their children’s names and dates of birth; the names, addresses, and telephone numbers of other caregivers; and the names of and places of employment of occupants, did not serve to document the CMHA’s functions or other activities).

⁵¹ *Fant v. Enright*, 66 Ohio St.3d 186, 188 (1993); *State ex rel. Louisville Edn. Assn v. Louisville City School Dist. Bd. of Edn.*, 5th Dist. No. 2016CA00159, 2017-Ohio-5564, ¶¶ 4-9 (tax records showing “deductions for tax sheltered accounts, charitable contributions, and the amount of taxes withheld” does not document the organization or function of the agency, therefore, it is not public information subject to disclosure).

⁵² *State ex rel. Cincinnati Enquirer v. Jones-Kelly*, 118 Ohio St.3d 81, 2008-Ohio-1770, ¶ 7 (requiring release of names and addresses of persons certified as foster caregivers); exemption for this information later created by R.C. 5101.29(D), R.C. 149.43(A)(1)(y).

⁵³ *State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, ¶¶ 32-42 (holding that names of fire-captain promotional candidates; names, ranks, addresses, and telephone numbers of firefighter assessors; and all documentation on subject-matter experts were records, although a [since-repealed] statutory exemption applied).

⁵⁴ *State ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 5th Dist. No. 2013 AP 06 0024, 2014-Ohio-1222 (relating to names and addresses of persons leasing property from the Watershed District for any purpose).

⁵⁵ 2002 Ohio Op. Att’y Gen. No. 030, pp. 9-10 (relating to names and address of a county sewer district’s customers); partial exemption later created by R.C. 149.43(A)(1)(aa) (for “[u]sage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility”).

⁵⁶ *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶¶ 14-17 (relating to notices to owners of property as residence of a child [with no information identifying the child] whose blood test indicates an elevated lead level); *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St.3d 258, paragraph 2 of syllabus (relating to names of donors to a gift-receiving arm of a public university).

⁵⁷ *State ex rel. Recodot Co. v. Buchanan*, 46 Ohio St.3d 163, 165 (1989); see *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, ¶¶ 21-25 (holding that data “inextricably intertwined” with exempt proprietary software need not be disclosed).

⁵⁸ 2014 Ohio Op. Att’y Gen. No. 029; *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff’s Dept.*, 82 Ohio St.3d 37 (1998).

⁵⁹ 2007 Ohio Op. Att’y Gen. No. 034.

⁶⁰ *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63 (1998).

⁶¹ *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, ¶ 27 (noting judge’s use of redacted information to decide whether to approve settlement); *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61 (1998) (noting that judge read unsolicited letters but did not rely on them in sentencing defendant, therefore, letters did not serve to document any activity of the public office); *State ex rel. Sensel v. Leone*, 85 Ohio St.3d 152 (1999) (finding unsolicited letters alleging inappropriate behavior of coach not “records”); *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St.3d 37, 39 (1990) (finding a record is “anything a governmental unit utilizes to carry out its duties and responsibilities.”); *State ex rel. Rhodes v. Chillicothe*, 4th Dist. No. 12CA3333, 2013-Ohio-1858, ¶ 28 (finding images that were not forwarded to city by vendor not public records because city did not use them in performing a governmental function); *State ex rel. Carr v. Caltrider*, Franklin C.P. No. 00CVH07-6001 (2001).

⁶² *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, ¶¶ 15-16.

⁶³ *State ex rel. Bowman v. Jackson City School Dist.*, 4th Dist. No. 10CA3, 2011-Ohio-2228.

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4. “Is this item a record?” – Some common applications

a. Email

A public office must analyze an email message like any other item to determine if it meets the definition of a record. As electronic documents, all emails are items containing information stored on a fixed medium (the first part of the definition). If an email is received by, created by, or comes under the jurisdiction of a public office (the second part of the definition), then its status as a record depends on the content of the message. If an email created by, received by, or coming under the jurisdiction of a public office also serves to document the activities, etc., of the public office, then it meets all three parts of the definition of a record.⁶⁴ If an email does not serve to document the activities of the office, then it does not meet the definition of a record.⁶⁵

Although the Ohio Supreme Court has not ruled directly on whether communications of public employees to or from private email accounts that otherwise meet the definition of a record are subject to the Public Records Act,⁶⁶ the issue is analogous to mailing a record from one’s home, versus mailing it from the office – the location from which the item is sent does not change its status as a record. Records transmitted via email, like all other records, must be maintained in accordance with the office’s relevant records retention schedules, based on content.⁶⁷

b. Notes

Not every piece of paper on which a public official or employee writes something meets the definition of a record.⁶⁸ Personal notes generally do not constitute records.⁶⁹ Employee notes have been found not to be public records if they are:

- kept as personal papers, not official records;
- kept for the employee’s own convenience (for example, to help recall events); **and**
- other employees did not use or have access to the notes.⁷⁰

Such personal notes do not meet the third part of the definition of a record because they do not document the activities, etc., of the public office. The Ohio Supreme Court has held in several cases

⁶⁴ *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Comms.*, 120 Ohio St.3d 372, 2008-Ohio-6253 (holding public office email can constitute public records under R.C. 149.011(G) and 149.43 if it documents the organization, policies, decisions, procedures, operations, or other activities of the public office); *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶¶ 28-32; *State ex rel. Bowman v. Jackson City School Dist.*, 4th Dist. No. 10CA3, 2011-Ohio-2228 (finding personal emails on public system to be “records” when relied upon for discipline).

⁶⁵ *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff’s Dept.*, 82 Ohio St.3d 37 (1998) (noting that, when an email message does not serve to document the organization, functions, policies, procedures, or other activities of the public office, it is not a “record,” even if it was created by public employees on a public office’s email system).

⁶⁶ *But see State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 23 (noting that respondent conceded that email messages created or received by her in her capacity as state representative that document her work-related activities constitute records subject to disclosure under R.C. 149.43 regardless of whether it was her public or her private email account that received or sent the email messages).

⁶⁷ *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 24, fn. 1 (“Our decision in no way restricts a public office from disposing of items, including transient and other documents (e.g., email messages) that are no longer of administrative value and are not otherwise required to be kept, in accordance with the office’s properly adopted policy for records retention and disposal. See R.C. 149.351. Nor does our decision suggest that the Public Records Act prohibits a public office from determining the period of time after which its email messages can be routinely deleted as part of the duly adopted records-retention policy.”).

⁶⁸ *Internatl. Union, United Auto., Aerospace & Agricultural Implement Workers of Am. v. Voinovich*, 100 Ohio App.3d 372, 376 (10th Dist. 1995) (holding that governor’s logs, journals, calendars, and appointment books not “records”); *State ex rel. Doe v. Tetrault*, 12th Dist. No. CA2011-10-070, 2012-Ohio-3879, ¶¶ 4, 28, 35-38 (noting that scrap paper used by one person to track his hours worked, for entering his hours into report, contained only personal notes and were not a record).

⁶⁹ *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, ¶ 22 (holding notes taken during public employee’s pre-disciplinary conference not “records”); *Hunter v. Ohio Bur. of Workers’ Comp.*, 10th Dist. No. 13AP-457, 2014-Ohio-5660, ¶¶ 16-17, 23-35 (holding investigators’ handwritten notes, used to convey information for oral or written reports and then disposed of, were not public records subject to disclosure); *State ex rel. Doe v. Tetrault*, 12th Dist. No. CA2011-10-070, 2012-Ohio-3879, ¶¶ 38, citing *Cranford v. Cleveland*; *State ex rel. Santeport v. Wayne Twp. Bd. of Trustees*, 12th Dist. No. CA2014-070153, 2015-Ohio-2009, ¶¶ 13, 15 (holding handwritten notes township fiscal officer took for her own convenience “to serve as a reminder when compiling the official record” were not subject to disclosure even though officer is required by statute to “keep an accurate record” of board proceedings).

⁷⁰ *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, ¶¶ 9-23; *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439, 440 (1993); *Barnes v. Columbus Civ. Serv. Comm.*, 10th Dist. No. 10AP-637, 2011-Ohio-2808, *discretionary appeal not allowed*, 130 Ohio St.3d 1418, 2011-Ohio-5605 (relating to police promotional exam assessors’ notes).

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that, in the context of a public court hearing or administrative proceeding, personal notes that meet the above criteria need not be retained as records because no information will be lost to the public.⁷¹ However, if any one of these factors does not apply (for instance, if the notes are used to create official minutes), then the notes are likely to be considered a record.⁷²

c. Drafts

If a draft document kept by a public office meets the three-part definition of a record, it is subject to both the Public Records Act and records retention law.⁷³ For example, the Ohio Supreme Court found that a written draft of an oral collective bargaining agreement submitted to a city council for its approval documented the city's version of the oral agreement, and therefore, met the definition of a record.⁷⁴ A public office may address the length of time it must keep drafts through its records retention schedules.⁷⁵

d. Electronic database contents

A database is an organized collection of related data. The Public Records Act does not require a public office to search a database for information and compile or summarize it to create new records.⁷⁶ However, if the public office already uses a computer program that can perform the search and produce the compilation or summary described by the requester, the Ohio Supreme Court has determined that the output already “exists” as a record for the purposes of the Public Records Act.⁷⁷ In contrast, where the public office would have to reprogram its computer system to produce the requested output, the Court has determined that the public office does not have that output as an existing record of the office.⁷⁸

C. What is a “public record”?

1. Statutory definition – R.C. 149.43(A)(1): “Public record” means records kept by any public office⁷⁹

This short definition joins the previously detailed definitions of “records” and “public office,” with the words “kept by.”

2. What “kept by” means

A record is only a public record if it is “kept by”⁸⁰ a public office.⁸¹ Records that do not yet exist – for example, future minutes of a meeting that has not yet taken place – are not records, much less

⁷¹ *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, ¶ 19; *State ex rel. Steffan v. Kraft*, 67 Ohio St.3d 439, 440 (1993); personal notes, if not physically “kept by” the public office, would also not fit that defining requirement of a “public record.”

⁷² *State ex rel. Verhovec v. Marietta*, 4th Dist. No. 12CA32, 2013-Ohio-5415, ¶ 30 (holding that handwritten notes that are later transcribed are records because city clerk used them not merely as personal notes, but in preparation of official minutes in clerk’s official capacity).

⁷³ *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, ¶ 20 (noting that “document need not be in final form to meet the statutory definition of ‘record’”); *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶ 20 (“[E]ven if a record is not in final form, it may still constitute a ‘record’ for purposes of R.C. 149.43 if it documents the organization, policies, functions, decisions, procedures, operations, or other activities of a public office.”); see also *State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53 (1998) (granting access to preliminary, unnumbered accident reports not yet processed into final form); *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170 (1988) (granting access to preliminary work product that had not reached its final stage or official destination); *State ex rel. Dist. 1199, Health Care & Social Serv. Union v. Gulyassy*, 107 Ohio App.3d 729, 733 (10th Dist. 1995).

⁷⁴ *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229 (2000).

⁷⁵ For additional discussion, see Chapter Five: B. “Records Management – Practical Pointers.”

⁷⁶ *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999) (citing *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273 (1998)); see also *Margolius v. Cleveland*, 62 Ohio St.3d 456, 461 (1992).

⁷⁷ *State ex rel. Scanlon v. Deters*, 45 Ohio St.3d 376, 379 (1989) (overruled on different grounds).

⁷⁸ *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 275 (1998) (finding that the agency would have had to reprogram its computers to create the requested names and addresses of a described class of members).

⁷⁹ The definition goes on to expressly include specific entities, by title, as “public offices,” and specific records as “public records,” as follows: “... including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code.” R.C. 149.43(A)(1).

⁸⁰ Prior to July 1985, the statute read, “records required to be kept by any public office,” which was a very different requirement, and which no longer applies to the Ohio definition of “public record.” *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170, 173 (1988).

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public records, until actually in existence and “kept” by the public office.⁸² A public office has no duty to furnish records that are not in its possession or control.⁸³ Similarly, if the office kept a record in the past, but has properly disposed of the record and no longer keeps it, then it is no longer a record of that office.⁸⁴ For example, where a school board first received and then returned superintendent candidates’ application materials to the applicants, those materials were no longer “public records” responsive to a newspaper’s request.⁸⁵ But “‘so long as a public record is kept by a government agency, it can never lose its status as a public record.’”⁸⁶

D. Exemptions

Both within the Public Records Act and in separate statutes throughout the Ohio Revised Code, the Ohio General Assembly has identified items and information that are either removed from the definition of public record or are otherwise required or permitted to be withheld.⁸⁷ (See Chapter Three: Exemptions to the Required Release of Public Records, for definitions, application, and examples of exemptions to the Public Records Act).

⁸¹ *State ex rel. Hubbard v. Fuerst*, 8th Dist. No. 94799, 2010-Ohio-2489 (holding that a writ of mandamus will not issue to compel a custodian of public records to furnish records that are not in his possession or control).

⁸² *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, ¶ 16 (holding that, in responding to request for copies of maps and aerial photographs, a county engineer’s office has no duty to create requested records because the public office generates such records by inputting search terms into program).

⁸³ *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, ¶ 28; *State ex rel. Sinkfield v. Rocco*, 8th Dist. No. 101579, 2014-Ohio-5555, ¶¶ 6-7.

⁸⁴ *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶¶ 21-23.

⁸⁵ See *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Cincinnati Bd. of Edn.*, 99 Ohio St.3d 6, 2003-Ohio-2260, ¶ 12 (holding that materials related to superintendent search were not “public records” where neither board nor search agency kept such materials); see also *State ex rel. Johnson v. Oberlin City School Dist. Bd. of Edn.*, 9th Dist. No. 08CA009517, 2009-Ohio-3526 (holding that individual evaluations used by board president to prepare a composite evaluation but not kept thereafter were not “public records”); *Barnes v. Columbus Civ. Serv. Comm.*, 10th Dist. No. 10AP-637, 2011-Ohio-2808, *discretionary appeal not allowed*, 2011-Ohio-5605 (relating to police promotional exam assessors’ notes).

⁸⁶ *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 28, quoting *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 41 (2000).

⁸⁷ R.C. 149.43(A)(1)(a-ee) (establishing that some records, information, and other items are not public records or are otherwise exempted).

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Chapter Two: Requesting Public Records

II. Chapter Two: Requesting Public Records

The Public Records Act sets out procedures, limits, and requirements designed to maximize requester success in obtaining access to public records, and to minimize the burden on public offices when possible. When making or responding to a public records request, it is important to be familiar with these statutory provisions to achieve a cooperative, efficient, and satisfactory outcome.

A. Rights and Obligations of Public Records Requesters and Public Offices

Every public office must organize and maintain public records in a manner that they can be made available in response to public records requests. A public office must also maintain a copy of its current records retention schedules at a location readily available to the public.

Any person can make a request for public records by asking a public office or person responsible for public records for specific, existing records. The requester may make a request in any manner the requester chooses: by phone, in person, or in an email or letter. A public office cannot require the requester to identify him or herself or indicate why he or she is requesting the records, unless a specific law permits or requires it. Often, however, a discussion about the requester's purposes or interest in seeking certain information can aid the public office in locating and producing the desired records more efficiently.

Upon receiving a request for specific, existing public records, a public office must provide prompt inspection at no cost during regular business hours, or provide copies at cost within a reasonable period of time. The public office may withhold or redact specific records that are covered by an exemption to the Public Records Act but is required to give the requester an explanation, including legal authority, for each denial. The Public Records Act provides for negotiation and clarification to help identify, locate, and deliver requested records if: 1) a requester makes an ambiguous or overly broad request; or 2) the public office believes that asking for the request in writing, or the requester's identity, or the intended use of the requested information would enhance the ability of the public office to provide the records.

1. Organization and maintenance of public records

"To facilitate broader access to public records, a public office ... shall organize and maintain public records in a manner that they can be made available for inspection or copying" in response to public records requests.⁸⁸ The fact that the office uses an organizational system that is different from, and inconsistent with, the form of a given request does not mean that the public office has violated this duty.⁸⁹ For instance, if a person requests copies of all police service calls for a particular geographical area identified by street names and the request does not match the office's method of retrieval, it is not one that the office has a duty to fulfill.⁹⁰ The Public Records Act does not require a public office or person responsible for public records to post its public records on the office's website⁹¹ (but doing so may reduce the number of public records requests the office receives for posted records). A public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.⁹²

⁸⁸ R.C. 149.43(B)(2).

⁸⁹ See *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶ 30 (noting that Public Records Act "does not expressly require public offices to maintain e-mail records so that they can be retrieved based on sender and recipient status"); *State ex rel. Bardwell v. Cleveland*, 126 Ohio St.3d 195, 2010-Ohio-3267 (noting that police department kept and made available its pawnbroker reports on 3x5 notecards; while keeping these records on 8 ½ x 11 paper could reduce delays in processing requests, there was no requirement to do so); *State ex rel. Oriana House v. Montgomery*, 10th Dist. Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 89, *rev'd on other grounds*, 110 Ohio St.3d 456, 2006-Ohio-4854 (holding that the fact that requester made what it believed to be a specific request does not mandate that the public office keep its records in such a way that access to the records was possible).

⁹⁰ *State ex rel. Evans v. Parma*, 8th Dist. No. 81236, 2003-Ohio-1159, ¶15; cf. *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, ¶ 26 (holding request not overbroad when "there is no indication that the request is not readily amenable to the method of retrieval used by the government agency").

⁹¹ *State ex rel. Patton v. Rhodes*, 129 Ohio St.3d 182, 2011-Ohio-3093, ¶¶ 15-17.

⁹² *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999); *State ex rel. Warren v. Warner*, 84 Ohio St.3d 432, 433, (1999); *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 274 (1998); *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, ¶ 16.

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A public office must have a copy of its current records retention schedule at a location readily available to the public.⁹³ The records retention schedule can be a valuable tool for a requester to obtain in advance to plan a specific and efficient public records request or for the public office to use to inform a requester how the records kept by the office are organized and maintained.

2. “Any person” may make a request

The requesting “person” need not be an Ohio or United States resident. In fact, in the absence of a law to the contrary, foreign individuals and entities domiciled in a foreign country are entitled to inspect and copy public records.⁹⁴ The requester need not be an individual, but may be a corporation, trust, or other body.⁹⁵

3. The request must be for the public office’s existing records

The proper subject of a public records request is a record that actually exists at the time of the request,⁹⁶ not unrecorded or dispersed *information* the requester seeks to obtain.⁹⁷ For example, if a person asks a public office for a list of court cases pending against it, but the office does not keep such a list, the public office is under no duty to create a list to respond to the request.⁹⁸ Additionally, there is no duty to provide records that were not in existence at the time of the request⁹⁹ or that the public office does not possess,¹⁰⁰ including records that later come into existence.¹⁰¹

4. A request must be specific enough for the public office to reasonably identify responsive records

A requester must identify the records he or she is seeking “with reasonable clarity,”¹⁰² so that the public office can identify responsive records based on the manner in which it ordinarily maintains

⁹³ R.C. 149.43(B)(2); for additional discussion, see Chapter Five: A. “Records Management.”

⁹⁴ 2006 Ohio Op. Att’y Gen. No. 038.

⁹⁵ R.C. 1.59(C); 1990 Ohio Op. Att’y Gen. No. 050.

⁹⁶ *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 23 (“[I]n cases in which public records...are properly disposed of in accordance with a duly adopted records-retention policy, there is no entitlement to these records under the Public Records Act.”); *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 389-90 (1999); *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999) (holding that a public office has “no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records”); *State ex rel. Cioffi v. Stuard*, 11th Dist. No. 2009-T-0057, 2010-Ohio-829, ¶¶ 21-23 (finding no violation of the Public Records Act when a clerk of courts failed to provide a hearing transcript that had never been created).

⁹⁷ See *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 455 (1992); *State ex rel. Evans v. Parma*, 8th Dist. No. 81236, 2003-Ohio-1159 (finding requests for service calls from geographic area to be improper request); *Capers v. White*, 8th Dist. No. 80713, *3 (2002) (holding requests for information are not enforceable in a public records mandamus); *State ex rel. Fant v. Tober*, 8th Dist. No. 63737 (1993) (holding that office had no duty to seek out records that would contain information of interest to requester), *aff’d*, 68 Ohio St.3d 117 (1993); *State ex rel. Rittner v. Dir., Fulton Cty. Emergency Med. Servs.*, 6th Dist. No. F-10-020, 2010-Ohio-4055 (finding improper request when requester sought only information on “how documents might be searched”); *State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 190 Ohio App.3d 218, 2010-Ohio-3416 (8th Dist.), *rev’d in part on other grounds*, 131 Ohio St.3d 149, 2012-Ohio-115 (finding a request for minutes of meetings that contained certain topics was an improper request for information and the public office was not required to seek out and retrieve those records that contained the information of interest to the requester); *Natl. Fedn. of the Blind of Ohio v. Ohio Rehab. Servs. Comm.*, 10th Dist. No. 09AP-1177, 2010-Ohio-3384, ¶ 35 (finding a request for information as to payments made and received from state agencies was an improper request); but see *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, ¶ 22 (finding request not ambiguous as it did not require improper research because “to constitute improper research, a record request must require a government agency to either search through voluminous documents for those that contain certain information or to create a new document by searching for and compiling information from existing records”).

⁹⁸ *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999) (holding that a public office has “no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records”); *State ex rel. Fant v. Flaherty*, 62 Ohio St.3d 426 (1992); *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197 (1991); *State ex rel. Welden v. Ohio State Med. Bd.*, 10th Dist. No. 11AP139, 2011-Ohio-6560, ¶ 9 (noting that, because a list of addresses of every licensed physician did not exist, there was no clear legal duty to create such a record); *Pierce v. Dowler*, 12th Dist. No. CA92-08-024 (1993).

⁹⁹ *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor’s Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, ¶¶ 22-26; *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, ¶ 25; *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶ 15; *State ex rel. Ohio Patrolmen’s Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 448 (2000); *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, ¶ 16.

¹⁰⁰ *State ex rel. Chatfield v. Gammill*, 132 Ohio St.3d 36, 2012-Ohio-1862; *State ex rel. Gooden v. Kagel*, 138 Ohio St.3d 343, 2014-Ohio-869, ¶¶ 5, 8-9 (noting that respondent denied that records had been filed with her, and relator provided no evidence to the contrary).

¹⁰¹ *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 392 (1999); *State ex rel. Scanlon v. Deters*, 45 Ohio St.3d 376 (1989), *overruled on other grounds*, *State ex rel. Steckman v. Jackson*, 45 Ohio St.3d 376 (1994); *Starks v. Wheeling Twp. Trustees*, 5th Dist. Nos. 2008 CA 000037, 2009 CA 000003, 2009-Ohio-4827, ¶¶ 33-34.

¹⁰² *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 17, quoting *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 29; *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 42.

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and accesses the public records it keeps.¹⁰³ The request must fairly and specifically describe what the requester is seeking.¹⁰⁴ A court will not compel a public office to produce public records when the underlying request is ambiguous or overly broad, or the requester has difficulty making a request such that the public office cannot reasonably identify what public records are being requested.¹⁰⁵

What is An Ambiguous or Overly Broad Request?

An ambiguous request is one that lacks the clarity a public office needs to ascertain what the requester is seeking and where to look for records that might be responsive. The wording of the request is vague or subject to interpretation.¹⁰⁶

A request can be overly broad when it is so inclusive that the public office is unable to identify the records sought based on the manner in which the office routinely organizes and accesses records. The courts have also found a request overly broad when it seeks what amounts to a complete duplication of a major category of a public office's records. Examples of overly broad requests include requests for:

- **All records containing particular names or words;¹⁰⁷**
- **Duplication of all records having to do with a particular topic, or all records of a particular type;¹⁰⁸**
- **Every report filed with the public office for a particular time period (if the office does not organize records in that manner);¹⁰⁹**
- **"[A]ll e-mails between" two employees (when email not organized by sender and recipient).¹¹⁰**
- **"[A]ll documents which document any and all instances of lead poisoning in the last 15 years in any dwelling owned or operated by [the office]."¹¹¹**

¹⁰³ *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901; *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752 (10th Dist. 1989).

¹⁰⁴ *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, ¶¶ 21-31; *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶ 26 ("[R]ecords request is not specific merely because it names a broad category of records listed within an agency's retention schedule."); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 17; *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312 (2001); *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752 (10th Dist. 1989); *State ex rel. Dehler v. Spatny*, 11th Dist. No. 2009-T-0075, 2010-Ohio-3052, *aff'd*, 127 Ohio St.3d 312, 2010-Ohio-5711; *State ex rel. Cushion v. Massillon*, 5th Dist. No. 2010CA00199, 2011-Ohio-4749, ¶¶ 35, 52-55 (noting that "arbitrator fees paid to attorneys" not included with particularity by request for records of "legal fees or consulting fees").

¹⁰⁵ R.C. 149.43(B)(2); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 19; *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228; *Salemi v. Cleveland Metroparks*, 8th Dist. No. 100761, 2014-Ohio-3914, ¶¶ 26-27, *aff'd*, 145 Ohio St.3d 408, 2016-Ohio-1192.

¹⁰⁶ *State ex rel. Samara v. Byrd*, 8th Dist. No. 103621, 2016-Ohio-5518, ¶ 14 (finding request for qualifications of various officials too broad and vague as "this category raises a host of educational, statutory, and bureaucratic possibilities to fulfill this request" and "presents a perpetual moving target").

¹⁰⁷ *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312 (2001).

¹⁰⁸ *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228 (relating to request for all litigation files and all grievance files for a period over six years, and for all emails between two employees during joint employment); *State ex rel. Dehler v. Spatny*, 127 Ohio St.3d 312, 2010-Ohio-5711, ¶¶ 1-3 (regarding request for prison quartermaster's orders and receipts for clothing over seven years); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 19 (regarding request for all work-related emails, texts, and correspondence of an elected official during six months in office); *State ex rel. Daugherty v. Mohr*, 10th Dist. No. 11AP-5, 2011-Ohio-6453, ¶¶ 32-35 (regarding request for all policies, emails, or memos regarding whether prison officials are authorized to "triple cell" inmates into segregation); *State ex rel. Davila v. Bellefontaine*, 3d Dist. No. 8-11-01, 2011-Ohio-4890, ¶¶ 36-43 (regarding request to inspect 911 tapes covering 15 years); *State ex rel. Davila v. East Liverpool*, 7th Dist. No. 10 CO 16, 2011-Ohio-1347, ¶¶ 22-28, (regarding request to access tape recorded 911 calls and radio traffic over seven years); *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752 (10th Dist. 1989) (regarding request for all accident reports filed on a given date with two law enforcement agencies); *Hicks v. Newtown, Ct. of Cl. No. 2017-Ohio-00612-PQ*, 2017-Ohio-8952, ¶ 8 ("A request to search for information 'regarding,' or 'relating' to, a topic is generally improper.").

¹⁰⁹ *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752 (10th Dist. 1989).

¹¹⁰ *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶¶ 13, 30-37.

¹¹¹ *State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶¶ 19-20.

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Whether a public records request is “proper” will be considered in the context of the circumstances surrounding it.¹¹² Courts differ as to whether an office that does not deny a request as ambiguous or overly broad before litigation commences has waived its ability to challenge the validity of the request.¹¹³

5. Denying, and then clarifying, an ambiguous or overly broad request

R.C. 149.43(B)(2) permits a public office to deny any part of a public records request that is ambiguous or overly broad as defined above. However, the statute then requires the public office to give the requester the opportunity to revise the denied request, by informing the requester how the office ordinarily maintains and accesses its records.¹¹⁴ Thus, the Public Records Act expressly promotes cooperation to clarify and narrow requests that are ambiguous or overly broad, in order to craft a successful, revised request.

The public office can inform the requester how the office ordinarily maintains and accesses records through a verbal or written explanation.¹¹⁵ Giving the requester a copy of the public office’s relevant records retention schedules can be a helpful starting point in explaining the office’s records organization and access.¹¹⁶ Retention schedules categorize records based on how they are used and the purpose they serve, and well-drafted schedules provide details of record subcategories, content, and duration, which can help a requester revise and narrow the request. Ohio courts have noted favorably an office’s invitation to discuss revision of an overly broad request as a circumstance supporting compliance.¹¹⁷

6. Unless a specific law provides otherwise, requests can be for any purpose, and need not identify the requester or be made in writing

A public records request does not need to be in writing or identify the person making the request.¹¹⁸ If the request is verbal, it is recommended that the public employee receiving the request write down the complete request and confirm the wording with the requester to assure accuracy. In most circumstances, the Public Records Act neither requires the requester to specify the reason for the request¹¹⁹ nor use particular wording to make a request.¹²⁰ Any requirement by the public office that the requester disclose his or her identity or the intended use of the requested public record constitutes a denial of the request.¹²¹

¹¹² *State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶¶ 19-22 (finding that when public office did not initially respond that request was overly broad, and requester later adequately clarified the request, request was appropriate).

¹¹³ *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 10th Dist. No. 12AP-448, 2013-Ohio-5219, ¶¶ 34-41 (finding office required to attempt to comply with request belatedly claimed to be overly broad); *Salemi v. Cleveland Metroparks*, 8th Dist. No. 100761, 2014-Ohio-3914, ¶¶ 26-27, (finding that when overly broad request was not denied as overly broad but only pursuant to an exemption that was found to be invalid, the public office was not in violation, but it must provide requester an opportunity to revise the request and then respond subject to any applicable redaction), *aff’d*, 145 Ohio St.3d 408, 2016-Ohio-1192.

¹¹⁴ R.C. 149.43(B)(2); *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, ¶ 11.

¹¹⁵ *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶¶ 13-16, 33-38, 40 (noting a requester may also possess preexisting knowledge of the public office’s records organization, which helps satisfy this requirement).

¹¹⁶ *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶¶ 15, 26, 36-37.

¹¹⁷ *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶40; *Ziegler v. Ohio Dept. of Public Safety*, 11th Dist. No. 2014-L-064, 2015-Ohio-139, ¶ 16 (“Although repeatedly encouraged by respondent..., relator never revised her request to clarify any of the ambiguities.”); *State ex rel. Hunter v. Ohio Bur. of Workers’ Comp.*, 10th Dist. No. 13AP-457, 2014-Ohio-5660, ¶41.

¹¹⁸ See R.C. 149.43(B)(4) and (5).

¹¹⁹ See R.C. 149.43(B)(4); see also, *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 10 (“[A] person may inspect and copy a ‘public record’ ... irrespective of his or her purpose for doing so.”), citing *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186 (1993); *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 45 (noting that purpose behind request to “inspect and copy public records is irrelevant”); 1974 Ohio Op. Att’y Gen. No. 097. But see *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279 (1999) (noting that police officer’s personal information was properly withheld from a criminal defendant who might use the information for “nefarious ends,” implicating constitutional right of privacy); R.C. 149.43(B)(9)(a) (journalist seeking safety officer personal or residential information must certify that disclosure would be in public interest).

¹²⁰ *Franklin Cty. Sheriff’s Dept. v. State Emp. Relations Bd.*, 63 Ohio St.3d 498, 504 (1992) (“No specific form of request is required by R.C. 149.43.”).

¹²¹ R.C. 149.43(B)(4).

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7. *Optional negotiation when identity, purpose, or request in writing would assist identifying, locating, or delivering requested records*

However, in the event that a public office believes that either 1) a written request, 2) knowing the intended use of the information, or 3) knowing the requester's identity would benefit the requester by enhancing the ability of the public office to identify, locate, or deliver the requested records, the public office must first inform the requester that giving this information is not mandatory and then ask if the requester is willing to provide that information to assist the public office in fulfilling the request.¹²² As with the negotiation required for an ambiguous or overly broad request, this optional negotiation regarding purpose, identity, or writing can promote cooperation and efficiency. *Reminder:* Before asking for the information, the public office must let a requester know that he or she may decline this option.

8. *Requester can choose media on which copies are made*

A requester may specify whether he or she would like to inspect the records or obtain copies.¹²³ If the requester asks for copies, he or she has the right to choose the copy medium (paper, film, electronic file, etc.).¹²⁴ The requester can choose to have the record copied: (1) on paper, (2) in the same medium as the public office keeps them,¹²⁵ or (3) on any medium upon which the public office or person responsible for the public records determines the record can "reasonably be duplicated as an integral part of the normal operations of the public office."¹²⁶ The public office may charge the requester the actual cost of copies made and may require payment of copying costs in advance.¹²⁷

9. *Requester can choose pick-up, delivery, or transmission of copies; public office may charge delivery costs*

A requester may personally pick up requested copies of public records or may send a designee.¹²⁸ Upon request, a public office must transmit copies of public records via the U.S. mail "or by any other means of delivery or transmission," at the choice of the requester.¹²⁹ Although a public office has no duty to post public records online, if a requester lists posting on the office's website as a satisfactory alternative to providing copies, then the public office has complied when it posts the requested records online.¹³⁰ Posting records online, however, does not satisfy a request for copies of those records.¹³¹ The public office may require prepayment of postage or other actual delivery costs, as well as the actual cost of supplies used in mailing, delivery, or transmission.¹³² (See paragraph 12 below for "costs" detail).

10. *Prompt inspection, or copies within a reasonable period of time*

There is no set, predetermined time period for responding to a public records request. Instead, the requirement to provide "prompt" production of records for inspection¹³³ has been interpreted by the courts as being "without delay" and "with reasonable speed."¹³⁴ Public offices are required to provide copies of requested records in a "reasonable period of time."¹³⁵ The reasonableness of the

¹²² R.C. 149.43(B)(5).

¹²³ R.C. 149.43(B)(1); see also *Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶¶ 36-37; R.C. 149.43(B)(6)-(7).

¹²⁴ R.C. 149.43(B)(6); *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St.3d 172, 2005-Ohio-685, ¶¶ 12-13.

¹²⁵ *State v. Nau*, 7th Dist. No. 07-NO-341, 2007-Ohio-6433, ¶¶ 30-31 (noting that, although direct copies could not be made because the original recording device was no longer available, requester is still entitled to copies in available alternative format).

¹²⁶ R.C. 149.43(B)(6).

¹²⁷ R.C. 149.43(B)(1), (B)(6).

¹²⁸ *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458, 459 (2000).

¹²⁹ R.C. 149.43(B)(7).

¹³⁰ *State ex rel. Patton v Rhodes*, 129 Ohio St.3d 182, 2011-Ohio-3093, ¶ 20; 2014 Ohio Op. Att'y Gen. No. 009.

¹³¹ 2014 Ohio Op. Att'y Gen. No. 009.

¹³² R.C. 149.43(B)(7).

¹³³ R.C. 149.43(B)(1); *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 35.

¹³⁴ *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 37; see also *State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53 (1998).

¹³⁵ R.C. 149.43(B)(1).

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time taken depends on the facts and circumstances of the particular request.¹³⁶ These terms do not mean “immediately,” or “without a moment’s delay,”¹³⁷ but the courts will find a violation of this requirement when an office cannot show that the time taken was reasonable.¹³⁸ Time spent on the following response tasks may contribute to the calculation of what is “prompt” or “reasonable” in a given circumstance:

Identification of Responsive Records:

- Clarify or revise request;¹³⁹ and
- Identify records.¹⁴⁰

Location and Retrieval:

- Locate records¹⁴¹ and retrieve from storage location, e.g., file cabinet, branch office, off-site storage facility.

Review, Analysis, and Redaction:

- Examine all materials for possible release;¹⁴²
- Perform necessary legal review¹⁴³ or consult with knowledgeable parties;

¹³⁶ *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner’s Office*, 2017-Ohio-8988, ¶ 59 (2017) (finding two months a reasonable amount of time to produce redacted autopsy reports of homicide victims given “the magnitude of the investigation into the murders and the corresponding need to redact the reports with care”); *State ex rel. Patituce & Assocs., LLC v. City of Cleveland*, 8th Dist. No. 104837, 2017-Ohio-300 (Jan. 20, 2017) (delay of almost three months in responding to request for personnel files of police officers and other records not unreasonable as requested records potentially contained information prohibited by disclosure); *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 565, 2015-Ohio-4914, ¶ 16, 18 (finding delay of approximately eight months in providing large amount of records unreasonable when it “was not primarily due to a review for redaction” but was caused by inadvertent omission of records from emails and producing other records before suit was filed); *Strothers v. Norton*, 131 Ohio St.3d 359, 2012-Ohio-1007 (finding 45 days not unreasonable when records responsive to multiple requests were voluminous); *State ex rel. Miller v. Ohio Dept. of Edn.*, 10th Dist. No. 15AP-1168, 2016-Ohio-8534, ¶ 8 (finding that, when “the limited number of documents sought by relator in his public records request were clearly identified and should not have been difficult to locate, review, and produce” and the only specific justification for delay was the occurrence of Thanksgiving, Christmas Day, and New Year’s Day, the delay of 61 days was unreasonable); *State ex rel. Santeft v. Wayne Twp. Bd. of Trustees*, 12th Dist. No. CA2014-07-153, 2015-Ohio-2009, ¶¶ 28-30 (finding 22 days was not unreasonable to provide records under the facts and circumstances of case, including public office’s attempt to deliver records to address found on auditor’s website when the relator did not provide an address in his request); *State ex rel. Pine Tree Towing & Recovery v. McCauley*, 5th Dist. No. 14 CA 07, 2014-Ohio-4331, ¶¶ 16-20 (finding 95 days to provide 776 pages of records was a reasonable period of time based on affidavit of the facts and circumstances of compliance efforts); *State ex rel. Davis v. Metzger*, 139 Ohio St.3d 423, 2014-Ohio-2329 (finding 3 days was a reasonable period of time to respond to records request for the personnel files of six employees); *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, ¶ 21 (“It follows that the absence of any response over a two-month period constitutes a violation of the ‘obligation in accordance with division (B)’ to respond ‘within a reasonable period of time’ per R.C. 149.43(B)(7).”); *State ex rel. Patton v. Rhodes*, 129 Ohio St.3d 182, 2011-Ohio-3093, ¶ 20 (finding 56 days was not unreasonable under the circumstances); *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, ¶ 17 (“Given the broad scope of the records requested, the governor’s office’s decision to review the records before producing them, to determine whether to redact exempt matter, was not unreasonable.”); *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 44 (finding delay due to “breadth of the requests and the concerns over the employees’ constitutional right of privacy” was not unreasonable); *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311; *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 10th Dist. No. 12AP-448, 2013-Ohio-5219, ¶ 19 (finding public office failed to provide records responsive to requests made on May 17 and October 27, 2011, within a reasonable period of time by releasing additional responsive records on April 19, 2012); *State ex rel. Davis v. Metzger*, 5th Dist. No. 12-CA-36, 2013-Ohio-1699, ¶ 20 (finding, that because requester requested, in effect, a complete duplication of the public office’s files, the public office acted reasonably by releasing responsive records approximately 54 days after receiving request); *State ex rel. Striker v. Cline*, 5th Dist. No. 09CA107, 2010-Ohio-3592, ¶ 13 (finding nine business days was a reasonable period of time to respond to a records request); *State ex rel. Holloman v. Collins*, 10th Dist. No. 09AP-1184, 2010-Ohio-3034, ¶ 12 (“[T]he critical time frame is not the number of days between when respondent received the public records request and when relator filed his action. Rather, the relevant time frame is the number of days it took for respondent to properly respond to the relator’s public records request.”).

¹³⁷ *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶ 10.

¹³⁸ *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶¶ 33-51 (finding public office’s six-day delay when providing responsive records was neither prompt nor reasonable); see also *State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53 (1998) (finding thirteen- to twenty-four-day delay to provide access to accident reports was neither prompt nor reasonable); *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 624 (1994) (finding four-month delay to respond to a request for “all incident reports and traffic tickets written in 1992” was neither prompt nor reasonable); *State ex rel. Mun. Constr. Equip. Operators’ Labor Council v. Cleveland*, 8th Dist. No. 95277, 2011-Ohio-117 (finding 28-day delay in releasing two emergency response plans and two pieces of correspondence was not reasonable).

¹³⁹ R.C. 149.43(B)(2), (5).

¹⁴⁰ R.C. 149.43(B)(2), (5).

¹⁴¹ R.C. 149.43(B)(5).

¹⁴² *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, ¶ 16; *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶ 17 (“R.C. 149.43(A) envisions an opportunity on the part of the public office to examine records prior to inspection in order to make appropriate redactions of exempt materials.” (quoting *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 623 (1994))).

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- Redact exempt materials;¹⁴⁴ and
- Provide explanation and legal authority for all redactions and/or denials.¹⁴⁵

Preparation:

- Obtain requester's choice of medium;¹⁴⁶ and
- Make copies.¹⁴⁷

Delivery:

- Wait for advance payment of costs;¹⁴⁸ and
- Deliver copies or schedule inspection.¹⁴⁹

The Ohio Supreme Court has held that no pleading of too much expense, or too much time involved, or too much interference with normal duties can be used by the public office to evade the public's right to inspect or obtain a copy of public records within a reasonable time.¹⁵⁰

11. Inspection at no cost during regular business hours

A public office must make its public records available for inspection at all reasonable times during regular business hours.¹⁵¹ "Regular business hours" means established business hours.¹⁵² When a public office operates twenty-four hours a day, such as a police department, the office may adopt hours that approximate normal administrative hours during which inspection may be provided.¹⁵³ Public offices may not charge requesters for inspection of public records.¹⁵⁴ Posting records online is one means of providing them for inspection -- the public office may not charge a fee just because a person could use their own equipment to print or otherwise download a record posted online.¹⁵⁵ Requesters are not required to inspect the records themselves; they may designate someone to inspect the requested records.¹⁵⁶

12. Copies, and delivery or transmission, "at cost"

A public office may charge costs for copies and/or for delivery or transmission, and it may require payment of both costs in advance.¹⁵⁷ "At cost" includes the actual cost of making copies,¹⁵⁸ packaging, postage, and any other costs of the method of delivery or transmission chosen by the requester.¹⁵⁹ The cost of employee time cannot be included in the cost of copies or of delivery.¹⁶⁰ A

¹⁴³ *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, ¶ 17.

¹⁴⁴ R.C. 149.43(A)(11), (B)(1); see *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶ 17 (affording clerk of courts time to redact social security numbers from requested records).

¹⁴⁵ R.C. 149.43(B)(3).

¹⁴⁶ R.C. 149.43 (B)(6).

¹⁴⁷ R.C. 149.43(B)(1), (B)(6).

¹⁴⁸ R.C. 149.43(B)(6), (B)(7).

¹⁴⁹ R.C. 149.43(B)(1).

¹⁵⁰ *State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53-54 (1998).

¹⁵¹ R.C. 149.43(B)(1).

¹⁵² *State ex rel. Butler Cty. Bar Assn. v. Robb*, 62 Ohio App.3d 298 (12th Dist. 1990) (rejecting requester's demand that a clerk work certain hours different from the clerk's regularly scheduled hours).

¹⁵³ *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619 (1994) (allowing records requests during all hours of the entire police department's operations is unreasonable).

¹⁵⁴ *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 624 (1994); *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Comms.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 37 ("The right of inspection, as opposed to the right to request copies, is not conditioned on the payment of any fee under R.C. 149.43." (quotation omitted)).

¹⁵⁵ 2014 Ohio Op. Att'y Gen. No. 009.

¹⁵⁶ *State ex rel. Sevayaga v. Reis*, 88 Ohio St.3d 458, 459 (2000).

¹⁵⁷ R.C. 149.43(B)(6), (B)(7); *State ex rel. Watson v. Mohr*, 131 Ohio St.3d 338, 2012-Ohio-1006; *State ex rel. Dehler v. Mohr*, 129 Ohio St.3d 37, 2011-Ohio-959, ¶ 3 (finding requester was not entitled to copies of requested records because he refused to submit prepayment).

¹⁵⁸ R.C. 149.43(B)(1) (copies of public records must be made available "at cost"); *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 625-26 (1994) (holding that public office cannot charge \$5.00 for initial page or for employee labor, but only for "actual cost" of final copies).

¹⁵⁹ R.C. 149.43(B)(7); *State ex rel. Call v. Fragale*, 104 Ohio St.3d 276, 2004-Ohio-6589, ¶¶ 2-8.

¹⁶⁰ *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 626 (1994).

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public office may choose to employ the services, and charge the requester the costs of, a private contractor to copy public records so long as the decision to do so is reasonable.¹⁶¹

When a statute sets the cost of certain records or for certain requesters, the specific takes precedence over the general, and the requester must pay the cost set by the statute.¹⁶² For example, because R.C. 2301.24 requires that parties to a common pleas court action must pay court reporters the compensation rate set by the judges for court transcripts, a requester who is a party to the action may not use R.C. 149.43(B)(1) to obtain copies of the transcript at the actual cost of duplication.¹⁶³ However, when a statute sets a fee for certified copies of an otherwise public record, and the requester does not request that the copies be certified, the office may only charge actual cost.¹⁶⁴ Similarly, when a statute sets a fee for “photocopies” and the request is for electronic copies rather than photocopies, the office may only charge actual cost.¹⁶⁵

There is no obligation to provide free copies to someone who indicates an inability or unwillingness to pay for requested records.¹⁶⁶ The Public Records Act neither requires a public office to allow those seeking a copy of the public record to make copies with their own equipment¹⁶⁷ nor prohibits the public office from allowing this.

13. What responsive documents can the public office withhold?

a. Duty to withhold certain records

A public office must withhold records subject to a mandatory, “must not release” exemption to the Public Records Act in response to a public records request. (See Chapter Three: A.1. “Must not release”).

b. Option to withhold or release certain records

Records subject to a discretionary exemption give the public office the option to either withhold or release the record. (See Chapter Three: A.2. “May release but may choose to withhold”).

c. No duty to release non-records

A public office need not disclose or create¹⁶⁸ items that are “non-records.” There is no obligation that a public office produce items that do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.¹⁶⁹ A record must document something that the office does.¹⁷⁰ The Ohio Supreme Court expressly rejected the notion that an item is a “record” simply because the public office *could* use the item to carry out its duties and responsibilities.¹⁷¹ Instead, the public office must actually use the item; otherwise, it is not a

¹⁶¹ *State ex rel. Gibbs v. Concord Twp. Trustees*, 152 Ohio App.3d 387, 2003-Ohio-1586, ¶ 31 (11th Dist.); *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, ¶ 29 (holding that, as long as the decision to hire a private contractor is reasonable, a public office may charge requester the actual cost to extract requested electronic raw data from an otherwise copyrighted database).

¹⁶² R.C. 1.51 (rules of statutory construction); *State ex rel. Motor Carrier Serv., Inc. v. Rankin*, 135 Ohio St.3d 395, 2013-Ohio-1505, ¶¶ 26-32; *State ex rel. Slagle v. Rogers*, 103 Ohio St.3d 89, 90, 2004-Ohio-4354, ¶¶ 5-15.

¹⁶³ *State ex rel. Slagle v. Rogers*, 103 Ohio St.3d 89, 92, 2004-Ohio-4354, ¶ 15; *State ex rel. Kirin v. D’Apolito*, 7th Dist. No. 15 MA 61, 2015-Ohio-3964, ¶¶ 12-14; *State ex rel. Kirin v. Evans*, 7th Dist. No. 15 MA 62, 2015-Ohio-3965, ¶ 29-30; *Lawrence v. Shaughnessy*, 8th Dist. No. 102616, 2015-Ohio-885, ¶ 6. For another example, see R.C. 5502.12 (Dept. of Public Safety may charge \$4.00 for each accident report copy).

¹⁶⁴ *State ex rel. Call v. Fragale*, 104 Ohio St.3d 276, 2004-Ohio-6589 (holding that court offered uncertified records at actual cost, but may charge up to \$1.00 per page for certified copies pursuant to R.C. 2303.20); *State ex rel. Butler Cty. Bar Assn. v. Robb*, 66 Ohio App.3d 398 (12th Dist. 1990).

¹⁶⁵ *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, ¶¶ 42-62.

¹⁶⁶ *State ex rel. Call v. Fragale*, 104 Ohio St.3d 276, 2004-Ohio-6589, ¶ 6; *Breeden v. Mitrovich*, 11th Dist. No. 2005-L-055, 2005-Ohio-5763, ¶ 10.

¹⁶⁷ R.C. 149.43(B)(6). For discussion of previous law, see 2004 Ohio Op. Att’y Gen. No. 011 (determining that county recorder may not prohibit person from using digital camera to duplicate records or assess a copy fee).

¹⁶⁸ R.C. 149.40 (“The ... public office shall cause to be made *only* such records as are necessary for ... adequate and proper documentation ...” (emphasis added)).

¹⁶⁹ *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 25; *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188 (1993) (“To the extent that any item contained in a personnel file is not a ‘record,’ i.e., does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed.”); R.C. 149.011(G).

¹⁷⁰ *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff’s Dept.*, 82 Ohio St.3d 37 (1998) (finding allegedly racist emails circulated between public employees are not “records” when the requested emails were not used to conduct the business of the public office).

¹⁷¹ See *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61 (1998).

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record.¹⁷² The Public Records Act itself does not *restrict* a public office from releasing non-records, but other laws may prohibit a public office from releasing certain information in non-records.¹⁷³

A public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.¹⁷⁴ For example, if a person asks a public office for a list of cases pending against it, but the office does not keep such a list, the public office is under no duty to create a list to respond to the request.¹⁷⁵ The office also need not conduct a search for and retrieve records that contain described information that is of interest to the requester.¹⁷⁶

14. Denial of a request, redaction, and a public office's duties of notice

Both the withholding of an entire record and the redaction of any part of a record are considered a denial of the request to inspect or copy that particular item.¹⁷⁷ Any requirement by the public office that the requester disclose the requester's identity or the intended use of the requested public record also constitutes a denial of the request.¹⁷⁸

a. Redaction – statutory definition

“Redaction” means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a “record.”¹⁷⁹ For records on paper, redaction is the blacking or whiting out of non-public information in an otherwise public document. A public office may redact audio, video, and other electronic records by processes that obscure or delete specific content. “If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt.”¹⁸⁰ Therefore, a public office may redact only that part of a record subject to an exemption or other valid basis for withholding. However, an office may withhold an entire record when exempted information is “inextricably intertwined” with the entire content of a particular record such that redaction cannot protect the exempted information.¹⁸¹

The Public Records Act states that “[a] redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if a federal or state law authorizes or requires the public office to make the redaction.”¹⁸²

¹⁷² See 2007 Ohio Op. Att’y Gen. No. 034 (determining that an item of physical evidence in the possession of the prosecuting attorney that was not introduced as evidence was not a “record”); *State ex rel. WBNS-TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, ¶ 27 (noting that judge used redacted information to decide whether to approve settlement); *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61 (1998) (finding that, because judge read unsolicited letters but did not rely on them in sentencing, letters did not serve to document any activity of the public office and were not “records”); *State ex rel. Sensel v. Leone*, 85 Ohio St.3d 152 (1999) (finding letters alleging inappropriate behavior of coach not “records” and could be discarded); *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff’s Dept.*, 82 Ohio St.3d 37 (1998) (finding allegedly racist email messages circulated between public employees were not “records”); *Andes v. Ohio AG’s Office*, Ct. of Cl. No. 2017-0144-PQ, 2017-Ohio-4251, ¶ 14 (contents of electronic storage devices seized during criminal investigation that were either not relevant to the investigation or used in the criminal prosecution are not records).

¹⁷³ See, e.g., R.C. 1347.01, et seq. (Ohio Personal Information Systems Act).

¹⁷⁴ *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153 (1999); *State ex rel. Warren v. Warner*, 84 Ohio St.3d 432, 1999-Ohio-475; *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273 (1998); *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff’s Dept.*, 82 Ohio St.3d 37, 42 (1998); *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197 (1991).

¹⁷⁵ *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197 (1991).

¹⁷⁶ *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154 (1999) (finding that a public office has “no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records”).

¹⁷⁷ R.C. 149.43(B)(1).

¹⁷⁸ R.C. 149.43(B)(4).

¹⁷⁹ R.C. 149.43(A)(11).

¹⁸⁰ R.C. 149.43(B)(1).

¹⁸¹ See *State ex rel. Master v. Cleveland*, 76 Ohio St.3d 340, 342, 1996-Ohio-300; see also *State ex rel. McGee v. Ohio State Bd. of Psychology*, 49 Ohio St.3d 59, 60 (1990) (finding that, when exempt information is so “intertwined” with the public information as to reveal the exempt information from the context, the record itself, and not just the exempt information, may be withheld), *overruled in part on other grounds*, *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420 (1994).

¹⁸² R.C. 149.43(B)(1).

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b. Requirement to notify of and explain redactions and withholding of records

Public offices must either “notify the requester of any redaction or make the redaction plainly visible.”¹⁸³ In addition, if an office denies a request in part or in whole, the public office must “provide the requester with an explanation, including legal authority, setting forth why the request was denied.”¹⁸⁴ If the requester made the initial request in writing, then the office must also provide its explanation for the denial in writing.¹⁸⁵

c. No obligation to respond to duplicate request

When a public office responds to a request, and the requester sends a follow-up letter reiterating a request for essentially the same records, the public office is not required to provide an additional response.¹⁸⁶

d. No waiver of unasserted, applicable exemptions

If the requester later files a mandamus action against the public office, the public office is not limited to the explanation(s) previously given for denial, but may rely on additional reasons or legal authority in defending the mandamus action.¹⁸⁷

15. Burden or expense of compliance

A public office cannot deny or delay response to a public records request on the grounds that responding will interfere with the operation of the public office.¹⁸⁸ However, when a request unreasonably interferes with the discharge of the public office’s duties, the office may not be obligated to comply.¹⁸⁹ For example, a requester does not have the right to the complete duplication of voluminous files of a public office.¹⁹⁰

B. Statutes that Modify General Rights and Duties

Through legislation, the General Assembly can change the preceding rights and duties for particular records, for particular public offices, for particular requesters, or in specific situations. Be aware that the general rules of public records law may be modified in a variety and combination of ways. Below are a few examples of modifications to the general rules.

1. Particular records

- (a) Although most DNA records kept by the Ohio Bureau of Criminal Identification and Investigation (BCI) are protected from disclosure by exemptions,¹⁹¹ Ohio law requires that the results of DNA testing of an inmate who obtains post-conviction testing

¹⁸³ R.C. 149.43(B)(1).

¹⁸⁴ R.C. 149.43(B)(3).

¹⁸⁵ R.C. 149.43(B)(3).

¹⁸⁶ *State ex rel. Laborers Internatl. Union of N. Am., Local Union No. 500 v. Summerville*, 122 Ohio St.3d 1234, 2009-Ohio-4090, ¶ 6.

¹⁸⁷ R.C. 149.43(B)(3).

¹⁸⁸ *State ex rel. Beacon Journal Publishing Co. v. Andrews*, 48 Ohio St.2d 283, 289 (1976) (“No pleading of too much expense, or too much time involved, or too much interference with normal duties, can be used by the [public office] to evade the public’s right to inspect and obtain a copy of public records within a reasonable amount of time”).

¹⁸⁹ *State ex rel. Dehler v. Mohr*, 129 Ohio St.3d 37, 2011-Ohio-959 (allowing inmate to personally inspect requested records in another prison would have created security issues, unreasonably interfered with the official’s discharge of their duties, and violated prison rules); *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 623 (1994) (explaining that “unreasonabl[e] interfere[nce] with the discharge of the duties of the officer having custody” of the public records creates an exemption to the rule that public records should be generally available to the public), citing *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 81 (1988); *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371 (1960) (“[A]nyone may inspect [public] records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.” (quotation omitted); *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752, 756 (10th Dist. 1989).

¹⁹⁰ *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 17 (“[T]he Public Records Act does not contemplate that any individual has the right to a complete duplication of voluminous files kept by government agencies.” (quotation omitted)).

¹⁹¹ R.C. 109.573(D), (E), (G)(1); R.C. 149.43(A)(1)(j).

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must be disclosed to any requester,¹⁹² which would include results of testing conducted by BCI.

- (b) Certain Ohio sex offender records must be posted on a public website without waiting for an individual public records request.¹⁹³
- (c) Ohio law specifies that a public office's release of an "infrastructure record" or "security record" to a private business for certain purposes does not waive these exemptions,¹⁹⁴ despite the usual rule that voluntary release to a member of the public waives any exemption(s).¹⁹⁵
- (d) Journalists may inspect, but not copy, some of the records to which they have special access, despite the general right to choose either inspection or copies.¹⁹⁶
- (e) Contracts and financial records of moneys expended in relation to services provided under those contracts to federal, state, or local government by another governmental entity or agency, or by most nonprofit corporations or associations, shall be deemed to be public records, except as otherwise provided by R.C. 149.431.¹⁹⁷
- (f) Regardless of whether the dates of birth of office officials and employees fit the statutory definition of "records," every public office must maintain a list of the names and dates of birth of every official and employee, which "is a public record and shall be made available upon request."¹⁹⁸

2. Particular public offices

- (a) The Ohio Bureau of Motor Vehicles is authorized to charge a non-refundable fee of four dollars for each highway patrol accident report for which it receives a request,¹⁹⁹ and a coroner's office may charge a record retrieval and copying fee of twenty-five cents per page, with a minimum charge of one dollar,²⁰⁰ despite the general requirement that a public office may only charge the "actual cost" of copies.²⁰¹
- (b) Ohio courts' case records and administrative records are not subject to the Public Records Act. Rather, courts apply the records access rules of the Ohio Supreme Court Rules of Superintendence.²⁰²
- (c) Information in a competitive sealed proposal and bid submitted to a county contracting authority becomes a public record subject to inspection and copying only *after* the contract is awarded. After the bid is opened by the contracting authority, any information that is subject to an exemption set out in the Public

¹⁹² R.C. 2953.81(B).

¹⁹³ R.C. 2950.08(A) (BCI sex offender registry and notification, or "SORN" information, not open to the public). *But see* R.C. 2950.13(A)(11) (certain SORN information must be posted as a database on the internet and is a public record under R.C. 149.43).

¹⁹⁴ R.C. 149.433(D).

¹⁹⁵ *See, e.g., State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶ 22.

¹⁹⁶ *See, e.g., R.C. 4123.88(D)* (Industrial Commission or Workers Compensation Bureau shall disclose to journalist addresses and telephone numbers of claimants, and the dependents of those claimants); R.C. 313.10(D) ("A journalist may submit to the coroner a written request to view preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent made by the coroner....").

¹⁹⁷ R.C. 149.431; *State ex rel. Bell v. Brooks*, 130 Ohio St.3d 87, 2011-Ohio-4897, ¶¶ 30-40.

¹⁹⁸ R.C. 149.434.

¹⁹⁹ R.C. 5502.12 (also provides that other agencies that submit such reports may charge requesters who claim an interest arising out of a motor vehicle accident a non-refundable fee not to exceed four dollars).

²⁰⁰ R.C. 313.10(B).

²⁰¹ *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 625 (1994); *see also State ex rel. Russell v. Thomas*, 85 Ohio St.3d 83, 85 (1999) (holding that one dollar per page did not represent actual cost of copies); 2001 Ohio Op. Att'y Gen. No. 012.

²⁰² Rules of Superintendence for the Courts of Ohio. For additional discussion, see Chapter Six: D. "Court Records."

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Records Act may be redacted by the contracting authority before the record is made public.²⁰³

3. Particular requesters or purposes

- (a) Directory information concerning public school students may not be released if the intended use is for a profit-making plan or activity.²⁰⁴
- (b) Incarcerated persons, commercial requesters, and journalists are subject to combinations of modified rights and obligations, discussed below.

4. Modified records access for certain requesters

The rights and obligations of the following requesters differ from those generally provided by the Public Records Act. Some are required to disclose the intended use of the records or motive behind the request. Others may be required to provide more information or make the request in a specific fashion. Some requesters are given greater access to records than other persons, and some are more restricted. These are only examples. Changes to the law are constantly occurring, so be sure to check for any current law modifying access to the particular public records with which you are concerned.

a. Prison inmates

Prison inmates may request public records,²⁰⁵ but they must follow a statutorily-mandated process if requesting records concerning any criminal investigation or prosecution or a juvenile delinquency investigation that otherwise would be a criminal investigation or prosecution if the subject were an adult.²⁰⁶ This process applies to both state and federal inmates²⁰⁷ and reflects the General Assembly's public-policy decision to restrict a convicted inmate's unlimited access to public records, in order to conserve law enforcement resources.²⁰⁸ An inmate's designee may not make a public records request on behalf of the inmate that the inmate is prohibited from making directly.²⁰⁹ The criminal investigation records subject to this process when requested by an inmate are broader than those defined under the Confidential Law Enforcement Investigatory Records (CLEIRs) exemption, and include offense and incident reports.²¹⁰ A public office is not required to produce such records in response to an inmate request unless the inmate first obtains a finding from the judge who sentenced or otherwise adjudicated the inmate's case that the information sought is necessary to support what appears to be a justiciable claim, i.e., a pending proceeding with respect to which the requested documents would be material.²¹¹ The inmate's request must be filed in the inmate's original criminal action, not in a separate, subsequent forfeiture action involving the inmate.²¹² If an

²⁰³ R.C. 307.862(C), R.C. 307.87, and R.C. 307.88; 2012 Ohio Op. Att'y Gen. No. 036.

²⁰⁴ R.C. 3319.321(A) (allowing schools to "require disclosure of the requester's identity or the intended use of the directory information ... to ascertain whether the directory information is for use in a profit-making plan or activity").

²⁰⁵ See *State ex rel. Dehler v. Collins*, 10th Dist. No. 09AP-703, 2010-Ohio-5436 (holding correctional facilities may be able to limit the access to, and provision of, requested records due to personnel and safety considerations); see also *State ex rel. Dehler v. Kelly*, 11th Dist. No. 2009-T-0084, 2010-Ohio-3053 (noting that prison officials had to comply with various requests submitted by inmate).

²⁰⁶ R.C. 149.43(B)(8); *State ex rel. Papa v. Starkey*, 5th Dist. No. 2014CA00001, 2014-Ohio-2989, ¶¶ 7-9 (noting that the statutory process applies to an incarcerated criminal offender who seeks records relating to any criminal prosecution, not just of the inmate's own criminal case).

²⁰⁷ *State ex rel. Bristow v. Chief of Police, Cedar Point, Police Dept.*, 6th Dist. No. E-15-066, 2016-Ohio-3084, ¶ 10.

²⁰⁸ *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶ 14; *State ex rel. Bristow v. Chief of Police, Cedar Point, Police Dept.*, 6th Dist. No. E-15-066, 2016-Ohio-3084, ¶ 11 (following *Thornton*).

²⁰⁹ *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 128 Ohio St.3d 528, 2011-Ohio-1914.

²¹⁰ *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶¶ 9-18; *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458 (2000).

²¹¹ R.C. 149.43(B)(8); *McCain v. Huffman*, 2017-Ohio-9241, ¶ 12; *State v. Dowell*, 8th Dist. No. 102408, 2015-Ohio-3237, ¶ 8 (denying inmate request for records when inmate "did not identify any pending proceeding for which the requested records would be material"); *State v. Heid*, 4th Dist. Nos. 14CA3668, 14CA3669, 2015-Ohio-1502, ¶ 15 (denying request when inmate "conceded that he wanted to support a potential delayed appeal or postconviction action that he had not yet filed, i.e. he did not have a pending proceeding at the time he sought the records"); *State v. Cope*, 12th Dist. No. CA2015-02-017, 2015-Ohio-3935, ¶ 17 (same); *State v. Heid*, 4th Dist. No. 14CA3655, 2015-Ohio-1467, ¶ 18 (noting that, among other failures, inmate "did not establish that the records sought contained information that would be either necessary or material"); *State ex rel. Rodriguez*, 12th Dist. No. CA2013-11-011, 2014-Ohio-2583, ¶ 14; *State v. Wilson*, 2d Dist. No. 23734, 2011-Ohio-4195 (holding application for clemency is not a "justiciable claim"); *State v. Rodriguez*, 6th Dist. No. WE-10-062, 2011-Ohio-1397, ¶ 10 (noting that relator identified no pending proceeding to which his claims of evidence tampering would be material).

²¹² *State v. Lather*, 6th Dist. No. S-08-036, 2009-Ohio-3215, ¶ 13; *State v. Chatfield*, 5th Dist. No. 10CA12, 2010-Ohio-4261, ¶ 14 (noting that inmate may file R.C. 149.43(B)(8) motion, even if currently represented by criminal counsel in the original action).

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inmate requesting public records concerning a criminal prosecution does not follow these requirements, any suit to enforce his or her request will be dismissed.²¹³ The appropriate remedy for an inmate who is denied a 149.43(B)(8) order is an appeal of the sentencing judge's findings, not a mandamus action.²¹⁴ Any public records that were obtained by a litigant prior to the ruling in *Steckman v. Jackson* are not excluded for use in the litigant's post-conviction proceedings.²¹⁵ One court has concluded that R.C. 2959.26(A)'s requirement that an inmate exhaust inmate grievance procedures before filing any civil action relating to an aspect of institutional life that directly and personally affects an inmate applies to mandamus actions brought to enforce public records requests when those requests concern aspects of institutional life that directly and personally affect the inmate.²¹⁶

b. Commercial requesters

Unless a specific statute provides otherwise,²¹⁷ it is irrelevant whether the intended use of requested records is for commercial purposes.²¹⁸ However, if an individual or entity is making public records requests for commercial purposes, the public office receiving the requests can limit the number of records "that the office will physically deliver by United States mail or by another delivery service to ten per month."²¹⁹

For purposes of this limitation, the term "commercial purposes"²²⁰ is to be narrowly construed and does not include the following activities:

- Reporting or gathering news;
- Reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government; or
- Nonprofit educational research.²²¹

c. Journalists

Several statutes grant "journalists"²²² enhanced access to certain records that are not available to other requesters. This enhanced access is sometimes conditioned on the journalist providing information or representations not normally required of a requester.

For example, a journalist may obtain the actual residential address of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the Bureau of Criminal Identification and Investigation, or federal law enforcement officer. If the individual's spouse, former spouse, or child is employed by a public office, a journalist may obtain the name and address of that spouse or child's employer in this manner as well.²²³ A journalist may also request customer information maintained by a municipally-owned or operated public utility, other than social security numbers and any private financial

²¹³ *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 8th Dist. No. 93326, 2009-Ohio-3301; *Hall v. State*, 11th Dist. No. 2008-T-0073, 2009-Ohio-404; *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶¶ 9-18; *State ex rel. Sevayega v. Reis*, 88 Ohio St.3d 458 (2000).

²¹⁴ *State v. Heid*, 4th Dist. No. 14CA3655, 2014-Ohio-4714, ¶¶ 3-5; *State v. Thornton*, 2d Dist. No. 23291, 2009-Ohio-5049; *State v. Armengau*, 10th Dist. No. 16AP-418, 2016-Ohio-5534, ¶ 12.

²¹⁵ *State v. Broom*, 123 Ohio St.3d 114, 2009-Ohio-4778.

²¹⁶ *State ex rel. Bloodworth v. Bogan*, 12th Dist. No. CA 2016-05-043, 2017-Ohio-7810, ¶ 26 (Sept. 25, 2017).

²¹⁷ See, e.g., R.C. 3319.321(A) (prohibiting schools from releasing student directory information "to any person or group for use in a profit-making plan or activity").

²¹⁸ 1990 Ohio Op. Att'y Gen. No. 050; see also, R.C. 149.43(B)(4).

²¹⁹ R.C. 149.43(B)(7)(c)(i) (noting exception when "the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes"). NOTE: The limit only applies to records the office "will physically deliver by United States mail or by another delivery service."

²²⁰ R.C. 149.43(B)(7)(c)(iii).

²²¹ R.C. 149.43(B)(7)(c)(iii).

²²² R.C. 149.43(B)(9)(c) states; "As used in division (B)(9) of [R.C. 149.43], 'journalist' means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public."

²²³ R.C. 149.43(B)(9)(a).

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information such as credit reports, payment methods, credit card numbers, and bank account information.²²⁴ To obtain this information, the journalist must:

- Make the request in writing and sign the request;
- Identify himself or herself by name, title, and employer's name and address; and
- State that disclosure of the information sought would be in the public interest.²²⁵

Journalist Requests		
Type of Request	ORC Section	Requester May:
Actual personal residential address of a: <ul style="list-style-type: none">• Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, BCI agent, or federal law enforcement officer	149.43(B)(9)(a)	Inspect or copy the record(s)
Employer name and address, if the employer is a public office, of a spouse, former spouse, or child of the following: <ul style="list-style-type: none">• Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, BCI agent, or federal law enforcement officer	149.43(B)(9)(a)	Inspect or copy the record(s)
Customer information maintained by a municipally owned or operated public utility, other than: <ul style="list-style-type: none">• Social security numbers• Private financial information such as credit reports, payment methods, credit card numbers, and bank account information	149.43(B)(9)(b)	Inspect or copy the record(s)
Coroner Records, including: <ul style="list-style-type: none">• Preliminary autopsy and investigative notes²²⁶• Suicide notes• Photographs of the decedent made by the coroner or those directed or supervised by the coroner	313.10(D)	Inspect the record(s) only, but may not copy them or take notes

(continued on next page)

²²⁴ R.C. 149.43(B)(9)(b).

²²⁵ R.C. 149.43(B)(9)(a), (b).

²²⁶ One court has held that journalists are not entitled to inspect confidential law enforcement investigatory records contained within preliminary autopsy reports. *State ex rel. Cincinnati Enquirer v. Pike Cty. Gen. Health Dist.*, 4th Dist. No. 16CA873, 2017-Ohio-1084 (Mar. 17, 2017), appeal pending.

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Type of Request	ORC Section	Requester May:
Workers' Compensation Initial Filings, including: <ul style="list-style-type: none">Addresses and telephone numbers of claimants, regardless of whether their claims are active or closed, and the dependents of those claimants	4123.88(D)(1)	Inspect or copy the record(s)
Actual confidential personal residential address of a: <ul style="list-style-type: none">Public children service agency employeePrivate child placing agency employeeJuvenile court employeeLaw enforcement agency employee Note: The journalist must adequately identify the person whose address is being sought and must make the request to the agency by which the individual is employed or to the agency that has custody of the records	2151.142(D)	Inspect or copy the record(s)

5. Modified access to certain public offices' records

As with requesters, the rights and obligations of public offices can be modified by law. Some of these modifications impose conditions on obtaining records in volume and setting permissible charges for copying. The following provisions are only examples. The law is subject to change, so be sure to check for any current law modifying access to particular public records with which you are concerned.

a. Bulk commercial requests from Ohio Bureau of Motor Vehicles

"The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten percent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law."²²⁷ The statute sets out definitions of "actual cost," "bulk commercial extraction request," "commercial," "special extraction costs," and "surveys, marketing, solicitation, or resale for commercial purposes."²²⁸

b. Copies of Coroner's Records

Generally, all records of a coroner's office are public records subject to inspection by the public.²²⁹ A coroner's office may provide copies to a requester upon a written request and payment by the requester of a statutory fee.²³⁰ However, the following are not public records: preliminary autopsy and investigative notes and findings; photographs of a decedent made by the coroner's office; suicide notes; medical and psychiatric records of the decedent provided to the coroner; records of a

²²⁷ R.C. 149.43(F)(1).

²²⁸ These definitions are set forth at R.C. 149.43(F)(2) (a)-(d), and (F)(3).

²²⁹ R.C. 313.10(A).

²³⁰ R.C. 313.10(B).

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deceased individual that are part of a confidential enforcement investigatory record;²³¹ and laboratory reports generated from analysis of physical evidence by the coroner's laboratory that is discoverable under Ohio Criminal Rule 16.²³² The following three classes of requesters may request some or all of the records that are otherwise exempted from disclosure: 1) next of kin of the decedent or the representative of the decedent's estate (copy of full records),²³³ 2) journalists (limited right to inspect),²³⁴ and 3) insurers (copy of full records).²³⁵ The coroner may notify the decedent's next of kin if a journalist or insurer has made a request.²³⁶

C. *Going "Above and Beyond," Negotiation, and Mediation*

1. *Think outside the box – go above and beyond your duties*

Requesters may become impatient with the time a response is taking, and public offices are often concerned with the resources required to process a large or complex request, and either may believe that the other is pushing the limits of the public records laws. These problems can be minimized if one or both parties go above and beyond their duties in search of a result that works for both. Some examples:

- If a request is made for paper copies, and the office keeps the records electronically, the office might offer to email digital copies instead (particularly if this is easier for the office). The requester may not know that the records are kept electronically or that sending by email is cheaper and faster for the requester. The worst that can happen is the requester declines.
- If a requester tells the public office that one part of a request is very urgent for them and the rest can wait, then the office might agree to expedite that part in exchange for relaxed timing for the rest.
- If a township fiscal officer's ability to copy 500 pages of paper records is limited to a slow ink-jet copier, then either the fiscal officer or the requester might suggest taking the documents to a copy store, where the copying will be faster and likely cheaper.

2. *How to find a win-win solution: negotiate*

The Public Records Act requires negotiated clarification when an ambiguous or overly broad request is denied (see Section A.5. above) and offers optional negotiation when a public office believes that sharing the reason for the request or the identity of the requester would help the office identify, locate, or deliver the records (see Section A.7. above). But negotiation is not limited to these circumstances. If you have a concern or a creative idea (see Section C.1. above), remember that "it never hurts to ask." If the other party appears frustrated or burdened, ask them, "Is there another way to do this that works better for you?"

²³¹ An autopsy report is a "[r]ecord of a deceased individual" within the meaning of R.C. 313.10(A)(2)(e) such that information in a final autopsy report that is a confidential law enforcement investigatory record (CLEIR) is exempt from disclosure while the investigation is ongoing. [State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office](#), 2017-Ohio-8988.

²³² R.C. 313.10(A)(2)(a)-(f).

²³³ R.C. 313.10(C). A next-of-kin is entitled to a complete autopsy report even though the next-of-kin is incarcerated for murdering the subject of the autopsy report and the provisions of the Public Records Act regarding inmates, see *infra*, did not apply. [State ex rel. Clay v. Cuyahoga Cty. Med. Examiners Office](#), 2017-Ohio 8714.

²³⁴ R.C. 313.10(D).

²³⁵ R.C. 313.10(E).

²³⁶ R.C. 313.10(F).

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III. Chapter Three: Exemptions to the Required Release of Public Records²³⁷

While the Public Records Act presumes and favors public access to government records, Ohio and federal laws provide limited exemptions to protect certain records from mandatory release. These laws can include constitutional provisions,²³⁸ statutes,²³⁹ common law,²⁴⁰ or properly authorized administrative codes and regulations.²⁴¹

However, local ordinances and local court rules²⁴² cannot create public records exemptions. A contract between a public office and other parties also cannot create a public records exemption.²⁴³ The federal Freedom of Information Act (FOIA) and the exemptions it contains do not apply to Ohio public offices.

A. Categories of Exemptions

There are two types of public records exemptions: 1) those that mandate that a public office cannot release certain documents; and 2) those that allow the public office to choose whether to release certain documents.

1. “Must not release”

The first type of exemption prohibits a public office from releasing specific records or information to the public, sometimes under civil or criminal penalty. Such records are prohibited from release in response to a public records request and the public office has no choice but to deny the request. These mandatory restrictions are expressly included as exemptions to the Public Records Act by R.C. 149.43(A)(1)(v), often referred to as the “catch-all” exemption: “records the release of which is prohibited by state or federal law.”

A few “must not release” exemptions apply to public offices on behalf of, and are subject to the decisions of, another person. For example, a public legal or medical office may be restricted by the attorney-client or physician-patient privilege from releasing certain records of its clients or patients.²⁴⁴ In such cases, if the client or patient chooses to waive the privilege, the public office would be released from the otherwise mandatory exemption.²⁴⁵

2. “May release, but may choose to withhold”

The other type of exemption, a “discretionary” exemption, gives a public office the choice of either withholding or releasing specific records, often by excluding certain records from the definition of public records.²⁴⁶ This means that the public office does not have to disclose these records in response to a public records request; however, it may choose to do so without fear of punishment under the law.²⁴⁷ Such provisions are usually state or federal statutes. Some laws contain

²³⁷ In this section, the term “exemption” will be used to describe laws authorizing the withholding of records from public records requests. Note that the term “exception” also is used often in public records law and court cases.

²³⁸ See, e.g., *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279 (1999).

²³⁹ See, e.g., *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557 (applying R.C. 2151.421).

²⁴⁰ An example being the common law attorney-client privilege. *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶ 27.

²⁴¹ *State ex rel. Lindsay v. Dwyer*, 108 Ohio App.3d 462, 467 (10th Dist. 1996) (finding State Teacher Retirement System properly denied access to beneficiary form pursuant to Ohio Administrative Code); 2000 Ohio Op. Att’y Gen. No. 036 (determining that federal regulation prohibits release of service member’s discharge certificate without service member’s written consent). But see *State ex rel. Gallon & Takacs Co., L.P.A. v. Conrad*, 123 Ohio App.3d 554, 561 (10th Dist. 1997) (holding that, if regulation was promulgated outside of agency’s statutory authority, the invalid rule will not constitute an exemption to the Public Records Act).

²⁴² *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 11.

²⁴³ *State ex rel. Clough v. Franklin Cty. Children Servs.*, 144 Ohio St.3d 83, 2015-Ohio-3425, ¶ 16 (holding that a written policy of permitting the clients of a public office to see their files does not create a legally enforceable obligation on the public office to provide access when access to requested files is prohibited by law).

²⁴⁴ *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379 (1998).

²⁴⁵ See *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789 (illustrating the interplay of attorney-client privilege, waiver, public records law, and criminal discovery).

²⁴⁶ 2000 Ohio Op. Att’y Gen. No. 021 (“R.C. 149.43 does not expressly prohibit the disclosure of items that are excluded from the definition of public records, but merely provides that their disclosure is not mandated.”); see also 2001 Ohio Op. Att’y Gen. No. 041.

²⁴⁷ *Bentkowski v. Trafis*, 8th Dist. No. 102540, 2015-Ohio-5139 (holding that the Public Records Act does not explicitly and directly impose a duty upon officials to withhold records that are exempt from disclosure).

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ambiguous titles or text such as “confidential” or “private,” but the test for public-records purposes is whether a particular law applied to a particular request actually *prohibits* release of a record or just gives the public office the *choice* to withhold the record.

3. Contracts and FOIA cannot create exemptions

a. Contractual terms of confidentiality

Parties to a public contract, including settlement agreements,²⁴⁸ memoranda of understanding,²⁴⁹ and collective bargaining agreements,²⁵⁰ cannot nullify the Public Records Act’s guarantee of public access to public records.²⁵¹ Nor can an employee handbook confidentiality provision alter the status of public records.²⁵² In other words, a contract cannot nullify or restrict the public’s access to public records.²⁵³ Absent a statutory exemption, a “public entity cannot enter into enforceable promises of confidentiality regarding public records.”²⁵⁴

b. FOIA does not apply to Ohio public offices

The federal Freedom of Information Act (FOIA) is a federal law that does not apply to state or local agencies or officers.²⁵⁵ A request for government records from a state or local agency in Ohio is governed only by the Public Records Act. Requests for records and information from federal agencies located in Ohio (or anywhere else in the country or the world) are governed by FOIA.²⁵⁶

B. Multiple and Mixed Exemptions

Many records are subject to more than one exemption. Some may be subject to both a discretionary exemption (giving the public office the option to withhold), as well as a mandatory exemptions (prohibiting release), so it is important for public offices to find all exemptions that apply to a particular record, rather than acting on the first one that is found to apply.

C. Waiver of an Exemption

If a valid discretionary exemption applies to a particular record, but the public office voluntarily discloses it, the office is deemed to have waived²⁵⁷ (abandoned) that exemption for that particular record, especially if the disclosure was to a person whose interests are antagonistic to those of the public

²⁴⁸ Chapter Three: F. 5. g. “Settlement agreements and other contracts.”

²⁴⁹ *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶¶ 40-41.

²⁵⁰ *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400 (1997) (holding that, because contractual provision designating as confidential applications and resumes for city position could not alter public nature of information, applications and resumes were subject to disclosure under the Public Records Act); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384 (1985) (holding provision in collective bargaining agreement between city and its police force requiring city to ensure confidentiality of officers’ personnel records held invalid; otherwise, “private citizens would be empowered to alter legal relationships between a government and the public at large”).

²⁵¹ *Keller v. Columbus*, 100 Ohio St.3d 192, 2003-Ohio-5599, ¶ 23 (“Any provision in a collective bargaining agreement that establishes a schedule for the destruction of public record is unenforceable if it conflicts with or fails to comport with all the dictates of the Public Records Act.”); *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 40-41 (2000); *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Comms.*, 80 Ohio St.3d 134, 137 (1997); *Toledo Police Patrolman’s Assn. v. Toledo*, 94 Ohio App.3d 734, 739 (6th Dist. 1994); *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 663 (8th Dist. 1990); *Bowman v. Parma Bd. of Edn.*, 44 Ohio App.3d 169, 172 (8th Dist. 1988); *State ex rel. Dwyer v. Middletown*, 52 Ohio App.3d 87, 91 (12th Dist. 1988); *State ex rel. Toledo Blade Co. v. Telb*, Lucas C.P. No. 90-0324, 50 Ohio Misc.2d 1, 8 (1990); *State ex rel. Sun Newspapers v. Westlake Bd. of Edn.*, 76 Ohio App.3d 170, 173 (8th Dist. 1991).

²⁵² *State ex rel. Russell v. Thomas*, 85 Ohio St.3d 83, 85 (1999).

²⁵³ *State ex rel. Gannett Satellite Information Network v. Shirey*, 76 Ohio St.3d 1224 (1996); *Teodecki v. Litchfield Twp.*, 9th Dist. No. 14CA0035-M, 2015-Ohio-2309 (finding confidentiality clause prohibiting disclosure of an investigative report into a public official’s actions was unenforceable and invalid).

²⁵⁴ *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Comms.*, 80 Ohio St.3d 134, 137 (1997); *State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland*, 63 Ohio St.3d 772, 776 (1992) (reversing and remanding on the grounds that the court failed to examine records *in camera* to determine the existence of trade secrets); *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 82 Ohio App.3d 202 (8th Dist. 1992).

²⁵⁵ *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, ¶ 35; *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶ 32.

²⁵⁶ 5 U.S.C. § 552.

²⁵⁷ *State ex rel. Wallace v. State Med. Bd. of Ohio*, 89 Ohio St.3d 431, 435 (2000) (noting that “waiver” is defined as a voluntary relinquishment of a known right).

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office.²⁵⁸ However, “waiver does not necessarily occur when the public office that possesses the information makes limited disclosures [to other public officials] to carry out its business.”²⁵⁹ Under such circumstances, the information has never been disclosed to the public.²⁶⁰

D. Applying Exemptions

In Ohio, the public records of a public office belong to the people, not to the government officials holding them.²⁶¹ Accordingly, the public records law must be liberally interpreted in favor of disclosure, and any exemptions in the law that permit certain types of records to be withheld from disclosure must be narrowly construed.²⁶² The public office has the burden of establishing that an exemption applies; the public office fails to meet that burden if it has not proven that the requested records fall squarely within the exemption.²⁶³ The Ohio Supreme Court has stated that “in enumerating very narrow, specific exceptions to the public records statute, the General Assembly has already weighed and balanced the competing public policy considerations between the public’s right to know how its state agencies make decisions and the potential harm, inconvenience or burden imposed on the agency by disclosure.”²⁶⁴

A “well-settled principle of statutory construction [is] that ‘when two statutes, one general and the other special, cover the same subject matter, the special provision is to be construed as an exception to the general statute which might otherwise apply.’”²⁶⁵ This means that when two different statutes apply to one issue, the more specific of the two controls. For example, when county coroner’s statutes set a 25 cent per page (one dollar minimum) retrieval and copying fee for public records of the coroner’s office,²⁶⁶ the coroner’s statute prevails over the general Public Records Act provision that copies of records must be provided “at cost.” But the statutes must actually conflict – if a special statute sets a two dollar fee for “photocopies” of an office’s records²⁶⁷ and a person instead requests those records as “electronic copies” on a CD, then there is no conflict, and the specific charge for photocopying does not apply.²⁶⁸ (See Chapter Two: B. “Statutes That Modify General Rights and Duties”).

Even if a statute expressly states that specific records of a public office are public, it does *not* mean that all other records of that office are exempt from disclosure.²⁶⁹ The Public Records Act still applies to all the public records of the office.

²⁵⁸ See, e.g., *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041; *State ex rel. Gannett Satellite Information Network, Inc. v. Petro*, 80 Ohio St.3d 261 (1997); *Dept. of Liquor Control v. B.P.O.E. Lodge 0107*, 10th Dist. No. 90AP-821 (1991) (holding that introduction of record at administrative hearing waives any bar to dissemination); *State ex rel. Zuern v. Leis*, 56 Ohio St.3d 20, 22 (1990) (finding any exemptions applicable to sheriff’s investigative material were waived by disclosure in civil litigation); *State ex rel. Coleman v. Norwood*, 1st Dist. No. C-890075, 1989 WL 88835, *1 (1989) (“[T]he visual disclosure of the documents to [the requester] waives any contractual bar to dissemination of these documents.”); *Air-Ride, Inc. v. DHL Express (USA), Inc.*, 12th Dist. No. CA2008-01-001, 2008-Ohio-5669, ¶¶ 17-30 (holding that attorney-client privilege waived when counsel had reviewed, marked confidential, and inadvertently produced documents during discovery).

²⁵⁹ *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Sharp*, 151 Ohio App.3d 756, 761, 2003-Ohio-1186, ¶ 14 (1st Dist.) (finding statutory confidentiality of documents submitted to municipal port authority not waived when port authority shares documents with county commissioners); *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶ 15 (forwarding police investigation records to a city’s ethics commission did not constitute waiver).

²⁶⁰ *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 465, 2005-Ohio-5521, ¶¶ 35-39; *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Sharp*, 151 Ohio App.3d 756, 761, 2003-Ohio-1186 (1st Dist.).

²⁶¹ *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 420 (1996); *Dayton Newspapers, Inc. v. Dayton*, 45 Ohio St.2d 107, 109 (1976); *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371 (1960).

²⁶² *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, ¶ 21; *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 17; *State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, ¶ 30 (“Insofar as Akron asserts that some of the requested records fall within certain exceptions to disclosure under R.C. 149.43, we strictly construe exceptions against the public records custodian, and the custodian has the burden to establish the applicability of an exception.” (quotation omitted)).

²⁶³ *State ex rel. Rocker v. Guernsey Cty. Sheriff’s Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, ¶ 7; *Cuyahoga Cty. Bd. of Health v. Lipson O’Shea Legal Group*, 8th Dist. No. 99832, 2013-Ohio-5736, ¶¶ 31-32.

²⁶⁴ *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 172 (1994). NOTE: The Ohio Supreme Court has not authorized courts or other records custodians to create new exemptions to R.C. 149.43 based on a balancing of interests or generalized privacy concerns. *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, ¶ 31.

²⁶⁵ *State ex rel. Slagle v. Rogers*, 103 Ohio St.3d 89, 92, 2004-Ohio-4354, ¶¶ 4-15, citing *State ex rel. Dublin Securities, Inc. v. Ohio Div. of Securities*, 68 Ohio St.3d 426, 429, 1994-Ohio-340; see also R.C. 1.51.

²⁶⁶ R.C. 313.10(B).

²⁶⁷ R.C. 317.32(I).

²⁶⁸ *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753.

²⁶⁹ *Franklin Cty. Sheriff’s Dept. v. State Emp. Relations Bd.*, 63 Ohio St.3d 498 (1992) (noting that, while categories of records designated in R.C. 4117.17 clearly are public records, all other records must still be analyzed under R.C. 149.43).

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When an office can show that non-exempt records are “inextricably intertwined” with exempt materials, the non-exempt records are not subject to disclosure under R.C. 149.43 only to the extent they are inseparable.²⁷⁰ Finally, a public office has no duty to submit a “privilege log” to preserve a claimed public records exemption.²⁷¹

To summarize, if a record does not clearly fit into one of the exemptions listed by the General Assembly, and is not otherwise prohibited from disclosure by other state or federal law, it must be disclosed.

E. Exemptions Enumerated in the Public Records Act

The Public Records Act contains a list of records and types of information removed from the definition of “public records.”²⁷² The full text of those exemptions appears in R.C. 149.43(A)(1), a copy of which is included in Appendix A. Here, these exemptions are addressed in brief summaries. Note that, although the language of R.C. 149.43(A)(1) – “Public record” *does not mean any of the following* – gives the public office the *choice* of withholding or releasing the records, many of these same records are further subject to other statutes that *prohibit* their release.²⁷³

(a) Medical records, which are defined as any document or combination of documents that:

- 1) pertain to a patient’s medical history, diagnosis, prognosis, or medical condition;
- and
- 2) were generated and maintained in the process of medical treatment.²⁷⁴

Records meeting this definition need not be disclosed.²⁷⁵ Birth, death, and hospital admission or discharge records are not considered medical records for purposes of Ohio’s public records law.²⁷⁶ Reports generated for reasons other than medical diagnosis or treatment, such as for employment or litigation purposes, are not “medical records” exempt from disclosure under the Public Records Act.²⁷⁷ However, other statutes or federal constitutional rights may prohibit disclosure,²⁷⁸ in which case the records or information are not public records under the “catch-all exemption,” R.C. 149.43(A)(1)(v).

(b) Records pertaining to probation and parole proceedings or proceedings related to the imposition of community control sanctions²⁷⁹ and post-release control sanctions.²⁸⁰ Examples of records covered by this exemption include:

- Pre-sentence investigation reports;²⁸¹
- Records relied on to compile a pre-sentence investigation report;²⁸²

²⁷⁰ *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, ¶¶ 21-25; *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 2011-Ohio-6009, ¶ 29; *State ex rel. Master v. Cleveland*, 76 Ohio St.3d 340, 342, 1996-Ohio-300.

²⁷¹ *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶ 24.

²⁷² R.C. 149.43(A)(1)(a)-(ff).

²⁷³ See Chapter Three: B. “Multiple and Mixed Exemptions.”

²⁷⁴ R.C. 149.43(A)(1)(a) (applying Public Records Act definition of “medical records” at R.C. 149.43(A)(3)).

²⁷⁵ R.C. 149.43(A)(3); *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158 (1997); 1999 Ohio Op. Att’y Gen. No. 06. But see *State ex rel. Cincinnati Enquirer v. Adcock*, 1st Dist. No. C-040064, 2004-Ohio-7130.

²⁷⁶ R.C. 149.43(A)(3).

²⁷⁷ See *State ex rel. O’Shea & Assocs. L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶¶ 41-43 (holding that questionnaires and release authorizations generated to address lead exposure in city-owned housing not “medical records” despite touching on children’s medical histories); *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 144-45 (1995) (finding a police psychologist report obtained to assist in the police hiring process is not a medical record); *State v. Hall*, 141 Ohio App.3d 561 (2001) (4th Dist.) (finding psychiatric reports compiled solely to assist court with competency to stand trial determination are not medical records).

²⁷⁸ See, e.g., 42 U.S.C. §§ 12101 et seq. (1990) (Americans with Disabilities Act); 29 U.S.C. §§ 2601 et seq. (1993) (Family and Medical Leave Act).

²⁷⁹ R.C. 149.43(A)(9) (“Community control sanction” has the same meaning as in R.C. 2929.01).

²⁸⁰ R.C. 149.43(A)(1)(b); R.C. 149.43(A)(10) (“Post-release control sanction” has the same meaning as in R.C. 2967.01).

²⁸¹ *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St.3d 30, 32 n.2 (1985).

²⁸² *State ex rel. Hadlock v. Polito*, 74 Ohio App.3d 764, 766 (8th Dist. 1991).

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- Documents reviewed by the Parole Board in preparation for a parole hearing;²⁸³ and
- Records of parole proceedings.²⁸⁴

(c) All records associated with the statutory process through which unmarried and unemancipated minors may obtain judicial approval for abortion procedures in lieu of parental consent. This exemption includes records from both trial- and appellate-level proceedings.²⁸⁵

(d), (e), and (f) These three exemptions all relate to the confidentiality of adoption proceedings.

Documents removed from the definition of “public record” include:

- Records pertaining to adoption proceedings;²⁸⁶
- Contents of an adoption file maintained by the Department of Health;²⁸⁷
- A putative father registry;²⁸⁸ and
- An original birth record after a new birth record has been issued.²⁸⁹

In limited circumstances, release of adoption records and proceedings may be appropriate. For example:

- The Department of Job and Family Services may release a putative father’s registration form to the mother of the minor or to the agency or attorney who is attempting to arrange the minor’s adoption.²⁹⁰
- Forms pertaining to the social and medical histories of the biological parents may be inspected by an adopted person who has reached majority or to the adoptive parents of a minor.²⁹¹
- An adopted person at least eighteen years of age may be entitled to the release of identifying information or access to his or her adoption file.²⁹²

(g) Trial preparation records: “trial preparation record,” for the purposes of the Public Records Act, is defined as “any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.”²⁹³

Documents that a public office obtains through discovery during litigation are considered trial preparation records.²⁹⁴ In addition, material compiled for a public attorney’s personal trial preparation constitutes a trial preparation record.²⁹⁵ The trial preparation exemption does not apply to settlement agreements or settlement proposals,²⁹⁶ or when there is insufficient evidence that litigation was reasonably anticipated at the time the records were prepared.²⁹⁷

²⁸³ *State ex rel. Lipshutz v. Shoemaker*, 49 Ohio St.3d 88, 90 (1990).

²⁸⁴ *State ex rel. Gaines v. Adult Parole Auth.*, 5 Ohio St.3d 104 (1983).

²⁸⁵ R.C. 149.43(A)(1)(c) (referencing R.C. 2505.073(B)).

²⁸⁶ R.C. 149.43(A)(1)(d); R.C. 149.43(A)(1)(f) (referencing R.C. 3107.52(A)).

²⁸⁷ R.C. 149.43(A)(1)(d) (referencing R.C. 3705.12 to 3705.124).

²⁸⁸ R.C. 149.43(A)(1)(e) (referencing R.C. 3107.062, 3111.69).

²⁸⁹ R.C. 3705.12.

²⁹⁰ R.C. 3107.063.

²⁹¹ R.C. 3107.17(D).

²⁹² R.C. 149.43(A)(1)(f); R.C. 3107.38(B), (C).

²⁹³ R.C. 149.43(A)(4); see also Chapter 3, F. 5, d. “Prosecutor and government attorney files (trial preparation and work product).”

²⁹⁴ *Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197, ¶ 10.

²⁹⁵ *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 431-32 (1994).

²⁹⁶ *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶¶ 16-21.

²⁹⁷ See *State ex rel. O’Shea & Assocs. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶ 44; see also *Bentkowski v. Trafis*, 8th Dist. No. 102540, 2015-Ohio-5139 (finding trial preparation records exemption inapplicable to records of a police investigation when the police had closed the investigation, no crime was charged or even contemplated, and thus trial was not reasonably anticipated).

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- (h) Confidential Law Enforcement Investigatory Records (see Chapter Six: A. “CLEIRs: Confidential Law Enforcement Investigatory Records Exemption”): CLEIRs are defined²⁹⁸ as records that (1) pertain to a law enforcement matter, and (2) have a high probability of disclosing any of the following:
- The identity of an uncharged suspect;
 - The identity of an information source or witness to whom confidentiality has been “reasonably promised”;
 - Information provided by an information source or witness to whom confidentiality has been reasonably promised, that would tend to reveal the identity of the source or witness;
 - Specific confidential investigatory techniques or procedures, or specific investigatory work product; or
 - Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.
- (i) Records containing confidential “mediation communications” (R.C. 2710.03) or records of the Ohio Civil Rights Commission made confidential under R.C. 4112.05.²⁹⁹
- (j) DNA records stored in the state DNA database pursuant to R.C. 109.573.³⁰⁰
- (k) Inmate records released by the Department of Rehabilitation and Correction to the Department of Youth Services or a court of record pursuant to R.C. 5120.21(E).³⁰¹
- (l) Records of the Department of Youth Services (DYS) regarding children in its custody that are released to the Department of Rehabilitation and Correction (DRC) for the limited purpose of carrying out the duties of the DRC.³⁰²
- (m) “Intellectual property records”: While this exemption seems broad, it has a specific definition for the purposes of the Public Records Act, and is limited to those records that are produced or collected: (1) by or for state university faculty or staff; (2) in relation to studies or research on an education, commercial, scientific, artistic, technical, or scholarly issue; and (3) which have not been publicly released, published, or patented.³⁰³
- (n) Donor profile records: Similar to the intellectual property exemption, the “donor profile records” exemption is given a specific, limited definition for the purposes of the Public Records Act. First, it only applies to records about donors or potential donors to public colleges and universities.³⁰⁴ Second, the names and reported addresses of all donors and the date, amount, and condition of their donation(s) *are* all public information.³⁰⁵ The exemption applies only to all *other* records about a donor or potential donor records.
- (o) Records maintained by the Ohio Department of Job and Family Services on statutory employer reports of new hires.³⁰⁶

²⁹⁸ R.C. 149.43(A)(2).

²⁹⁹ R.C. 149.43(A)(1)(i).

³⁰⁰ R.C. 149.43(A)(1)(j).

³⁰¹ R.C. 149.43(A)(1)(k); R.C. 5120.21(A).

³⁰² R.C. 149.43(A)(1)(l); R.C. 5139.05(D)(1); see R.C. 5139.05(D) for all records maintained by DYS of children in its custody.

³⁰³ R.C. 149.43(A)(1)(m); R.C. 149.43(A)(5); see also *State ex rel. Physicians Comm. for Responsible Medicine v. Bd. of Trustees of Ohio State Univ.*, 108 Ohio St.3d 288, 2006-Ohio-903 (finding university’s records of spinal cord injury research to be exempt intellectual property records, and ruling that limited sharing of the records with other researchers to further the advancement of spinal cord injury research did not mean that the records had been “publicly released”).

³⁰⁴ R.C. 149.43(A)(6) (“‘Donor profile record’ means all records about donors or potential donors to a public institution of higher education....”).

³⁰⁵ R.C. 149.43(A)(6).

³⁰⁶ R.C. 149.43(A)(1)(o) (referencing R.C. 3121.894).

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- (p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the Bureau of Criminal Identification and Investigation, or federal law enforcement officer residential and familial information.³⁰⁷ See Chapter Six: C. “Residential and Familial Information of Covered Professions that are not Public Records.”
- (q) Trade secrets of certain county and municipal hospitals:³⁰⁸ “Trade secrets” are defined at R.C. 1333.61(D), the definitional section of Ohio’s Uniform Trade Secrets Act.
- (r) Information pertaining to the recreational activities of a person under the age of eighteen. This includes any information that would reveal the person’s:
- Address or telephone number, or that of person’s guardian, custodian, or emergency contact person;
 - Social security number, birth date, or photographic image;
 - Medical records, history, or information; or
 - Information sought or required for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or obtain admission privileges to any recreational facility owned or operated by a public office.³⁰⁹
- (s) Listed records of a child fatality review board (except for the annual reports the boards are required by statute to submit to the Ohio Department of Health).³¹⁰ The listed records are also prohibited from unauthorized release by R.C. 307.629.
- (t) Records and information provided to the executive director of a public children services agency or prosecutor regarding the death of a minor from possible abuse, neglect, or other criminal conduct. Some of these records are prohibited from release to the public. Others may become public depending on the circumstances.³¹¹
- (u) Nursing home administrator licensing test materials, examinations, or evaluation tools.³¹²
- (v) Records the release of which is prohibited by state or federal law;³¹³ this is often called the “catch-all” exemption. Although state and federal statutes can create both mandatory and discretionary exemptions by themselves, this provision also incorporates any statutes or administrative code that prohibit the release of specific records.

Under this provision, a state or federal agency rule designating particular records as confidential that is properly promulgated by the agency will constitute a valid exemption³¹⁴ because such rules have the effect of law.³¹⁵

But, if the rule was promulgated outside the authority statutorily granted to the agency, the rule is not valid and will not constitute an exemption to disclosure.³¹⁶

³⁰⁷ R.C. 149.43(A)(1)(p); R.C. 149.43(A)(7).

³⁰⁸ R.C. 149.43(A)(1)(q).

³⁰⁹ R.C. 149.43(A)(1)(r); R.C. 149.43(A)(8).

³¹⁰ R.C. 149.43(A)(1)(s) (referencing R.C. 307.621 - .629).

³¹¹ R.C. 149.43(A)(1)(t) (referencing R.C. 5153.171).

³¹² R.C. 149.43(A)(1)(u) (referencing R.C. 4751.04).

³¹³ R.C. 149.43(A)(1)(v).

³¹⁴ *State ex rel. Lindsay v. Dwyer*, 108 Ohio App.3d 462 (10th Dist. 1996) (holding that State Teachers Retirement System properly denied access to beneficiary form pursuant to Ohio Administrative Code); 2000 Ohio Op. Att’y Gen. No. 036 (determining that, per federal regulation, service member’s discharge certificate prohibited from release by Governor’s Office of Veterans Affairs, without service member’s written consent).

³¹⁵ *Columbus & Southern Ohio Elec. Co. v. Indus. Comm.*, 64 Ohio St.3d 119, 122 (1992); *Doyle v. Ohio Bur. of Motor Vehicles*, 51 Ohio St.3d 46, 48 (1990); *State ex rel. DeBoe v. Indus. Comm.*, 161 Ohio St. 67, paragraph one of the syllabus (1954).

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- (w)** Proprietary information of or relating to any person that is submitted to or compiled by the Ohio Venture Capital Authority.³¹⁷
- (x)** Financial statements and data any person submits for any purpose to the Ohio Housing Finance Agency or the Controlling Board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency.³¹⁸
- (y)** Records and information relating to foster caregivers and children housed in foster care, as well as children enrolled in licensed, certified, or registered child care centers. This exemption applies only to records held by county agencies or the Ohio Department of Job and Family Services.³¹⁹ (See also Section F.2.c. “County Children Services Agency Records”).
- (z)** Military discharges recorded with a county recorder.³²⁰
- (aa)** Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility.³²¹
- (bb)** Records described in R.C. 187.04(C) (relating to JobsOhio) that are not designated to be made available to the public as provided in that division.³²²
- (cc)** Information and records concerning drugs used for lethal injections that are made confidential, privileged, and not subject to disclosure under R.C. 2949.221(B) and (C).³²³
- (dd)** “Personal information,” including an individual’s social security number; state or federal tax identification number; driver’s license number or state identification number; checking account number, savings account number, credit card number, or debit card number; and demand deposit number, money market account number, mutual fund account number, or any other financial or medical account number.³²⁴
- (ee)** The confidential name, address, and other personally identifiable information of a program participant in the Secretary of State’s Address Confidentiality Program established under R.C. 111.41 to R.C. 111.47, including records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state.³²⁵
- (ff)** Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order.³²⁶

³¹⁶ *State ex rel. Gallon & Takacs Co., L.P.A. v. Conrad*, 123 Ohio App.3d 554, 560-61 (10th Dist. 1997) (holding that Bureau of Workers’ Compensation administrative rule prohibiting release of managed care organization applications was unauthorized attempt to create exemption to Public Records Act).

³¹⁷ R.C. 149.43(A)(1)(w) (referencing R.C. 150.01).

³¹⁸ R.C. 149.43(A)(1)(x).

³¹⁹ R.C. 149.43(A)(1)(y) (referencing R.C. 5101.29).

³²⁰ R.C. 149.43(A)(1)(z) (referencing R.C. 317.24).

³²¹ R.C. 149.43(A)(1)(aa).

³²² R.C. 149.43(A)(1)(bb).

³²³ R.C. 149.43(A)(1)(cc) (referencing R.C. 2949.221).

³²⁴ R.C. 149.43(A)(1)(dd) (referencing R.C. 149.45).

³²⁵ R.C. 149.43(A)(1)(ee).

³²⁶ R.C. 149.43(A)(1)(ff).

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F. Exemptions Created By Other Laws (By Category)

The following is a non-exhaustive list of exemptions that may apply to records of public offices. Some will require expert case by case analysis by the public office's legal counsel before use in response to a public records request. Additional Ohio statutory exemptions beyond those mentioned in this Chapter can be found in "Appendix B – Statutory Provisions Exempting Records from the Ohio Public Records Act."

1. Exemptions affecting personal privacy

There is no general "privacy exemption" to the Ohio Public Records Act. Ohio has no general privacy law comparable to the federal Privacy Act.³²⁷ However, a public office is obligated to protect certain *non-public record* personal information from unauthorized dissemination.³²⁸ Though many of the exemptions to the Public Records Act apply to information people would consider "private," this section focuses specifically on records and information that are protected by: (1) the right to privacy found in the United States Constitution; and (2) R.C. 149.45 and R.C. 319.28(B), which are statutes designed to protect personal information on the internet.

a. Constitutional right to privacy

The U.S. Supreme Court recognizes a constitutional right to informational privacy under the Fourteenth Amendment's Due Process Clause. This right protects people's "interest in avoiding divulgence of highly personal information,"³²⁹ but must be balanced against the public interest in the information.³³⁰ Such information cannot be disclosed unless disclosure "narrowly serves a compelling state interest."³³¹

In Ohio, the U.S. Court of Appeals for the Sixth Circuit has limited this right to informational privacy to interests that rise to the level of "constitutional dimension" and implicate "fundamental rights" or "rights implicit in the concept of ordered liberty."³³²

The Ohio Supreme Court has "not authorized courts or other records custodians to create new exceptions to R.C. 149.43 based on a balancing of interests or generalized privacy concerns."³³³ In matters that do not rise to fundamental constitutional levels, state statutes address privacy rights, and the Court defers to "the role of the General Assembly to balance the competing concerns of the public's right to know and individual citizens' right to keep private certain information that becomes part of the records of public offices."³³⁴ Cases finding a new or expanded constitutional right of privacy affecting public records are relatively infrequent.

In the Sixth Circuit case of *Kallstrom v. City of Columbus*, police officers sued the city for releasing their unredacted personnel files to an attorney representing members of a criminal gang. The police officers were testifying against the gang members in a major drug case. The personnel files contained the addresses and phone numbers of the officers and their family members, as well as

³²⁷ 5 U.S.C. 552a.

³²⁸ Ohio has a Personal Information Systems Act (PISA), Chapter 1347 of the Ohio Revised Code, that only applies when the Public Records Act does not apply; that is, PISA does not apply to public records but only applies to records that have been determined to be non-public and information that is not a "record" as defined by the Public Records Act. Public offices can find more detailed guidance at <http://privacy.ohio.gov/government/aspx>. See also *State ex rel. Renfro v. Cuyahoga Cty. Dept. of Human Servs.*, 54 Ohio St.3d 25 (1990); *Fisher v. Kent State Univ.*, 41 N.E.3d 840, 2015-Ohio-3569, ¶ 15 (finding legal brief written by state university's attorneys in response to retired professor's Equal Employment Opportunity Commission claims constituted a public record, and even though the brief contained stored personal information from professor's employment records, it was not exempt from disclosure pursuant to Ohio's PISA Act in R.C. Chapter 1347).

³²⁹ *Kallstrom v. Columbus*, 136 F.3d 1055, 1061 (6th Cir. 1998), citing *Whalen v. Roe*, 429 U.S. 589, 598-600 (1977).

³³⁰ *Kallstrom v. Columbus*, 136 F.3d 1055, 1061 (6th Cir. 1998); *Nixon v. Admr. of Gen. Servs.*, 433 U.S. 425 (1977); see also, *J.P. v. DeSanti*, 653 F.2d 1080, 1091 (6th Cir. 1981).

³³¹ *Kallstrom v. Columbus*, 136 F.3d 1055, 1059 (6th Cir. 1998).

³³² *Kallstrom v. Columbus*, 136 F.3d 1055, 1062 (6th Cir. 1998), citing *J. P. v. DeSanti*, 653 F.2d 1080, 1090 (6th Cir. 1981).

³³³ *State ex rel. WBNS TV v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, ¶¶ 30-31, 36-37.

³³⁴ *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St.3d 258, 266 (1992).

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banking information, social security numbers, and photo IDs.³³⁵ The Court held that, because release of the information could lead to the gang members causing the officers bodily harm, the officers' fundamental constitutional rights to personal security and bodily integrity were at stake.³³⁶ The Court also described this constitutional right as a person's "interest in preserving [one's] life."³³⁷ The Court then found that the Public Records Act did not require release of the files in this manner because the disclosure did not "narrowly serve[] the state's interest in ensuring accountable governance."³³⁸ The Sixth Circuit has similarly held that names, addresses, and dates of birth of adult cabaret license applicants are exempted from the Public Records Act because their release to the public poses serious risk to their personal security.³³⁹

Based on *Kallstrom*, the Ohio Supreme Court subsequently held that police officers have a constitutional right to privacy in their personal information that could be used by defendants in a criminal case to achieve nefarious ends.³⁴⁰ The Ohio Supreme Court has also suggested that the constitutional right to privacy of minors would come into play when "release of personal information ... creates an unacceptable risk that a child could be victimized."³⁴¹

In another Sixth Circuit case, a county sheriff held "a press conference to release the confidential and highly personal details" of a rape.³⁴² The Court held that "a rape victim has a fundamental right of privacy in preventing government officials from gratuitously and unnecessarily releasing the intimate details of the rape where no penalogical purpose is being served."³⁴³ The Court indicated that release of some of the details may have been justifiable if the disclosure would have served "any specific law enforcement purpose," including apprehending the suspect.³⁴⁴

Neither the Ohio Supreme Court nor the Sixth Circuit has applied broadly the constitutional right to privacy. Public offices and individuals should thus be aware of this potential protection, but know that it is limited to circumstances involving fundamental rights, and that most personal information is not protected by it.³⁴⁵

b. Personal information listed online

R.C. 149.45 requires public offices to redact, and permits certain individuals to request redaction of, specific personal information³⁴⁶ from any records made available to the general public on the internet.³⁴⁷ A person must make this request in writing on a form developed by the Attorney General, specifying the information to be redacted and providing any information that identifies the location of that personal information.³⁴⁸ In addition, persons in certain professions can also request the redaction of their actual residential address from any records made available by public offices to the general public on the internet.³⁴⁹ When a public office receives a request for redaction, it must

³³⁵ *Kallstrom v. Columbus*, 136 F.3d 1055, 1059 (6th Cir. 1998).

³³⁶ *Kallstrom v. Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998), citing *Doe v. Clairborne Cty.*, 103 F.3d 495, 507 (6th Cir. 1996).

³³⁷ *Kallstrom v. Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998), quoting *Nishiyama v. Dickson Cty.*, 814 F.2d 277, 380 (6th Cir. 1987) (en banc).

³³⁸ *Kallstrom v. Columbus*, 136 F.3d 1055, 1065 (6th Cir. 1998).

³³⁹ *Deja Vu of Cincinnati, LLC v. Union Twp. Bd. of Trustees*, 411 F.3d 777, 793-794 (2005).

³⁴⁰ *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 282 (1999); see also, *State ex rel. Cincinnati Enquirer v. Craig*, 132 Ohio St.3d 68, 2012-Ohio-1999, ¶¶ 13-23 (holding that identities of officers involved in fatal accident with motorcycle club exempted from disclosure based on constitutional right of privacy when release would create likely threat of serious bodily harm or death).

³⁴¹ *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 372 (2000).

³⁴² *Bloch v. Ribar*, 156 F.3d 673, 676 (6th Cir. 1998).

³⁴³ *Bloch v. Ribar*, 156 F.3d 673, 686 (6th Cir. 1998).

³⁴⁴ *Bloch v. Ribar*, 156 F.3d 673, 686 (6th Cir. 1998).

³⁴⁵ *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 8th Dist. No. 99733, 2013-Ohio-4481, ¶ 3 (ordering public office to release replacement teachers' names because public office failed to establish that threats and violent acts continued after strike), aff'd 142 Ohio St.3d 509, 2015-Ohio-1083, ¶¶ 25-28.

³⁴⁶ "Personal information" is defined as an individual's: social security number, federal tax identification number, driver's license or state identification number, checking account number, savings account number, or credit card number. R.C. 149.43(A)(1).

³⁴⁷ R.C. 149.45(C)(1).

³⁴⁸ This form is available at <http://www.OhioAttorneyGeneral.gov/Sunshine>.

³⁴⁹ Covered professions include: peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or BCI Investigator. R.C. 149.45(A)(2). For additional discussion, see Chapter Six: C. "Residential and Familial Information of Covered Professions that are not Public Records"; R.C. 149.45(D)(1) (this section does not apply to county auditor offices). The request must be on a form developed by the Attorney General, which is available at <http://www.OhioAttorneyGeneral.gov/Sunshine>.

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act in accordance with the request within five business days, if practicable.³⁵⁰ If the public office determines that redaction is not practicable, it must explain to the individual why the redaction is impracticable within five business days.³⁵¹

R.C. 149.45 separately requires all public offices to redact, encrypt, or truncate the social security numbers of individuals from any documents made available to the general public on the internet.³⁵² If a public office becomes aware that an individual's social security number was not redacted, the office must redact the social security number within a reasonable period of time.³⁵³

The statute provides that a public office is not liable in a civil action for any alleged harm as a result of the failure to redact personal information or addresses on records made available on the internet to the general public, unless the office acted with a malicious purpose, in bad faith, or in a wanton or reckless manner.³⁵⁴

In addition to the protections listed above, R.C. 319.28 allows a covered professional³⁵⁵ to submit a request, by affidavit, to remove his or her name from the general tax list of real and public utility property and insert initials instead.³⁵⁶ Upon receiving such a request, the county auditor shall act within five days in accordance with the request.³⁵⁷ If removal is not practicable, the auditor's office must explain why the removal and insertion is impracticable.³⁵⁸

c. Social security numbers

Social security numbers (SSNs) should be redacted before the disclosure of public records, including court records.³⁵⁹ The Ohio Supreme Court has held that while the federal Privacy Act (5 U.S.C. § 552a) does not expressly prohibit release of one's SSN, the Act does create an expectation of privacy as to the use and disclosure of a SSN.³⁶⁰

Under the federal Privacy Act, any federal, state, or local government agency that asks individuals to disclose their SSNs must advise the person: (1) whether that disclosure is mandatory or voluntary and, if mandatory, under what authority the SSN is solicited; and (2) what use will be made of it.³⁶¹

In short, a SSN can only be disclosed if an individual has been given prior notice that the SSN will be publicly available.

³⁵⁰ R.C. 149.45(C)(2), (D)(2).

³⁵¹ R.C. 149.45(C)(2), (D)(2). NOTE: Explanation of the impracticability of redaction by the public office can be either oral or written.

³⁵² R.C. 149.45(B)(1), (2). NOTE: A public office is also obligated to redact social security numbers from records that were posted before the effective date of R.C. 149.45.

³⁵³ R.C. 149.45(E)(1).

³⁵⁴ R.C. 149.45(E)(2).

³⁵⁵ A peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer. R.C. 319.28(B)(1).

³⁵⁶ R.C. 319.28(B)(1).

³⁵⁷ R.C. 319.28(B)(2).

³⁵⁸ R.C. 319.28(B)(2).

³⁵⁹ R.C. 149.43(A)(1)(dd); *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶ 18 (finding that the clerk of courts correctly redacted SSNs from criminal records before disclosure); *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 25 (noting that SSNs should be removed before releasing court records); see also *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 25 (finding that the personal information of jurors was used only to verify identification not to determine competency to serve on the jury, and SSNs, telephone numbers, and driver's license numbers may be redacted); *State ex rel. Wadd v. Cleveland*, 81 Ohio St.3d 50, 53 (1998) (stating that "there is nothing to suggest that Wadd would not be entitled to public access ... following prompt redaction of exempt information such as Social Security numbers"); *State ex rel. Beacon Journal Publishing Co. v. Kent State*, 68 Ohio St.3d 40, 43 (1993) (determining on remand that the court of appeals may redact confidential information, the release of which would violate constitutional right to privacy); *Lambert v. Hartman*, 517 F.3d 433, 445 (6th Cir. 2008) (determining that, as a policy matter, a clerk of court's decision to allow public internet access to people's SSNs was "unwise").

³⁶⁰ *State ex rel. Beacon Journal Publishing v. Akron*, 70 Ohio St.3d 605, 607 (1994) (determining that city employees had legitimate expectation of privacy in their SSNs such that they must be redacted before release of public records to newspapers); cf. *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996) (finding that SSNs contained in 911 tapes are public records subject to disclosure). But see R.C. 4931.49(E), 4931.99(E) (providing that information from a database that serves public safety answering point of 911 system may not be disclosed); 1996 Ohio Op. Att'y Gen. No. 034 (opining that a county recorder is under no duty to obliterate SSN before making a document available for public inspection when the recorder presented with the document was asked to file it).

³⁶¹ Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (5 U.S.C. § 552a).

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However, the Ohio Supreme Court has ruled that 911 tapes must be made immediately available for public disclosure without redaction, even if the tapes contain SSNs.³⁶² The Court explained that there is no expectation of privacy when a person makes a 911 call. Instead, there is an expectation that the information will be recorded and disclosed to the public.³⁶³ Similarly, the Ohio Attorney General has opined that there is no expectation of privacy in official documents containing SSNs.³⁶⁴

d. *Driver's privacy protection*

An authorized recipient of personal information about an individual that the Bureau of Motor Vehicles obtained in connection with a motor vehicle record may re-disclose the personal information only for certain purposes.³⁶⁵

e. *Income tax returns*

Generally, any information gained as a result of municipal and state income tax returns, investigations, hearings, or verifications are confidential and may only be disclosed as permitted by law.³⁶⁶ Ohio's municipal tax code provides that tax information may only be disclosed (1) in accordance with a judicial order; (2) in connection with the performance of official duties; or (3) in connection with authorized official business of the municipal corporation.³⁶⁷ One Attorney General Opinion found that W-2 federal tax forms prepared and maintained by a township as an employer are public records, but that W-2 forms filed as part of a municipal income tax return are confidential.³⁶⁸ Release of municipal income tax information to the Auditor of State is permissible for purposes of facilitation of an audit.³⁶⁹ Federal tax returns and "return information" are also confidential.³⁷⁰

f. *EMS run sheets*

When a run sheet created and maintained by a county emergency medical services (EMS) organization documents treatment of a living patient, the EMS organization may redact information that pertains to the patient's medical history, diagnosis, prognosis, or medical condition.³⁷¹ However, a patient's name, address, and other non-medical personal information does not fall under the "medical records" exemption in R.C. 149.43(A)(1)(a) and may not be redacted unless some other exemption applies to that information.³⁷² Accordingly, each run sheet must be examined to determine whether it falls, in whole or in part, within the "medical records" exemption, the physician-patient privilege, or any other exemption for information the release of which is prohibited by law.³⁷³

2. *Juvenile records*

Although it is a common misconception, there is no Ohio law that categorically excludes all juvenile records from public records disclosure.³⁷⁴ As with any other record, a public office must identify a

³⁶² *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374 (1996).

³⁶³ *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St.3d 172, 2005-Ohio-685; *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374 (1996).

³⁶⁴ 1996 Ohio Op. Att'y Gen. No. 034 (opining that the federal Privacy Act does not require county recorders to redact SSNs from copies of official records). *But see* R.C. 149.45(B)(1) (specifying that no public office shall make any document containing an individual's SSN available on the internet without removing the number from that document).

³⁶⁵ 18 U.S.C. 2721 et seq. (Driver's Privacy Protection Act); R.C. 4501.27; O.A.C. 4501:1-12-01; 2014 Ohio Op. Att'y Gen. No. 007; *see also State ex rel. Motor Carrier Serv. v. Williams*, 10th Dist. No. 10AP-1178, 2012-Ohio-2590 (holding that requester motor carrier service was not entitled to unredacted copies of an employee's driving record from the BMV when requester did not comply with statutory requirements for access).

³⁶⁶ R.C. 5747.18(C); R.C. 718.13(A); *see also, Reno v. Centerville*, 2d Dist. No. 20078, 2004-Ohio-781.

³⁶⁷ R.C. 718.13; *see also Cincinnati v. Grogan*, 141 Ohio App.3d 733, 755 (1st Dist. 2001) (finding that under Cincinnati Municipal Code, the city's use of tax information in a nuisance-abatement action constituted an official purpose for which disclosure is permitted).

³⁶⁸ 1992 Ohio Op. Att'y Gen. No. 005.

³⁶⁹ *See* R.C. 5747.18(C); *see also* 1992 Ohio Op. Att'y Gen. No. 010.

³⁷⁰ 26 U.S.C. 6103(a).

³⁷¹ 2001 Ohio Op. Att'y Gen. No. 249; 1999 Ohio Op. Att'y Gen. No. 006; *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 82 Ohio App.3d 202, 214 (8th Dist. 1992).

³⁷² 2001 Ohio Op. Att'y Gen. No. 249; 1999 Ohio Op. Att'y Gen. No. 006.

³⁷³ 2001 Ohio Op. Att'y Gen. No. 249.

³⁷⁴ 1990 Ohio Op. Att'y Gen. No. 101.

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specific law that requires or permits a record regarding a juvenile to be withheld, or else it must be released.³⁷⁵ Examples of laws that exempt specific juvenile records include:

a. Juvenile court records

Records maintained by the juvenile court and parties for certain proceedings are not available for public inspection and copying.³⁷⁶ Although the juvenile court may exclude the general public from most hearings, serious youthful offender proceedings and their transcripts are open to the public unless the court orders a hearing closed.³⁷⁷ The closure hearing notice, proceedings, and decision must themselves be public.³⁷⁸ Records of social, mental, and physical examinations conducted pursuant to a juvenile court order,³⁷⁹ records of juvenile probation,³⁸⁰ and records of juveniles held in custody by the Department of Youth Services are not public records.³⁸¹ Sealed or expunged juvenile adjudication records must be withheld.³⁸²

b. Juvenile law enforcement records

Juvenile offender investigation records maintained by law enforcement agencies, in general, are treated no differently than adult records, including records identifying a juvenile suspect, victim, or witness in an initial incident report.³⁸³ Specific additional juvenile exemptions apply to: 1) fingerprints, photographs, and related information in connection with specified juvenile arrest or custody;³⁸⁴ 2) certain information forwarded from a children's services agency;³⁸⁵ and 3) sealed or expunged juvenile records (see Juvenile court records, above). Most information held by local law enforcement offices may be shared with other law enforcement agencies and some may be shared with a board of education upon request.³⁸⁶

Federal law similarly prohibits disclosure of specified records associated with federal juvenile delinquency proceedings.³⁸⁷ Additionally, federal laws restrict the disclosure of fingerprints and photographs of a juvenile found guilty in federal delinquency proceedings of committing a crime that would have been a felony if the juvenile were prosecuted as an adult.³⁸⁸

c. County children services agency records

Records prepared and kept by a public children services agency of investigations of families, children, and foster homes, and of the care of and treatment afforded children, and of other records required by the department of job and family services, are required to be kept confidential by the

³⁷⁵ 1990 Ohio Op. Att'y Gen. No. 101; See Chapter Two: A. 14. b. "Requirement to notify of and explain redactions and withholding of records."

³⁷⁶ Juv. Pro. Rules 27 and 37(B), R.C. 2151.35; 1990 Ohio Op. Att'y Gen. No. 101.

³⁷⁷ *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas*, 73 Ohio St.3d 19, 21-22 (1995) (the release of a transcript of a juvenile contempt proceeding was required when proceedings were open to the public).

³⁷⁸ *State ex rel. Plain Dealer v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437, ¶¶ 44-52.

³⁷⁹ Juv.R. 32(B).

³⁸⁰ R.C. 2151.14.

³⁸¹ R.C. 5139.05(D).

³⁸² R.C. 2151.355-.358; see *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 6, 9, 38, 43 (holding that when records were sealed pursuant to R.C. 2151.356, the response, "There is no information available," was a violation of the R.C. 149.43(B)(3) requirement to provide a sufficient explanation, with legal authority, for the denial); see also Chapter Six: D. "Court Records."

³⁸³ See Chapter Six: A. "CLEIRs"; 1990 Ohio Op. Att'y Gen. No. 101.

³⁸⁴ R.C. 2151.313; 2017 Ohio Op. Att'y Gen. No. 042; *State ex rel. Carpenter v. Chief of Police*, 8th Dist. No. 62482, 1992 WL 252330 (1992) (noting that "other records" may include the juvenile's statement or an investigator's report if they would identify the juvenile). But see R.C. 2151.313(A)(3) ("This section does not apply to a child to whom either of the following applies: (a) The child has been arrested or otherwise taken into custody for committing, or has been adjudicated a delinquent child for committing, an act that would be a felony if committed by an adult or has been convicted of or pleaded guilty to committing a felony. (b) There is probable cause to believe that the child may have committed an act that would be a felony if committed by an adult."). Also note that this statute does not apply to records of a juvenile arrest or custody that was not the basis of the taking of any fingerprints and photographs. 1990 Ohio Op. Att'y Gen. No. 101.

³⁸⁵ See, e.g., *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶¶ 44-45 (holding that information referred from a children services agency as potentially criminal may be redacted from police files, including the incident report, pursuant to R.C. 2151.421(H)).

³⁸⁶ R.C. 2151.14(D)(1)(e); 1990 Ohio Op. Att'y Gen. No. 099 (opining that a local board of education may request and receive information regarding student drug or alcohol use from certain records of law enforcement agencies); 1987 Ohio Op. Att'y Gen. No. 010.

³⁸⁷ 18 U.S.C. §§ 5038(a), 5038(e) of the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5031-5042) (providing that these records can be accessed by authorized persons and law enforcement agencies).

³⁸⁸ See 18 U.S.C. § 5038(d).

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agency.³⁸⁹ These records shall be open to inspection by the agency and certain listed officials and to other persons upon the written permission of the executive director when it is determined that “good cause” exists to access the records (except as otherwise limited by R.C. 3107.17).³⁹⁰

d. Some other exemptions for juvenile records

Other exemptions that relate to juvenile records include: 1) reports regarding allegations of child abuse;³⁹¹ 2) certain records of children services agencies;³⁹² 3) individually identifiable student records;³⁹³ 4) certain foster care and day care information;³⁹⁴ and 5) information pertaining to the recreational activities of a person under the age of eighteen.³⁹⁵

3. Student records³⁹⁶

The federal Family Education Rights and Privacy Act of 1974 (FERPA)³⁹⁷ prohibits educational institutions from releasing a student’s “education records” without the written consent of the eligible student³⁹⁸ or his or her parents, except as permitted by the Act.³⁹⁹ “Education records” are records directly related to a student that are maintained by an education agency or institution or by a party acting for the agency or institution.⁴⁰⁰ The term encompasses records such as school transcripts, attendance records, and student disciplinary records.⁴⁰¹ “Education records” covered by FERPA are not limited to “academic performance, financial aid, or scholastic performance.”⁴⁰²

A record is considered to be “directly related” to a student if it contains “personally identifiable information.” The latter term is defined broadly and covers not only obvious identifiers such as student and family member names, addresses, and social security numbers, but also personal characteristics or other information that would make the student’s identity easily linkable.⁴⁰³ In evaluating records for release, an institution must consider what the records requester already knows about the student to determine if that knowledge, together with the information to be disclosed, would allow the requester to ascertain the student’s identity.

The federal FERPA law applies to all students, regardless of grade level. In addition, Ohio has adopted laws specifically applicable to public school students in grades K-12.⁴⁰⁴ Those laws provide that, unless otherwise authorized by law, no public school employee is permitted to release or permit access to personally identifiable information – other than directory information – concerning a public school student without written consent of the student’s parent, guardian, or custodian if the student is under 18, or the consent of the student if the student is 18 or older.⁴⁰⁵

“Directory information” is one of several exemptions to the requirement that an institution obtain written consent prior to disclosure. “Directory information” is “information...that would not

³⁸⁹ R.C. 5153.17; *State ex rel. Clough v. Franklin Cty. Children Servs.*, 144 Ohio St.3d 83, 2015-Ohio-3425, ¶ 19 (finding the report of a child-abuse allegation and the investigation of that allegation is confidential under R.C. 2151.421(H)(1)); *State ex rel. Edinger v. Cuyahoga Cty. Dept. of Children & Family Serv.*, 8th Dist. No. 86341, 2005-Ohio-5453, ¶¶ 6-7.

³⁹⁰ R.C. 5153.17; Ohio Op. Att’y Gen. No. 91-003.

³⁹¹ R.C. 2151.421(I); *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶¶ 44-45.

³⁹² R.C. 5153.17.

³⁹³ See Chapter Three: F. 3. “Student records.”

³⁹⁴ R.C. 149.43(A)(1)(v) (citing R.C. 5101.29).

³⁹⁵ R.C. 149.42(A)(1)(r); see also *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365 (2000).

³⁹⁶ See also Chapter Six: B. 9. “School records.”

³⁹⁷ 20 U.S.C. § 1232g.

³⁹⁸ 34 C.F.R. § 99.3 (providing that eligible student means a student who has reached 18 years of age or is attending an institution of post-secondary education).

³⁹⁹ 34 C.F.R. § 99.30.

⁴⁰⁰ 34 C.F.R. § 99.3; *State ex rel. School Choice Ohio, Inc. v. Cincinnati Public School Dist.*, 147 Ohio St.3d 256, 2016-Ohio-5026, ¶ 20 (holding that, under FERPA, school district court could not change the categories that fit within the term “directory information” through a policy treating “directory information” as “personally identifiable information” not subject to release without parental consent).

⁴⁰¹ *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, ¶¶ 28-30 (finding university disciplinary records are education records); see also *United States v. Miami Univ.*, 294 F.3d 797, 802-03 (6th Cir. 2002).

⁴⁰² *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, ¶ 30.

⁴⁰³ 34 C.F.R. § 99.3.

⁴⁰⁴ R.C. 3319.321.

⁴⁰⁵ R.C. 3319.321(B).

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generally be considered harmful or an invasion of privacy if disclosed.”⁴⁰⁶ It includes a student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, date of graduation, and awards received.⁴⁰⁷ Pursuant to federal law, post-secondary institutions designate what they will unilaterally release as directory information. For K-12 students, Ohio law leaves that designation to each school district board of education. Institutions at all levels must notify parents and eligible students and give them an opportunity to opt out of disclosure of their directory information.⁴⁰⁸

Ohio law prohibits release of directory information to any person or group for use in a profit-making plan or activity.⁴⁰⁹ A public office may require disclosure of the requester’s identity or the intended use of directory information in order to ascertain if it will be used in a profit-making plan or activity.⁴¹⁰

Although the release of FERPA-protected records is prohibited by law, a public office or school should redact the student’s personal identifying information, instead of withholding the entire record, when possible.⁴¹¹

4. Public safety and public office security

a. Infrastructure and security records

In 2002, the Ohio legislature enacted an anti-terrorism bill. Among other changes to Ohio law, the bill created two new categories of records that are exempt from mandatory public disclosure: “infrastructure records” and “security records.”⁴¹² Other state⁴¹³ and federal⁴¹⁴ laws may create exemptions for the same or similar records.

i. Infrastructure records

An “infrastructure record” is any record that discloses the configuration of a public office’s “critical systems,” such as its communications, computer, electrical, mechanical, ventilation, water, plumbing, or security systems.⁴¹⁵ Simple floor plans or records showing the spatial relationship of the public office are not infrastructure records.⁴¹⁶ Infrastructure records may be disclosed for purposes of construction, renovation, or remodeling of a public office without waiving the exempt status of that record.⁴¹⁷

ii. Security records

A “security record” is “[a]ny record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage ... [or] to prevent, mitigate, or respond to acts of terrorism.”⁴¹⁸ Protecting a public office includes protecting the

⁴⁰⁶ 34 C.F.R. § 99.3.

⁴⁰⁷ R.C. 3319.321(B)(1).

⁴⁰⁸ 34 C.F.R. § 99.37.

⁴⁰⁹ *State ex rel. School Choice Ohio, Inc. v. Cincinnati Public School Dist.*, 147 Ohio St.3d 256, 2016-Ohio-5026, ¶¶ 31-34 (finding release of student directory information to nonprofit organization that informs parents about alternative educational opportunities is not prohibited by state law).

⁴¹⁰ 34 C.F.R. § 99.3, R.C. 3319.321.

⁴¹¹ *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, ¶ 34.

⁴¹² R.C. 149.433.

⁴¹³ See, e.g., R.C. 5502.03(B)(2) (regarding information collected by Ohio Division of Homeland Security to support public and private agencies in connection with threatened or actual terrorist events).

⁴¹⁴ See, e.g., 6 U.S.C. §§ 131, et seq., 6 C.F.R. 29 (providing that the federal Homeland Security Act of 2002 prohibits disclosure of certain “critical infrastructure information” shared between state and federal agencies).

⁴¹⁵ R.C. 149.433(A)(2).

⁴¹⁶ R.C. 149.433(A)(2); *State ex rel. Ohio Republican Party v. FitzGerald*, 145 Ohio St.3d 92, 2015-Ohio-5056, ¶ 26 (holding that the key-card-swipe data of a county executive official that reveals the location of nonpublic, secured entrances is not exempted from disclosure as an infrastructure record).

⁴¹⁷ R.C. 149.433(C).

⁴¹⁸ R.C. 149.433(A); *State ex rel. Bardwell v. Ohio Atty. Gen.*, 181 Ohio App.3d 661, 2009-Ohio-1265, ¶¶ 68-70 (10th Dist.) (applying the statute).

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employees, officers, and agents who work in that office.⁴¹⁹ However, this is not to say that all records involving criminal activity in or near a public building or official are automatically “security records.”⁴²⁰ Security records may be disclosed for purposes of construction, renovation, or remodeling of a public office without waiving the exempt status of that record.⁴²¹

b. Records that would jeopardize the security of public office electronic records

Records that would disclose or may lead to the disclosure of records or information that would jeopardize the state’s continued use or security of any computer or telecommunications devices or services associated with electronic signatures, electronic records, or electronic transactions are not public records for purposes of section 149.43 of the Revised Code.⁴²²

5. Exemptions related to litigation

a. Attorney-client privilege

“The attorney-client privilege is one of the oldest recognized privileges for confidential communications.”⁴²³ Attorney-client privileged records and information must not be revealed without the client’s waiver.⁴²⁴ Such records are prohibited from release by the “catch-all” exemption to the Public Records Act.⁴²⁵

The attorney-client privilege arises whenever legal advice of any kind is sought from a professional legal advisor. Those communications made in confidence by the client are permanently protected from disclosure by the client or the legal advisor.⁴²⁶ Records or information that meet those criteria must be withheld or redacted in order to preserve attorney-client privilege.⁴²⁷ For example, drafts of proposed bond documents prepared by an attorney are protected by the attorney-client privilege and are not subject to disclosure.⁴²⁸

The privilege applies to records of communications between public office clients and their attorneys in the same manner that it does for private clients and their attorneys.⁴²⁹ Communications between a client and his or her attorney’s agent (for example, a paralegal) may also be subject to the attorney-client privilege.⁴³⁰ The privilege also applies to “documents containing communications between members of the public entity represented about the legal advice given.”⁴³¹ For example, the narrative portions of itemized attorney billing statements to a public office that contain

⁴¹⁹ *State ex rel. Plunderbund Media v. Born*, 141 Ohio St.3d 422, 2014-Ohio-3679, ¶¶ 19-31 (holding that, based on investigative agency testimony, records documenting threats to the governor were found to be “security records”). But see *State ex rel. Ohio Republican Party v. FitzGerald*, 145 Ohio St.3d 92, 2015-Ohio-5056, ¶ 28 (holding that, although key-card-swipe data records were security records at the time of the public records request, the key-card-swipe data were no longer security records because public official who had received verified threats was no longer the county executive).

⁴²⁰ *State ex rel. Plunderbund Media v. Born*, 141 Ohio St.3d 422, 2014-Ohio-3679, ¶ 29 (finding records at issue were security records because they were used for protecting and maintaining the security of the governor, his office, staff, and family); *State ex rel. Miller v. Pinkney*, 149 Ohio St.3d 662, 2017-Ohio-1335 (holding initial incident reports at issue were not security records).

⁴²¹ R.C. 149.433(D).

⁴²² R.C. 1306.23.

⁴²³ *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶ 19, quoting *Swidler & Berlin v. United States*, 524 U.S. 399 (1998).

⁴²⁴ *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508 ¶ 18; see, e.g., *Reed v. Baxter*, 134 F.3d 351, 356 (6th Cir. 1998); *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379, 383 (1998); *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58 (1998); *State ex rel. Besser v. Ohio State Univ.*, 87 Ohio St.3d 535 (2000); *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245 (1994).

⁴²⁵ R.C. 149.43(A)(1)(v).

⁴²⁶ *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 265, 2005-Ohio-1508, ¶ 21, quoting *Reed v. Baxter*, 134 F.3d 351, 355-356 (6th Cir. 1998).

⁴²⁷ *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶¶ 26-31.

⁴²⁸ *State ex rel. Benesch, Friedlander, Coplan & Aronoff, LLP v. Rossford*, 140 Ohio App.3d 149, 156 (6th Dist. 2000).

⁴²⁹ *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶ 23 (finding attorney-client privilege applied to communications between state agency personnel and their in-house counsel); *American Motors Corp. v. Huffstutler*, 61 Ohio St.3d 343 (1991); *Morgan v. Butler*, 2017-Ohio-816 (10th Dist.) (holding emails between attorneys and their state government clients pertaining to the attorneys’ legal advice are exempted from disclosure).

⁴³⁰ *State ex rel. Toledo Blade v. Toledo-Lucas Cty. Port Auth.*, 121 Ohio St.3d 537, 2009-Ohio-1767 (finding that a factual investigation may invoke the attorney-client privilege). *State v. Post*, 32 Ohio St.3d 380, 385 (1987).

⁴³¹ See *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245, 251 (1994).

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descriptions of work performed may be protected by the attorney-client privilege, although the portions that reflect dates, hours, rates, and the amount billed are usually not protected.⁴³²

b. Criminal discovery

Criminal defendants may use the Public Records Act to obtain otherwise public records in a pending criminal proceeding.⁴³³ However, Criminal Rule 16 is the “preferred mechanism to obtain discovery from the state.”⁴³⁴ Under Criminal Rule 16(H), when a criminal defendant makes a public records request, either directly or indirectly, it “shall be treated as a demand for discovery in a criminal case if, and only if, the request is made to an agency involved in the prosecution or investigation of that case.”⁴³⁵

Note that, when a prosecutor discloses materials to a criminal defendant pursuant to the Rules of Criminal Procedure, that disclosure does not mean those records automatically become available for public disclosure.⁴³⁶ The prosecutor does not waive⁴³⁷ applicable public records exemptions, such as trial preparation records or confidential law enforcement records,⁴³⁸ simply by complying with discovery rules.⁴³⁹

c. Civil discovery

In pending civil court proceedings, the parties are not limited to the materials available under the civil rules of discovery. A civil litigant is allowed to use the Public Records Act in addition to civil discovery.⁴⁴⁰ The exemptions contained in the Public Records Act do not protect documents from discovery in civil actions.⁴⁴¹ The nature of a request as either discovery or a request for public records will determine any available enforcement mechanisms.⁴⁴²

The Ohio Rules of Evidence govern the use of public records as evidence in litigation.⁴⁴³ Justice Stratton’s concurring opinion in the case *Gilbert v. Summit County* noted that “[t]rial courts have discretion to admit or exclude evidence,” and concluded that, “even though a party may effectively circumvent a discovery deadline by acquiring a document through a public records request, it is the trial court that ultimately determines whether those records will be admitted in the pending litigation.”⁴⁴⁴

d. Prosecutor and government attorney files (trial preparation and work product)

R.C. 149.43(A)(1)(g) exempts from release any “trial preparation records,” which are defined as “any record that contains information that is specifically compiled in reasonable anticipation of, or in

⁴³² *State ex rel. Anderson v. Vermilion*, 134 Ohio St.3d 120, 2012-Ohio-5320, ¶¶ 13-15; *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 2011-Ohio-6009; *State ex rel. Pietrangelo v. Avon Lake*, 146 Ohio St.3d 292, 2016-Ohio-2974, ¶¶ 10-17.

⁴³³ *State v. Athon*, 136 Ohio St.3d 43, 2013-Ohio-1956, ¶ 16 (“[O]ur decision in *Steckman* does not bar an accused from obtaining public records that are otherwise available to the public. Although R.C. 149.43 provides an independent basis for obtaining information potentially relevant to a criminal proceeding, it is not a substitute for and does not supersede the requirements of criminal discovery pursuant to Crim.R. 16.”). However, the Public Records Act may not be used to obtain copies of court transcripts of criminal proceedings without complying with the procedure in R.C. 2301.24. *State ex rel. Kirin v. D’Apolito*, 7th Dist. No. 15 MA 61, 2015-Ohio-3964; *State ex rel. Kirin v. Evans*, 7th Dist. No. 15 MA 62, 2015-Ohio-3965.

⁴³⁴ *State v. Athon*, 136 Ohio St.3d 43, 2013-Ohio-1956, ¶ 18 (holding that, when a criminal defendant makes a public records request for information that could be obtained from the prosecutor through discovery, this request triggers a reciprocal duty on the part of the defendant to provide discovery as contemplated by Crim.R. 16).

⁴³⁵ Crim.R. 16(H).

⁴³⁶ *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 355 (1997).

⁴³⁷ See Chapter Three: C. “Waiver of an Exemption.”

⁴³⁸ See Chapter Three: E. (g) “Trial preparation records”; see also Chapter Six: A. “CLEIRs: Confidential Law Enforcement Investigatory Records Exemption.”

⁴³⁹ *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 354-55 (1997).

⁴⁴⁰ *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 661-62, 2004-Ohio-7108.

⁴⁴¹ *Cockshutt v. Ohio Dept. of Rehabilitation and Correction*, No. 2:13-cv-532, 2013 WL 4052914 (S.D. Ohio 2013); *Easter v. Beacon Tri-State Staffing, Inc.*, S.D. Ohio No. 2:17-cv-197, 2017 U.S. Dist. LEXIS 171741 (Oct. 17, 2017).

⁴⁴² *State ex rel. TP Mech. Contractors, Inc. v. Franklin Cty. Bd. of Comms.*, 10th Dist. No. 09AP-235, 2009-Ohio-3614.

⁴⁴³ Evid.R. 803(8), 1005; *State v. Scurti*, 153 Ohio App.3d 183, 2003-Ohio-3286, ¶ 15 (7th Dist.).

⁴⁴⁴ *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶¶ 13-14 (Stratton, J. concurring).

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defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.”⁴⁴⁵ Documents that a public office obtains as a litigant through discovery will ordinarily qualify as “trial preparation records,”⁴⁴⁶ as would the material compiled for a specific criminal proceeding by a prosecutor or the personal trial preparation by a public attorney.⁴⁴⁷ Attorney trial notes and legal research are “trial preparation records,” which may be withheld from disclosure.⁴⁴⁸ Virtually everything in a prosecutor’s file during an active prosecution is either material compiled in anticipation of a specific criminal proceeding or personal trial preparation of the prosecutor, and therefore, is exempt from public disclosure as “trial preparation” material.⁴⁴⁹ However, unquestionably non-exempt materials do not transform into “trial preparation records” simply because they are held in a prosecutor’s file.⁴⁵⁰ For example, routine offense and incident reports are subject to release while a criminal case is active, including those reports in the files of the prosecutor.⁴⁵¹

The common law attorney work product doctrine also protects certain materials in a similar manner as the attorney-client privilege.⁴⁵² The doctrine provides a qualified privilege⁴⁵³ and is incorporated into Rule 26 of both the Ohio and Federal Rules of Civil Procedure. Ohio Civil Rule 26(B)(3) protects material “prepared in anticipation of litigation or for trial.” The rule protects “the attorney’s mental processes in preparation of litigation” and “establish[es] a zone of privacy in which lawyers can analyze and prepare their client’s case.”⁴⁵⁴

e. Protective orders and sealed / expunged court records⁴⁵⁵

When the release of court records would prejudice the rights of the parties in an ongoing criminal or civil proceeding,⁴⁵⁶ court rules may permit a protective order prohibiting release of the records.⁴⁵⁷ Similarly, when court records have been properly expunged or sealed, they are not available for public disclosure.⁴⁵⁸ The criminal sealing statute does not apply to the sealing of pleadings in related civil cases.⁴⁵⁹ However, when a responsive record is sealed, the public office must provide the explanation for withholding, including the legal authority under which the record was sealed.⁴⁶⁰

Even absent statutory authority, trial courts “in unusual and exceptional circumstances” have the inherent authority to seal court records.⁴⁶¹ The judicial power to seal criminal records is narrowly

⁴⁴⁵ R.C. 149.43(A)(4).

⁴⁴⁶ *Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197, ¶ 10.

⁴⁴⁷ *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 431-32 (1994).

⁴⁴⁸ *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379, 384-85 (1998).

⁴⁴⁹ *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 432 (1994); *State ex rel. Towler v. O'Brien*, 10th Dist. No. 04AP-752, 2005-Ohio-363, ¶¶ 14-16.

⁴⁵⁰ *State ex rel. WLWT-TV-5 v. Leis*, 77 Ohio St.3d 357, 361 (1997); see also, *State ex rel. Rasul-Bey v. Onunwor*, 94 Ohio St.3d 119, 120, 2002-Ohio-67 (finding that a criminal defendant was entitled to immediate release of initial incident reports).

⁴⁵¹ *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 435 (1994); see also *Bentkowski v. Trafis*, 8th Dist. No. 102540, 2015-Ohio-5139 (finding trial preparation records exemption inapplicable to records of a police investigation when the police had closed the investigation, no crime was charged or even contemplated, and thus trial was not reasonably anticipated).

⁴⁵² *Schaefer, Inc. v. Garfield Mitchell Agency, Inc.*, 82 Ohio App.3d 322 (2d Dist. 1992); *Hickman v. Taylor*, 329 U.S. 495 (1947).

⁴⁵³ *Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 2010-Ohio-4469, ¶ 55.

⁴⁵⁴ *Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 2010-Ohio-4469, ¶ 55 (quotation omitted).

⁴⁵⁵ Chapter Six: D. “Court Records.”

⁴⁵⁶ *State ex rel. Vindicator Printing Co. v. Watkins*, 66 Ohio St.3d 129, 137-38 (1993) (prohibiting disclosure of pretrial court records prejudicing rights of criminal defendant); *Adams v. Metallica*, 143 Ohio App.3d 482, 493-95 (1st Dist. 2001) (applying balancing test to determine whether prejudicial record should be released when filed with the court). But see *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶¶ 9-20 (pending appeal from court order unsealing divorce records does not preclude writ of mandamus claim).

⁴⁵⁷ *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App.3d 725, 730-33 (1st Dist. 2001) (finding that a trial judge was required to determine whether release of records would jeopardize defendant’s right to a fair trial).

⁴⁵⁸ *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶ 4 (affirming trial court’s sealing order per R.C. 2953.52); *Dream Fields, LLC v. Bogart*, 175 Ohio App.3d 165, 2008-Ohio-152, ¶¶ 5-6 (1st Dist.) (stating that “[u]nless a court record contains information that is excluded from being a public record under R.C. 149.43, it shall not be sealed and shall be available for public inspection[, a]nd the party wishing to seal the record has the duty to show that a statutory exclusion applies,” and that “[j]ust because the parties have agreed that they want the records sealed is not enough to justify the sealing”); see also Chapter Six: D. “Court Records.”

⁴⁵⁹ *Mayfield Hts. v. M.T.S.*, 8th Dist. No. 100842, 2014-Ohio-4088, ¶ 8.

⁴⁶⁰ *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 6, 9, 38, 43 (finding that response, “There is no information available,” was a violation of the R.C. 149.43(B)(3) requirement to provide a sufficient explanation, with legal authority, for the denial). But see R.C. 2953.38(G)(2) (providing that, “upon any inquiry” for expunged records of human trafficking victims, court “shall reply that no record exists”).

⁴⁶¹ *Pepper Pike v. Doe*, 66 Ohio St.2d 374, 376 (1981). But see *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 1 (determining that divorce records were not properly sealed when an order results from “unwritten and informal court policy”).

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limited to cases in which the accused has been acquitted or exonerated in some way and protection of the accused's privacy interest is paramount to prevent injustice.⁴⁶² The grant of a pardon under Article III, Section 11 of the Ohio Constitution does not automatically entitle the recipient to have the record of the pardoned conviction sealed,⁴⁶³ or give the trial court the authority to seal the conviction outside of the statutory sealing process.⁴⁶⁴

f. Grand jury records

Ohio Criminal Rule 6(E) provides that “[d]eliberations of the grand jury and the vote of any grand juror shall not be disclosed,” and provides for withholding of other specific grand jury matters by certain persons under specific circumstances.⁴⁶⁵ Materials covered by Criminal Rule 6 include transcripts, voting records, subpoenas, and the witness book.⁴⁶⁶ In contrast to those items that document the deliberations and vote of a grand jury, evidentiary documents that would otherwise be public records remain public records, regardless of their having been submitted to the grand jury.⁴⁶⁷

g. Settlement agreements and other contracts

When a governmental entity is a party to a settlement, the trial preparation records exemption will not apply to the settlement agreement.⁴⁶⁸ But the parties are entitled to redact any information within the settlement agreement that is subject to the attorney-client privilege.⁴⁶⁹ Any promise not to release a settlement agreement is void and unenforceable because a contractual provision will not supersede Ohio public records law.⁴⁷⁰

6. Intellectual property

a. Trade secrets

Trade secrets are defined in R.C. 1333.61(D) and include “information, including ... any business information or plans, financial information, or listing of names” that:

- 1) Derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;

and

- 2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁴⁷¹

Information identified in records by its owner as a trade secret is not automatically exempted from disclosure under R.C. 149.43(A)(1)(v) of the Public Records Act as “records the release of which is prohibited by state or federal law.” Rather, identification of a trade secret requires a fact-based

⁴⁶² *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235, ¶27.

⁴⁶³ *State v. Boykin*, 138 Ohio St.3d 97, 2013-Ohio-4582, syllabus.

⁴⁶⁴ *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235, ¶ 37.

⁴⁶⁵ Crim.R. 6(E).

⁴⁶⁶ *State ex rel. Beacon Journal v. Waters*, 67 Ohio St.3d 321 (1993); Fed.Crim.R. 6.

⁴⁶⁷ *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St.3d 172, 2005-Ohio-685, ¶ 5, citing *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996); *State ex rel. Gannett Satellite Information Network, Inc. v. Petro*, 80 Ohio St.3d 261, 267 (1997).

⁴⁶⁸ *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, ¶¶ 11-21; *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 663 (8th Dist. 1990); *State ex rel. Sun Newspapers v. Westlake Bd. of Edn.*, 76 Ohio App.3d 170, 172-73 (8th Dist. 1991).

⁴⁶⁹ *State ex rel. Sun Newspapers v. Westlake Bd. of Edn.*, 76 Ohio App.3d 170, 173 (8th Dist. 1991); see also Chapter Three: F. 5. a. “Attorney-client privilege.”

⁴⁷⁰ *Keller v. Columbus*, 100 Ohio St.3d 192, 2003-Ohio-5599, ¶ 20; *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 136-37 (1997); see generally, Chapter Three: A. 3. a. “Contractual terms of confidentiality.”

⁴⁷¹ R.C. 1333.61(D) (adopting the Uniform Trade Secrets Act); see also R.C. 149.43(A)(1)(m); R.C. 149.43(A)(5).

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assessment.⁴⁷² “An entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy.”⁴⁷³

The Ohio Supreme Court has adopted the following factors in analyzing a trade secret claim:

- (1) the extent to which the information is known outside the business;
- (2) the extent to which it is known to those inside the business, i.e., by the employees;
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (4) the savings effected and the value to the holder in having the information as against competitors;
- (5) the amount of effort or money expended in obtaining and developing the information; and
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.⁴⁷⁴

The maintenance of secrecy is important but does not require that the trade secret be completely unknown to the public in its entirety. If parts of the trade secret are in the public domain, but the value of the trade secret derives from the parts being taken together with other secret information, then the trade secret remains protected under Ohio law.⁴⁷⁵

Trade secret law is underpinned by “[t]he protection of competitive advantage in private, not public, business.”⁴⁷⁶ However, the Ohio Supreme Court has held that certain governmental entities can have trade secrets in limited situations.⁴⁷⁷ Signed non-disclosure agreements do not create trade secret status for otherwise publicly disclosable documents.⁴⁷⁸

An *in camera* inspection may be necessary to determine if disputed records contain trade secrets.⁴⁷⁹

⁴⁷² *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 181 (1999) (finding that time, effort, or money expended in developing law firm’s client list, as well as amount of time and expense it would take for others to acquire and duplicate it, may be among factfinder’s considerations in determining if that information qualifies as a trade secret).

⁴⁷³ *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 400 (2000).

⁴⁷⁴ *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399-400 (2000); *State ex rel. Luken v. Corp. for Findlay Market*, 135 Ohio St.3d 416, 2013-Ohio-1532, ¶¶ 19-25 (determining that information met the two requirements of *Besser* because 1) rental terms had independent economic value and 2) corporation made reasonable efforts to maintain secrecy of information); *Salemi v. Cleveland Metroparks*, 145 Ohio St.3d 408, 2016-Ohio-1192 (holding that, after applying the *Besser* factors, customer lists and marketing plan of Metroparks’ public golf course were trade secrets because: 1) the information was not available to the public or contractual partners, 2) the golf course had taken measures to protect the list from disclosure and limited employee access, 3) the customer list was of economic value to the golf course, and 4) the golf course expended money and effort in collecting and maintaining the information).

⁴⁷⁵ *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399-400 (2000).

⁴⁷⁶ *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St.3d 258, 264 (1992).

⁴⁷⁷ *State ex rel. Besser v. Ohio State Univ.*, 87 Ohio St.3d 535, 543 (2000) (finding that a public entity can have its own trade secrets); *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency*, 88 Ohio St.3d 166, 171 (2000); *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25 (1997). Compare *State ex rel. Gannett Satellite Information Network v. Shirey*, 76 Ohio St.3d 1224, 1224-25 (1996) (finding that resumes are not trade secrets of a private consultant); and *State ex rel. Rea v. Ohio Dept. of Edn.*, 81 Ohio St.3d 527, 533 (1998) (finding that proficiency tests are public record after they have been administered); with *State ex rel. Perrea v. Cincinnati Pub. Schools*, 123 Ohio St.3d 410, 2009-Ohio-4762, ¶¶ 32-33 (holding that a public school had proven that certain semester examination records met the statutory definition of “trade secret” in R.C. 1333.61(D); and *State ex rel. Am. Ctr. For Economic Equality v. Jackson*, 8th Dist. No. 102298, 2015-Ohio-4981, ¶¶ 41-48 (finding evidence sufficiently established that a document containing a list of names and email addresses was exempt from disclosure as a trade secret); and *Salemi v. Cleveland Metroparks*, 8th Dist. No. 100761, 2014-Ohio-3914, ¶¶ 12, 14-23 (finding customer lists and marketing plan of public golf course exempt from disclosure pursuant to trade secret exemption).

⁴⁷⁸ *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 527 (1997).

⁴⁷⁹ *State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland*, 63 Ohio St.3d 772, 776 (1992) (finding that an *in camera* inspection may be necessary to determine whether disputed records contain trade secrets); *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency*, 88 Ohio St.3d 166 (2000); *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 404-05 (2000) (holding that, after an *in camera* inspection, a university’s business plan and memoranda concerning a medical center did not constitute “trade secrets”).

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b. Copyright

Federal copyright law is designed to protect “original works of authorship,” which may exist in one of several specified categories:⁴⁸⁰ (1) literary works; (2) musical works (including any accompanying words); (3) dramatic works (including any accompanying music); (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.⁴⁸¹

Federal copyright law provides certain copyright owners the exclusive right of reproduction,⁴⁸² which means public offices could expose themselves to legal liability if they reproduce copyrighted public records in response to a public records request. If a public record sought by a requester is copyrighted material that the public office does not possess the right to reproduce or copy via a copyright ownership or license, the public office is not typically authorized to make copies of this material under federal copyright law.⁴⁸³ However, there are some exemptions to this rule. For example, in certain situations, the copying of a portion of a copyrighted work may be permitted.⁴⁸⁴

Note that copyright law only prohibits unauthorized *copying*, and should not affect a public records request for *inspection*.

⁴⁸⁰ 17 U.S.C. § 102(a).

⁴⁸¹ 17 U.S.C. § 102(a)(1)-(8).

⁴⁸² 17 U.S.C. § 102(a).

⁴⁸³ Because of the complexity of copyright law and the fact-specific nature of this area, public bodies should resolve public records related copyright issues with their legal counsel.

⁴⁸⁴ See 17 U.S.C. § 107; *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 560-61 (1985) (providing that in determining whether the intended use of the protected work is “fair use,” a court must consider these facts, which are not exclusive: (1) the purpose and character of the use, including whether the intended use is commercial or for non-profit educational purposes; (2) the nature of the protected work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the most important factor—the effect of the intended use upon the market for or value of the protected work); *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, ¶ 25 (finding that, because engineer’s office cannot separate requested raw data from copyrighted and exempt software, nonexempt records are not subject to disclosure to the extent they are inseparable from copyrighted software).

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IV. Chapter Four: Enforcement and Liabilities

The Public Records Act is a “self-help” statute. This means that a person who believes that the Act has been violated must independently pursue a remedy, rather than asking a public official (such as the Ohio Attorney General) to initiate legal action on his or her behalf. If a public office or person responsible for public records fails to produce requested records, or otherwise fails to comply with the requirements of division (B) of the Public Records Act, the requester can file a lawsuit to seek a writ of *mandamus*⁴⁸⁵ to enforce compliance and may apply for various sanctions. Alternatively, the requester may file a complaint in the Court of Claims under a new procedure added to Ohio law in 2016.

This section discusses the basic aspects of both a mandamus suit and the new Court of Claims procedures, along with the types of relief available.

A. Public Records Act Statutory Remedies — Mandamus Lawsuit

1. Parties

A person allegedly “aggrieved by”⁴⁸⁶ a public office’s failure to comply with division (B) of the Public Records Act may file an action in mandamus⁴⁸⁷ against the public office or any person responsible for the office’s public records.⁴⁸⁸ A person may file a public records mandamus action regardless of pending related actions⁴⁸⁹ but may not seek compliance with a public records request in an action for other types of relief, like an injunction or declaratory judgment.⁴⁹⁰ A relator can file a mandamus action or file a complaint with the Court of Claims, but not both.⁴⁹¹ The person who files the suit is called the “relator,” and the named public office or person responsible for the records is called the “respondent.”

2. Where to file

The relator can file the mandamus action in any one of three courts: the common pleas court of the county where the alleged violation occurred, the court of appeals for the appellate district where the alleged violation occurred, or the Ohio Supreme Court.⁴⁹² If a relator files in the Supreme Court, the Court may refer the case to mediation counsel for a settlement conference.⁴⁹³

⁴⁸⁵ “Mandamus” means a court command to a governmental office to correctly perform a mandatory function. Black’s Law Dictionary (10th ed. 2014).

⁴⁸⁶ *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, ¶ 27 (“Every records requester is aggrieved by a violation of division (B), and division (C)(1) authorizes the bringing of a mandamus action by any requester.”); *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 142 Ohio St.3d 509, 2015-Ohio-1083, ¶¶ 21-24 (holding that president of a teacher’s union had standing to sue despite submitting request through his attorney and the school board not initially knowing that he was the requester).

⁴⁸⁷ R.C. 149.43(C)(1); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 12 (“Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio’s Public Records Act.” (citation omitted)).

⁴⁸⁸ *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170, 174 (1988) (finding that mandamus does not have to be brought against the person who actually withheld the records or committed the violation; it can be brought against any “person responsible” for public records in the public office); *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St.3d 30 (1985), paragraph two of the syllabus (stating that, “[w]hen statutes impose a duty on a particular official to oversee records, that official is the ‘person responsible’ under [the Public Records Act]”); *State ex rel. Doe v. Tetrault*, 12th Dist. No. CA2011-10-070, 2012-Ohio-3879, ¶¶ 23-26 (finding employee who created and disposed of requested notes was not the “particular official” charged with the duty to oversee records); see also Chapter One: A. 3. “Quasi-agency — A private entity, even if not a ‘public office,’ can be ‘a person responsible for public records.’”

⁴⁸⁹ *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 18.

⁴⁹⁰ *Davis v. Cincinnati Enquirer*, 164 Ohio App.3d 36, 2005-Ohio-5719, ¶¶ 8-17; *Reeves v. Chief of Police*, 6th Dist. No. E-14-124, 2015-Ohio-3075, ¶¶ 7-8 (affirming dismissal of a public records case brought as a declaratory judgment action); *State ex rel. Meadows v. Louisville City Council*, 5th Dist. No. 2015CA00040, 2015-Ohio-4126, ¶¶ 26-29.

⁴⁹¹ R.C. 149.43(C)(1); R.C. 2743.75(C)(1). For more information about the Court of Claims procedures, see Section B below.

⁴⁹² R.C. 149.43(C)(1)(b); *Fischer v. Kent State Univ.*, 41 N.E.3d 840, 2015-Ohio-3569 (10th Dist.) (holding that the court of claims lacks jurisdiction to preside over mandamus actions alleging violation of R.C. 149.43) (decided prior to creation of Court of Claims procedure for resolving public records disputes).

⁴⁹³ S.Ct.Prac.R. 19.01(A) (providing the court may, on its own or on motion by a party, refer cases to mediation counsel and, unless otherwise ordered by the court, this stays all filing deadlines for the action).

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3. When to file

When an official responsible for records has denied a public records request, no administrative appeal to the official's supervisor is necessary before filing a mandamus action in court.⁴⁹⁴ The likely statute of limitations for filing a public records mandamus action is within ten years after the cause of action accrues.⁴⁹⁵ However, the defense of laches may apply if the respondent can show that unreasonable and inexcusable delay in asserting a known right caused material prejudice to the respondent.⁴⁹⁶

4. Discovery

In general, the Ohio Rules of Civil Procedure govern discovery in a public records mandamus case, as in any other civil lawsuit.⁴⁹⁷ While discovery procedures are generally designed to ensure the free flow of accessible information,⁴⁹⁸ in a public records case, it is the access to requested records that is in dispute. Instead of allowing a party to access the withheld records through discovery, the court will instead usually conduct an *in camera* inspection of the disputed records.⁴⁹⁹ An *in camera* inspection allows the court to view the unredacted records in private⁵⁰⁰ to determine whether the claimed exemption was appropriately applied. Not allowing the relator to view the unredacted records does not violate the relator's due process rights.⁵⁰¹ Attorneys are required to prepare a log of the documents subject to the attorney-client privilege in the course of discovery,⁵⁰² but a public office is not required to provide such a log during the initial response to a public records request.⁵⁰³ In addition, law enforcement investigatory files sought in discovery are entitled to a qualified common law privilege.⁵⁰⁴

5. Requirements to prevail

To be entitled to a writ of mandamus, the relator must prove that he or she has a clear legal right to the requested relief and that the respondent had a clear legal duty to perform the requested act.⁵⁰⁵ In a public records mandamus lawsuit, this usually includes showing that when the requester made the request, he or she specifically described the records being sought⁵⁰⁶ and specified in the mandamus action the records withheld or other failure to comply with R.C. 149.43(B).⁵⁰⁷ A person is not entitled to file a mandamus action unless a prior request for records has already been made.⁵⁰⁸

⁴⁹⁴ *State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St.3d 41, 42 (1990).

⁴⁹⁵ R.C. 2305.14.

⁴⁹⁶ *State ex rel. Clinton v. MetroHealth Sys.*, 8th Dist. No. 100590, 2014-Ohio-4469, ¶¶ 38-41 (finding three-year delay in filing action to enforce public records request untimely); *State ex rel. Carver v. Hull*, 70 Ohio St.3d 570, 577 (1994) (examining laches defense in employment mandamus context); *State ex rel. Moore v. Sanders*, 65 Ohio St.2d 72, 74 (1981) (noting mandamus request must be made in reasonable timeframe, regardless of statute of limitations).

⁴⁹⁷ See Civ.R. 26-37, 45.

⁴⁹⁸ See *Vaught v. Cleveland Clinic Found.*, 98 Ohio St.3d 485, 2003-Ohio-2181, ¶ 25.

⁴⁹⁹ *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶22, (citing *State ex rel. Natl. Broadcasting Co. v. Cleveland*, 38 Ohio St.3d 79 (1988)). But see *State ex rel. Plunderbund v. Born*, 141 Ohio St.3d 422, 2014-Ohio-3679 (holding that, when testimonial evidence sufficiently showed all withheld records were subject to the claimed exemption, *in camera* review was not necessary).

⁵⁰⁰ See Black's Law Dictionary (10th ed. 2014) (noting "in camera inspection" means "[a] trial judge's private consideration of evidence").

⁵⁰¹ *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶ 23.

⁵⁰² Ohio Civ.R. 26(B)(6); *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 155 Ohio App.3d 653, 2003-Ohio-7257, ¶ 10.

⁵⁰³ *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶ 24.

⁵⁰⁴ *Henneman v. Toledo*, 35 Ohio St.3d 241, 245 (1988); *State ex rel. Community Journal v. Reed*, 12th Dist. No. CA2014-01-010, 2014-Ohio-5745, ¶¶ 17-20; *J & C Marketing v. McGinty*, 143 Ohio St.3d 315, 2015-Ohio-1310.

⁵⁰⁵ *State ex rel. Van Gundy v. Indus. Comm.*, 111 Ohio St.3d 395, 2006-Ohio-5854, ¶ 13 (discussing mandamus requirements); *State ex rel. Fields v. Cervenik*, 8th Dist. No. 86889, 2006-Ohio-3969, ¶ 4.

⁵⁰⁶ *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 17; *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 26 ("[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue." (quotation omitted) (alteration in original)); *State ex rel. Zauderer v. Joseph*, 62 Ohio App.3d 752 (10th Dist. 1989).

⁵⁰⁷ *State ex rel. Citizens for Environmental Justice v. Campbell*, 93 Ohio St.3d 585, 586 (2001); *State ex rel. Verhovec v. Marietta*, 4th Dist. Nos. 11CA29, 12CA52, 12CA53, 13CA1, 13CA2, 2013-Ohio-5414, ¶¶ 38-39 (noting that failure to comply with public records policy does not establish a violation of R.C. 149.43(B)(1) (prompt access)); *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 10th Dist. No. 12AP-448, 2013-Ohio-5219, ¶ 32 (holding that requester not required to prove harm or prejudice in order to obtain a writ of mandamus).

⁵⁰⁸ *State ex rel. Taxpayers Coalition v. Lakewood*, 86 Ohio St.3d 385, 390 (1999); *Strothers v. Norton*, 131 Ohio St.3d 359, 2012-Ohio-1007, ¶ 14.

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Only those particular records that were requested from the public office can be litigated in the mandamus action.⁵⁰⁹

If these requirements are met, the respondent then has the burden of proving in court that any items withheld are exempt from disclosure⁵¹⁰ and of countering any other alleged violations of R.C. 149.43(B). In defending the action, the public office may rely on any applicable legal authority for withholding or redaction, even if not earlier provided to the requester in response to the request.⁵¹¹ The court, if necessary, will review *in camera* (in private) the materials that were withheld or redacted.⁵¹² To the extent any doubt or ambiguity exists as to the duty of the public office, the public records law will be liberally interpreted in favor of disclosure.⁵¹³

Unlike most mandamus actions, a relator in a statutory public records mandamus action need not prove the lack of an adequate remedy at law.⁵¹⁴ Also note that, if a respondent provides requested records to the relator after the filing of a public records mandamus action, all or part of the case may be rendered moot or concluded.⁵¹⁵ Even if the case is rendered moot, the relator may still be entitled to statutory damages and attorney fees.⁵¹⁶ Even if a particular public records dispute becomes moot, a court may still decide the merits of the case if the issue is capable of repetition yet evading review.⁵¹⁷

6. Liabilities of the public office under the Public Records Act⁵¹⁸

In a properly filed action, if a court determines that the public office or the person responsible for public records failed to comply with an obligation contained in R.C. 149.43(B) and issues a writ of mandamus, the relator shall be entitled to an award of all court costs⁵¹⁹ and may receive an award of attorney fees and/or statutory damages, as detailed below.

a. Attorney fees

Recent amendments to R.C. 149.43(C) made some changes to attorney fee awards in public records mandamus actions.⁵²⁰ Any award of attorney fees is within the discretion of the court.⁵²¹ Under prior

⁵⁰⁹ *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶ 14 (“R.C. 149.43(C) requires a prior request as a prerequisite to a mandamus action.” (quotation omitted)); *State ex rel. Bardwell v. Ohio Atty. Gen.*, 181 Ohio App.3d 661, 2009-Ohio-1265, ¶ 5 (10th Dist.) (“There can be no ‘failure’ of a public office to make a public record available ‘in accordance with division (B),’ without a request for the record under division (B).”); *State ex rel. Holloman v. Dolan*, 10th Dist. No. 15AP-31, 2016-Ohio-577, ¶¶ 3, 33-34 (finding relator not entitled to writ to compel production of four items that were not included in relator’s public records request).

⁵¹⁰ *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 6, citing *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79 (1988); *State ex rel. Philbin v. City of Cleveland*, 8th Dist. No. 104106, 2017-Ohio-1031, ¶ 8 (respondents failed to demonstrate that the released records were subject to redaction and that all requested records were provided to relator).

⁵¹¹ R.C. 149.43(B)(3).

⁵¹² *State ex rel. Seballos v. School Emp. Retirement Sys.*, 70 Ohio St.3d 667, 671 (1994); *State ex rel. Lanham v. DeWine*, 135 Ohio St.3d 191, 2013-Ohio-199, ¶¶ 21-22. But see *State ex rel. Plunderbund v. Born*, 141 Ohio St.3d 422, 2014-Ohio-3679, ¶¶ 29-31 (denying motion to submit documents *in camera* when respondents showed that all withheld documents were “security records” under R.C. 149.433).

⁵¹³ *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010-Ohio-5073, ¶ 10; *State ex rel. Mun. Constr. Equip. Operators’ Labor Council v. Cleveland*, 8th Dist. No. 102961, 2016-Ohio-2625, ¶ 4 (reviewing evidence and finding in favor of disclosure, against public office).

⁵¹⁴ *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 580 (2001).

⁵¹⁵ *State ex rel. Pietrangelo v. Avon Lake*, 149 Ohio St.3d 273, 2016-Ohio-5725, ¶¶ 15-22; *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, ¶ 22; *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041 (noting mootness can be demonstrated by extrinsic evidence); *State ex rel. Samara v. Byrd*, 8th Dist. No. 103621, 2016-Ohio-5518, ¶¶ 13-15 (holding case moot because public office provided all responsive records).

⁵¹⁶ R.C. 149.43(C)(2) (statutory damages); R.C. 149.43(C)(3)(b). Under prior law, the requester was not entitled to attorney fees if the case became moot. See *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, ¶¶ 31-35.

⁵¹⁷ *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Public Safety*, 148 Ohio St.3d 433, 2016-Ohio-7987, ¶¶ 29-31.

⁵¹⁸ Public offices may still be liable for the content of public records they release, e.g., defamation. *Mehta v. Ohio Univ.*, 194 Ohio App.3d 844, 2011-Ohio-3484, ¶ 63 (10th Dist.) (“[T]here is no legal authority in Ohio providing for blanket immunity from defamation for any and all content included within a public record.”).

⁵¹⁹ R.C. 149.43(C)(3)(a)(i) (noting that court costs are considered “remedial and not punitive”); see also *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 53 (awarding court costs under prior law); *State ex rel. Miller v. Ohio Dept. of Edn.*, 10th Dist. No. 15AP-1168, 2016-Ohio-8534, ¶ 17 (declining to award court costs because action was moot).

⁵²⁰ Prior to the amendments, a court could not award mandatory attorney fees unless it had issued a judgment ordering compliance with R.C. 149.43(B). See *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, ¶ 32 (holding that, although the untimely response constituted a violation, the mandamus claim was moot because of the production of all documents); *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 378, 2014-Ohio-539, ¶¶ 2, 16-21. Any other award of attorney fees was discretionary. See *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 378, 2014-Ohio-539, ¶¶ 16-17; *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, ¶¶ 16-17; *State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St.3d 392, 2015-Ohio-974, ¶ 37.

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law, an award of discretionary attorney fees was subject to a public-benefit test, i.e., a showing that release of the requested public records provided a public benefit greater than the benefit to the requester.⁵²²

Under current law, a court may award reasonable attorney fees to a relator if: 1) the court orders the public office to comply with R.C. 149.43(B); 2) the court determines that the public office failed to respond to the public records request in accordance with the time allowed under R.C. 149.43(B);⁵²³ 3) the court determines that the public office promised to permit inspection or deliver copies within a specified period of time but failed to fulfill that promise;⁵²⁴ or 4) the court determines that the public office acted in bad faith when it voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action but before the court issued any order. In the last scenario, the relator is also entitled to court costs,⁵²⁵ but the relator may not conduct discovery on the issue of bad faith and the court may not presume bad faith by the public office.⁵²⁶

An award of attorney fees may be reduced or eliminated at the discretion of the court (see Section 5 below). Litigation expenses, other than court costs, are not recoverable at all.⁵²⁷

b. Amount of fees

Only those attorney fees directly associated with the mandamus action,⁵²⁸ and only fees paid or actually owed,⁵²⁹ may be awarded. The opportunity to collect attorney fees does not apply when the relator appears before the court *pro se* (without an attorney), even if the *pro se* relator is an attorney.⁵³⁰ Neither the wages of in-house counsel⁵³¹ nor contingency fees are considered “paid or actually owed.”⁵³² The relator is entitled to fees only insofar as the requests had merit.⁵³³ Reasonable attorney fees also include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.⁵³⁴ A relator may waive a claim for attorney fees (and statutory damages) by not including any argument in

⁵²¹ R.C. 149.43(C)(3)(b) (stating “the court may award” attorney fees).

⁵²² *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 378, 2014-Ohio-539, ¶¶ 13-15; see also *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, ¶ 60 (“[A]ny minimal benefit conferred by the writ granted here is beneficial mainly to Mahajan rather than to the public in general.”); *State ex rel. Laborers Internatl. Union of N. Am., Local Union No. 500 v. Summerville*, 122 Ohio St.3d 1234, 2009-Ohio-4090, ¶ 8 (“The release of the requested records to relator primarily benefits relator itself rather than the public in general”); *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 20, 33, 38; *State ex rel. Cincinnati Enquirer v. Sage*, 12th Dist. No. CA2012-06-122, 2013-Ohio-2270, ¶¶ 54-57; *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 8th Dist. No. 99733, 2013-Ohio-4481, ¶ 8 (finding that release of replacement teachers’ names would allow the public to determine qualifications for teaching and was thus a sufficient public benefit); *State ex rel. Hartkemeyer v. Fairfield Twp.*, 12th Dist. No. CA2012-04-080, 2012-Ohio-5842, ¶¶ 30-33 (“[R]elator uses the public documents she requests to inform interested members of the public as to the goings-on of Fairfield Township.”).

⁵²³ R.C. 149.43(C)(3)(b)(i); *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶¶ 49-51 (awarding attorney fees because public office failed to respond to request); *State ex rel. Braxton v. Nichols*, 8th Dist. Nos. 93653, 93654, 93655, 2010-Ohio-3193, ¶ 13.

⁵²⁴ R.C. 149.43(C)(3)(b)(ii).

⁵²⁵ R.C. 149.43(C)(3)(b)(ii).

⁵²⁶ R.C. 149.43(C)(3)(b)(iii).

⁵²⁷ *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 10, 46, superseded by statute on other grounds; *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 313, 318, 2001-Ohio-193 (regarding litigation expenses sought included telephone, copying, mailing, filing, and paralegal expenses), superseded by statute on other grounds; *State ex rel. Mun. Constr. Equip. Operators’ Labor Council v. Cleveland*, 8th Dist. No. 95277, 2011-Ohio-117.

⁵²⁸ *State ex rel. Gannett Satellite Information Network v. Petro*, 81 Ohio St.3d 1234, 1236 (1998) (determining that fees incurred as a result of other efforts to obtain the same records were not related to the mandamus action and were excluded from the award); *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 8th Dist. No. 99733, 2013-Ohio-4481, ¶¶ 10-11 (reducing attorney fee award because counsel billed for time that did not advance public records case or was extraneous to the case).

⁵²⁹ See *State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶ 45.

⁵³⁰ *State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, ¶ 45; *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 684 (1996).

⁵³¹ *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶ 62; *State ex rel. Bott Law Group, L.L.C. v. Ohio Dept. of Natural Resources*, 10th Dist. No. 12AP-448, 2013-Ohio-5219, ¶ 46 (holding that award of attorney fees is not available to relator law firm when no evidence that the firm paid or was obligated to pay any attorney to pursue the public records action).

⁵³² *State ex rel. Hous. Advocates, Inc. v. Cleveland*, 8th Dist. No. 96243, 2012-Ohio-1187, ¶¶ 6-7 (holding that in-house counsel taking case on contingent fee basis not entitled to award of attorney fees).

⁵³³ *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, ¶ 25 (denying relator’s attorney fees due to “meritless request”); *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 318 (2001); *State ex rel. ESPN, Inc. v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, ¶ 39.

⁵³⁴ R.C. 149.43(C)(4)(c); *State ex rel. Miller v. Brady*, 123 Ohio St.3d 255, 2009-Ohio-4942, ¶ 19.

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support of an award of fees in its merit brief.⁵³⁵ The attorney fee award shall not exceed the fees incurred before the public record was made available to the relator and the reasonable fees incurred to demonstrate entitlement to fees.⁵³⁶ Court costs and reasonable attorney fees awarded in public records mandamus actions are considered remedial rather than punitive.⁵³⁷

c. Statutory damages

A person who transmits a valid written request for public records by hand delivery or certified mail⁵³⁸ is entitled to receive statutory damages if a court finds that the public office failed to comply with its obligations under R.C. 149.43(B).⁵³⁹ The award of statutory damages is not considered a penalty, but it is intended to compensate the requester for injury arising from lost use⁵⁴⁰ of the requested information, and if lost use is proven, then injury is conclusively presumed. Statutory damages are fixed at \$100 for each business day during which the respondent fails to comply with division (B), beginning with the day on which the relator files a mandamus action to recover statutory damages, up to a maximum of \$1000.⁵⁴¹ This means that a respondent may stop further accrual of statutory damages by fully complying with division (B) before the maximum is reached. The Act “does not permit stacking of statutory damages based on what is essentially the same records request.”⁵⁴²

d. Recovery of deleted email records

The Ohio Supreme Court has determined that if there is evidence showing that records in email format have been deleted in violation of a public office’s records retention schedule, the public office has a duty to recover the contents of deleted emails and to provide access to them.⁵⁴³ The courts will consider the relief available to the requester based on several factors, including whether: emails were improperly destroyed; forensic recovery of emails might be successful; and the proposed recovery efforts were reasonable.⁵⁴⁴

e. Reduction of attorney fees and statutory damages

A court may either eliminate or reduce an award of attorney fees and statutory damages based on the facts of the particular case. A court shall not award any attorney fees if it determines both of the following:⁵⁴⁵

⁵³⁵ *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, ¶ 69, citing *State ex rel. Mun. Constr. Equip. Operators’ Labor Council v. Cleveland*, 114 Ohio St.3d 183, 2007-Ohio-3831, ¶ 83.

⁵³⁶ R.C. 149.43(C)(4)(b) and (c).

⁵³⁷ R.C. 149.43(C)(4)(a); R.C. 149.43(C)(3)(a)(i).

⁵³⁸ *State ex rel. Pietrangelo v. Avon Lake*, 149 Ohio St.3d 273, 2016-Ohio-5725, ¶¶ 23-27 (examining evidence of hand delivery); *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St.3d 255, 2012-Ohio-753, ¶ 70; *State ex rel. Miller v. Brady*, 123 Ohio St.3d 255, 2009-Ohio-4942, ¶ 17; see also *State ex rel. Petranek v. Cleveland*, 8th Dist. No. 98026, 2012-Ohio-2396, ¶ 8 (holding that later repeat request by certified mail does not trigger entitlement to statutory damages).

⁵³⁹ R.C. 149.43(C)(2); *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 52 (awarding statutory damages); *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 2014-Ohio-538, ¶ 22 (finding that failure of city to respond to request in a reasonable period of time triggered statutory damages award); *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 565, 2015-Ohio-4914, ¶¶ 23-28 (finding that city law director informing requester he no longer would communicate with requester and city’s failure to respond to request for 8 months put city on notice that failure to produce records could lead to statutory damages).

⁵⁴⁰ R.C. 149.43(C)(2); see *State ex rel. Bardwell v. Rocky River Police Dept.*, 8th Dist. No. 91022, 2009-Ohio-727, ¶ 63 (finding that a public official’s improper request for requester’s identity, absent proof that this resulted in actual “lost use” of the records requested, does not provide a basis for statutory damages).

⁵⁴¹ R.C. 149.43 (C)(2); see also *State ex rel. Miller v. Ohio Dept. of Edn.*, 10th Dist. No. 15AP-1168, 2016-Ohio-8534, ¶¶ 9-13 (holding that statutory damages begin accruing on day mandamus action is filed but does not include day records are provided).

⁵⁴² *State ex rel. Dehler v. Kelly*, 127 Ohio St.3d 309, 2010-Ohio-5724, ¶ 4.

⁵⁴³ *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 41 (noting that board did not contest the status of the requested emails as public records).

⁵⁴⁴ *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 51 (finding that, when newspaper sought to inspect improperly deleted emails, the public office had to bear the expense of forensic recovery).

⁵⁴⁵ R.C. 149.43(C)(3)(c); see *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, ¶ 17 (holding that, even if court had found denial of request contrary to statute, requester would not have been entitled to attorney fees because the public office’s conduct was reasonable); *State ex rel. Cincinnati Enquirer v. Sage*, 143 Ohio St.3d 392, 2015-Ohio-974, ¶ 37 (holding that courts first make decision of whether to award attorneys’ fees and then conduct analysis of factors outlined in statute to determine amount of fees); *State ex rel. Rohm v. Fremont City School Dist. Bd. of Edn.*, 6th Dist. No. S-09-030, 2010-Ohio-2751 (finding respondent did not demonstrate reasonable belief that its actions did not constitute a failure to comply); *State ex rel. Brown v. Village of North Lewisburg*, 2d Dist. No. 2012-CA-30, 2013-Ohio-3841, ¶ 19 (finding that it was not unreasonable for public office to believe that village council member would have access to requested council records, and was not entitled to duplicative voluminous copies of same records).

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- 1) That, based on the law as it existed at the time, a well-informed person responsible for the requested public records reasonably would have believed that the conduct of the respondent did not constitute a failure to comply with an obligation of R.C. 149.43(B);⁵⁴⁶
and
- 2) That a well-informed person responsible for the requested public records reasonably would have believed that the conduct of the public office would serve the public policy that underlies the authority that it asserted as permitting that conduct.⁵⁴⁷

The court may also reduce an award of statutory damages for the same reasons.⁵⁴⁸

A court may also reduce an award of attorney fees if it determines that, given the facts of the particular case, an alternative means should have been pursued to more effectively and efficiently resolve the public records dispute.⁵⁴⁹

7. Liabilities applicable to either party

The following additional remedies may be available against a party in a public records mandamus action. They are applicable regardless of whether the party represents him or herself (“*pro se*”) or is represented by counsel.

a. Frivolous conduct

If the court does not issue a writ of mandamus and the court determines that the bringing of the mandamus action was frivolous conduct as defined in R.C. 2323.51(A), the court may award to the public office all court costs, expenses, and reasonable attorney fees, as determined by the court.⁵⁵⁰

Any party adversely affected by frivolous conduct of another party may file a motion with the court, not more than 30 days after the entry of final judgment,⁵⁵¹ for an award of court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with the lawsuit or appeal.⁵⁵² When a court determines that the accused party has engaged in frivolous conduct, a party adversely affected by the conduct may recover the full amount of the reasonable attorney fees incurred, even fees paid or in the process of being paid, or in the process of being paid by an insurance carrier.⁵⁵³ Sanctions for frivolous conduct are reviewed on appeal under an abuse of discretion standard.⁵⁵⁴

⁵⁴⁶ *State ex rel. Anderson v. Vermilion*, 134 Ohio St.3d 120, 2012-Ohio-5320, ¶ 26; *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶ 39; *State ex rel. Bardwell v. Rocky River Police Dept.*, 8th Dist. No. 91022, 2009-Ohio-727, ¶ 58 (finding respondents failed to show grounds for reduction of statutory damages); *State ex rel. Toledo Blade Co. v. Toledo*, 6th Dist. No. L-12-1183, 2013-Ohio-3094, ¶ 17 (finding police department’s refusal to release gang map was not unreasonable given court precedent and thus attorney fee request denied).

⁵⁴⁷ *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶ 40; *Rohm v. Fremont City School Dist. Bd. of Edn.*, 6th Dist. No. S-09-030, 2010-Ohio-2751, ¶ 14.

⁵⁴⁸ R.C. 149.43(C)(2). An award or denial of statutory damages is reviewed on appeal under an abuse of discretion standard. *State ex rel. Pietrangelo v. Avon Lake*, 146 Ohio St.3d 292, 2016-Ohio-2974, ¶ 18.

⁵⁴⁹ R.C. 149.43(C)(4)(d).

⁵⁵⁰ R.C. 149.43(C)(5).

⁵⁵¹ *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 571, 2015-Ohio-4915, ¶¶ 10-12 (holding that a motion filed pursuant to R.C. 2323.51 must be rejected if not filed within 30 days).

⁵⁵² R.C. 2323.51; *State ex rel. Davis v. Metzger*, 145 Ohio St.3d 405, 2016-Ohio-1026, ¶¶ 9-13 (affirming sanctions against requester’s attorney for frivolous mandamus action and discovery); *State ex rel. Striker v. Cline*, 5th Dist. No. 09CA107, 2011-Ohio-983, *aff’d*, 130 Ohio St.3d 214, 2011-Ohio-5350, ¶¶ 22-25; *State ex rel. Verhovec v. Marietta*, 4th Dist. Nos. 11CA29, 12CA52, 12CA53, 13CA2, 2013-Ohio-5414, ¶¶ 44-92.

⁵⁵³ *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 2011-Ohio-5350, ¶¶ 7, 23-25; *State ex rel. Verhovec v. Marietta*, 4th Dist. Nos. 11CA29, 12CA52, 12CA53, 13CA1, 13CA2, 2013-Ohio-5414, ¶¶ 93-94; *State ex rel. Davis v. Metzger*, 5th Dist. No. 11-CA-130, 2014-Ohio-4555 (noting that requester filed mandamus within hours of being told request was being reviewed and did not dismiss action after receiving the records later that same day, and conducted unwarranted discovery); *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 571, 2015-Ohio-4915, ¶ 15 (noting that frivolous conduct must be egregious and “is not proved merely by winning a legal battle or by proving that a party’s factual assertions were incorrect”).

⁵⁵⁴ *State ex rel. Davis v. Metzger*, 145 Ohio St.3d 405, 2016-Ohio-1026, ¶ 10.

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b. Civil Rule 11

Civ.R. 11 provides, in part:

The signature of an attorney or *pro se* party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay For a willful violation of this rule, an attorney or *pro se* party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule.

Courts have found sanctionable conduct under Civ.R. 11 in public records cases.⁵⁵⁵ Any Civ.R. 11 motion must be filed within a reasonable period of time following the final judgment.⁵⁵⁶ An award or denial of Civ.R. 11 sanctions is reviewed on appeal under an abuse of discretion standard.⁵⁵⁷

B. Public Records Act Statutory Remedies — Court of Claims Procedure

On September 28, 2016, a new process for resolving public records disputes was added to Ohio law.⁵⁵⁸ This change gives public records requesters an expedited and economical process for resolving public records disputes in the Ohio Court of Claims.⁵⁵⁹ The Court of Claims is an Ohio court of limited jurisdiction, originally created to hear claims against the state for monetary damages.⁵⁶⁰ With regard to a particular public records request, a requester can pursue either a mandamus action (see Section A above) or resolution in the Court of Claims, but not both.⁵⁶¹

A requester may file a Court of Claims public records complaint, on a form prescribed by the clerk of the court of claims, in either the common pleas court in the county where the public office is located, or directly with the Court of Claims.⁵⁶² The requester must attach to the complaint copies of the records request in dispute and any written responses or other communications about the request from the public office.⁵⁶³ The filing fee is \$25.⁵⁶⁴ If the requester files the complaint in a common pleas court, the clerk of that court will serve the complaint on the public office and then forward it to the Court of Claims for all further proceedings.⁵⁶⁵

When the Court of Claims receives a public records complaint, it will be assigned to a special master for review.⁵⁶⁶ A special master is an attorney who serves as a judicial officer in the Court of Claims; his or her recommended decisions are reviewed by a judge of the Court of Claims.⁵⁶⁷ The Court of Claims is able to dismiss the complaint on its own authority, if recommended by the special master.⁵⁶⁸ The requester may also voluntarily dismiss his or her complaint at any time.⁵⁶⁹ If the Court of Claims determines that the complaint constitutes a case of first impression that involves an issue of substantial

⁵⁵⁵ *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Comms.*, 127 Ohio St.3d 202, 2010-Ohio-5073, ¶¶ 15-17; *State ex rel. Verhovec v. Marietta*, 4th Dist. Nos. 11CA29, 12CA52, 12CA53, 13CA1, 13CA2, 2013-Ohio-5414, ¶¶ 44-94 (finding relator engaged in frivolous conduct under Civ. R. 11 by feigning interest in records access when their actual intent was to seek forfeiture award).

⁵⁵⁶ *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 571, 2015-Ohio-4915, ¶ 18 (filing a Civ.R. 11 motion two years after final judgment in public records case was not within a reasonable period of time).

⁵⁵⁷ *State ex rel. Pietrangelo v. Avon Lake*, 146 Ohio St.3d 292, 2016-Ohio-2974, ¶ 19.

⁵⁵⁸ Sub. S.B. No. 321 (131st General Assembly).

⁵⁵⁹ R.C. 2743.75(A).

⁵⁶⁰ R.C. 2743.03. For more information, see the Ohio Court of Claims website at www.ohiocourtclaims.gov.

⁵⁶¹ R.C. 2743.75(C)(1).

⁵⁶² R.C. 2743.75(D)(1); R.C. 2743.75(B).

⁵⁶³ R.C. 2743.75(D)(1).

⁵⁶⁴ R.C. 2743.75(D)(1).

⁵⁶⁵ R.C. 2743.75(D)(1).

⁵⁶⁶ R.C. 2743.75(D)(2).

⁵⁶⁷ R.C. 2743.75(A); see also Black's Law Dictionary (10th ed. 2014) (defining "special master").

⁵⁶⁸ R.C. 2743.75(D)(2).

⁵⁶⁹ R.C. 2743.75(D)(2).

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public interest, the Court must dismiss the complaint and direct the requester to file a mandamus action in the appropriate court of appeals.⁵⁷⁰

Once the complaint is served on the public office, the special master will refer the case to mediation.⁵⁷¹ While in mediation, the case is stayed—that is, action in the case is suspended until mediation concludes.⁵⁷² Mediation may be conducted by telephone or any other electronic means.⁵⁷³ If mediation resolves the dispute between the parties, the case is dismissed.⁵⁷⁴ The special master can also determine, in consideration of the particular circumstances of the case and the interests of justice, that the case should not be referred to mediation at all.⁵⁷⁵

If mediation does not resolve the dispute, the mediation stay terminates and the case proceeds with the Court of Claims process.⁵⁷⁶ After mediation terminates, the public office has ten business days to file a response to the complaint.⁵⁷⁷ The public office may also file a motion to dismiss, if applicable.⁵⁷⁸ No other motions or pleadings—other than the complaint, response, and/or motion to dismiss—will be accepted by the Court of Claims in the matter.⁵⁷⁹ The special master may direct the parties in writing to file any additional motions, pleadings, information, or documentation, if needed.⁵⁸⁰ No discovery is permitted, and the parties may support their pleadings with affidavits.⁵⁸¹

Within seven business days of receiving the public office’s response to the complaint or motion to dismiss, the special master must submit a report and recommendation to the Court of Claims.⁵⁸² A report and recommendation is a written statement of findings by the special master and a proposal for the Court of Claims about how the case should be resolved.⁵⁸³ All parties will receive a copy of the report and recommendation.⁵⁸⁴ The parties have seven business days after receipt of the report and recommendation to file a written objection.⁵⁸⁵ The objection must be specific and state with particularity all grounds for the objection.⁵⁸⁶ If a party objects, the other party may file a response to the objection within seven business days.⁵⁸⁷

If neither party timely objects, the Court of Claims must issue an order adopting the report and recommendation unless there is an error evident on its face.⁵⁸⁸ There can be no appeal from this decision unless the Court of Claims materially altered the report and recommendation.⁵⁸⁹ If one or more of the parties objected to the report and recommendation, the Court of Claims must issue a final order within seven business days after the final response(s) to the objection(s) is received.⁵⁹⁰ Either party may appeal that order to the court of appeals for the appellate district where the public office is located.⁵⁹¹ Any appeal must be given precedence to ensure that a decision is promptly reached.⁵⁹²

⁵⁷⁰ R.C. 2743.75(C)(2). A “case of first impression” is simply one that presents the court with an issue of law that has not previously been decided by any controlling legal authority in that jurisdiction. See Black’s Law Dictionary (10th ed. 2014) (defining “case of first impression”).

⁵⁷¹ R.C. 2743.75(E)(1).

⁵⁷² R.C. 2743.75(E)(1); see also Black’s Law Dictionary (10th ed. 2014) (defining “stay”).

⁵⁷³ R.C. 2743.75(E)(1).

⁵⁷⁴ R.C. 2743.75(E)(1).

⁵⁷⁵ R.C. 2743.75(E)(1).

⁵⁷⁶ R.C. 2743.75(E)(1).

⁵⁷⁷ R.C. 2743.75(E)(2).

⁵⁷⁸ R.C. 2743.75(E)(2).

⁵⁷⁹ R.C. 2743.75(E)(2).

⁵⁸⁰ R.C. 2743.75(E)(2), (E)(3)(c).

⁵⁸¹ R.C. 2743.75(E)(3)(a), (b).

⁵⁸² R.C. 2743.75(F)(1) (establishing, however, that, “[f]or good cause shown, the special master may extend the seven-day period for the submission of the report and recommendation to the court ... by an additional seven business days.”).

⁵⁸³ R.C. 2743.75(F)(1); see also Black’s Law Dictionary (10th ed. 2014) (defining “report and recommendation”).

⁵⁸⁴ R.C. 2743.75(F)(2).

⁵⁸⁵ R.C. 2743.75(F)(2).

⁵⁸⁶ R.C. 2743.75(F)(2).

⁵⁸⁷ R.C. 2743.75(F)(2).

⁵⁸⁸ R.C. 2743.75(F)(2).

⁵⁸⁹ R.C. 2743.75(G)(1).

⁵⁹⁰ R.C. 2743.75(F)(2).

⁵⁹¹ R.C. 2743.75(G)(1).

⁵⁹² R.C. 2743.75(G)(1).

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If the appellate court finds that the public office obviously filed an appeal with the intent to delay compliance with R.C. 149.43(B) or unduly harass the requester, the court of appeals may award reasonable attorney's fees to the requester pursuant to R.C. 149.43(C).⁵⁹³ No discovery can be taken on this issue, and the court is not to presume that the appeal was filed with intent to delay or harass.⁵⁹⁴

If no appeal is taken and the Court of Claims determines that the public office denied access to public records in violation of R.C. 149.43(B), the Court of Claims must order the public office to permit access to the public records, and to reimburse the requester for the \$25 filing fee and any other costs associated with the action that were incurred by the requester.⁵⁹⁵ The requester is not entitled to recover attorney's fees.⁵⁹⁶

For more information, please see the Ohio Court of Claims' public records dispute website at <https://ohiocourtofclaims.gov/public-records.php>.

⁵⁹³ R.C. 2743.75(G)(2).

⁵⁹⁴ R.C. 2743.75(G)(2).

⁵⁹⁵ R.C. 2743.75(F)(3).

⁵⁹⁶ R.C. 2743.75(F)(3)(b).

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Chapter Five: Other Obligations of Public Office

V. Chapter Five: Other Obligations of a Public Office

Public offices have other obligations with regard to the records that they keep. These include:

- Managing public records by organizing them such that they can be made available in response to public records requests,⁵⁹⁷ and ensuring that all records – public or not – are maintained and disposed of only in accordance with properly adopted, applicable records retention schedules;⁵⁹⁸
- Maintaining a copy of the office’s current records retention schedules at a location readily available to the public;⁵⁹⁹
- Adopting and posting an office public records policy;⁶⁰⁰ and
- Ensuring that all elected officials associated with the public office, or their designees, obtain three hours of certified public records training through the Ohio Attorney General’s Office once during each term of office.⁶⁰¹

Additionally, the Ohio Auditor of State’s Office recommends that public offices log and track the public records requests they receive to ensure compliance with the Ohio Public Records Act. Auditor of State Bulletin 2011-006 explains the office’s recommended Best Practices for Complying with Public Records Requests.⁶⁰²

A. Records Management

Records are a crucial component of the governing process. They contain information that supports government functions affecting every person in government and within its jurisdiction. Like other important government resources, records and the information they contain must be well managed to ensure accountability, efficiency, economy, and overall good government.

The term “records management” encompasses two distinct obligations of a public office, each of which furthers the goals of the Public Records Act. First, in order to facilitate broader access to public records, a public office must organize and maintain the public records it keeps in a manner such that they can be made available for inspection or copying in response to a public records request.⁶⁰³

Second, Ohio’s records retention law, R.C. 149.351, prohibits unauthorized removal, destruction, mutilation, transfer, damages, or disposal of any record or part of a record, except as provided by law or under the rules adopted by the records commissions (i.e., pursuant to approved records retention schedules).⁶⁰⁴ This law helps facilitate transparency in government and is one means of preventing the circumvention of the Public Records Act.⁶⁰⁵ Therefore, in the absence of a law or retention schedule permitting disposal of particular records, an office lacks the required authority to dispose of those records and must maintain them until proper authority to dispose of them is obtained. In the meantime, the records remain subject to public records requests. Public offices at various levels of government, including state agencies, boards and commissions, and local political subdivisions, have different resources and processes for adopting records retention schedules. Those processes are described below.

In addition, a public office shall only create records that are “necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions

⁵⁹⁷ R.C. 149.43(B)(2).

⁵⁹⁸ R.C. 149.351(A).

⁵⁹⁹ R.C. 149.43(B)(2).

⁶⁰⁰ R.C. 149.43(E)(1); R.C. 109.43(E).

⁶⁰¹ R.C. 149.43(E)(1); R.C. 109.43(B).

⁶⁰² See Auditor of State Bulletin 2011-006 at <https://ohioauditor.gov/publications/bulletins/2011/2011-006.pdf>.

⁶⁰³ R.C. 149.43(B)(2); see Chapter Two: A. “Rights and Obligations of Public Records Requesters and Public Offices” (providing more information about records management in the context of public records requests).

⁶⁰⁴ R.C. 149.351(A).

⁶⁰⁵ *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279, ¶ 14.

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of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities."⁶⁰⁶ This standard only addresses the records required to be *created* by a public office. A public office may *receive* many items in addition to those it creates. Those items received, if they meet the definition of a record, must also be retained and disposed of in accordance with records retention schedules.

1. Records management programs

a. Local government records commissions

Authorization for disposition of local government records is provided by applicable statutes, and by rules adopted by records commissions at the county,⁶⁰⁷ township,⁶⁰⁸ and municipal⁶⁰⁹ levels. Records commissions also exist for each library district,⁶¹⁰ special taxing district,⁶¹¹ school district,⁶¹² and educational service center.⁶¹³

Records commissions are responsible for reviewing applications for one-time disposal of obsolete records, as well as records retention schedules submitted by government offices within their jurisdiction.⁶¹⁴ Once a commission has approved an application or schedule, it is forwarded to the State Archives at the Ohio History Connection for review and identification of records⁶¹⁵ that the State Archives deems to be of continuing historical value.⁶¹⁶ Upon completion of that process, the Ohio History Connection will forward the application or schedule to the Auditor of State for approval or disapproval.⁶¹⁷

b. State records program

The Ohio Department of Administrative Services (DAS) administers the records program for all state agencies,⁶¹⁸ with the exception of state-supported institutions of higher education, and upon request for the legislative and judicial branches of government.⁶¹⁹ Among its other duties, the state records program is responsible for establishing "general schedules" for the disposal of certain types of records common to most state agencies. State agencies must affirmatively adopt, within the Records and Information Management System (RIMS), any existing general schedules they wish to utilize.⁶²⁰ Once a general schedule has been officially adopted by a state agency, when the time specified in the general schedule has elapsed, the records identified should no longer have sufficient administrative, legal, fiscal, or other value to warrant further preservation by the state.⁶²¹

If a state agency keeps a record series that does not fit into an existing state general schedule, or if it wishes to modify the language of a general schedule to better suit its needs, the state agency can submit its own proposed retention schedules to DAS via the online RIMS for approval by DAS, the Auditor of State, and the State Archivist.

The state's records program works in a similar fashion to local records commissions, except that applications and schedules are forwarded to the State Archives and the Auditor of State for review

⁶⁰⁶ R.C. 149.40.

⁶⁰⁷ R.C. 149.38.

⁶⁰⁸ R.C. 149.42.

⁶⁰⁹ R.C. 149.39.

⁶¹⁰ R.C. 149.411.

⁶¹¹ R.C. 149.412.

⁶¹² R.C. 149.41.

⁶¹³ R.C. 149.41.

⁶¹⁴ R.C. 149.38, .381.

⁶¹⁵ R.C. 149.38, .381.

⁶¹⁶ R.C. 149.38, .381.

⁶¹⁷ R.C. 149.39.

⁶¹⁸ R.C. 149.33(A). Information about records management for state agencies is available at:

<http://www.das.ohio.gov/Divisions/GeneralServices/StatePrintingandMailServices/RecordsManagement/tabid/265/Default.aspx>.

⁶¹⁹ R.C. 149.332.

⁶²⁰ Instructions for how to adopt DAS general retention schedules are on page 20 of the RIMS User Manual, available at: <http://www.das.ohio.gov/LinkClick.aspx?fileticket=D6T7Sb1qZ0k%3d&tabid=265>.

⁶²¹ R.C. 149.331(C); General retention schedules (available for adoption by all state agencies) and individual state agency schedules are available at: <http://apps.das.ohio.gov/rims/General/General.asp>.

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simultaneously following the approval of DAS.⁶²² Again, the State Archives focuses on identifying records with enduring historical value. The State Auditor decides whether to approve, reject, or modify applications and schedules based on the continuing administrative and fiscal value of the state records to the state or to its citizens.⁶²³

c. *Records program for state-supported colleges and universities*

State-supported institutions of higher education are unique in that their records programs are established and administered by their respective boards of trustees rather than a separate records commission or the State's records program.⁶²⁴ Through their records programs, these state offices are charged with applying efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposition of records.⁶²⁵

2. *Records retention and disposition*

a. *Retention schedules*

Records of a public office may be destroyed, but only if they are destroyed in compliance with a properly approved records retention schedule.⁶²⁶ In a 2008 decision, the Ohio Supreme Court emphasized that, "in cases in which public records, including e-mails, are properly disposed of in accordance with a duly adopted records-retention policy, there is no entitlement to those records under the Public Records Act."⁶²⁷ However, if the retention schedule does not address the particular type of record in question, the record must be kept until the schedule is properly amended to address that category of records.⁶²⁸ Also, if a public record is retained beyond its properly approved destruction date, it keeps its public record status and is subject to public records requests until it is destroyed.⁶²⁹

In crafting proposed records retention schedules, a public office must evaluate the length of time each type of record needs to be retained after it has been received or created by the office for administrative, legal, or fiscal purposes.⁶³⁰ Consideration should also be given to the enduring historical value of each type of record, which will also be evaluated by the State Archives at the Ohio History Connection when that office conducts its review. Local records commissions may consult with the State Archives at the Ohio History Connection during this process;⁶³¹ the state records program offers consulting services for state offices.⁶³²

b. *Transient records*

Adoption of a schedule for transient records – that is, records containing information of short term usefulness – allows a public office to dispose of these records once they are no longer of administrative value.⁶³³ Examples of transient records include voicemail messages, telephone message slips, post-it notes, and superseded drafts.

⁶²² R.C. 149.333.

⁶²³ R.C. 149.333.

⁶²⁴ R.C. 149.33(B).

⁶²⁵ R.C. 149.33.

⁶²⁶ R.C. 149.351.

⁶²⁷ *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, ¶ 23.

⁶²⁸ *Wagner v. Huron Cty. Bd. of Cty. Commrs.*, 6th Dist. No. H-12-008, 2013-Ohio-3961, ¶ 17 (holding that public office must dispose of records in accordance with then-existing retention schedule and cannot claim that it disposed of records based on a schedule implemented after disposal of requested records).

⁶²⁹ *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 41 (2000) (finding police department violated R.C. 149.43 when records were destroyed in contravention of City's retention schedule).

⁶³⁰ R.C. 149.34.

⁶³¹ R.C. 149.31(A) (providing that "[t]he archives administration shall be headed by a trained archivist designated by the Ohio history connection and shall make its services available to county, municipal, township, school district, library, and special taxing district records commissions upon request.").

⁶³² R.C. 149.331(D).

⁶³³ *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 24, n.1.

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c. Records disposition

It is important to document the disposition of records after they have satisfied their approved retention periods. Local governments should file a Certificate of Records Disposal (RC-3) with the State Archives at the Ohio History Connection at least fifteen business days prior to the destruction in order to allow the State Archives to select records of enduring historical value. State agencies can document their records disposals on the RIMS system or in-house. Even after changes to R.C. 149.38 and R.C. 149.381 concerning times when it is not necessary to submit the RC-3 to the State Archives, it is important for a government entity to internally track records disposals, particularly tracking under which retention schedule the records were disposed, the record series title, the inclusive dates of the records, and the date of disposal.

3. Liability for unauthorized destruction, damage, or disposal of records

All records are considered to be the property of the public office and must be delivered by outgoing officials and employees to their successors in office.⁶³⁴ Improper removal, destruction, damage or other disposition of a record is a violation of R.C. 149.351(A).

a. Injunction and civil forfeiture

Ohio law allows “any person who is aggrieved by”⁶³⁵ the unauthorized “removal, destruction, mutilation, transfer, or other damage to or disposition of a record,” or by the threat of such action, to file either or both of the following types of lawsuits in the appropriate common pleas court:

- A civil action for an injunction to force the public office to comply with R.C. 149.351(A), as well as any reasonable attorney fees associated with the suit.⁶³⁶
- A civil action to recover a forfeiture of \$1,000 for each violation of R.C. 149.351(A), not to exceed a cumulative total of \$10,000 (regardless of the number of violations), as well as reasonable attorney fees associated with the suit, not to exceed the forfeiture amount recovered.⁶³⁷

A person is not “aggrieved” unless he establishes, as a threshold matter, that he made an enforceable public records request for the records claimed to have been disposed of in violation of R.C. 149.351.⁶³⁸ Also, a person is not “aggrieved” by a violation of R.C. 149.351(A) if clear and convincing evidence shows that the request for a record was contrived as a pretext to create liability under the section.⁶³⁹ If pretext is so proven, the court may order the requester to pay reasonable attorney fees to the defendant(s).⁶⁴⁰

⁶³⁴ R.C. 149.351(A).

⁶³⁵ *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279; *Walker v. Ohio State Univ. Bd. of Trustees*, 10th Dist. No. 09AP-748, 2010-Ohio-373, ¶¶ 22-27 (determining that a person is “aggrieved by” a violation of R.C. 149.351(A) when (1) the person has a legal right to disclosure of a record of a public office, and (2) the disposal of the record, not permitted by law, allegedly infringes the right); see also *State ex rel. Verhovec v. Uhrichsville*, 5th Dist. No. 2014AP04 0013, 2014-Ohio-4848 (finding requester did not demonstrate actual interest in records); *State ex rel. Cincinnati Enquirer v. Allen*, 1st Dist. No. C-040838, 2005-Ohio-4856, ¶ 15; *State ex rel. Sensel v. Leone*, 12th Dist. No. CA97-05-102 (1998), reversed on other grounds, 85 Ohio St.3d 152 (1999).

⁶³⁶ R.C. 149.351(B)(1).

⁶³⁷ R.C. 149.351(B)(2).

⁶³⁸ *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279, ¶ 16; *Arnold v. Columbus*, 10th Dist. No. 14AP-418, 2015-Ohio-4873, ¶¶ 71-72; *Walker v. Ohio State Univ. Bd. of Trustees*, 10th Dist. No. 09AP-748 2010-Ohio-373, ¶¶ 22-27; *State ex rel. Todd v. Canfield*, 7th Dist. No. 11 MA 209, 2014-Ohio-569, ¶ 22.

⁶³⁹ R.C. 149.351(C); *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279; *State ex rel. Verhovec v. Marietta*, 4th Dist. No. 12CA32, 2013-Ohio-5415, ¶ 48 (considering the intent of the real party-in-interest, Relator’s husband, to determine whether requester was an aggrieved party, and finding that, because all evidence indicated that requester’s intent was pecuniary gain, trial court properly determined that requester was not aggrieved and not entitled to civil forfeiture); *State ex rel. Rhodes v. Chillicothe*, 4th Dist. No. 12CA3333, 2013-Ohio-1858, ¶ 44 (holding that, because appellant’s interest was purely pecuniary, appellant did not have an interest in accessing records and was not aggrieved).

⁶⁴⁰ R.C. 149.351(C)(2).

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b. Limits on filing action for unauthorized destruction, damage, or disposal

A person has five years from the date of the alleged violation or threatened violation to file the above actions⁶⁴¹ and has the burden of providing evidence that records were destroyed in violation of R.C. 149.351.⁶⁴² When any person has recovered a forfeiture in a civil action under R.C. 149.351(B)(2), no other person may recover a forfeiture for that same record, regardless of the number of persons “aggrieved,” or the number of civil lawsuits filed.⁶⁴³ Determining the number of “violations” depends on the nature of the records involved.⁶⁴⁴

c. Attorney fees

The aggrieved person may seek an award of reasonable attorney fees for either the injunctive action or an action for civil forfeiture.⁶⁴⁵ An award of attorney fees under R.C. 149.351 is discretionary,⁶⁴⁶ and the award of attorney fees for the forfeiture action may not exceed the forfeiture amount.⁶⁴⁷

4. Availability of records retention schedules

All public offices must maintain a copy of all current records retention schedules at a location readily available to the public.⁶⁴⁸

B. Records management – practical pointers

1. Fundamentals

Create Records Retention Schedules and Follow Them

Every record, public or not, that is kept by a public office must be covered by a records retention schedule. Without an applicable schedule dictating how long a record must be kept and when it can be destroyed, a public office must keep that record forever. Apart from the inherent long-term storage problems and associated costs this creates for a public office, the office is also responsible for continuing to maintain the record in such a way that it can be made available at any time if it is responsive to a public records request. Creating and following schedules for all of its records allows a public office to dispose of records once they are no longer necessary or valuable.

Content – Not Medium – Determines How Long to Keep a Record

Deciding how long to keep a record should be based on the *content* of the record, not on the medium on which it exists. Not all paper documents are “records” for purposes of the Public Records Act; similarly, not all documents transmitted via email are “records” that must be maintained and destroyed pursuant to a records retention schedule. Accordingly, in order to fulfill both its records management and public records responsibilities, a public office should categorize all of the items it keeps that are deemed to be records – regardless of the *form* or transmission method in which they exist – based on content, and store them based on those content categories, or “records series,” for as long as the records have legal, administrative, fiscal, or historic value. (Note that storing email records unsorted on a server does not satisfy records retention requirements because the server does not allow for the varying disposal schedules of different record series.)

⁶⁴¹ R.C. 149.351(E).

⁶⁴² *Snodgrass v. Mayfield Hts.*, 8th Dist. No. 990643, 2008-Ohio-5095, ¶ 18; *State ex rel. Doe v. Register*, 12th Dist. No. CA2008-08-081, 2009-Ohio-2448, ¶ 30.

⁶⁴³ R.C. 149.351(D).

⁶⁴⁴ *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, ¶¶ 25-44; see also *Cwynar v. Jackson Twp. Bd. of Trustees*, 178 Ohio App.3d 345, 2008-Ohio-5011 (5th Dist.).

⁶⁴⁵ R.C. 149.351(B)(1)-(2).

⁶⁴⁶ *Cwynar v. Jackson Twp. Bd. of Trustees*, 178 Ohio App.3d 345, 2008-Ohio-5011, ¶ 56 (5th Dist.).

⁶⁴⁷ R.C. 149.351(B)(2).

⁶⁴⁸ R.C. 149.43(B)(2).

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Practical Application

Creating and implementing a records management system might sound daunting. For most public offices, though, it is a matter of simple housekeeping. Many offices already have the scaffolding of existing records retention schedules in place, which may be improved in the manner outlined below.

2. Managing records in five easy steps:

a. Conduct a records inventory

The purpose of an inventory is to identify and describe the types of records an office keeps. Existing records retention schedules are a good starting point for determining the types of records an office keeps, as well as identifying records that are no longer kept or new types of records for which new schedules need to be created.

For larger offices, it is helpful to designate a staff member from each functional area of the office who knows the kinds of records his or her department creates and why, what the records document, and how and where they are kept.

b. Categorize records by record series

Records should be grouped according to record series. A record series is a group of similar records that are related because they are created, received or used for, or result from the same purpose or activity. Record series descriptions should be broad enough to encompass all records of a particular type (“Itemized Phone Bills” rather than “FY07-FY08 Phone Bills” for instance), but not so broad that it fails to be instructive (such as “Finance Department emails”) or leaves the contents open to interpretation or “shoehorning.”

c. Decide how long to keep each records series

Retention periods are determined by assessing four values for each category of records:

Administrative Value: A record maintains its administrative value as long as it is useful and relevant to the execution of the activities that caused the record to be created. Administrative value is determined by how long the record is needed by the office to carry out – that is, to “administer” – its duties. Every record created by government entities should have administrative value, which can vary from being transient (a notice of change in meeting location) to long-term (personnel files).

Legal Value: A record has legal value if it documents or protects the rights or obligations of citizens or the agency that created it, provides for defense in litigation, or demonstrates compliance with laws, statutes, and regulations. Examples include contracts, real estate records, retention schedules, and licenses.

Fiscal Value: A record has fiscal value if it pertains to the receipt, transfer, payment, adjustment, or encumbrance of funds, or if it is required for an audit. Examples include payroll records and travel vouchers.

Historical Value: A record has historical value if it contains significant information about people, places, or events. The State Archives suggests that historical documents be retained permanently. Examples include board or commission meeting minutes and annual reports.

Retention periods should be set to the highest of these values and should reflect how long the record needs to be kept, not how long it can be kept.

d. Dispose of records on schedule

Records retention schedules indicate how long particular record series must be kept and when and how the office can dispose of them. Records kept past their retention period are still subject to

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public records requests and can be unwieldy and expensive to store and/or migrate as technology changes. As a practical matter, it is helpful to designate a records manager or records custodian to assist in crafting retention schedules, monitoring when records are due for disposal, and ensuring proper completion of disposal forms.

e. Review schedules regularly and revise, delete, or create new schedules as the law and the office's operations change

Keep track of new record series that are created as a result of statutory and policy changes. Ohio law requires all records to be scheduled within one year after the date that they are created or received.⁶⁴⁹

C. Helpful Resources for Local Government Offices

Ohio History Connection/State Archives – Local Government Records Program

The Local Government Records Program of the State Archives (see: www.ohiohistory.org/lgr) provides records-related advice, forms, model retention manuals, and assistance to local governments in order to facilitate the identification and preservation of local government records with enduring historical value. Please direct inquiries and send forms to:

The Ohio History Connection/State Archives
Local Government Records Program
800 East 17th Avenue
Columbus, Ohio 43211
(614) 297-2553
localrecs@ohiohistory.org

D. Helpful Resources for State Government Offices

1. Ohio Department of Administrative Services records management program

The Ohio Department of Administrative Services' State Records Administration can provide records management advice and assistance to state agencies, as well as provide training seminars by request. Information available on their website includes:

- Access to the Records Information Management System (RIMS) retention schedule database;
- RIMS User Manual;
- General Retention Schedules; and
- Records Inventory and Analysis template.

For more information, contact DAS at 614-466-1105 or visit the Records Management page of the DAS website at

<http://www.das.ohio.gov/divisions/generalservices/stateprintingandmailservices/recordsmanagement/tabid/265/Default.aspx>.

⁶⁴⁹ R.C. 149.34(C).

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2. The Ohio History Connection, State Archives

The State Archives can assist state agencies with the identification and preservation of records with enduring historical value.

For more information or to schedule a records appraisal, contact the State Archives:

The Ohio History Connection/State Archives
800 East 17th Avenue
Columbus, Ohio 43211
(614) 297-2536
statearchives@ohiohistory.org
<https://www.ohiohistory.org/learn/archives-library/state-archives>

E. Helpful Resources for All Government Offices

Ohio Electronic Records Committee

Electronic records present unique challenges for archivists and records managers. As society shifts from traditional methods of recordkeeping to electronic recordkeeping, the issues surrounding the management of electronic records become more significant. Although the nature of electronic records is constantly evolving, these records are being produced at an ever-increasing rate. As these records multiply, the need for leadership and policy becomes more urgent.

The goal of the Ohio Electronic Records Committee (OhioERC) is to draft guidelines for the creation, maintenance, long term preservation of, and access to electronic records created by Ohio's state and local governments. Helpful documents available on the OhioERC's website include:

- Social Media: The Records Management Challenges;
- Hybrid Microfilm Guidelines;
- Digital Document Imaging Guidelines and Scanning Feasibility Tool;
- Electronic Records Management Guidelines;
- General Schedules for Electronic Records;
- Electronic Records Policy;
- Managing Electronic Mail;
- Trustworthy Information Systems Handbook; and
- Topical Tip Sheets.

For more information and to learn about ongoing projects, visit the Ohio Electronic Records Committee website at <http://www.OhioERC.org>.

Statements on Maintaining Digitally Imaged Records Permanently

- Ohio History Connection
<https://www.ohiohistory.org/learn/archives-library/state-archives/local-government-records-program/electronic-records-resources/statement-on-maintaining-digitally-imaged-records->
- Ohio County Archivists and Records Managers Association
https://www.ohiohistory.org/OHC/media/OHC-Media/Documents/CARMA_Statement_on_Permanent_Records_2013_12_17.pdf

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F. Public Records Policy

A public office must create and adopt a policy for responding to public records requests. The Ohio Attorney General's Office has developed a model public records policy, which may serve as a guide.⁶⁵⁰ The public records policy must be distributed to the records manager, records custodian, or the employee who otherwise has custody of the records of the office, and that employee must acknowledge receipt. In addition, a poster describing the policy must be posted in the public office in a conspicuous location, as well as in all branch offices.⁶⁵¹ The public records policy must be included in the office's policies and procedures manual, if one exists, and may be posted on the office's website.⁶⁵² Compliance with these requirements will be audited by the Auditor of State in the course of a regular financial audit.⁶⁵³

A public records policy may ...

limit the number of records that the office will transmit *by United States mail* to a particular requester to ten per month, unless the requester certifies in writing that the requested records and/or the information those records contain will not be used or forwarded for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering of news, reporting or gathering of information to assist citizen oversight or understanding of the operation or activities of government, or non-profit educational research.⁶⁵⁴

A public records policy may not ...

- limit the number of public records made available to a single person;
- limit the number of records the public office will make available during a fixed period of time; or
- establish a fixed period of time before the public office will respond to a request for inspection or copying of public records (unless that period is less than eight hours).⁶⁵⁵

G. Required Public Records Training for Elected Officials

All local and statewide elected government officials⁶⁵⁶ or their designees⁶⁵⁷ must attend a three-hour public records training program during each term of elective office⁶⁵⁸ the official serves.⁶⁵⁹ The training must be developed and certified by the Ohio Attorney General's Office and presented either by the Ohio Attorney General's Office or an approved entity with which the Attorney General's Office contracts.⁶⁶⁰ Compliance with the training provision will be audited by the Auditor of State in the course of a regular financial audit.⁶⁶¹

⁶⁵⁰ R.C. 149.43(E)(1). Attorney General's Model Policy available at <http://www.OhioAttorneyGeneral.gov/Sunshine>.

⁶⁵¹ R.C. 149.43(E)(2).

⁶⁵² R.C. 149.43(E)(2).

⁶⁵³ R.C. 109.43(G).

⁶⁵⁴ R.C. 149.43(B)(7). In addition, a public office may adopt policies and procedures it will follow in transmitting copies by U.S. mail or other means of delivery or transmission, but adopting these policies and procedures is deemed to create an enforceable duty on the office to comply with them.

⁶⁵⁵ R.C. 149.43(E)(1).

⁶⁵⁶ R.C. 109.43(A)(2) (defining "elected official"). NOTE: the definition excludes justices, judges, or clerks of the Supreme Court of Ohio; courts of appeals; courts of common pleas; municipal courts; and county courts.

⁶⁵⁷ R.C. 109.43(B) (providing that training may be received by an "appropriate" designee, who may be the designee of the sole elected official in a public office, or of all the elected officials if the public office includes more than one elected official). Note that R.C. 109.43(A) does not provide a definition of "appropriate."

⁶⁵⁸ R.C. 109.43(B) (providing that training shall be three hours for every term of office for which the elected official was appointed or elected to the public office involved).

⁶⁵⁹ R.C. 149.43(E)(1); R.C. 109.43(B) (providing that this training is intended to enhance an elected official's knowledge of his or her duty to provide access to public records and to provide guidance in developing and updating his or her office's public records policies); R.C. 149.43(E)(1) (providing that another express purpose of the training is "[t]o ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of [the Public Records Act]").

⁶⁶⁰ R.C. 109.43(B)-(D) (providing that the Attorney General's Office may not charge a fee to attend the training programs it conducts, but outside contractors that provide the certified training may charge a registration fee that is based on the "actual and necessary" expenses associated with the training, as determined by the Attorney General's Office).

⁶⁶¹ R.C. 109.43(G).

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Both the online version of the certified elected officials' training and the schedule for in-person training sessions can be found online at www.OhioAttorneyGeneral.gov/Sunshine.

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Chapter Six: Special Topics

VI. Chapter Six: Special Topics

A. CLEIRs: Confidential Law Enforcement Investigatory Records Exemption⁶⁶²

This exemption is often mistaken as one that applies only to police investigations. In fact, the Confidential Law Enforcement Investigatory Records exemption, commonly known as “CLEIRs,” applies to investigations of alleged violations of criminal, quasi-criminal, civil, and administrative law. It does not apply to most investigations conducted for purposes of employment matters, such as internal disciplinary investigations,⁶⁶³ pre-employment questionnaires and polygraph tests,⁶⁶⁴ or to public records that later become the subject of a law enforcement investigation.⁶⁶⁵

Note that a public records request for any criminal or juvenile adjudicatory investigation made by an incarcerated adult or juvenile must be pre-approved by the sentencing judge.⁶⁶⁶ After pre-approval, the request is still subject to any exemptions and defenses that apply to the requested records.

1. CLEIRs defined:

Under CLEIRs, a public office may withhold any record that both:

- (1) Pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature,⁶⁶⁷

and

- (2) If released, would create a high probability of disclosing any of the following information:⁶⁶⁸

- Identity of an uncharged suspect;
- Identity of a source or witness to whom confidentiality was reasonably promised;
- Specific confidential investigatory techniques or procedures;
- Specific investigatory work product; or
- Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

2. Determining whether the CLEIRs exemption applies

Remember that the CLEIRs exemption is a strict two-step test, and a record must first qualify as pertaining to a “law enforcement matter” under Step One before any of the exemption categories in Step Two will apply to the record.⁶⁶⁹

⁶⁶² R.C. 149.43(A)(1)(h),(A)(2).

⁶⁶³ *Mehta v. Ohio Univ.*, Court of Claims No. 2006-06752, 2009-Ohio-4699, ¶¶ 36-37 (determining that a public university’s internal report of investigation of plagiarism was not exempted from disclosure under the Public Records Act), rev’d in part on other grounds, 194 Ohio App.3d 844, 2011-Ohio-3484.

⁶⁶⁴ *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142 (1995).

⁶⁶⁵ See *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 42, 2006-Ohio-6365, ¶ 51 (holding that records “made in the routine course of public employment” that related to but preceded a law enforcement investigation are not confidential law enforcement investigatory records); *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 316 (2001).

⁶⁶⁶ R.C. 149.43(B)(8); see Chapter Two: B. 4. a. “Prison Inmates.”

⁶⁶⁷ R.C. 149.43(A)(2).

⁶⁶⁸ R.C. 149.43(A)(2)(a)-(d).

⁶⁶⁹ *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996) (holding that, because 911 tapes are not part of an investigation, “it does not matter that release of the tapes might reveal the identity of an uncharged suspect or contain information which, if disclosed, would endanger the life or physical safety of a witness.”); *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 170 (1994).

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Step one: Pertains to “a law enforcement matter”

An investigation is only considered a “law enforcement matter” if it meets each prong of the following 3-part test:

*(a) Has an investigation been initiated upon specific suspicion of wrongdoing?*⁶⁷⁰

Investigation records must be generated in response to specific alleged misconduct, not as the incidental result of routine monitoring.⁶⁷¹ However, “routine” investigations of the use of deadly force by officers, even if the initial facts indicate accident or self-defense, are sufficient to meet this requirement.⁶⁷²

*(b) Does the alleged conduct violate criminal,⁶⁷³ quasi-criminal,⁶⁷⁴ civil,⁶⁷⁵ or administrative law?*⁶⁷⁶

So long as the conduct is prohibited by statute or administrative rule, whether the punishment is criminal, quasi-criminal, civil, or administrative in nature is irrelevant.⁶⁷⁷

“Law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature” refers directly to the enforcement of the law and not to employment or personnel matters ancillary to law enforcement matters.⁶⁷⁸

Disciplinary investigations of alleged violations of internal office policies or procedures are *not* law enforcement matters,⁶⁷⁹ including disciplinary matters and personnel files of law enforcement officers.⁶⁸⁰

⁶⁷⁰ See, e.g., *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53 (1990).

⁶⁷¹ *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53 (1990); *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 445 (2000).

⁶⁷² See *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 57 Ohio St.3d 77, 79-80 (1991); see also, *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 77 (holding that redacted portions of audit records were directed to specific misconduct and were not simply part of routine monitoring).

⁶⁷³ *State ex rel. Police Officers for Equal Rights v. Lashutka*, 72 Ohio St.3d 185, 187 (1995).

⁶⁷⁴ See *Goldberg v. Maloney*, 111 Ohio St.3d 211, 2006-Ohio-5485, ¶¶ 41-43 (providing bankruptcy as an example of a “quasi-criminal” matter); *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 76 (noting that the special audit by the Auditor of State clearly qualifies as both a “law enforcement matter of a ... civil, or administrative nature” and a “law enforcement matter of a criminal [or] quasi-criminal” matter); *In re Fisher*, 39 Ohio St.2d 71, 75-76 (1974) (noting juvenile delinquency is an example of a “quasi-criminal” matter).

⁶⁷⁵ *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 76 (noting that the special audit by the Auditor of State clearly qualifies as both a “law enforcement matter of a ... civil, or administrative nature” and a “law enforcement matter of a criminal [or] quasi-criminal” matter).

⁶⁷⁶ See, e.g., *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 684 (1996); *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53 (1990) (“The issue is whether records compiled by the committee pertain to a criminal, quasi-criminal or administrative matter. Those categories encompass the kinds of anti-fraud and anti-corruption investigations undertaken by the committee. The records are compiled by the committee in order to investigate matter prohibited by state law and administrative rule.” (emphasis omitted)); *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, ¶ 29 (“The reference in R.C. 149.43(A)(2) to four types of law enforcement matters – criminal, quasi-criminal, civil, and administrative – evidences a clear statutory intention to include investigative activities of state licensing boards.” (quotation omitted)); *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 76 (holding that the special audit by the Auditor of State clearly qualifies as both a “law enforcement matter of a ... civil, or administrative nature” and a “law enforcement matter of a criminal [or] quasi-criminal” matter).

⁶⁷⁷ *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 53 (1990); *State ex rel. McGee v. Ohio State Bd. of Psychology*, 49 Ohio St.3d 59, 60 (1990), overruled on other grounds, *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420 (1994).

⁶⁷⁸ *State ex rel. Freedom Communications, Inc. v. Elida Community Fire Co.*, 82 Ohio St.3d 578, 581 (1998); *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142 (1995) (finding polygraph test results, questionnaires, and other materials gathered in the course of a police department’s hiring process were not “law enforcement matters” for purposes of CLEIRs, as “law enforcement matters” refers “directly to the enforcement of the law, and not to employment or personnel matters ancillary to law enforcement matters.”).

⁶⁷⁹ *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 49.

⁶⁸⁰ *State ex rel. McGowan v. Cuyahoga Metro. Hous. Auth.*, 78 Ohio St.3d 518, 519 (1997); *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142 (1995) (finding personnel records reflecting the discipline of police officers were not confidential law enforcement investigatory records exempted from disclosure).

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(c) Does the public office have the authority to investigate or enforce the law allegedly violated?

If the office does not have legally-mandated investigative⁶⁸¹ or enforcement authority over the alleged violation of the law, then the records it holds are not “a law enforcement matter” for that office.⁶⁸² For example, if an investigating law enforcement agency obtains a copy of an otherwise public record of another public office as part of an investigation, the original record remaining in the hands of the other public office is not covered by the CLEIRs exemption.⁶⁸³

Step two: High probability of disclosing certain information

If an investigative record does pertain to a “law enforcement matter,” the CLEIRs exemption applies, but only to the extent that release of the record would create a high probability of disclosing one or more of the following five types of information:⁶⁸⁴

(a) Identity of an uncharged suspect in connection with the investigated conduct

An “uncharged suspect” is a person who at some point in the investigatory agency’s investigation was believed to have committed a crime or offense,⁶⁸⁵ but who has not been arrested⁶⁸⁶ or charged⁶⁸⁷ for the offense to which the investigative record pertains. The purposes of this exemption include: (1) protecting the rights of individuals to be free from unwarranted adverse publicity; and (2) protecting law enforcement investigations from being compromised.⁶⁸⁸

Only the particular information that has a high probability of revealing the identity of an uncharged suspect can be redacted from otherwise non-exempt records prior to the records’ release.⁶⁸⁹ When the contents of a particular record in an investigatory file are so “inextricably intertwined” with the suspect’s identity that redacting will fail to protect the person’s identity in connection with the investigated conduct, that entire record may be

⁶⁸¹ *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. Nos. 04AP-492, 04AP-504, 2005-Ohio-3377, ¶ 76.

⁶⁸² *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158 (1997) (finding that records of alleged child abuse do not pertain to a law enforcement matter in the hands of county ombudsman office that has no legally mandated enforcement or investigative authority).

⁶⁸³ *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 51 (holding that “records made in the routine course of public employment before” an investigation began were not confidential law enforcement records); *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 316 (2001) (finding street repair records of city’s public works superintendent were “unquestionably public records” and “[t]he mere fact that these records might have subsequently become relevant to Dillery’s criminal cases did not transform them into records exempt from disclosure”); *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378 (1996) (holding that a public record that “subsequently came into the possession and/or control of a prosecutor, other law enforcement officials, or even the grand jury has no significance” because “[o]nce clothed with the public records cloak, the records cannot be defrocked of their status”).

⁶⁸⁴ R.C. 149.43(A)(2); *State ex rel. Multimedia v. Snowden*, 72 Ohio St.3d 141, 142 (1995).

⁶⁸⁵ *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶ 23.

⁶⁸⁶ *State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept.*, 38 Ohio St.3d 324, 328 (1998) (“[I]t is neither necessary nor controlling to engage in a query as to whether or not a person who has been arrested or issued a citation for minor criminal violations and traffic violations ... has been formally charged. Arrest records and intoxilyzer records which contain the names of persons who have been formally charged with an offense, as well as those who have been arrested and/or issued citations but who have not been formally charged, are not confidential law enforcement investigatory records with the exception of R.C. 149.43(A)(2)(a).”).

⁶⁸⁷ *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶¶ 23-24 (noting that a “charge” is a “formal accusation of an offense as a preliminary step to prosecution” and that “[a] formal accusation of an offense requires a charging instrument, i.e., an indictment, information, or criminal complaint” (quotation omitted)); see also *Crim.R. 7*; *Black’s Law Dictionary* 249 (10th ed. 2014); *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 30 (1996); *State ex rel. Moreland v. Dayton*, 67 Ohio St.3d 129, 130 (1993).

⁶⁸⁸ *State ex rel. Master v. Cleveland*, 76 Ohio St.3d 340, 343 (1996) (citing “avoidance of subjecting persons to adverse publicity where they may otherwise never have been identified with the matter under investigation” and a law enforcement interest in not “compromising subsequent efforts to reopen and solve inactive cases” as two of the purposes of the uncharged suspect exemption).

⁶⁸⁹ *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 31 (1996) (“[W]hen a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court must make an individualized scrutiny of the records in question. If the court finds that these records contain excepted information, this information must be redacted and any remaining information must be released.”) (quoting *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 85 (1998)); *State ex rel. White v. Watson*, 8th Dist. No. 86737, 2006-Ohio-5234, ¶ 4 (“The government has the duty to disclose public records, including the parts of a record which do not come within an exemption. Thus, if only part of a record is exempt, the government may redact the exempt part and release the rest.”).

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withheld.⁶⁹⁰ However, the application of this exemption to some records in an investigative file does not automatically create a blanket exemption covering all other records in the file, and the public office must still release any investigative records that do not individually have a high probability of revealing the uncharged suspect's identity.⁶⁹¹ Note: use of any exemption requires an explanation, including legal authority, to be provided in any response that denies access to records.⁶⁹²

The uncharged suspect exemption applies even if:

- time has passed since the investigation was closed;⁶⁹³
- the suspect has been accurately identified in media coverage;⁶⁹⁴ or
- the uncharged suspect is the person requesting the information.⁶⁹⁵

(b) Identity of a confidential source

For purposes of the CLEIRs exemption, “confidential sources” are those who have been “reasonably promised confidentiality.”⁶⁹⁶ A promise of confidentiality is considered reasonable if it was made on the basis of the law enforcement investigator's determination that the promise is necessary to obtain the information.⁶⁹⁷ When possible, it is advisable – though not required – that the investigator document the specific reasons why promising confidentiality was necessary to further the investigation.⁶⁹⁸ Promises of confidentiality contained in policy statements or given as a matter of course during routine administrative procedures are not “reasonable” promises of confidentiality for purposes of the CLEIRs exemption.⁶⁹⁹

This exemption exists only to protect the identity of the information source, not the information he or she provides.⁷⁰⁰ However, when the contents of a particular record in an investigatory file are so inextricably intertwined with the confidential source's identity that redacting will fail to protect the person's identity in connection with the investigated conduct, the identifying material within a record, or even the entire record, may be withheld.⁷⁰¹

(c) Specific confidential investigatory techniques or procedures

Specific confidential investigatory techniques or procedures,⁷⁰² including sophisticated scientific investigatory techniques or procedures such as forensic laboratory tests and their

⁶⁹⁰ *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 448 (2000) (holding that public office may withhold portions of investigative records that “would create a high probability of disclosure of the identity of uncharged suspects”); *State ex rel. McGee v. Ohio State Bd. of Psychology*, 49 Ohio St.3d 59, 60 (1990) (holding that, when exempt information is so “intertwined” with the public information as to reveal the exempt information from the context, the record itself, and not just the exempt information, may be withheld), overruled on other grounds, *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420 (1994).

⁶⁹¹ *State ex rel. Rocker v. Guernsey Cty. Sheriff's Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, ¶¶ 11-15.

⁶⁹² R.C. 149.43(B)(3); *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 6, 9, 38, 43 (finding that an explanation including legal authority must be provided even when that explanation reveals the otherwise deniable existence of sealed records, and the response, “no information available,” violated R.C. 149.43(B)(3)).

⁶⁹³ *State ex rel. Musial v. N. Olmsed*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶ 28.

⁶⁹⁴ *State ex rel. Rocker v. Guernsey Cty. Sheriff's Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, ¶ 10; *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 447 (2000).

⁶⁹⁵ *State ex rel. Musial v. N. Olmsed*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶¶ 17-23.

⁶⁹⁶ *State ex rel. Yant v. Conrad*, 74 Ohio St.3d 681, 682, 684 (1996).

⁶⁹⁷ *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9 (C.P. 1990).

⁶⁹⁸ *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9 (C.P. 1990); see also *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 156-57 (1993) (finding that, to trigger an exemption, a promise of confidentiality or a threat to physical safety need not be within the “four corners” of a document).

⁶⁹⁹ *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 8-9 (C.P. 1990).

⁷⁰⁰ *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc.2d 1, 9 (C.P. 1990).

⁷⁰¹ *State ex rel. Beacon Journal Publishing Co. v. Kent State Univ.*, 68 Ohio St.3d 40, 44 (1993); *State ex rel. Strothers v. McFaul*, 122 Ohio App.3d 327, 332 (8th Dist. 1997).

⁷⁰² R.C. 149.43(A)(2)(c); *State ex rel. Walker v. Balraj*, 8th Dist. No. 77967, 2000 WL 1061222 (2000) (results of “trace metal test” are exempt as specific investigatory work product).

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results, may be redacted pursuant to this exemption.⁷⁰³ One purpose of the exemption is to avoid compromising the effectiveness of confidential investigative techniques.⁷⁰⁴ Routine factual reports are not covered under the exemption.⁷⁰⁵

(d) Investigative work product

Statutory Definition: Information, including notes, working papers, memoranda, or similar materials, assembled in connection with a probable or pending criminal proceeding is work product under R.C. 149.43(A)(2)(c).⁷⁰⁶ Copies of otherwise public records gathered by a law enforcement investigator from a separate public office may be exempted in the investigator's file as specific investigative work product, although public records gathered from the investigator's own public office or governmental subdivision generally do not lose the public records "cloak."⁷⁰⁷ These materials may be protected even when they appear in a law enforcement office's files other than the investigative file.⁷⁰⁸ "It is difficult to conceive of anything in a prosecutor's file, in a pending criminal matter, that would not be either material compiled in anticipation of a specified criminal proceeding or the personal trial preparation of the prosecutor."⁷⁰⁹ However, there are some limits to the items in an investigative file covered by this exemption.⁷¹⁰

Time Limits on Investigatory Work Product Exemption: Once a law enforcement matter has commenced, the investigative work product exemption applies until the matter has concluded. The Ohio Supreme Court has held that the investigative work product exemption does not extend past the completion of the trial for which the information was gathered.⁷¹¹ Even if no suspect has been identified, "[o]nce it is evident that a crime has occurred, investigative materials developed are necessarily compiled in anticipation of litigation and so fall squarely within the *Steckman* definition of work product."⁷¹² However, the work product exemption is not merely an "ongoing investigation" exemption. The investigating agency must be able to show that work product is being assembled in

⁷⁰³ See *State ex rel. Dayton Newspapers, Inc. v. Rauch*, 12 Ohio St.3d 100, 100-01 (1984) (finding an autopsy report may be exempt as a specific investigatory technique or work product), as modified by R.C. 313.10; *State ex rel. Lawhorn v. White*, 8th Dist. No. 63290, 1994 WL 76873 (1994); *State ex rel. Williams v. Cleveland*, 8th Dist. No. 57769, 1991 WL 6365 (1991); *State ex rel. Jester v. Cleveland*, 8th Dist. No. 56438, 1991 WL 3545 (1991); *State ex rel. Apanovitch v. Cleveland*, 8th Dist. No. 58867, 1991 WL 18676 (1991). The three preceding cases were affirmed in *State ex rel. Williams v. Cleveland*, 64 Ohio St.3d 544 (1992).

⁷⁰⁴ *State ex rel. Broom v. Cleveland*, 8th Dist. No. 59571, 1992 WL 209575 (1992) ("[T]he records mention confidential investigatory techniques, the effectiveness of which could be compromised by disclosure. To insure the continued effectiveness of these techniques, this court orders references to the techniques redacted." (citation omitted)); *State ex rel. Toledo Blade Co. v. Toledo*, 6th Dist. No. L-12-1183, 2013-Ohio-3094, ¶ 10 (holding release of a gang territory map created by police department would not reveal any specific confidential investigatory technique, procedure, source of information, or location being surveilled).

⁷⁰⁵ *State ex rel. Beacon Journal v. Univ. of Akron*, 64 Ohio St.2d 392, 397 (1980).

⁷⁰⁶ *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 2017-Ohio-8988, ¶¶ 34-44; *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 56-57 (2001).

⁷⁰⁷ *State ex rel. Community Journal v. Reed*, 12th Dist. No. CA2014-01-010, 2014-Ohio-5745, ¶¶ 35-42 (finding copies of public records documenting the activities of a victim agency, when compiled and assembled by a separate investigating agency, were "specific investigative work product" in the hands of the investigating agency).

⁷⁰⁸ *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, ¶¶ 51-52 (regarding investigative work product incidentally contained in chief enforcement attorney's general personnel file).

⁷⁰⁹ *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 431-32 (1994) (expanding the previous definition of "investigative work product" expressly and dramatically, which had previously limited the term to only those materials that would reveal the investigator's "deliberative and subjective analysis" of a case), overruled on other grounds by *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 47.

⁷¹⁰ *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Public Safety*, 2016-Ohio-7987, ¶¶ 45-50 (holding that dash cam video must be subjected to case-by-case review to determine whether any portion is confidential investigatory work product); *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 448 (2000) (finding certain records, e.g., copies of newspaper articles and statutes, are unquestionably nonexempt and do not become exempt simply because they are placed in an investigative or prosecutorial file); *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St.3d 357, 361 (1997) ("An examination ... reveals the following nonexempt records: The ... indictment, copies of various Revised Code provisions, newspaper articles, a blank charitable organization registration statement form, the Brotherhood's Yearbook and Buyer's Guide, the transcript of the ... plea hearing, a videotape of television news reports, and a campaign committee finance report filed with the board of elections."), overruled on other grounds by *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 47.

⁷¹¹ *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 47 (overruling *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, and *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St.3d 357, to the extent that they conflict with this decision). Under prior law, a law enforcement matter concluded only when all potential actions, trials, and post-trial proceedings in the matter had ended, including a direct appeal, post-conviction relief, or habeas corpus proceedings. See *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St.3d 357 (1997); *Perry v. Onunwor*, 8th Dist. No. 78398, 2000 WL 1871753, *3 (2000) (including federal habeas corpus proceedings as one of the "possibilities for further proceedings and trials"); *State ex rel. Cleveland Police Patrolmen's Assn. v. Cleveland*, 84 Ohio St.3d 310, 311-12 (1999) (holding that, when a defendant signed an affidavit agreeing not to pursue appeal or post-conviction relief, trial preparation and investigatory work product exemptions were inapplicable).

⁷¹² *State ex rel. Leonard v. White*, 75 Ohio St.3d 516, 518 (1996).

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connection with a pending or highly probable criminal proceeding, not merely the possibility of future criminal proceedings.⁷¹³

Not Waived by Criminal Discovery: The work product exemption is not waived when a criminal defendant is provided discovery materials as required by law.⁷¹⁴

(e) Information that would endanger life or physical safety if released

Information that, if released, would endanger the life or physical safety of law enforcement personnel,⁷¹⁵ a crime victim, a witness, or a confidential informant may be redacted before public release of a record.⁷¹⁶ The threat to safety need not be specified within the four corners of the investigative file; but bare allegations or assumed conclusions that a person's physical safety is threatened are not sufficient reasons to redact information.⁷¹⁷ Alleging that disclosing the information would infringe on a person's privacy does not justify a denial of release under this exemption.⁷¹⁸

Note: Non-expiring Step Two exemptions: When a law enforcement matter has concluded, only the work product exemption expires. The courts have expressly or impliedly found that investigatory records that continue to fall under the uncharged suspect,⁷¹⁹ confidential source or witness,⁷²⁰ confidential investigatory technique,⁷²¹ and information threatening physical safety⁷²² exemptions apply despite the passage of time.

Note: Exemptions other than CLEIRs may apply to documents within a law enforcement investigative file, including but not limited to social security numbers; Law Enforcement Automated Data System (LEADS) computerized criminal history documents;⁷²³ information, data, and statistics gathered or disseminated through the Ohio Law Enforcement Gateway (OHLEG);⁷²⁴ and information that is highly likely to identify an alleged delinquent child or arrestee who is also an abused child.⁷²⁵

3. Law enforcement records not covered by CLEIRs

As noted above, personnel files and other administrative records not pertaining to a law enforcement matter would not be covered by the CLEIRs exemption. In addition, the courts have specifically ruled that the following records are not covered by CLEIRs:

⁷¹³ *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 446 (2000); *Hilliard City Sch. Dist. v. Columbus Div. of Police*, Ct. of Cl. No. 2017-00450-PQ, 2017-Ohio-8052, ¶¶ 23-27 (concluding that investigatory work product exemption had not expired when investigation became inactive due to the exhaustion of available leads as it could become active again at any time based on new information), adopted by 2017-Ohio-8454.

⁷¹⁴ *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350 (1997), overruled on other grounds by *State ex rel. Caster v. Columbus*, 2016-Ohio-8394, ¶ 47.

⁷¹⁵ *State ex rel. Cleveland Police Patrolmen's Assn. v. Cleveland*, 122 Ohio App.3d 696 (8th Dist. 1997) (holding a "Strike Plan" and related records prepared in connection with the possible strike by teachers were not records because their release could endanger the lives of police personnel).

⁷¹⁶ R.C. 149.43(A)(2)(d); see *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 156 (1993) (holding a document does not need to specify within its four corners the promise of confidentiality or threat to physical safety).

⁷¹⁷ See e.g., *State ex rel. Johnson v. Cleveland*, 65 Ohio St.3d 331, 333-34 (1992).

⁷¹⁸ See e.g., *State ex rel. Johnson v. Cleveland*, 65 Ohio St.3d 331, 333-34 (1992).

⁷¹⁹ *State ex rel. Musial v. City of N. Olmsted*, 10t Ohio St.3d 459, 2005-Ohio-5521, ¶¶ 26-28.

⁷²⁰ *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 54 (1990) ("One purpose of the examination in R.C. 149.43(A)(2) is to protect a confidential informant. This purpose would be subverted if a record (in which the informant's identity is disclosed) were deemed subject to disclosure simply because a period of time had elapsed with no enforcement action."); *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155, 157 (1993).

⁷²¹ *State ex rel. Broom v. Cleveland*, 8th Dist. No. 59571, 1992 WL 209575 (1992).

⁷²² *State ex rel. Martin v. Cleveland*, 67 Ohio St.3d 155 (1993).

⁷²³ O.A.C. 4501:2-10-06(C).

⁷²⁴ R.C. 109.57 (D)(1)(b).

⁷²⁵ R.C. 149.435.

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a. Offense and incident reports

“Offense-and-incident reports are form reports in which the law enforcement officer completing the form enters information in the spaces provided.”⁷²⁶ Police offense or incident reports initiate investigations but are not considered part of the investigation; and therefore, they are not a “law enforcement matter” covered by the CLEIRs exemption.⁷²⁷ Therefore, none of the information explained in Step Two above can be redacted from an initial incident report.⁷²⁸ However, if an offense or incident report contains information that is otherwise exempt from disclosure under state or federal law, the exempt information may be redacted.⁷²⁹ This could include social security numbers, information referred from a children services agency,⁷³⁰ or other independently applicable exemptions.

b. 911 records

Audio records of 911 calls are not considered to pertain to a “law enforcement matter” or constitute part of an investigation for the purposes of the CLEIRs exemption.⁷³¹ Further, since there is no basis to find a constitutional right of privacy in such calls, even social security numbers may not be redacted.⁷³² As with other public records, a requester is entitled to access either the audio record or a paper transcript.⁷³³ However, information concerning telephone numbers, addresses, or names obtained from a 911 database maintained pursuant to R.C. 128.32 may not be disclosed or used for any purpose other than as permitted in that section.⁷³⁴

B. Employment Records⁷³⁵

Public employee personnel records are generally considered public records.⁷³⁶ However, if any item contained within a personnel file or other employment record⁷³⁷ is not a “record” of the office, or is subject to an exemption, it may be withheld. We recommend that Human Resource officers prepare a list of information and records in the office’s personnel files that are subject to withholding, including the explanation and legal authority related to each item. The office can then use this list for prompt and consistent responses to public records requests. A sample list can be found on page 75.

⁷²⁶ *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶ 13, (citing *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54 (2001) (referring to an “Ohio Uniform Incident Form”).

⁷²⁷ *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶ 13; *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 56 (2001) (noting that it ruled the way it did “despite the risk that the report may disclose the identity of an uncharged suspect”).

⁷²⁸ *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 57 (2001).

⁷²⁹ *State ex rel. Miller v. Pinkney*, 149 Ohio St.3d 662, 2017-Ohio-1335 (incident reports were not exempt from disclosure under security record exemption and had to be released with redaction of exempt information); *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶ 13; *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶ 55 (explaining that, “in *Maurer*, we did not adopt a per se rule that all police offense-and-incident reports are subject to disclosure notwithstanding the applicability of any exemption”), superseded by statute on other grounds.

⁷³⁰ *State ex rel. Beacon Journal Publishing Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, ¶¶ 44-45 (noting that information referred from a children services agency as potentially criminal may be redacted from police files, including the incident report, pursuant to R.C. 2151.421(H)).

⁷³¹ *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor’s Office*, 105 Ohio St.3d 172, 2005-Ohio-685; *State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St.3d 392, 2015-Ohio-974, ¶¶ 13-18 (holding that recording of return call by dispatcher to 911 caller was not exempt from disclosure either as trial preparation or confidential law enforcement investigatory records).

⁷³² *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 377 (1996) (finding 911 tapes at issue had to be released immediately).

⁷³³ *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor’s Office*, 105 Ohio St.3d 172, 2005-Ohio-685, ¶ 5.

⁷³⁴ R.C. 128.99 establishes criminal penalties for violation of R.C. 128.32.

⁷³⁵ The following categories may not include all exemptions (or types of employment records) that could apply to every public office’s personnel records.

⁷³⁶ 2007 Ohio Op. Att’y Gen. No. 026; *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143 (1995); *State ex rel. Ohio Patrolmen’s Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 444 (2000) (addressing police personnel records).

⁷³⁷ The term “personnel file” has no single definition in public records law. See *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 57 (inferring that “records that are the functional equivalent of personnel files exist and are in the custody of the city” when a respondent claimed that no personnel files designated by the respondent existed); *Cwynar v. Jackson Twp. Bd. of Trustees*, 178 Ohio App.3d 345, 2008-Ohio-5011, ¶ 31 (5th Dist.) (finding that, when the appellant requested only the complete personnel file and not the records relating to an individual’s employment, “[i]t is the responsibility of the person making the public records request to identify the records with reasonable clarity”).

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1. Non-records

To the extent that any item contained in a personnel file is not a “record,” that is, when it does not document the organization, operations, etc., of the public office, it is not a public record and need not be disclosed.⁷³⁸ Based on this reasoning, the Ohio Supreme Court has found that in most instances the home addresses of public employees kept by their employers solely for administrative convenience are not “records” of the office.⁷³⁹ Home and personal cell phone numbers, emergency contact information, employee banking information, insurance beneficiary designations, personal email addresses, and similar items may be maintained only for administrative convenience and not to document the formal duties and activities of the office; a public office should evaluate these types of records carefully. Non-record items may be redacted from materials that are otherwise records, such as a civil service application form.

2. Names and dates of birth of public officials and employees

“Each public office or person responsible for public records shall maintain a database or a list that includes the name and date of birth of all public officials and employees elected to or employed by that public office. The database or list is a public record and shall be made available upon a request made pursuant to section 149.43 of the Revised Code.”⁷⁴⁰

3. Resumes and application materials

There is no public records exemption that generally protects resumes and application materials obtained by public offices in the hiring process.⁷⁴¹ The Ohio Supreme Court has found that “[t]he public has an unquestioned public interest in the qualifications of potential applicants for positions of authority in public employment.”⁷⁴² For example, when a city board of education used a private search firm to help hire a new treasurer, it was required to disclose the names and resumes of the interviewees.⁷⁴³ The fact that a public office has promised confidentiality to applicants is irrelevant.⁷⁴⁴ A public office’s obligation to turn over application materials and resumes extends to records in the sole possession of private search firms used in the hiring process.⁷⁴⁵ As with any other category of records, if an exemption for home address, social security number, or other specific item applies, it may be used to redact only the protected information.

Application Materials Not “Kept By” a Public Office: Application materials may not be public records if they are not “kept by”⁷⁴⁶ the office at the time of the request. In *State ex rel. Cincinnati Enquirer v. Cincinnati Board of Education*, the school board engaged a private search firm to assist in its search for a new superintendent. During the interview process, the school board members reviewed and then returned all application materials and resumes submitted by the candidates. A Newspaper made a public records request for any resumes, documents, etc. related to the superintendent search. Because no copies of the materials had been provided to the board at any time outside the interview setting and had never been “kept,” by the board, the court denied the

⁷³⁸ *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 367 (2000); *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 188 (1993) (“To the extent that any item contained in a personnel file is not a ‘record,’ i.e., does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed.”).

⁷³⁹ *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 39 (finding an employee’s home address may constitute a “record” when it documents an office policy or practice, as when the employee’s work address is also the employee’s home address); *State ex rel. Davis v Metzger*, 139 Ohio St.3d 423, 2014-Ohio-2329, ¶10 (“[P]ersonnel files require careful review to redact sensitive personal information about employees that does not document that organization or function of the agency.”).

⁷⁴⁰ R.C. 149.434.

⁷⁴¹ *State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 41; *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997).

⁷⁴² *State ex rel. Consumer News Servs. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 53 (noting opponents’ argument that disclosing these materials would prevent the best candidates from applying). But see *State ex rel. The Plain Dealer Publishing Co. v. Cleveland*, 75 Ohio St.3d 31, 36 (1996) (“[I]t is not evident that disclosure of resumes of applicants for public offices like police chief necessarily prevents the best qualified candidates from applying.”).

⁷⁴³ *State ex rel. Consumer News Servs. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311.

⁷⁴⁴ *State ex rel. Consumer News Servs. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶ 46; *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997).

⁷⁴⁵ *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St.3d 400, 403 (1997).

⁷⁴⁶ For a discussion on “kept by,” see Chapter One: C. 2. “What ‘kept by’ means.”

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writ of mandamus.⁷⁴⁷ Keep in mind that this case is limited to a narrow set of facts, including compliance with records retention schedules in returning such materials.

4. Background investigations

Background investigations are not subject to any general public records exemption,⁷⁴⁸ although specific statutes may exempt defined background investigation materials kept by specific public offices.⁷⁴⁹ However, criminal history “rap sheets” obtained from the federal National Crime Information Center system (NCIC) or through the state Law Enforcement Automated Data System (LEADS) are subject to a number of statutory exemptions.⁷⁵⁰

5. Evaluations and disciplinary records

Employee evaluations are not subject to any general public records exemption.⁷⁵¹ Likewise, records of disciplinary actions involving an employee are not exempted.⁷⁵² Specifically, note that the CLEIRs exemption does not apply to routine office discipline or personnel matters,⁷⁵³ even when such matters are the subject of an internal investigation within a law enforcement agency.⁷⁵⁴

6. Employee assistance program (EAP) records

Records of the identity, diagnosis, prognosis, or treatment of any person that are maintained in connection with an EAP are not public records.⁷⁵⁵ Their use and release is strictly limited.

7. Physical fitness, psychiatric, and polygraph examinations

As used in the Public Records Act, the term “medical records” is limited to records generated and maintained in the process of medical *treatment* (see “Medical Records” below). Accordingly, records of examinations performed for the purpose of determining fitness for hiring or for continued employment, including physical fitness,⁷⁵⁶ psychiatric,⁷⁵⁷ and psychological⁷⁵⁸ examinations, are not exempted from disclosure as “medical records.” Similarly, polygraph, or “lie detector,” examinations are not “medical records,” and they do not fall under the CLEIRs exemption when

⁷⁴⁷ *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Cincinnati Bd. of Edn.*, 99 Ohio St.3d 6, 2003-Ohio-2260, ¶¶ 11-15.

⁷⁴⁸ *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 445 (2000), citing *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142-45 (1995) (addressing all personnel, background, and investigation reports for police recruit class); *Dinkins v. Ohio Div. of State Highway Patrol*, 116 F.R.D. 270, 272 (1987).

⁷⁴⁹ See, e.g., R.C. 113.041(E) (providing for criminal history checks of employees of the state treasurer); R.C. 109.5721(E) (regarding information of arrest or conviction received by a public office from BCI that is retained in the applicant fingerprint database); R.C. 2151.86(E) (addressing the results of criminal history checks of children's day care employees); R.C. 3319.39(D) (addressing the results of criminal history check of teachers). Note that statutes may also require dissemination of notice of an employee's or volunteer's conviction. See, e.g., R.C. 109.576 (providing for notice of a volunteer's conviction).

⁷⁵⁰ R.C. 109.57(D), (H); O.A.C. 4501:2-10-06(C); 42 U.S.C. § 3789g; 28 C.F.R. § 20.33; *In the Matter of: C.C.*, 11th Dist. No. 2008-G-2838, 2008-Ohio-6776, ¶¶ 8-10 (providing that there are three different analyses of the interplay between Juv. R. 37 (juvenile court records) and O.A.C. 4501:2-10-06 (LEADS records and BMV statutes)); *Patrolman X v. Toledo*, 132 Ohio App.3d 381, 389 (C.P. 1996); *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 82 Ohio App.3d 202, 206-07 (8th Dist. 1992); *Ingraham v. Ribar*, 80 Ohio App.3d 29, 33-34 (9th Dist. 1992); 1994 Ohio Op. Att'y Gen. No. 046.

⁷⁵¹ *State ex rel. Medina Cty. Gazette v. Brunswick*, 109 Ohio App.3d 661, 664 (9th Dist. 1996).

⁷⁵² *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶ 49.

⁷⁵³ *State ex rel. Freedom Communications, Inc. v. Elida Community Fire Co.*, 82 Ohio St.3d 578, 581-82 (1998) (holding that an investigation of an alleged sexual assault conducted internally as a personnel matter is not a law enforcement matter).

⁷⁵⁴ *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 142 (1995) (finding personnel records of police officers reflecting the discipline of police officers are not confidential law enforcement investigatory records exempted from disclosure).

⁷⁵⁵ R.C. 124.88(B).

⁷⁵⁶ *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Lucas Cty. Sheriff's Office*, 6th Dist. No. L-06-1108, 2007-Ohio-101, ¶ 16 (a “fitness for duty evaluation” did not constitute “medical records”).

⁷⁵⁷ *State v. Hall*, 141 Ohio App.3d 561, 568 (2001) (4th Dist. 2001) (holding psychiatric reports compiled solely to assist the court with “competency to stand trial determination” were not medical records); *State v. Rohrer*, 4th Dist. No. 14CA3471, 2015-Ohio-5333, ¶¶ 52-57 (finding psychiatric reports generated “for purposes of continued commitment proceedings” were not medical records).

⁷⁵⁸ *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143 (1995) (a police psychologist report obtained to assist the police hiring process is not a medical record).

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performed in connection with hiring.⁷⁵⁹ Note, though, that a separate exemption does apply to “medical information” pertaining to those professionals covered under R.C. 149.43(A)(7)(c).⁷⁶⁰

While fitness for employment records do not fit within the definition of “medical records,” they may nonetheless be exempted from disclosure under the so-called “catch-all” provision of the Public Records Act as “records the release of which is prohibited by state or federal law.”⁷⁶¹ Specifically, the federal Americans With Disabilities Act (ADA) and its implementing regulations⁷⁶² permit employers to require employees and applicants to whom they have offered employment to undergo medical examination and/or inquiry into their ability to perform job-related functions.⁷⁶³ Information regarding medical condition or history must be collected and kept on separate forms and in separate medical files and must be treated as confidential, except as otherwise provided by the ADA.⁷⁶⁴ As non-public records, the examinations may constitute “confidential personal information” under Ohio’s Personal Information Systems Act.⁷⁶⁵

8. Medical records

“Medical records” are not public records,⁷⁶⁶ and a public office may withhold any medical records in a personnel file. “Medical records” are those generated and maintained in the process of medical treatment.⁷⁶⁷ Note that the federal Health Insurance Portability and Accountability Act (HIPAA),⁷⁶⁸ does not apply to records in employer personnel files, but that the federal Family and Medical Leave Act (FMLA)⁷⁶⁹ or the Americans With Disabilities Act (ADA)⁷⁷⁰ may apply to medical-related information in personnel files.

9. School records

Education records, which include but are not limited to school transcripts, attendance records, and discipline records, that are directly related to a student and maintained by the educational institution, as well as personally identifiable information from education records, are generally protected from disclosure by the school itself through the federal Family Educational Rights and Privacy Act (FERPA).⁷⁷¹ However, when a student or former student provides such records directly to a public office, those records are not protected by FERPA and are considered public records.

10. Social security numbers and taxpayer records

Social security numbers (SSNs) should be redacted before the disclosure of public records.⁷⁷² The Ohio Supreme Court has held that, although the Federal Privacy Act (5 U.S.C. §552a) does not expressly prohibit release of one’s SSN, the Act does create an expectation of privacy as to the use and disclosure of the SSN. Ohio statutes or administrative code may provide other exemptions for

⁷⁵⁹ *State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St.3d 141, 143 (1995), citing *State ex rel. Lorain Journal Co. v. Lorain*, 87 Ohio App.3d 112 (9th Dist. 1993).

⁷⁶⁰ See Chapter Six: C. “Residential and Familial Information of Covered Professionals that Are not Public Records.”

⁷⁶¹ R.C. 149.43(A)(1)(v).

⁷⁶² 42 U.S.C. § 12112; 29 C.F.R. §§ 1630.14(b)(1), (c)(1).

⁷⁶³ 29 C.F.R. 1630.14(c); see also *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995, ¶¶ 44, 47 (finding employer’s questioning of court reporter and opposing counsel was properly redacted as inquiry into whether employee was able to perform job-related functions, as pertinent ADA provision does not limit the confidential nature of such inquiries to questions directed to employees or medical personnel).

⁷⁶⁴ 29 C.F.R. 1630.14(b)(1), (c)(1).

⁷⁶⁵ R.C. 1347.15(A)(1).

⁷⁶⁶ R.C. 149.43(A)(1)(a), (A)(3).

⁷⁶⁷ R.C. 149.43(A)(3) (extends to “any document...that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment”); *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158 (1997) (emphasizing that both parts of this conjunctive definition must be met in order to fall under the medical records exemption: “a record must pertain to a medical diagnosis and be generated and maintained in the process of medical treatment” (quotation admitted)).

⁷⁶⁸ See 45 C.F.R. §§ 160 et seq.; 45 C.F.R. §§ 164 et seq.

⁷⁶⁹ See 29 U.S.C. §§ 2601 et seq.; 29 C.F.R. § 825.500(g).

⁷⁷⁰ See 42 U.S.C. §§ 12101 et seq.

⁷⁷¹ 20 U.S.C. § 1232g; see Chapter Three: F. 3. “Student records.”

⁷⁷² R.C. 149.43(A)(1)(dd); *State ex rel. Beacon Journal Publishing Co. v. Akron*, 70 Ohio St.3d 605, 612 (1994) (noting that there is a “high potential for fraud and victimization caused by the unchecked release of city employee SSNs”); see also Chapter Three: F. 1. c. “Social security numbers.”

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SSNs and other information for specific employees⁷⁷³ or in particular locations,⁷⁷⁴ and/or upon request.⁷⁷⁵

Information obtained from municipal tax returns is confidential.⁷⁷⁶ One Attorney General Opinion found that W-2 federal tax forms prepared and maintained by a township as an employer are public records. However, W-2 forms filed as part of a municipal income tax return are confidential.⁷⁷⁷ Federal law makes “returns” and “return information” confidential.⁷⁷⁸ The term “return information” is interpreted broadly to include any information gathered by the IRS with respect to a taxpayer’s liability under the Internal Revenue Code.⁷⁷⁹

With respect to Ohio income tax records, any information gained as the result of returns, investigations, hearings, or verifications required or authorized by R.C. Chapter 5747 is confidential.⁷⁸⁰

11. Residential and familial information of listed safety officers

As detailed elsewhere in this manual, the residential and familial information⁷⁸¹ of certain listed public employees may be withheld from disclosure.⁷⁸²

12. Bargaining agreement provisions

Courts have held that collective bargaining agreements concerning the confidentiality of records cannot prevail over the Public Records Act. For example, a union may not legally bar the production of available public records through a provision in a collective bargaining agreement.⁷⁸³

13. Statutes specific to a particular agency’s employees

Statutes may protect particular information or records concerning specific public offices, or particular employees⁷⁸⁴ within one or more agencies.⁷⁸⁵

⁷⁷³ See, e.g., R.C. 149.43(A)(1)(p), (7)(c) (protecting residential and familial information of certain covered professionals); see also R.C. 149.45(D)(1).

⁷⁷⁴ R.C. 149.45(B)(1) (providing that no public office or person responsible for a public office’s public records shall make available to the general public on the internet any document that contains an individual’s SSN without otherwise redacting, encrypting, or truncating the SSN).

⁷⁷⁵ R.C. 149.45(C)(1) (providing that an individual may request that a public office or a person responsible for a public office’s public records redact personal information of that individual from any record made available to the general public on the internet).

⁷⁷⁶ R.C. 718.13; see also *Reno v. Centerville*, 2d Dist. No. 20078, 2004-Ohio-781, ¶¶ 25-26; Chapter Three: F. 1. e. “Income tax returns.”

⁷⁷⁷ 1992 Ohio Op. Att’y Gen. No. 005.

⁷⁷⁸ 26 U.S.C. 6103

⁷⁷⁹ See *McQueen v. United States*, 264 F. Supp.2d 502, 516 (2003), aff’d, 100 F. App’x 964 (5th Cir. 2004); *LaRouche v. Dept. of Treasury*, 112 F. Supp.2d 48, 54 (D.D.C. 2000) (noting “return information is defined broadly”).

⁷⁸⁰ R.C. 5747.18.

⁷⁸¹ R.C. 149.43(A)(7); Chapter Six: C. “Residential and Familial Information of Covered Professions that Are not Public Records.”

⁷⁸² R.C. 149.43(A)(1)(p).

⁷⁸³ *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 40-43 (2000) (holding that the FOP could not legally bar the production of available public records through a records disposition provision in a collective bargaining agreement); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384 (1995).

⁷⁸⁴ See, e.g., R.C. 149.43(A)(7) (Covered Professionals’ Residential and Familial Information); R.C. 149.43(A)(7)(g) (relating to photograph of a peace officer who may work undercover or plainclothes assignments).

⁷⁸⁵ See, e.g., R.C. 2151.142 (providing for confidentiality of residential address of public children services agency or private child placing agency personnel).

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Personnel Files*

Items from personnel files that are 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 LEADS throughput, NCIC, and CCH
- ♦ Disciplinary investigation/action records, unless exempt from disclosure by law

Items from personnel files that may or must be withheld

- ♦ Social security numbers (based on the federal Privacy Act: 5 U.S.C. § 552a) (R.C. 149.43(A)(1)(dd); *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St.3d 605, 612 (1994))
- ♦ Public employee home addresses, generally (as non-record)
- ♦ Residential and familial information of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, BCI investigator, or federal law enforcement officer, other than residence address of prosecutor (see R.C. 149.43(A)(1)(p))
- ♦ Charitable deductions and employment benefit deductions such as health insurance (as non-records)
- ♦ Beneficiary information (as non-record)
- ♦ Federal tax returns and “return information” filed under the jurisdiction of the IRS (26 U.S.C. § 6103)
- ♦ Personal history information of state retirement contributors (R.C. 145.27(A); R.C. 742.41(B); R.C. 3307.20(B); R.C. 3309.22; R.C. 5505.04(C))
- ♦ Taxpayer records maintained by Ohio Dept. of Taxation and by municipal corporations (R.C. 5703.21; R.C. 718.13)
- ♦ “Medical records” that are generated and maintained in the process of medical treatment (R.C. 149.43(A)(1)(a) and (A)(3))
- ♦ LEADS, NCIC, or CCH criminal record information (42 U.S.C. § 3789g; 28 C.F.R. § 20.21, § 20.33(a)(3); R.C. 109.57(D)-(E); O.A.C. 109:05-1-01; O.A.C. 4501:2-10-06)
- ♦ Information regarding an employee’s medical condition or history compiled as a result of a medical examination required by employer to ensure employee’s ability to perform job related functions (29 C.F.R. 1630.14(c)(1))
- ♦ Information gathered by employer who conducts voluntary medical examination of employee as part of an employee health program (29 C.F.R. 1630.14 (d)(1))

* These lists are not exhaustive but are intended as a starting point for each public office in compiling lists appropriate to its employee records.

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C. Residential and Familial Information of Covered Professions that Are not Public Records⁷⁸⁶

Residential and Familial Information Defined:⁷⁸⁷ The “residential and familial information” of peace officers,⁷⁸⁸ parole officers, probation officers, bailiffs, prosecuting attorneys, assistant prosecuting attorneys,⁷⁸⁹ correctional employees,⁷⁹⁰ community-based correctional facility employee, youth services employees,⁷⁹¹ firefighters,⁷⁹² emergency medical technicians (EMTs),⁷⁹³ investigators of the Bureau of Criminal Identification and Investigation, and federal law enforcement officers is exempted from mandatory disclosure under the Public Records Act.⁷⁹⁴ “Residential and familial information” means any information that discloses any of the following about individuals in the listed employment categories (see following chart):

Information of Covered Professions that Is not Public Record

Residential	<ul style="list-style-type: none">◆ Address of the covered employee’s actual personal residence, except for state or political subdivision, residential phone number, and emergency phone number⁷⁹⁵◆ Residential address, residential phone number, and emergency phone number of the spouse, former spouse, or child of a covered employee⁷⁹⁶
Medical	<ul style="list-style-type: none">◆ Any information of a covered employee that is compiled from referral to or participation in an employee assistance program⁷⁹⁷◆ Any medical information of a covered employee⁷⁹⁸
Employment	<ul style="list-style-type: none">◆ The name of any beneficiary of employment benefits of a covered employee, including, but not limited to, life insurance benefits⁷⁹⁹

⁷⁸⁶ Individuals in these covered professions can also request to have certain information redacted or prohibit its disclosure. For additional discussion, see Chapter Three: F. 1. b. “Personal information listed online.”

⁷⁸⁷ For purposes of this section, “covered professions” is the term used to describe all of the persons covered under the residential and familial exemption (i.e., peace officer, firefighter, etc.).

⁷⁸⁸ R.C. 149.43(A)(7). For purposes of this statute, “peace officer” has the same meaning as in R.C. 109.71 and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff. R.C. 149.43(A)(7)(g).

⁷⁸⁹ *State ex rel. Bardwell v. Rocky River Police Dept.*, 8th Dist. No. 91022, 2009-Ohio-727, ¶¶ 31-46 (finding the home address of an elected law director who at times serves as a prosecutor is not a public record, pursuant to R.C. 149.43(A)(1)(p) in conjunction with (7)(a)).

⁷⁹⁰ R.C. 149.43(A)(7)(g) (“As used in divisions (A)(7) and (B)(5) of this section, ‘correctional employee’ means any employee of the department of rehabilitation and correction who in the course of performing the employee’s job duties has or has had contact with inmates and persons under supervision.”).

⁷⁹¹ R.C. 149.43(A)(7)(g) (“As used in divisions (A)(7) and (B)(5) of this section, ‘youth services employee’ means any employee of the department of youth services who in the course of performing the employee’s job duties has or has had contact with children committed to the custody of the department of youth services.”).

⁷⁹² R.C. 149.43(A)(7)(g) (“As used in divisions (A)(7) and (B)(9) of this section, ‘firefighter’ means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.”).

⁷⁹³ R.C. 149.43(A)(7)(g) (“As used in divisions (A)(7) and (B)(9) of this section, ‘EMT’ means EMTs-basic, EMTs-I, and paramedic that provide emergency medical services for a public emergency medical service organization. ‘Emergency medical service organization,’ ‘EMT-basic,’ ‘EMT-I,’ and ‘paramedic’ have the same meanings as in section 4765.01 of the Revised Code.”).

⁷⁹⁴ R.C. 149.43(A)(1)(p), (A)(7). For discussion of application by public offices, see 2000 Ohio Op. Att’y Gen. No. 21.

⁷⁹⁵ R.C. 149.43(A)(7)(a), and (c). Because prosecuting attorneys are elected officials, the actual personal residential address of elected prosecuting attorneys is not exempted from disclosure (some published versions of Chapter 149 incorrectly include prosecuting attorneys in R.C. 149.43(A)(7)(a)).

⁷⁹⁶ R.C. 149.43(A)(7)(f).

⁷⁹⁷ R.C. 149.43(A)(7)(b).

⁷⁹⁸ R.C. 149.43(A)(7)(c).

⁷⁹⁹ R.C. 149.43(A)(7)(d).

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- ♦ The identity and amount of any charitable or employment benefit deduction of a covered employee⁸⁰⁰
- ♦ A photograph of a peace officer who holds a position that may include undercover or plain clothes positions or assignments⁸⁰¹

Personal

The information below, which is not a public record, applies to *both* a covered employee and their spouse, former spouse, and children

- ♦ Social security number⁸⁰²
- ♦ Account numbers of bank accounts and debit, charge, and credit cards⁸⁰³

The information below, which is not a public record, applies to *only* a covered employee's spouse, former spouse, and children

- ♦ Name, residential address, name of employer, address of employer⁸⁰⁴

The following conclusions in 2000 Ohio Op. Att'y Gen. 021 address the application of this exemption:

1. R.C. 149.43 imposes no duty upon any particular individual or office to notify public offices of a peace officer's residential and familial information or to update the database.
2. For purposes of R.C. 149.43, a child of a peace officer includes a natural or adopted child, a stepchild, and a minor or adult child.
3. Under the definition in R.C. 149.43(A)(7), peace officer residential and familial information encompasses only records that both contain the information listed in the statute and disclose the relationship of the information to a peace officer or a spouse, former spouse, or child of the peace officer, and those are the only records that come within the statutory exception to mandatory disclosure provided by R.C. 149.43(A)(1)(p).
4. The exception for peace officer residential and familial information applies only to information contained in a record that presents a reasonable expectation of privacy, and does not extend to records kept by a county recorder or other public official for general public access. The general provisions of R.C. 149.43 excluding peace officer residential and familial information from mandatory disclosure do not operate to impose requirements or limitations on systems of public records that have been designed and established for general public access, where there is no reasonable basis for asserting a privacy interest and no expectation that the information will be identifiable as peace officer residential and familial information.
5. R.C. 149.43 provides no liability for disclosing information that comes within an exception to the definition of "public record." Liability may result, however, from disclosing a record that is made confidential by a provision of law other than R.C. 149.43.

⁸⁰⁰ R.C. 149.43(A)(7)(e).

⁸⁰¹ R.C. 149.43(A)(7)(g).

⁸⁰² R.C. 149.43(A)(7)(f).

⁸⁰³ R.C. 149.43(A)(7)(f).

⁸⁰⁴ R.C. 149.43(A)(7)(f).

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Note that R.C. 2921.24(A) (releasing of certain officers' home addresses by employer, court, or court clerk in a pending criminal case) and R.C. 2921.25(A) (disclosing of certain officers' home addresses during examination in court) do prohibit release of officers' home addresses but only in the limited circumstances set forth in those statutes.⁸⁰⁵

In addition to the professions treated collectively in R.C. 149.43(A)(1)(p) and (A)(7), other public office employees may be subject to similar exemptions through agency specific statutes.⁸⁰⁶

D. Court Records

Although records kept by the courts of Ohio otherwise meet the definition of public records under the Public Records Act,⁸⁰⁷ access to most court records is governed by a separate set of rules.

1. Courts' supervisory power over their own records

Ohio courts⁸⁰⁸ are subject to the Rules of Superintendence for the Courts of Ohio,⁸⁰⁹ adopted by the Supreme Court of Ohio. The Rules of Superintendence establish rights and duties regarding court case documents and administrative documents, starting with the statement that "[c]ourt records are presumed open to public access."⁸¹⁰ Sup.R. 45(A). While similar to the Public Records Act, the Rules of Superintendence contain some additional or different provisions, including language:

- For internet records, allowing courts to announce that a large attachment or exhibit was not scanned but is available by direct access. Sup.R. 45(C)(1).
- Establishing definitions of "court record," "case document," "administrative document," "case file," and other terms. Sup.R. 44(A)-(M).
- Identifying a process for restricting public access to part or all of any case document, including a process for any person to request access to a case document or information that has been granted limited public access. Sup.R. 45(E) and (F).
- Requiring that documents filed with the court omit or redact personal identifiers. The personal identifiers would instead be submitted on a separate standard form submitted only to the court, clerk of courts, and parties. Sup.R. 45(D).

(This is a partial list – see Sup. Rules 44-47 for all provisions.)

Rules 44 through 47 of the Rules of Superintendence apply to all court administrative documents, but only apply to court case documents in actions commenced on or after July 1, 2009.⁸¹¹ Rule of Superintendence 44(C)(2)(h), which restricts public access to certain domestic relations and juvenile court case documents, applies only to case documents in actions commenced on or after January 1, 2016.⁸¹² The Rules of Superintendence for the Courts of Ohio are currently available online at:

<http://www.sconet.state.oh.us/LegalResources/Rules/superintendence/Superintendence.pdf>.

The Public Records Act does not apply to case documents in actions commenced after July 1, 2009.⁸¹³

⁸⁰⁵ *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 82 Ohio App.3d 202, 212 (8th Dist. 1992), *cause dismissed*, 66 Ohio St.3d 1428 (1993).

⁸⁰⁶ See, e.g., R.C. 2151.142(B), (C) (providing that, in addition to the "covered professions" listed above, certain residential addresses of employees of a public children services agency or private child placing agency and that employee's family members are exempt from disclosure).

⁸⁰⁷ *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶ 5 ("[I]t is apparent that court records fall within the broad definition of a 'public record'").

⁸⁰⁸ Sup.R. 2(B) (defining "court" as county court, municipal court, court of common pleas, and court of appeals). One court has concluded that "[a]ll public records requests made to a court or an arm thereof, such as a probation department, must be made pursuant to the Rules of Superintendence." *State ex rel. Yambriak v. Richland Cty. Adult Court*, 5th Dist. No. 15CA66, 2016-Ohio-4622, ¶ 9.

⁸⁰⁹ Rules of Superintendence for the Courts of Ohio are cited as "Sup.R. n."

⁸¹⁰ *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, ¶ 27 (holding that the Rules of Superintendence do not require that a document be used by court in a decision to be entitled to presumption of public access specified in Sup.R. 45(A), but that the "document or information contained in a document must merely be submitted to a court or filed with a clerk of court in a judicial action or proceeding and not be subject to the specified exclusions." (Quotation omitted)).

⁸¹¹ Sup.R. 47(A)(1), (2); Sup.R. 99; *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, ¶ 21, n.2.

⁸¹² Sup.R. 47(A)(3).

⁸¹³ *State ex rel. Richfield v. Laria*, 138 Ohio St.3d 168, 2014-Ohio-243, ¶ 8 ("Sup.R. 44 through 47 deal specifically with the procedures regulating public access to court records and are the sole vehicle for obtaining such records in actions commenced after July 1, 2009.")

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2. Rules of court procedure

The Ohio Rules of Procedure, which are also adopted through the Ohio Supreme Court, can create exemptions to public record disclosure.⁸¹⁴ Examples include certain records related to grand jury proceedings⁸¹⁵ and certain juvenile court records.⁸¹⁶

3. Sealing statutes

Court records that have been properly expunged or sealed are not available for public disclosure.⁸¹⁷ However, when a responsive record is sealed, the public office must provide the explanation for withholding, including the legal authority under which the record was sealed.⁸¹⁸ Even absent statutory authority, the Ohio Supreme Court has found that trial courts have the inherent authority to seal court records in unusual and exceptional circumstances.⁸¹⁹ That inherent authority, however, is limited. The Ohio Supreme Court has concluded that there is no such authority “when the offender has been convicted and is not a first-time offender.”⁸²⁰ In such cases, the only authority to seal is statutory.⁸²¹ Courts have no authority to seal an offense that has been pardoned by the governor when the offender is not otherwise statutorily eligible for sealing.⁸²² The Ohio Supreme Court has also concluded that courts do not have inherent authority to unseal records and may only unseal records when statutorily authorized.⁸²³

4. Restricting access by rule

Sup.R. 45(E) also provides a procedure for restricting public access to a case document. Under this Rule, a court may restrict public access “if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering” certain factors. The Ohio Supreme Court has ordered a judge to unseal records after finding that there was not clear and convincing evidence to warrant restricting access.⁸²⁴

5. Non-records

Under the Public Records Act, courts, like other public offices, are not obligated to provide documents that are not “records” of the court. Examples include a judge’s handwritten notes,⁸²⁵

⁸¹⁴ *State ex rel. Beacon Journal Publishing Co. v. Waters*, 67 Ohio St.3d 321, 323-24 (1993).

⁸¹⁵ Crim.R. 6(E); *State ex rel. Beacon Journal Publishing Co. v. Waters*, 67 Ohio St.3d 321, 323-25 (1993).

⁸¹⁶ Juv.R. 37(B); *State ex rel. Cincinnati Enquirer v. Hunter*, 1st Dist. No. C-130072, 2013-Ohio-4459, ¶ 11.

⁸¹⁷ *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶¶ 12-13 (affirming the trial court’s sealing order per R.C. 2953.52 and concluding sealed records not subject to release); *Dream Fields, L.L.C. v. Bogart*, 175 Ohio App.3d 165, 2008-Ohio-152, ¶¶ 5-6 (1st Dist.) (“Unless a court record contains information that is excluded from being a public record under R.C. 149.43, it shall not be sealed and shall be available for public inspection. And the party wishing to seal the record has the duty to show that a statutory exclusion applies. ... Just because the parties have agreed that they want the records sealed is not enough to justify the sealing.”); *State ex rel. Cincinnati Enquirer v. Lyons*, 140 Ohio St.3d 7, 2014-Ohio-2354, ¶¶ 30-31 (sealing records not valid when judge did not follow the proper statutory procedure).

⁸¹⁸ *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, ¶¶ 6, 9, 28, 43 (holding that response, “There is no information available,” was a violation of R.C. 149.43(B)(3) requirement to provide a sufficient explanation, with legal authority, for the denial). *But see, e.g.*, R.C. 2953.38(G)(2) (establishing that, for expunged records of human trafficking victims, “upon any inquiry” court “shall reply that no record exists”).

⁸¹⁹ *Pepper Pike v. Doe*, 66 Ohio St.2d 374 (1981) (decided prior to enactment of legislation addressing the sealing of records when there was no conviction). *But see State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 2004-Ohio-4952, ¶ 11 (holding divorce records are not properly sealed when the order results from an agreed judgment entry and are not exempt from disclosure under R.C. 149.43); *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529 (holding that court may exercise inherent authority to seal records relating to a dissolved civil protection order without express statutory authority).

⁸²⁰ *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235, ¶27.

⁸²¹ *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235.

⁸²² *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235.

⁸²³ *State v. Vanzandt*, 142 Ohio St.3d 223, 2015-Ohio-236, ¶ 15 (“R.C. 2953.53(D) expressly prohibits access to sealed records for purposes other than those specifically listed in the statute’s enumerated exceptions, and those exceptions should not have been expanded through the exercise of judicial discretion in this case.”).

⁸²⁴ *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, ¶ 34; *see also State ex rel. Cincinnati Enquirer v. Hunter*, 1st Dist. No. C-130072, 2013-Ohio-4459 (holding that the Rules of Superintendence do not permit a court to substitute initials for the full names of juveniles in delinquency cases, and judge failed to present requisite clear and convincing evidence to justify substitution).

⁸²⁵ *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439, 439 (1993) (“A trial judge’s personal handwritten notes made during the course of a trial are not public records.”).

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completed juror questionnaires,⁸²⁶ social security numbers in certain court records,⁸²⁷ and unsolicited letters sent to a judge.⁸²⁸

6. General court records retention

Specific Rules of Superintendence provide the rules and procedures for courts' retention of records. Sup.R. 26 governs Court Records Management and Retention, and Sup.R. 26.01 through Sup.R. 26.05 set records retention schedules for each type of court.

Other Case Law Prior to Rules of Superintendence

Constitutional Right of Access: Based on constitutional principles, and separate from the Public Records Act and Rules of Superintendence, Ohio common law grants the public a presumptive right to inspect and copy court records.⁸²⁹ Both the United States and the Ohio Constitutions create a qualified right⁸³⁰ of public access to court proceedings that have historically been open to the public and in which the public's access plays a significantly positive role.⁸³¹ This qualified right includes access to the live proceedings, as well as to the records of the proceedings.⁸³²

Even when proceedings are not historically public, "the Ohio Supreme Court has determined that any restriction shielding court records from public scrutiny should be narrowly tailored to serve the competing interests of protecting the individual's privacy without unduly burdening the public's right of access."⁸³³ This high standard exists because "[T]he purpose of this common-law right is to promote understanding of the legal system and to ensure public confidence in the courts."⁸³⁴ But, the constitutional right of public access is not absolute, and courts have traditionally exercised "supervisory power over their own records and files."⁸³⁵

Once an otherwise non-public document is filed with the court and becomes part of the record (such as pretrial discovery material), that document becomes a public record.⁸³⁶ However, in circumstances when the release of the court records would prejudice the rights of the parties in an ongoing criminal or civil proceeding, a narrow exemption to public access exists.⁸³⁷ Under such circumstances, the court may impose a protective order prohibiting release of the records.⁸³⁸

⁸²⁶ *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 25 (finding the personal information of jurors used only to verify identification, not to determine competency to serve on the jury, such as SSNs, telephone numbers, and driver's license numbers may be redacted); *State v. McDuffie*, 8th Dist. No. 105614, 2017-Ohio-8490, ¶ 12 (addresses of jurors are not public records and because the jury verdict form contains the jurors' names, the verdict form is not a public record).

⁸²⁷ *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶¶ 18, 21 (holding that SSNs in court records do not "shed light on any government activity").

⁸²⁸ *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63-64 (1998) (finding that, when a judge read unsolicited letters but did not rely on them in sentencing, the letters did not serve to document any activity of the public office and were not "records").

⁸²⁹ *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶¶ 14-20; *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶¶ 8-13; *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas*, 73 Ohio St.3d 19, 20 (1995).

⁸³⁰ *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶ 9 ("The right, however, is not absolute.").

⁸³¹ *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas, Juv. Div.*, 73 Ohio St.3d 19, 20 (1995), citing *In re. T.R.*, 52 Ohio St.3d 6 (1990), paragraph two of the syllabus; *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986).

⁸³² *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶ 8; *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas, Juv. Div.*, 73 Ohio St.3d 19, 21 (1995).

⁸³³ *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Winkler*, 149 Ohio App.3d 350, 2002-Ohio-4803, ¶ 11 (1st Dist.), citing *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas, Juv. Div.*, 73 Ohio App.3d 19, 21 (1995).

⁸³⁴ *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Winkler*, 149 Ohio App.3d 350, 2002-Ohio-4803, ¶ 15 (1st Dist.).

⁸³⁵ *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Winkler*, 149 Ohio App.3d 350, 2002-Ohio-4803, ¶ 15 (1st Dist.).

⁸³⁶ *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App.3d 725, 730 (1st Dist. 2001).

⁸³⁷ *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, ¶ 34 (finding there must be clear and convincing evidence of the prejudicial effect of pretrial publicity sufficient to prevent defendant from receiving a fair trial in order to overcome the presumptive right of access under Sup.R. 45(A)); *State ex rel. Vindicator Printing Co. v. Watkins*, 66 Ohio St.3d 129, 137-39 (1993) (prohibiting disclosure of pretrial court records prejudicing rights of criminal defendant); see also *State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St.3d 392, 2015-Ohio-974, ¶¶ 24-25 (holding that protective order preventing dissemination of 911 call recording did not satisfy criteria for closure because there was no evidence that any disclosure of recording would endanger right to a fair trial).

⁸³⁸ *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App.3d 725, 733 (1st Dist. 2001) (holding that a trial judge was required to determine whether the release of records would jeopardize the defendant's right to a fair trial).

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Constitutional Access and Statutory Access Compared: The Ohio Supreme Court has distinguished between *public records* access and *constitutional* access to jurors' names, home addresses, and other personal information jurors provide in their responses to written juror questionnaires.⁸³⁹ While such information is not a "public record,"⁸⁴⁰ it is presumed to be subject to public disclosure based on constitutional principles.⁸⁴¹ The Court explained that the personal information of these private citizens is not "public record" because it does nothing to "shed light" on the operations of the court.⁸⁴² However, there is a constitutional presumption that this information will be publicly accessible in criminal proceedings.⁸⁴³ As a result, the jurors' personal information will be publicly accessible unless there is "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest."⁸⁴⁴

Nevertheless, the Ohio Supreme Court also concluded, in a unanimous decision, that social security numbers contained in criminal case files are appropriately redacted before public disclosure.⁸⁴⁵ According to the Court, permitting the court clerk to redact SSNs before disclosing court records "does not contravene the purpose of the Public Records Act, which is 'to expose government activity to public scrutiny.' Revealing individuals' social security numbers that are contained in criminal records does not shed light on any government activity."⁸⁴⁶

E. HIPAA & HITECH

Regulations implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") became fully effective in April 2003. Among the regulations written to implement HIPAA was the "Privacy Rule," which is a collection of federal regulations seeking to maintain the confidentiality of individually identifiable health information.⁸⁴⁷ For some public offices, the Privacy Rule and HITECH⁸⁴⁸ affect the manner in which they respond to public records requests. Amendments to HIPAA and HITECH are reflected in the *Federal Register* publication, "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules," 78 Fed. Reg. 5565 (Jan. 25, 2013) (codified at 45 C.F.R. §§ 160 and 164).

1. HIPAA definitions

The Privacy Rule protects all individually identifiable health information, which is called "protected health information" or "PHI."⁸⁴⁹ PHI is information that could reasonably lead to the identification of an individual, either by itself or in combination with other reasonably available information.⁸⁵⁰ The HIPAA regulations apply to the three "covered entities"⁸⁵¹ listed below:

- **Healthcare provider:** Generally, a "healthcare provider" is any entity providing mental or health services that electronically transmits individually identifiable health information for any financial or administrative purpose subject to HIPAA.
- **A health plan:** A "health plan" is an individual or group plan that provides or pays the cost of medical care, such as an HMO.

⁸³⁹ *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117.

⁸⁴⁰ *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, paragraph one of the syllabus ("Juror names, addresses, and questionnaire responses are not 'public records'").

⁸⁴¹ *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, paragraph two of the syllabus ("The First Amendment qualified right of access extends to juror names, addresses, and questionnaires").

⁸⁴² *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 11, citing *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365 (2000); see also *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶ 21 (holding that SSNs in court records do not "shed light on any governmental activity").

⁸⁴³ *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117.

⁸⁴⁴ *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 17, quoting *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984); see also 2004 Ohio Op. Att'y Gen. No. 045.

⁸⁴⁵ *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662.

⁸⁴⁶ *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, ¶ 21 (citation omitted).

⁸⁴⁷ 45 C.F.R. §§ 160 et seq.; 45 C.F.R. §§ 164 et seq.

⁸⁴⁸ Health Information Technology Economic Clinical Health Act, Public Law No. 111-5, Division A, Title XIII, Subtitle D (2009).

⁸⁴⁹ 45 C.F.R. § 160.103.

⁸⁵⁰ 45 C.F.R. § 160.103.

⁸⁵¹ 45 C.F.R. § 160.103.

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- **Healthcare clearinghouse:** A “healthcare clearinghouse” is any entity that processes health information from one format into another for particular purposes, such as a billing service.

Legal counsel should be consulted if there is uncertainty about whether a particular public office is a “covered entity,” or “business associate” of a covered entity, for purposes of HIPAA.

2. *HIPAA does not apply when Ohio Public Records Act requires release*

The Privacy Rule permits a covered entity to use and disclose protected health information as required by other law, including state law.⁸⁵² For this purpose, note that the Public Records Act only mandates disclosure when no other exemption applies.

So, when the public records law only permits, and does not mandate, the disclosure of protected health information – when exemptions or other qualifications apply to exempt the protected health information from the state’s law disclosure requirement – then such disclosures are not “required by law” and would not fall within the Privacy Rule. For example, if state public records law includes an exemption that gives a state agency discretion not to disclose medical⁸⁵³ or other information, the disclosure of such records is not required by the public records law; and therefore, the Privacy Rule would cover those records.⁸⁵⁴ In such cases, a covered entity only would be able to make the disclosure if permitted by another provision of the Privacy Rule. The Supreme Court of Ohio has held that HIPAA did not supersede state disclosure requirements, even if requested records contained protected health information. Specifically, the Court found that “[a] review of HIPAA reveals a ‘required by law’ exception to the prohibition against disclosure of protected health information. With respect to this position, Section 164.512(a)(1), Title 45, C.F.R., provides, ‘A covered entity may ... disclose protected health information to the extent that such ... disclosure is required by law.’”⁸⁵⁵ However, the Public Records Act requires disclosure of records unless the disclosure or release is prohibited by federal law.⁸⁵⁶ While the Court found the interaction of the federal and state law somewhat circular, the Court resolved it in favor of disclosure under the Public Records Act.⁸⁵⁷

Additional resources:

The HITECH Act of 2009, effective on February 17, 2010, materially affects the privacy and security of PHI. A number of resources are available on the Internet about HITECH legislation. See <http://www.hhs.gov/hipaa/for-professionals/special-topics/health-information-technology/index.html> and Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules, 78 Fed. Reg. 5565 (Jan. 25, 2013) (codified at 45 C.F.R. §§ 160 and 164).

F. *Ohio Personal Information Systems Act*⁸⁵⁸

Ohio’s Personal Information Systems Act (PISA) generally regulates the maintenance and use of personal information systems (collections of information that describe individuals) by state and local agencies.⁸⁵⁹ PISA applies to those items to which the Public Records Act does not apply—that is, records that have been determined to be non-public and items and information that are not “records” as defined by the Public Records Act.⁸⁶⁰ The General Assembly has made clear that PISA is not designed to deprive the

⁸⁵² 45 C.F.R. § 164.512(a).

⁸⁵³ *E.g.*, R.C. 149.43(A)(1)(a) (providing for an exemption for “medical records”).

⁸⁵⁴ 45 C.F.R. § 164.512(a).

⁸⁵⁵ *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶ 25 (alterations in original).

⁸⁵⁶ R.C. 149.43(a)(1)(v); *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶ 25.

⁸⁵⁷ *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, ¶¶ 26, 34.

⁸⁵⁸ R.C. Chapter 1347.

⁸⁵⁹ See R.C. 1347.05.

⁸⁶⁰ R.C. 149.011(G).

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public of otherwise public information by incorporating the following provisions with respect to the Public Records and Open Meetings Acts:

- State and local agencies whose principle activities are to enforce the criminal laws are exempt from PISA.⁸⁶¹
- “The provisions of this chapter shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in [the Public Records Act], or to authorize a public body to hold an executive session for the discussion of personal information if the executive session is not authorized under division (G) of [the Open Meetings Act].”⁸⁶²
- “The disclosure to members of the general public of personal information contained in a public record, as defined in [the Public Records Act], is not an improper use of personal information under this chapter.”⁸⁶³
- As used in the PISA, “‘confidential personal information’ means personal information that is **not** a public record for purposes of [the Public Records Act].”⁸⁶⁴

The following definitions apply to the information covered by PISA:

“Personal information” means any information that:

- Describes anything about a person; **or**
- Indicates actions done by or to a person; **or**
- Indicates that a person possesses certain personal characteristics; **and**
- Contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person.⁸⁶⁵

“Confidential personal information” means personal information that is **not** a public record for purposes of the Public Records Act.⁸⁶⁶

A personal information “system” is:

- Any collection or group of related records that are kept in an organized manner and maintained by a state or local agency; **and**
- From which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person; **including**
- Records that are stored manually and electronically.⁸⁶⁷

The following are not “systems” for purposes of PISA:

- Collected archival records in the custody of or administered under the authority of the Ohio History Connection;
- Published directories, reference materials, or newsletters; or

⁸⁶¹ R.C. 1347.04(A)(1)(a).

⁸⁶² R.C. 1347.04(B).

⁸⁶³ R.C. 1347.04(B).

⁸⁶⁴ R.C. 1347.15(A)(1) (emphasis added).

⁸⁶⁵ R.C. 1347.01(E).

⁸⁶⁶ R.C. 1347.15(A)(1).

⁸⁶⁷ R.C. 1347.01(F).

The Ohio Public Records Act

Chapter Six: Special Topics

- Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.⁸⁶⁸

PISA generally requires accurate maintenance and prompt deletion of unnecessary personal information from “personal information systems” maintained by public offices, and protects personal information from unauthorized dissemination.⁸⁶⁹ Based on provisions added to the law in 2009, state agencies⁸⁷⁰ must adopt rules under Chapter 119 of the Revised Code regulating access to confidential personal information the agency keeps, whether electronically or on paper.⁸⁷¹ No person shall knowingly access “confidential personal information” in violation of these rules,⁸⁷² and no person shall knowingly use or disclose “confidential personal information” in a manner prohibited by law.⁸⁷³ A state agency may not employ persons who have violated access, use, or disclosure laws regarding confidential personal information.⁸⁷⁴ In general, state and local agencies must “[t]ake reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure.”⁸⁷⁵

Sanctions for Violations of PISA

The enforcement provisions of PISA can include injunctive relief, civil damages, and/or criminal penalties, depending on the nature of the violation(s).⁸⁷⁶

Note: Because PISA concerns the treatment of non-records and non-public records, it is not set out in great detail in this Sunshine Law Manual. Public offices should consult with their legal counsel for further guidance about this law.

⁸⁶⁸ R.C. 1347.01(F).

⁸⁶⁹ R.C. 1347.01 *et seq.*

⁸⁷⁰ R.C. 1347.15(A)(2) (excluding from definition of “state agency” courts or any judicial agency, any state-assisted institution of higher education, or any local agency); 2010 Ohio Op. Att’y Gen. No. 016 (determining that the Ohio Bd. of Tax Appeals is a “judicial agency” for purposes of R.C. 1347.15).

⁸⁷¹ R.C. 1347.15(B).

⁸⁷² R.C. 1347.15(H)(1).

⁸⁷³ R.C. 1347.15(H)(2).

⁸⁷⁴ R.C. 1347.15(H)(3).

⁸⁷⁵ R.C. 1347.05(G).

⁸⁷⁶ R.C. 1347.10, 1347.15, 1347.99.

The Ohio Open Meetings Act

Overview of the Ohio Open Meetings Act

What is a “public body”?

- Decision-making bodies at any level of government
- May include the committees or subcommittees of a public body, even if these committees do not make the final decisions of the public body

What is a “meeting”?

- A meeting is (1) a prearranged gathering, (2) of a majority of the members of the public body, (3) who are discussing or deliberating public business.
- A meeting does not have to be called a “meeting” for the OMA requirements to apply—if the three elements above are present, the OMA requirements apply even if the gathering is called a “work session,” “retreat,” etc.

What is “discussion” or “deliberation” of public business?

- “Discussion” is an exchange of words, comments, or ideas.
- “Deliberation” is the weighing and examination of reasons for and against taking a course of action.
- This does not generally include information-gathering, attending presentations, or isolated conversations between employees.

What are the duties of a public body if the OMA applies?

- A public body must give appropriate notice of its meetings.
 - For regular meetings, notice must include the time and place of the meeting. For all other meetings—special and emergency meetings—notice must include the time, place, and purpose of the meeting.
- A public body must make all of its meetings open to the public at all times.
 - Secret ballots, whispering of public business, and “round-robin” discussions are all prohibited under the openness requirement.
- A public body must keep and maintain meeting minutes.
 - Minutes must be (1) promptly prepared, (2) filed, (3) maintained, and (4) open to the public. Meeting minutes do not need to be verbatim transcripts, but must have enough detail to allow the public to understand and appreciate the rationale behind a public body’s decisions.

What are the requirements for an “executive session”?

- Proper procedure, including a motion, second, and roll call vote in open session
- Proper topic, which is limited to the topics listed in the OMA. Discussion in the executive session must be limited to the proper topic.

The Ohio Open Meetings Act

The Ohio Open Meetings Act

The Open Meetings Act requires public bodies in Ohio to take official action and conduct all deliberations upon official business only in open meetings where the public may attend and observe. Public bodies must provide advance notice to the public indicating when and where each meeting will take place and, in the case of special meetings, the specific topics that the public body will discuss. The public body must take full and accurate minutes of all meetings and make these minutes available to the public, except in the case of permissible executive sessions.

Executive sessions are closed-door sessions convened by a public body, after a roll call vote, and attended by only the members of the public body and persons they invite. A public body may hold an executive session only for a few specific purposes, which are listed in the law. Further, no vote or other decision-making on the matter(s) discussed may take place during the executive session.

If any person believes that a public body has violated the Open Meetings Act, that person may file an action in a common pleas court to compel the public body to obey the Act. If an injunction is issued, the public body must correct its actions and pay court costs, a fine of \$500, and reasonable attorney fees subject to possible reduction by the court. If the court does not issue an injunction, and the court finds the lawsuit was frivolous, it may order the person who filed the suit to pay the public body's court costs and reasonable attorney fees. Any formal action of a public body that did not take place in an open meeting, or that resulted from deliberations in a meeting improperly closed to the public, or that was adopted at a meeting not properly noticed to the public, is invalid. A member of a public body who violates an injunction imposed for a violation of the Open Meetings Act may be subject to removal from office.

Like the Public Records Act, the Open Meetings Act is intended to be read broadly in favor of openness. However, while they share an underlying intent, the terms and definitions in the two laws are not interchangeable: the Public Records Act applies to the *records of public offices*; the Open Meetings Act addresses *meetings of public bodies*.⁸⁷⁷

A Note about Case Law

When the Ohio Supreme Court issues a decision interpreting a statute, that decision must be followed by all lower Ohio courts. Ohio Supreme Court decisions involving the Public Records Act are plentiful because a person may file a public records lawsuit at any level of the judicial system and often will choose to file in the court of appeals, or directly with the Ohio Supreme Court. By contrast, a lawsuit to enforce the Open Meetings Act must be filed in a county court of common pleas. While the losing party often appeals a court's decision, common pleas appeals are not guaranteed to reach the Ohio Supreme Court, and rarely do. Consequently, the bulk of case law on the Open Meetings Act comes from courts of appeals, whose opinions are binding only on lower courts within their district, but they may be cited for the persuasive value of their reasoning in cases filed in other districts.

⁸⁷⁷ “[The Ohio Supreme Court has] never expressly held that once an entity qualifies as a public body for purposes of R.C. 121.22, it is also a public office for purposes of R.C. 149.011(A) and 149.43 so as to make all of its nonexempt records subject to disclosure. In fact, R.C. 121.22 suggests otherwise because it contains separate definitions for ‘public body,’ R.C. 121.22(B)(1), and ‘public office,’ R.C. 121.22(B)(4), which provides that ‘[p]ublic office’ has the same meaning as in section 149.011 of the Revised Code.’ Had the General Assembly intended that a ‘public body’ for the purposes of R.C. 121.22 be considered a ‘public office’ for purposes of R.C. 149.011(A) and 149.43, it would have so provided.” *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, ¶ 38 (alteration in original).

The Ohio Open Meetings Act

Chapter One: “Public Body” and “Meeting” Defined

I. Chapter One: “Public Body” and “Meeting” Defined

Only entities that meet the definition of “public body” are subject to the Open Meetings Act. The Open Meetings Act requires “public bodies” to conduct their business in “meetings” that are open to the public. A “meeting” is any prearranged gathering of a public body by a majority of its members to discuss public business.⁸⁷⁸

A. “Public body”

1. Statutory definition – R.C. 121.22(B)(1)

The Open Meetings Act defines a “public body” as any of the following:

- a. Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;⁸⁷⁹
- b. Any committee or subcommittee thereof;⁸⁸⁰ or
- c. A court⁸⁸¹ of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district or for any other matter related to such a district other than litigation involving the district.⁸⁸²

2. Identifying public bodies

The term “public body” applies to many different decision-making bodies at the state and local level. If a statute does not specifically identify an entity as a “public body,” Ohio courts have applied several factors in determining what constitutes a “public body,” including:

- a. The manner in which the entity was created;⁸⁸³
- b. The name or official title of the entity;⁸⁸⁴
- c. The membership composition of the entity;⁸⁸⁵
- d. Whether the entity engages in decision-making;⁸⁸⁶ and

⁸⁷⁸ R.C. 121.22(B)(2).

⁸⁷⁹ R.C. 121.22(B)(1)(a).

⁸⁸⁰ R.C. 121.22(B)(1)(b); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001) (“R.C. 121.22(B)(1)(b) includes any committee or subcommittee of a legislative authority of a political subdivision, e.g., a village council, as a ‘public body’ for purposes of the Sunshine Law, so that the council’s personnel and finance committees constitute public bodies in that context.”).

⁸⁸¹ With the exception of sanitation courts, the definition of “public body” does not include courts. See *Walker v. Muskingum Watershed Conservancy Dist.*, 5th Dist. No. 2007 AP 01 0005, 2008-Ohio-4060, ¶ 27.

⁸⁸² R.C. 121.22(B)(1)(c). NOTE: R.C. 121.22(G) prohibits executive sessions for sanitation courts as defined in R.C. 121.22(B)(1)(c).

⁸⁸³ *State ex rel. Mason v. State Employment Relations Bd.*, 133 Ohio App.3d 213 (10th Dist. 1999); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that selection committee established by Ohio Rail Development Commission was a “public body” under the Open Meetings Act because it made decisions and advised the Commission and that it was immaterial that selection committee was created without formal action). But see *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Comms.*, 128 Ohio St.3d 256, 2011-Ohio-625 (finding that groups formed by private entities to provide community input, not established by governmental entity, and to which no government duties or authority have been delegated, were found not to be “public bodies”).

⁸⁸⁴ *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that a selection committee was a “public body” and that it was relevant that the entity was called a “committee,” a term included in the definition of a “public body” in R.C. 121.22); *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 103 (3d Dist. 1985) (considering it pertinent that the name of the entity is one of the public body titles listed in R.C. 121.22(B)(1), i.e., Board of Hospital Governors).

⁸⁸⁵ *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding relevant that commissioners of the parent Ohio Rail Development Commission comprised a majority of a selection committee’s membership).

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- e. Who the entity advises or to whom it reports.⁸⁸⁷

3. Close-up: applying the definition of “public body”

Using the above factors, the following entities have been found by some courts of appeals to be public bodies:

- a. A selection committee established on a temporary basis by a state agency for the purpose of evaluating responses to a request for proposals and making a recommendation to a commission.⁸⁸⁸
- b. An urban design review board that provided advice and recommendations to a city manager and city council about land development.⁸⁸⁹
- c. A board of hospital governors of a joint township district hospital.⁸⁹⁰
- d. A citizens’ advisory committee of a county children services board.⁸⁹¹
- e. A board of directors of a county agricultural society.⁸⁹²

Courts have found that the Open Meetings Act does not apply to individual public *officials* (as opposed to public *bodies*) or to meetings held by individual officials.⁸⁹³ Moreover, if an individual public official creates a group solely pursuant to his or her executive authority or as a delegation of that authority, the Open Meetings Act probably does not apply to the group’s gatherings.⁸⁹⁴

However, at least one court has determined that a selection committee whose members were appointed by the chair of a public body, not by formal action of the body, is nevertheless a public body and subject to the Open Meetings Act.⁸⁹⁵

⁸⁸⁶ *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (finding tasks such as making recommendations and advising involve decision-making); *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding that, whether an urban design review board, composed of a group of architectural consultants for the city, had ultimate authority to decide matters was not controlling because the board actually made decisions in the process of formulating its advice); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that, in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission, the selection committee made decisions).

⁸⁸⁷ *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding an urban design review board advised not only the city manager, but also the city council, a public body).

⁸⁸⁸ *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding relevant that the group was called a “committee,” a term included in the definition of a “public body” in R.C. 121.22; that a majority of the selection committee’s members were commissioners of the commission itself; that, in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission (a public body), the selection committee made decisions; and that the selection committee was established by the committee without formal action is immaterial).

⁸⁸⁹ *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding that, whether an urban design review board, composed of a group of architectural consultants for the city, had ultimate authority to decide matters was not controlling, as the board actually made decisions in the process of formulating its advice; the board advised not only the city manager, but also the city council, a public body).

⁸⁹⁰ *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 102-03 (3d Dist. 1985) (finding the Board of Governors of a joint township hospital fell within the definition of “public body” because this definition includes “boards”; the board made decisions essential to the construction and equipping of a general hospital; and the board was of a “township” or of a “local public institution” because it existed by virtue of authority granted by the legislature for the creation of joint township hospital facilities).

⁸⁹¹ *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (finding that the committee was a public body because the subject matter of the committee’s operations is the public business, each of its duties involves decisions as to what will be done, and the committee by law elects a chairman who serves as an *ex officio* voting member of the children services board, which involves decision-making).

⁸⁹² 1992 Ohio Op. Att’y Gen. No. 078.

⁸⁹³ *Smith v. Cleveland*, 94 Ohio App.3d 780, 784-785 (8th Dist. 1994) (finding a city safety director is not a public body, and may conduct disciplinary hearings without complying with the Open Meetings Act).

⁸⁹⁴ *Beacon Journal Publishing Co. v. Akron*, 3 Ohio St.2d 191 (1965) (finding boards, commissions, committees, etc., created by executive order of the mayor and chief administrator without the advice and consent of city council were not subject to the Open Meetings Act); *eFunds v. Ohio Dept. of Job & Family Serv.*, Franklin C.P. No. 05CVH09-10276 (2006) (finding an “evaluation committee” of government employees under the authority of a state agency administrator is not a public body); 1994 Ohio Op. Att’y Gen. No. 096 (determining that, when a committee of private citizens and various public officers or employees is established solely pursuant to the executive authority of the administrator of a general health district for the purpose of providing advice pertaining to the administration of a grant, and establishment of the committee is not required or authorized by the grant or board action, such a committee is not a public body for purposes of R.C. 121.22(B)(1) and is not subject to the requirements of the open meetings law).

⁸⁹⁵ *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460 (10th Dist. 2001).

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4. When the Open Meetings Act applies to private bodies

Some private entities are considered “public bodies” for purposes of the Open Meetings Act when they are organized pursuant to state statute and are statutorily authorized to receive and expend government funds for a governmental purpose.⁸⁹⁶ For example, an economic opportunity planning association was found to be a public body within the meaning of the Act based on the following factors: (1) its designation by the Ohio Department of Development as a community action organization pursuant to statute;⁸⁹⁷ (2) its responsibility for spending substantial sums of public funds in the operation of programs for the public welfare; and (3) its obligation to comply with state statutory provisions in order to keep its status as a community action organization.⁸⁹⁸

5. Public bodies/officials that are NEVER subject to the Open Meetings Act:⁸⁹⁹

- The Ohio General Assembly;⁹⁰⁰
- Grand juries;⁹⁰¹
- An audit conference conducted by the State Auditor or independent certified public accountants with officials of the public office that is the subject of the audit;⁹⁰²
- The Organized Crime Investigations Commission;⁹⁰³
- County child fatality review boards or state-level reviews of deaths of children;⁹⁰⁴
- The board of directors of JobsOhio Corp., or any committee thereof, and the board of directors of any subsidiary of JobsOhio Corp., or any committee thereof;⁹⁰⁵ and
- An audit conference conducted by the audit staff of the Department of Job and Family Services with officials of the public office that is the subject of that audit under R.C. 5101.37.⁹⁰⁶

6. Public bodies that are SOMETIMES subject to the Open Meetings Act:

a. Public bodies meeting for particular purposes

Some public bodies are not subject to the Open Meetings Act when they meet for particular purposes, including:

⁸⁹⁶ *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn. of Greater Toledo*, 61 Ohio Misc.2d 631 (C.P. 1990); *see also Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100 (3d Dist. 1985).

⁸⁹⁷ R.C. 122.69.

⁸⁹⁸ *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn. of Greater Toledo*, 61 Ohio Misc.2d 631, 640 (C.P. 1990) (“The language of the [Open Meetings Act] and its role in the organization of public affairs in Ohio make clear that this language is to be given a broad interpretation to ensure that the official business of the state is conducted openly. Consistent with that critical objective, a governmental decision-making body cannot assign its decisions to a nominally private body in order to shield those decisions from public scrutiny.”).

⁸⁹⁹ R.C. 121.22(D).

⁹⁰⁰ While the General Assembly as a whole is not governed by the Open Meetings Act, legislative committees are required to follow the guidelines set forth in the General Assembly’s own open meetings law (R.C. 101.15), which requires committee meetings to be open to the public and that minutes of those meetings be made available for public inspection. Like the Open Meetings Act, the legislature’s open meetings law includes some exemptions. For example, the law does not apply to meetings of the Joint Legislative Ethics Committee, other than those meetings specified in the law (R.C. 101.15(F)(1)), or to meetings of a political party caucus (R.C. 101.15(F)(2)).

⁹⁰¹ R.C. 121.22(D)(1).

⁹⁰² R.C. 121.22(D)(2).

⁹⁰³ R.C. 121.22(D)(4).

⁹⁰⁴ R.C. 121.22(D)(5).

⁹⁰⁵ R.C. 121.22(D)(11).

⁹⁰⁶ R.C. 121.22(D)(12).

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- The Adult Parole Authority, when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine pardon or parole;⁹⁰⁷
- The State Medical Board,⁹⁰⁸ the State Board of Nursing,⁹⁰⁹ the State Board of Pharmacy,⁹¹⁰ and the State Chiropractic Board⁹¹¹ when determining whether to suspend a license or certificate without a prior hearing;⁹¹²
- The Emergency Response Commission’s executive committee when meeting to determine whether to issue an enforcement order or to decide whether to bring an enforcement action;⁹¹³ and
- The Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board when determining whether to suspend a practitioner’s license or limited permit without a hearing.⁹¹⁴

b. Public bodies handling particular business

When meeting to consider “whether to grant assistance for purposes of community or economic development” certain public bodies may conduct meetings that are not open to the public. Specifically, the Controlling Board, the Tax Credit Authority, and the Minority Development Financing Advisory Board may close their meetings by *unanimous* vote of the members present in order to protect the interest of the applicant or the possible investment of public funds.⁹¹⁵

The meetings of these four bodies may only be closed “during consideration of the following information confidentially received ... from the applicant:”

- Marketing plans;
- Specific business strategy;
- Production techniques and trade secrets;
- Financial projections; and
- Personal financial statements of the applicant or the applicant’s immediate family, including, but not limited to, tax records or other similar information not open to public inspection.⁹¹⁶

In addition, the board of directors of a community improvement corporation, when acting as an agent of a political subdivision, may close a meeting by *majority* vote of all members present during consideration of non-public record information set out in R.C. 1724.11(A).⁹¹⁷

B. “Meeting”

1. Definition

The Open Meetings Act requires members of a public body to take official action, conduct deliberations, and discuss the public business in an open meeting, unless the subject matter is

⁹⁰⁷ R.C. 121.22(D)(3).

⁹⁰⁸ R.C. 4730.25(G); R.C. 4731.22(G).

⁹⁰⁹ R.C. 4723.281(B).

⁹¹⁰ R.C. 4729.16(D).

⁹¹¹ R.C. 4734.37.

⁹¹² R.C. 121.22(D)(6)-(9).

⁹¹³ R.C. 121.22(D)(10).

⁹¹⁴ R.C. 121.22(D)(13)-(15); R.C. 4755.11; R.C. 4755.47; R.C. 4755.64.

⁹¹⁵ R.C. 121.22(E).

⁹¹⁶ R.C. 121.22(E)(1)-(5).

⁹¹⁷ R.C. 1724.11(B)(1) (providing that the board, committee, or subcommittee shall consider no other information during the closed session).

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specifically exempted by law.⁹¹⁸ The Act defines a “meeting” as: (1) a prearranged gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business.⁹¹⁹

a. Prearranged

The Open Meetings Act governs prearranged discussions,⁹²⁰ but it does not prohibit unplanned encounters between members of public bodies, such as hallway discussions. One court has found that neither an unsolicited and unexpected email sent from one board member to other board members, nor a spontaneous one-on-one telephone conversation between two members of a five-member board was a prearranged meeting.⁹²¹ However, the “prearranged” element does not require the parties to participate at the same time, and a series of emails exchanged among a majority of board members can constitute a “prearranged gathering” even when the emails started with one board member sending an unsolicited email to other board members.⁹²²

b. Majority of members

For there to be a “meeting” as defined under the Open Meetings Act, “a majority of a public body’s members must come together.”⁹²³ The requirement that a gathering of a majority of the members of a public body constitutes a meeting applies to the public body as a whole and also to the separate memberships of all committees and subcommittees of that body.⁹²⁴ For instance, if a council is comprised of seven members, four constitute a majority in determining whether the council as a whole is conducting a “meeting.” If the council appoints a three-member finance committee, two of those members would constitute a majority of the finance committee.

i. Attending in person

A member of a public body must be present in person at a meeting in order to be considered present, vote, or be counted as part of a quorum,⁹²⁵ unless a specific law permits otherwise.⁹²⁶ In the absence of statutory authority, public bodies may not conduct a meeting via electronic or telephonic conferencing.⁹²⁷

ii. Round-robin or serial “meetings”

Unless two members constitute a majority, isolated one-on-one conversations between individual members of a public body regarding its business, either in person or by telephone, do not violate the Open Meetings Act.⁹²⁸ However, a public body may not “circumvent the requirements of the statute by setting up back-to-back meetings of less than a majority of its members, with the same topics of public business discussed at each.”⁹²⁹ Such conversations may be considered multiple parts of the

⁹¹⁸ R.C. 121.22(A), (B)(2), (C).

⁹¹⁹ R.C. 121.22(B)(2).

⁹²⁰ *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540 (1996) (holding that the back-to-back, prearranged discussions of city council members constitutes a “majority,” but clarifying that the statute does not prohibit impromptu meetings between council members or prearranged member-to-member discussion).

⁹²¹ *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 7.

⁹²² *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶¶ 15-20.

⁹²³ *Berner v. Woods*, 9th Dist. No. 07CA009132, 2007-Ohio-6207, ¶ 17; *Tyler v. Village of Batavia*, 12th Dist. No. CA2010-01-005, 2010-Ohio-4078, ¶ 18 (finding no “meeting” occurred when only two of five Commission members attended a previously scheduled session).

⁹²⁴ *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001).

⁹²⁵ R.C. 121.22(C).

⁹²⁶ For example, the General Assembly has specifically authorized the Ohio Board of Regents to meet via videoconferencing. R.C. 3333.02. R.C. 3316.05(K) also permits members of a school district financial planning and supervision commission to attend a meeting by teleconference if provisions are made for public attendance at any location involved in such teleconference.

⁹²⁷ See *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 9 (noting that, during a 2002 revision of the open meetings law, the legislature did not amend the statute to include “electronic communication” in the definition of a “meeting,” and that this omission indicates the legislature’s intent not to include email exchanges as potential “meetings”).

⁹²⁸ *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544 (1996) (“[The statute] does not prohibit member-to-member prearranged discussions.”); *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 11 (finding that a spontaneous telephone call from one board member to another to discuss election politics, not school board business, did not violate the Open Meetings Act); *Master v. Canton*, 62 Ohio App.2d 174, 178 (5th Dist. 1978) (agreeing that the legislature did not intend to prohibit one committee member from calling another to discuss public business).

⁹²⁹ *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 543 (1996).

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same, improperly private, “meeting.”⁹³⁰ The Ohio Supreme Court has held that improper serial meetings may also occur over the telephone or through electronic communications, like email.⁹³¹

c. Discussing public business

With narrow exemptions, the Open Meetings Act requires the members of a public body to discuss and deliberate on official business only in open meetings.⁹³² “Discussion” is the exchange of words, comments, or ideas by the members of a public body.⁹³³ “Deliberation” means the act of weighing and examining reasons for and against a choice.⁹³⁴ One court has described “deliberation” as a thorough discussion of all factors involved, a careful weighing of positive and negative factors, and a cautious consideration of the ramifications of the proposal, while gradually arriving at a decision.⁹³⁵ Another court described the term as involving “a decisional analysis, i.e., an exchange of views on the facts in an attempt to reach a decision.”⁹³⁶ Note that the Ohio Supreme Court has held that discussions of public business may also be conducted over any other media, such as the telephone, video conference, email, text, or tweet.⁹³⁷ In other words, just because a discussion did not occur in-person does not mean it is exempt from the requirements of the Open Meetings Act.

In evaluating whether particular gatherings of public officials constituted “meetings,” several courts of appeals have opined that the Open Meetings Act “is intended to apply to those situations where there has been actual formal action taken; to wit, formal *deliberations* concerning the public business.”⁹³⁸ Under this analysis, those courts have determined that gatherings strictly of an investigative and information-seeking nature that do not involve actual discussion or deliberation of public business are not “meetings” for purposes of the Open Meetings Act.⁹³⁹ More importantly, the Ohio Supreme Court has not ruled on whether “investigative and informational” gatherings are or are not “meetings.” Consequently, public bodies should seek guidance from their legal counsel about how such gatherings are viewed by the court of appeals in their district, before convening this kind of private gathering as something other than a regular or special meeting.

Those courts that have distinguished “discussions” or “deliberations” that must take place in public from other exchanges between a majority of its members at a prearranged gathering, have opined that the following are not “meetings” subject to the Open Meetings Act:

⁹³⁰ See generally *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 542-44 (1996) (noting the very purpose of the Open Meetings Act is to prevent such a game of “musical chairs” in which elected officials contrive to meet secretly to deliberate on public issues without accountability to the public); *State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶¶ 16-17, 43 (noting that board president conceded that pre-meeting decision of school board president and superintendent to narrow field of applicants should have occurred in executive session); *State ex rel. Floyd v. Rock Hill Local School Bd. of Edn.*, 4th Dist. No. 1862, 1988 WL 17190, **4, 13-16 (1988) (finding school board president improperly discussed and deliberated dismissal of principal with other board members in multiple one-on-one conversations, and came to next meeting with letter of non-renewal ready for superintendent to deliver to principal, which the board then, without discussion, voted to approve); *Wilkins v. Village of Harrisburg*, 10th Dist. No. 12AP-1046, 2013-Ohio-2751 (finding that two presentations were not serial meetings where the gatherings were separated by two months, the presentations were discussed at regularly scheduled meetings, and a regularly scheduled meeting was held between the two presentations).

⁹³¹ *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶¶ 16-18 (“Allowing public bodies to avoid the requirements of the Open Meetings Act by discussing public business via serial electronic communications subverts the purpose of the act.”).

⁹³² R.C. 121.22(A); R.C. 121.22(B)(2), (C).

⁹³³ *DeVere v. Miami Univ. Bd. of Trustees*, 12th Dist. No. CA85-05-065, 1986 WL 6763 (1986); *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.).

⁹³⁴ *Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emps.*, 106 Ohio App.3d 855, 864 (9th Dist. 1998); *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.); *Berner v. Woods*, 9th Dist. No. 07CA009132, 2007-Ohio-6207, ¶ 15.

⁹³⁵ *Theile v. Harris*, 1st Dist. No. C-860103, 1986 WL 6514 (1986).

⁹³⁶ *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 14 (4th Dist.).

⁹³⁷ *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, ¶ 16.

⁹³⁸ *Holeski v. Lawrence*, 85 Ohio App.3d 824, 829 (11th Dist. 1993).

⁹³⁹ *Holeski v. Lawrence*, 85 Ohio App.3d 824, 829 (11th Dist. 1993) (finding that, when the majority of members of a public body meet at a prearranged gathering in a “ministerial, fact-gathering capacity,” the third characteristic of a meeting is not satisfied as there are no “deliberations” occurring); *Theile v. Harris*, No. C-860103, 1986 WL 6514 (1st Dist. 1986) (finding a prearranged discussion between a prosecutor and the majority of township trustees did not violate Open Meetings Act because the gathering was conducted for investigative and information-seeking purposes); *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶¶ 14-18 (4th Dist.) (finding it permissible for a board to gather information on proposed school district in private, but it cannot deliberate privately in the absence of specifically authorized purposes); *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. No. CA2012-08-076, 2013-Ohio-2396 (2013) (finding that, while information-gathering and fact finding meetings for ministerial purposes do not violate the Open Meetings Act, whether a township’s pre-meeting meetings violated the Open Meetings Act was a question of fact when there was conflicting testimony about whether the meetings were prearranged, what the purpose of the meeting was, and whether deliberations took place).

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- Question-and-answer session between board members, the public body’s legal counsel, and others who were not public officials was not a meeting because a majority of the board members did not engage in discussion or deliberation of public business *with one another*;⁹⁴⁰
- Conversations among staff members employed by a city council;⁹⁴¹
- A presentation to a public body by its legal counsel when the public body receives legal advice;⁹⁴² and
- A press conference.⁹⁴³

2. Close-up: applying the definition of “meeting”

If a gathering meets all three elements of this definition, a court will consider it a “meeting” for the purposes of the Open Meetings Act, regardless of whether the public body initiated the gathering itself or whether it was initiated by another entity. Further, if majorities of multiple public bodies attend one large meeting, a court may construe the gathering of each public body’s majority of members to be separate “meetings” of each public body.⁹⁴⁴

a. Work sessions

A “meeting” by any other name is still a meeting. “Work retreats” or “workshops” are “meetings” when a public body discusses public business among a majority of the members of a public body at a prearranged time.⁹⁴⁵ When conducting any meeting, the public body must comply with its obligations under the Open Meetings Act: openness, notice, and minutes.⁹⁴⁶

b. Quasi-judicial proceedings

Public bodies whose responsibilities include adjudicative duties, such as boards of tax appeals and state professional licensing boards, are considered “quasi-judicial.” The Ohio Supreme Court has determined that public bodies conducting quasi-judicial hearings, “like all judicial bodies, [require] privacy to deliberate, *i.e.*, to evaluate and resolve, the disputes.”⁹⁴⁷ Quasi-judicial proceedings and the deliberations of public bodies when acting in their quasi-judicial capacities are not “meetings” and are not subject to the Open Meetings Act.⁹⁴⁸ Accordingly, when a public body is acting in its quasi-judicial capacity, the public body does not have to vote publicly to adjourn for deliberations or to take action following those deliberations.⁹⁴⁹

⁹⁴⁰ *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.) (holding that, in the absence of deliberations or discussions by board members during a non-public information-gathering and investigative session with legal counsel, the session was not a “meeting” as defined in the Open Meetings Act, and that it was not required to be held in public); *Holeski v. Lawrence*, 85 Ohio App.3d 824, 830 (11th Dist. 1993) (“The Sunshine Law is instead intended to prohibit the majority of a board from meeting and discussing public business *with one another*.”).

⁹⁴¹ *Kandell v. City Council of Kent*, 11th Dist. No. 90-P-2255, 1991 WL 147448 (1991); *State ex rel. Bd. of Edn. for Fairview Park School Dist. v. Bd. of Edn. for Rocky River School Dist.*, 40 Ohio St.3d 136, 140 (1988) (finding an employee’s discussions with a superintendent did not amount to secret deliberations within the meaning of R.C. 121.22(H)).

⁹⁴² *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.); *Theile v. Harris*, No. C-860103, 1986 WL 6514 (1st Dist. 1986).

⁹⁴³ *Holeski v. Lawrence*, 85 Ohio App.3d 824 (11th Dist. 1993).

⁹⁴⁴ *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *State ex rel. Wengert v. Baughman Twp. Bd. of Trustees*, 9th Dist. No. 13CA0048, 2014-Ohio-4749.

⁹⁴⁵ *State ex rel. Singh v. Schoenfeld*, 10th Dist. Nos. 92AP-188, 92AP-193, 1993 WL 150498 (1993).

⁹⁴⁶ *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990).

⁹⁴⁷ *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998).

⁹⁴⁸ *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998) (“[T]he Sunshine Law does not apply to adjudications of disputes in quasi-judicial proceedings, such as the [Board of Tax Appeals].”); *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 125 Ohio St.3d 438, 445, 2010-Ohio-2167; see also *Pennell v. Brown Twp.*, 5th Dist. No. 15 CAH 09 0074, 2016-Ohio-2652, ¶¶ 34-37 (finding that board of zoning appeals hearing was quasi-judicial and therefore Open Meetings Act did not apply); *Walker v. Muskingum Watershed Conservancy Dist.*, 5th Dist. No. 2007 AP 01 0005, 2008-Ohio-4060; *Angerman v. State Med. Bd. of Ohio*, 70 Ohio App.3d 346, 352 (10th Dist. 1990); *Wightman v. Ohio Real Estate Comm.*, 10th Dist. No. 16AP-466, 2017-Ohio-756, ¶ 26 (finding that state professional licensing board was quasi-judicial and therefore Open Meetings Act did not apply).

⁹⁴⁹ *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 125 Ohio St.3d 438, 2010-Ohio-2167 (holding that, because R.C. 121.22 did not apply to the elections board’s quasi-judicial proceeding, the board neither abused its discretion nor clearly disregarded the Open Meetings Act by failing to publicly vote on whether to adjourn the public hearing to deliberate and by failing to publicly vote on the matters at issue following deliberations); *In re Application for Additional Use of Property v. Allen Twp. Zoning Bd. of Appeals*, 6th Dist. No. OT-12-008, 2013-Ohio-722, ¶ 15

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c. County political party central committees

The convening of a county political party central committee for the purpose of conducting purely internal party affairs, unrelated to the committee’s duties of making appointments to vacated public offices, is not a “meeting” as defined by R.C. 121.22(B)(2). Thus, R.C. 121.22 does not apply to such a gathering.⁹⁵⁰

d. Collective bargaining

Collective bargaining meetings between public employers and employee organizations are private and are not subject to the Open Meetings Act.⁹⁵¹

(holding that board of zoning appeals was acting in its quasi-judicial capacity in reviewing applications for conditional use); *Beachland Ents., Inc. v. Cleveland Bd. of Rev.*, 8th Dist. No. 99770, 2013-Ohio-5585, ¶¶ 44-46 (holding that board of review was acting in quasi-judicial capacity in adjudicating tax dispute between the city commissioner of assessments and licenses and the taxpayer).

⁹⁵⁰ 1980 Ohio Op. Att’y Gen. No. 083; see also *Jones v. Geauga Cty. Republican Party Cent. Comm.*, 11th Dist. No. 2016-G-0056, 2017-Ohio-2930, ¶ 35 (upholding the trial court’s dismissal of the case because the meeting at issue concerned purely internal affairs, not public business, and was therefore not subject to the Open Meetings Act).

⁹⁵¹ R.C. 4117.21; see also *Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emps.*, 106 Ohio App.3d 855, 869 (9th Dist. 1995) (finding that R.C. 4117.21 manifests a legislative interest in protecting the privacy of the collective bargaining process); *Back v. Madison Local School Dist. Bd. of Edn.*, 12th Dist. No. CA2007-03-066, 2007-Ohio-4218, ¶¶ 6-10 (finding that school board’s consideration of a proposed collective bargaining agreement with the school district’s teachers was properly held in a closed session because the meeting was not an executive session but was a “collective bargaining meeting,” which, under RC. 4117.21, was exempt from the open meeting requirements of R.C. 121.22).

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Chapter Two: Duties of a Public Body

II. Chapter Two: Duties of a Public Body

The Open Meetings Act requires public bodies to provide: (A) openness; (B) notice; and (C) minutes.

A. Openness

The Open Meetings Act declares all meetings of a public body to be public meetings open to the public at all times.⁹⁵² The General Assembly mandates that the Act be liberally construed to require that public officials take official action and “conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.”⁹⁵³

1. Where meetings may be held

A public body must conduct its meetings in a venue that is open to the public.⁹⁵⁴ Although the Open Meetings Act does not specifically address where a public body must hold meetings, some authority suggests that a public body must hold meetings in a public meeting place⁹⁵⁵ that is within the geographical jurisdiction of the public body.⁹⁵⁶ Clearly, a meeting is not “open” when the public body has locked the doors to the meeting facility.⁹⁵⁷

Where space in the facility is too limited to accommodate all interested members of the public, closed circuit television may be an acceptable alternative.⁹⁵⁸ Federal law requires that a meeting place be accessible to individuals with disabilities.⁹⁵⁹

2. Method of voting

Unless a particular statute requires a specific method of voting, the public cannot insist on a particular form of voting. The body may use its own discretion in determining the method it will use, such as voice vote, show of hands, or roll call.⁹⁶⁰ The Open Meetings Act only specifies the method of voting when a public body is adjourning into executive session by requiring that the vote for that purpose be by roll call.⁹⁶¹ The Act does not specifically address the use of secret ballots; however, the Ohio Attorney General has opined that a public body may not vote in an open meeting by secret ballot.⁹⁶² Voting by secret ballot contradicts the openness requirement of the Open Meetings Act by hiding the decision-making process from public view.

⁹⁵² R.C. 121.22(C).

⁹⁵³ R.C. 121.22(A).

⁹⁵⁴ R.C. 121.22(C); *State ex rel. Randles v. Hill*, 66 Ohio St.3d 32, 35, 1993-Ohio-204 (locking the doors to the meeting hall, whether or not intentional, is not an excuse for failing to comply with the requirement that meetings be open to the public); *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. No. 2012-T-0035, 2013-Ohio-881, ¶ 22 (finding that a public body may place limitations on the time, place, and manner of access to its meetings, as long as the restrictions are content neutral and narrowly tailored to serve a significant governmental interest).

⁹⁵⁵ *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. No. 2012-T-0035, 2013-Ohio-881, ¶ 24 (“While [the Open Meetings Act] does not state where a public body must hold its public meetings, it has been held that the public body must use a public meeting place.”); 1992 Ohio Op. Att’y Gen. No. 032.

⁹⁵⁶ 1992 Ohio Op. Att’y Gen. No. 032; 1944 Ohio Op. Att’y Gen. No. 7038.

⁹⁵⁷ *Specht v. Finnegan*, 149 Ohio App.3d 201, 2002-Ohio-4660, ¶¶ 33-35 (6th Dist.).

⁹⁵⁸ *Wyse v. Rupp*, 6th Dist. No. F-94-19, 1995 WL 547784 (1995) (finding the Ohio Turnpike Commission dealt with the large crowd in a reasonable and impartial manner).

⁹⁵⁹ 42 U.S.C. § 12101 (Americans with Disabilities Act of 1990, P.L. §§ 201-202) (providing that remedy for violating this requirement would be under the ADA and does not appear to have any ramifications for the public body under the Open Meetings Act).

⁹⁶⁰ *But see State ex rel. Roberts v. Snyder*, 149 Ohio St. 333, 335 (1948) (finding that council was without authority to adopt a conflicting rule where enabling law limited council president’s vote to solely in the event of a tie under statute that preceded enactment of Open Meetings Act).

⁹⁶¹ R.C. 121.22(G).

⁹⁶² 2011 Ohio Op. Att’y Gen. No. 038 (providing that secret ballot voting by a public body is antagonistic to the ability of the citizenry to observe the workings of their government and to hold their government representatives accountable). *But see State ex rel. MORE Bratenahl v. Village of Bratenahl*, 8th Dist. Cuyahoga No. 105281, 2017-Ohio-8484, ¶ 19 (finding that a vote by handwritten ballot, in open session, where the ballots identified each councilmember’s name with their respective vote and were made public record, was not a secret vote as explained in 2011 Ohio Op. Att’y Gen. No. 038).

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3. Right to hear but not to be heard or to disrupt

All meetings of any public body are declared to be public meetings open to the public *at all times*.⁹⁶³ A court found that members of a public body who whispered and passed documents among themselves constructively closed that portion of their meeting by intentionally preventing the audience from hearing or knowing the business the body discussed.⁹⁶⁴ However, the Open Meetings Act does not provide (or prohibit) attendees the right to be heard at meetings, and a public body may place limitations on the time, place, and manner of access to its meetings, as long as the restrictions are content neutral and narrowly tailored to serve a significant governmental interest.⁹⁶⁵ Further, a disruptive person waives his or her right to attend meetings, and the body may remove that person from the meeting.⁹⁶⁶

4. Audio and video recording

A public body cannot prohibit the public from audio or video recording a public meeting.⁹⁶⁷ A public body may, however, establish reasonable rules regulating the use of recording equipment, such as requiring equipment to be silent, unobtrusive, self-contained, and self-powered to limit interference with the ability of others to hear, see, and participate in the meeting.⁹⁶⁸

5. Executive sessions

Executive sessions (discussed below in Chapter Three), are an exemption to the requirement that public bodies conduct public business in meetings that are open to the public; however, public bodies may not vote or take official action in an executive session.⁹⁶⁹

B. Notice

Every public body must establish, by rule, a reasonable method for notifying the public in advance of its meetings.⁹⁷⁰ The public body's notice rule must provide for "notice that is consistent and actually reaches the public."⁹⁷¹ The requirements for proper notice vary depending upon the type of meeting a public body is conducting, as detailed in this section.

⁹⁶³ R.C. 121.22(C); *Wyse v. Rupp*, 6th Dist. No. F-94-19, 1995 WL 547784 (1995); *Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals*, 66 Ohio St.3d 452 (1993); 1992 Ohio Op. Att'y Gen. No. 032; see also, 2007 Ohio Op. Att'y Gen. No. 019; *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. No. 2012-T-0035, 2013-Ohio-881, ¶¶ 15, 19-29 (holding that, while the Public Records Act permits a requester to remain anonymous when making a public records request, the Open Meetings Act does not have a similar anonymity requirement. As a result, a public body can require attendees at meetings to disclose their identities by signing a sign-in sheet as long as the practice is content-neutral and narrowly tailored to serve a significant governmental interest.).

⁹⁶⁴ *Manogg v. Stickle*, 5th Dist. No. 97CA00104, 1998 WL 516311 (1998).

⁹⁶⁵ *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (holding that R.C. 121.22 does not require that a public body provide the public with an opportunity to comment at its meetings, but if public participation is permitted, it is subject to the protections of the First and Fourteenth Amendments); *Forman v. Blaser*, 3d Dist. No. 13-87-12, 1988 WL 87146 (1988) (R.C. 121.22 guarantees the right to observe a meeting, but not necessarily the right to be heard); *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. No. 2012-T-0035, 2013-Ohio-881, ¶¶ 19-29.

⁹⁶⁶ *Froehlich v. Ohio State Med. Bd.*, 10th Dist. No. 15AP-666, 2016-Ohio-1035, ¶¶ 25-27 (no violation of Open Meetings Act where disruptive person is removed); *Forman v. Blaser*, 3d Dist. No. 13-87-12, 1988 WL 87146 (1988) ("When an audience becomes so uncontrollable that the public body cannot deliberate, it would seem that the audience waives its right to, or is estopped from claiming a right under the Sunshine Law to continue to observe the proceedings."); see also *Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (holding no violation of 1st and 14th Amendments when disruptive person was removed from a public meeting).

⁹⁶⁷ *McVey v. Carthage Twp. Trustees*, 4th Dist. No. 04CA44, 2005-Ohio-2869, ¶¶ 14-15 (finding trustees violated R.C. 121.22 by banning videotaping).

⁹⁶⁸ *Kline v. Davis*, 4th Dist. Nos. 00CA32, 01CA13, 2001-Ohio-2625 (finding blanket prohibition on recording a public meeting not permissible); 1988 Ohio Op. Att'y Gen. No. 087 (opining that trustees have authority to adopt reasonable rules for use of recording equipment at their meetings); see also *Mahajan v. State Med. Bd. of Ohio*, 10th Dist. Nos. 11AP-421, 11AP-422, 2011-Ohio-6728 (holding that, when rule allowed board to designate reasonable location for placement of recording equipment, requiring appellant's court reporter to move to the back of the room was reasonable, given the need to transact board business).

⁹⁶⁹ R.C. 121.22(A); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. No. 03CA55, 2003 WL 23652878 (2003) (reaching a consensus to take no action on a pending matter, as reflected by members' comments, is impermissible during an executive session).

⁹⁷⁰ R.C. 121.22(F); *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn.*, 121 Ohio App.3d 579, 587 (4th Dist. 1997) ("Typically, one would expect regular meetings to be scheduled well in advance").

⁹⁷¹ *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Comms.*, 3d Dist. No. 12-13-05, 2014-Ohio-2717, ¶ 24; *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002).

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1. Types of meetings and notice requirements

a. Regular meetings

“Regular meetings” are those held at prescheduled intervals, such as monthly or annual meetings.⁹⁷² A public body must establish, by rule, a reasonable method that allows the public to determine the *time* and *place* of regular meetings.⁹⁷³

b. Special meetings

A “special meeting” is any meeting other than a regular meeting.⁹⁷⁴ A public body must establish, by rule, a reasonable method that allows the public to determine the *time*, *place*, and *purpose* of special meetings⁹⁷⁵ and conforms with the following requirements:

- Public bodies must provide at least 24-hours advance notification of special meetings to all media outlets that have requested such notification,⁹⁷⁶ except in the event of an emergency requiring immediate official action (see “emergency meetings,” below).
- When a public body holds a special meeting to discuss particular issues, the statement of the meeting’s purpose must specifically indicate those issues, and the public body may only discuss those specified issues at that meeting.⁹⁷⁷ When a special meeting is simply a rescheduled “regular” meeting occurring at a different time, the statement of the meeting’s purpose may be for “general purposes.”⁹⁷⁸ Discussing matters at a special meeting that were not disclosed in the notice of purpose, either in open session or executive session, is a violation of the Open Meetings Act.⁹⁷⁹

c. Emergency meetings

An emergency meeting is a type of special meeting that a public body convenes when a situation requires immediate official action.⁹⁸⁰ Rather than the 24-hours advance notice usually required, a

⁹⁷² 1988 Ohio Op. Att’y Gen. No. 029; *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn.*, 121 Ohio App.3d 579, 587 (4th Dist. 1997).

⁹⁷³ R.C. 121.22(F); see also *Wyse v. Rupp*, 6th Dist. No. F-94-19, 1995 WL 547784 (1995) (finding a public body must specifically identify the time at which a public meeting will commence).

⁹⁷⁴ *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97, 100 (1990) (“The council either meets in a regular session or it does not, and any session that is not regular is special.”); 1988 Ohio Op. Att’y Gen. No. 029 (opining that, “[w]hile the term ‘special meeting’ is not defined in R.C. 121.22, its use in context indicates that a reference to all meetings other than ‘regular’ meetings was intended”).

⁹⁷⁵ R.C. 121.22(F); see also *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272-73 (2d Dist. 2002) (holding that a board violated R.C. 121.22(F) by failing to establish, by rule, method to provide reasonable notice to the public of time, place, and purpose of special meetings); *State ex rel. Stiller v. Columbiana Exempted Village School Dist. Bd. of Edn.*, 74 Ohio St.3d 113, 119-20 (1995) (holding that policy adopted pursuant to R.C. 121.22(F) that required notice of “specific or general purposes” of special meeting was not violated when general notice was given that nonrenewal of contract would be discussed, even though ancillary matters were also discussed).

⁹⁷⁶ R.C. 121.22(F); 1988 Ohio Op. Att’y Gen. No. 029.

⁹⁷⁷ *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 35-36, 40-43 (finding special meeting notice of “2015-2016 school year” was not specific enough to meeting’s purpose to discuss a school closure, and large crowds did not prove notice was sufficient); *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. No. CA2012-02-013, 2013-Ohio-1111 (finding school board failed to comply with special meeting notice requirements when notice indicated that the purpose of the special meeting was “community information,” but during the meeting the board entered executive session “to discuss negotiations with public employees concerning their compensation and other terms and conditions of their employment”); *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995).

⁹⁷⁸ *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995); see also *Satterfield v. Adams Cty. Ohio Valley School Dist.*, 4th Dist. No. 95CA611, 1996 WL 655789 (1996) (holding that, although specific agenda items may be listed, use of agenda term “personnel” is sufficient for notice of special meeting).

⁹⁷⁹ *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. No. L-97-1240, 1998 WL 172819 (1998) (finding business transacted at special meetings exceeded scope of published purpose and thus violated R.C. 121.22(F)). But see *State ex rel. Ames v. Portage Cty. Bd. of Comms.*, 11th Dist. Portage No. 2-16-P-0057, 2017-Ohio-4237 (finding that the Board did not exceed the scope of the special meeting notice when it went into executive session, which was held in compliance with the R.C. 121.22(G)(1) requirements for an executive session, because there is no prohibition on public bodies holding executive sessions in emergency meetings).

⁹⁸⁰ *State ex rel. Bates v. Smith*, 147 Ohio St.3d 322, 2016-Ohio-5449, ¶¶ 13-17 (holding that “emergency” meeting improper because there was no suggestion of any emergency that would necessitate such a meeting); *Neuvirth v. Bd. of Trustees of Bainbridge Twp.*, 11th Dist. No. 919, 1981 WL 4407 (1981) (finding the meetings were not emergencies since there was evidence that matters could have been scheduled any time in the preceding two or three months, and the public body could not postpone considering the matter until the last minute and then claim an emergency). But see *State ex rel. Ames v. Portage Cty. Bd. of Comms.*, 11th Dist. Portage No. 2-16-P-0057, 2017-Ohio-4237, ¶ 39 (finding no support for relator’s argument “that an emergency session is invalid under R.C. 121.22(F) where a public body decides not to take official action at the close of the session.”).

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public body scheduling an emergency meeting must **immediately** notify all media outlets that have specifically requested such notice of the time, place, and purpose of the emergency meeting.⁹⁸¹ The purpose statement must comport with the specificity requirements discussed above.

2. Rules requirements

The Open Meetings Act requires every public body to adopt rules establishing reasonable methods for the public to determine the time and place of all regularly scheduled meetings, and the time, place, and purpose of all special meetings.⁹⁸² Those rules must include a provision for any person, upon request and payment of a reasonable fee, to obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.⁹⁸³ The statute suggests that provisions for advance notification may include mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person requesting notice.⁹⁸⁴

3. Notice by publication

Courts have found that publication of meeting information in a newspaper is one reasonable method of noticing the public of its meetings.⁹⁸⁵ This method, however, does not satisfy the notice requirement if the public body does not have a rule providing for it or if the newspaper has discretion not to publish the information.⁹⁸⁶ Courts have addressed situations in which the media misprints meeting information and have not found a violation of the notice requirement.⁹⁸⁷ Many public bodies that adopt some other means of notice by rule also notify their local media of all regular, special, and emergency meetings as a courtesy.

C. Minutes

1. Content of minutes

A public body must keep full and accurate minutes of its meetings.⁹⁸⁸ Those minutes are not required to be a verbatim transcript of the proceedings, but they must include enough facts and information to permit the public to understand and appreciate the rationale behind the public body's decisions.⁹⁸⁹ The Ohio Supreme Court holds that minutes must include more than a record of roll call votes, and that minutes are inadequate when they contain inaccuracies that are not

⁹⁸¹ R.C. 121.22(F).

⁹⁸² R.C. 121.22(F).

⁹⁸³ R.C. 121.22(F); *State ex rel. Patrick Bros v. Putnam Cty. Bd. of Comms.*, 3d Dist. No. 12-13-05, 2014-Ohio-2717, ¶¶33-37.

⁹⁸⁴ These requirements notwithstanding, many courts have found that actions taken by a public body are not invalid simply because the body failed to adopt notice rules. These courts reason that the purpose of the law's invalidation section (R.C. 121.22(H)) is to invalidate actions taken when insufficient notice of the meeting was provided. See *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 271 (2d Dist. 2002); *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. No. L-97-1240, 1998 WL 172819 (1998); *Barbeck v. Twinsburg Twp.*, 73 Ohio App.3d 587 (9th Dist. 1992).

⁹⁸⁵ *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993); *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002) ("If the board would establish a rule providing that it would notify these newspapers and direct the newspapers to publish this notice consistently, it would satisfy the first paragraph of R.C. 121.22(F).")

⁹⁸⁶ *Doran v. Northmont Bd. of Edn.*, 147 Ohio App.3d 268, 272 (2d Dist. 2002).

⁹⁸⁷ *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (finding chairman of zoning commission testified that he correctly reported to newspaper the meeting time but newspaper mispublished it); *Swickrath & Sons, Inc. v. Village of Elida*, 3d Dist. No. 1-03-46, 2003-Ohio-6288 (finding no violation from newspaper's misprinting of meeting start time when village had three separate methods of providing notice of its meetings and village official made numerous phone calls to newspaper requesting correction).

⁹⁸⁸ *White v. Clinton Cty. Bd. of Comms.*, 76 Ohio St.3d 416, 420 (1996); *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Comms.*, 3d Dist. No. 12-13-05, 2014-Ohio-2717.

⁹⁸⁹ See generally *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542 (construing R.C. 121.22, 149.43, and 507.04 together, a township fiscal officer has a duty to maintain full and accurate minutes and records of the proceedings as well as the accounts and transactions of the board of township trustees); *White v. Clinton Cty. Bd. of Comms.*, 76 Ohio St.3d 416 (1996); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54 (2001); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶¶ 9-11 (finding that, absent evidence as to any alleged missing details or discussions, meeting minutes providing the resolution number being voted on and noting that a vote was taken were not too generalized).

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Chapter Two: Duties of a Public Body

corrected.⁹⁹⁰ A public body cannot rely on sources other than their approved minutes to argue that their minutes contain a full and accurate record of their proceedings.⁹⁹¹

Because executive sessions are not open to the public, the meeting minutes need to reflect only the general subject matter of the executive session via the motion to convene the session for a permissible purpose or purposes (see “Executive Session,” discussed later in Chapter Three).⁹⁹² Including details of members’ pre-vote discussion following an executive session may prove helpful, though. At least one court has found that the lack of pre-vote comments reflected by the minutes supported the trial court’s conclusion that the public body’s discussion of the pros and cons of the matter at issue must have improperly occurred during executive session.⁹⁹³

2. Making minutes available “promptly” as a public record

A public body must promptly prepare, file, and make available its minutes for public inspection.⁹⁹⁴ The term “promptly” is not defined. One court has adopted the definition applied by courts to the Public Records Act (without delay and with reasonable speed, depending on the facts of each case), to define that term in the Open Meetings Act.⁹⁹⁵ The final version of the official minutes approved by members of the public body is a public record.⁹⁹⁶ Note that a draft version of the meeting minutes that the public body circulates for approval,⁹⁹⁷ as well as the clerk’s handwritten notes used to draft minutes,⁹⁹⁸ may also be public records.

3. Medium on which minutes are kept

Because neither the Open Meetings Act nor the Public Records Act addresses the medium on which a public body must keep the official meeting minutes, a public body may make this determination for itself. Some public bodies document that choice by adopting a formal rule or by passing a resolution or motion at a meeting.⁹⁹⁹ Many public bodies make a contemporaneous audio recording of the meeting to use as a back-up in preparing written official minutes. The Ohio Attorney General has opined that such a recording constitutes a public record that the public body must make available for inspection upon request.¹⁰⁰⁰

⁹⁹⁰ *White v. Clinton Cty. Bd. of Comms.*, 76 Ohio St.3d 416, 419 (1996); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58 (2001).

⁹⁹¹ *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58 (2001); *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Comms.*, 3d Dist. No. 12-13-05, 2014-Ohio-2717, ¶¶ 33-37. *But see Shaffer v. Village of W. Farmington*, 82 Ohio App.3d 579, 585 (11th Dist. 1992) (holding that minutes may not be conclusive evidence as to whether roll call vote was taken).

⁹⁹² R.C. 121.22(C).

⁹⁹³ *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 380, 2005-Ohio-2868 (4th Dist.).

⁹⁹⁴ R.C. 121.22(C); see also *White v. Clinton Cty. Bd. of Comms.*, 76 Ohio St.3d 416 (1996); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990) (finding that, because the members of a public body had met as a majority group, R.C. 121.22 applied, and minutes of the meeting were therefore necessary); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 57 (2001) (finding that audiotapes that are later erased do not meet requirement to maintain minutes).

⁹⁹⁵ *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. No. CA2012-02-013, 2013-Ohio-1111, ¶ 33 (reading R.C. 121.22 in pari materia with R.C. 3313.26, school board failed to “promptly” prepare minutes where it was three months behind in approving minutes and did not approve minutes at the next respective meeting).

⁹⁹⁶ R.C. 121.22(C).

⁹⁹⁷ *State ex rel. Doe v. Register*, 12th Dist. No. CA2008-08-081, 2009-Ohio-2448, ¶ 28.

⁹⁹⁸ *State ex rel. Verhovec v. Marietta*, 4th Dist. No. 12CA32, 2013-Ohio-5415, ¶¶ 19-30.

⁹⁹⁹ In *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 57 (2001), the Ohio Supreme Court found the council’s contention that audiotapes complied with Open Meetings Act requirements to be meritless because they were not treated as official minutes, e.g., council approved written minutes, did not tape all meetings, and voted to erase tapes after written minutes had been approved.

¹⁰⁰⁰ 2008 Ohio Op. Att’y Gen. No. 019 (opining that an audio tape recording of a meeting that is created for the purpose of taking notes to create an accurate record of the meeting is a public record for purposes of R.C. 149.43, that the audio tape recording must be made available for public inspection and copying, and retained in accordance with the terms of the records retention schedule for such a record).

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Chapter Two: Duties of a Public Body

D. Modified Duties of Public Bodies under Special Circumstances

1. Declared emergency¹⁰⁰¹

During a declared emergency, R.C. 5502.24(B) provides a limited exemption to fulfilling the requirements of the Open Meetings Act. If, due to a declared emergency, it becomes “imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual place,” the governing body may meet at an alternate site previously designated (by ordinance, resolution, or other manner) as the emergency location of government.¹⁰⁰² Further, the public body may exercise its powers and functions in light of the exigencies of the emergency without regard to or compliance with time-consuming procedures and formalities of the Open Meetings Act. Even in an emergency, however, there is no exemption to the “in person” meeting requirement of R.C. 121.22(C), and the provision does not permit the public body to meet by teleconference.¹⁰⁰³

2. Municipal charters

The Open Meetings Act applies to public bodies at both the state and local government level. However, because the Ohio Constitution permits “home rule” (self-government), municipalities may adopt a charter under which their local governments operate.¹⁰⁰⁴ A charter municipality has the right to determine by charter the manner in which its meetings will be held.¹⁰⁰⁵ Charter provisions take precedence over the Open Meetings Act when the two conflict.¹⁰⁰⁶ If a municipal charter includes specific guidelines regarding the conduct of meetings, the municipality must abide by those guidelines.¹⁰⁰⁷ In addition, if a charter expressly requires that all meetings of the public bodies must be open, the municipality may not adopt ordinances that permit executive session.¹⁰⁰⁸

¹⁰⁰¹ “Emergency” is defined as “any period during which the congress of the United States or a chief executive has declared or proclaimed that an emergency exists.” R.C. 5502.21 (F). “Chief executive” is defined as “the president of the United States, the governor of this state, the board of county commissioners of any county, the board of township trustees of any township, or the mayor or city manager of any municipal corporation within this state.” R.C. 5502.21(C).

¹⁰⁰² R.C. 5502.24(B).

¹⁰⁰³ 2009 Op. Att’y Gen. No. 034; R.C. 5502.24(B).

¹⁰⁰⁴ Ohio Const., Art. XVIII, §§ 3, 7; see also *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164 (1995); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *State ex rel. Craft v. Schisler*, 40 Ohio St.3d 149 (1988); *Fox v. Lakewood*, 39 Ohio St.3d 19 (1988).

¹⁰⁰⁵ *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 168 (1988) (finding it unnecessary to decide the applicability of the Open Meetings Act because the charter language expressly provided for open meetings and encompassed the meeting at issue); *Hills & Dales, Inc. v. Wooster*, 4 Ohio App.3d 240, 242-43 (9th Dist. 1982) (finding a charter municipality, in the exercise of its sovereign powers of local self-government as established by the Ohio Constitution need not adhere to the strictures of R.C. 121.22, and noting there is “nothing in the Wooster Charter which mandates that all meetings of the city council and/or the city planning commission must be open to the public”).

¹⁰⁰⁶ *State ex rel. Lightfield v. Village of Indian Hill*, 69 Ohio St.3d 441, 442 (1994) (“In matters of local self-government, if a portion of a municipal charter expressly conflicts with a parallel state law, the charter provisions will prevail.”); *Kanter v. City of Cleveland Heights*, 8th Dist. Cuyahoga No. 104375, 2017-Ohio-1038 (holding that the city council did not have to follow the mandates of the Open Meetings Act when its charter permitted it to maintain its own rules, and those rules distinguished council meetings from special meetings and made recording minutes of council meetings discretionary); *Kujvila v. City of Newton Falls*, 11th Dist. Trumbull No. 2016-T-0010, 2017-Ohio-7957, ¶¶ 32-35.

¹⁰⁰⁷ *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728, 736 (1st Dist. 1989); *Johnson v. Kindig*, 9th Dist. No. 00CA0095, 2001 WL 929378 (2001) (finding that, when charter explicitly states that all meetings shall be public and contains no explicit exemptions, charter’s reference to Open Meetings law is insufficient to allow for executive sessions).

¹⁰⁰⁸ *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676 (1996); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165 (1988); see also *State ex rel. Gannett Satellite Information Network, Inc. v. Cincinnati City Council*, 137 Ohio App.3d 589, 592 (1st Dist. 2001) (finding that, when a city charter mandates all meetings be open, rules of council cannot supersede this mandate).

The Ohio Open Meetings Act

Chapter Three: Executive Session

III. Chapter Three: Executive Session

Executive Session Overview

- A portion of an open meeting from which the public can be excluded
- Proper procedure is required to move into executive session:
 - Meeting must always begin and end in open session, where public may be present
 - Motion on the record to move into executive session, followed by a second
 - Specific reason for executive session must be put in the motion and recorded
 - Roll call vote, which must be approved by the majority of a quorum of the public body
 - Motion and vote recorded in the meeting minutes
- Executive session can only be held for one of the following reasons:
 - Certain personnel matters
 - Purchase or sale of property
 - Pending or imminent court action
 - Collective bargaining matters
 - Matters required to be kept confidential
 - Security matters
 - Hospital trade secrets
 - Confidential business information of an applicant for economic development assistance
 - Veterans Service Commission applications
- Discussion in executive session should be limited to the specific, statutory reason for the executive session.
- The public body can invite non-members to be present in an executive session, but cannot exclude other members of the public body from the executive session.
- Discussions in executive session are not automatically confidential, but other confidentiality rules may apply; public records considered in the executive session may be accessible through the Public Records Act.
- The public body may not vote or make any decisions in executive session.

The Ohio Open Meetings Act

Chapter Three: Executive Session

A. General Principles

An “executive session” is a conference between members of a public body from which the public is excluded.¹⁰⁰⁹ The public body, however, may *invite* anyone it chooses to attend an executive session.¹⁰¹⁰ The Open Meetings Act strictly limits the use of executive sessions. First, the Open Meetings Act limits the matters that a public body may discuss in executive session.¹⁰¹¹ Second, the Open Meetings Act requires that a public body follow a specific procedure to adjourn into an executive session.¹⁰¹² Finally, a public body may not take any formal action, such as voting or otherwise reaching a collective decision, in an executive session – any formal action taken in an executive session is invalid.¹⁰¹³

A public body may only discuss matters specifically identified in R.C. 121.22(G) in executive session and may only hold executive sessions at regular and special meetings.¹⁰¹⁴ One court has held that a public body may discuss other, related issues if they have a direct bearing on the permitted matter(s).¹⁰¹⁵ If a public body is challenged in court over the nature of discussions or deliberations held in executive session, the burden of proof lies with the public body to establish that one of the statutory exemptions permitted the executive session.¹⁰¹⁶

The Open Meetings Act does not prohibit the public body or one of its members from disclosing the information discussed in executive session.¹⁰¹⁷ However, other provisions of law may prohibit such disclosure.¹⁰¹⁸

¹⁰⁰⁹ *Weisel v. Palmyra Twp. Bd. of Zoning Appeals*, 11th Dist. No. 90-P-2193, 1991 WL 132214 (1991); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. No. 89-CA004624, 1990 WL 72316 (1990). NOTE: R.C.121.22(G) prohibits executive sessions for sanitation courts as defined in R.C. 121.22(B)(1)(c).

¹⁰¹⁰ *Chudner v. Cleveland City School Dist.*, 8th Dist. No. 68572, 1995 WL 472805 (1995) (inviting select individuals to attend an executive session is not a violation as long as no formal action of the public body will occur); *Weisel v. Palmyra Twp. Bd. of Zoning Appeals*, 11th Dist. No. 90-P-2193, 1991 WL 132214 (1991); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. No. 89-CA004624, 1990 WL 72316 (1990).

¹⁰¹¹ R.C. 121.22(G)(1)-(8), (I); see also *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 28-29 (finding evidence showed that discussion in executive sessions was about proposed school closing and not the purpose stated in the executive session motions).

¹⁰¹² R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion); see also *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding respondents violated R.C. 121.22(G)(1) by using general terms like “personnel” and “personnel and finances” instead of one or more of the specified statutory purposes listed in division (G)(1)); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 473 (2001) (10th Dist. 2001) (finding a majority of a quorum of the public body must determine, by roll call vote, to hold executive session); *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995) (holding that “police personnel matters” does not constitute substantial compliance because it does not refer to any of the specified purposes listed in R.C. 149.43(G)(1)); *Vermillion Teachers’ Assn. v. Vermillion Local School Dist. Bd. of Edn.*, 98 Ohio App.3d 524, 531-32 (6th Dist. 1994) (finding a board violated 121.22(G) when it went into executive session to discuss a stated permissible topic but proceeded to discuss another, non-permissible topic); 1988 Ohio Op. Att’y Gen. No. 029.

¹⁰¹³ R.C. 121.22(H); *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 37-39 (finding an attempt to “cure” a violation “with an open vote that immediately followed presentations and discussions held behind closed doors in executive sessions is exactly the type of conduct the Act seeks to prohibit”); *Mathews v. E. Local School Dist.*, 4th Dist. No. 00CA647, 2001 WL 243501 (2001) (holding that a board was permitted to discuss employee grievance in executive session, but was required to take formal action by voting in an open meeting); *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 664 (8th Dist. 1990) (holding that, once a conclusion is reached regarding pending or imminent litigation, the conclusion is to be made public, even though the deliberations leading to the conclusion were private); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03 CA 55, 2003 WL 23652878 (Dec. 24, 2003); *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 19 (4th Dist.) (finding that, in an executive session, board members gave personal opinions and indicated how they would vote on a proposal to create new school district and resolution to adopt proposal was invalid, though it was also later adopted in open session).

¹⁰¹⁴ R.C. 121.22(G).

¹⁰¹⁵ *Chudner v. Cleveland City School Dist.*, 8th Dist. No. 68572, 1995 WL 472805 (1995) (finding that issues discussed in executive session each had a direct bearing on topic that was permissible subject of executive session discussion).

¹⁰¹⁶ *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728, 736 (1st Dist. 1989); *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. No. CA2012-02-013, 2013-Ohio-1111, ¶ 61 (holding that board violated Open Meetings Act when the board minutes failed to indicate the stated purpose for the executive session); *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶ 25 (adopting burden shifting analysis). But see *Brenneman Bros v. Allen Cty. Commrs.*, 3d Dist. No. 1-14-15, 2015-Ohio-148, ¶¶ 18-19 (holding that party asserting violation has the burden to prove it, and public officials are presumed to have followed the law).

¹⁰¹⁷ But see R.C. 121.22(G)(2) (providing that “no member of a public body shall use [executive session under property exemption] as a subterfuge for providing covert information to prospective buyers or sellers”).

¹⁰¹⁸ See, e.g., R.C. 102.03(B) (providing that a public official must not disclose or use any information acquired in course of official duties that is confidential because of statutory provisions or that has been clearly designated as confidential); *Humphries v. Chicarelli*, No. 1:10-cv-749, 2012 WL 5930437 (S.D. Ohio 2012) (prohibiting city council members from testifying as to attorney-client privileged matters discussed during executive session); *Talismanic Properties, LLC v. City of Tipp City*, S.D. Ohio No. 3:16-cv-285, 2017 U.S. Dist. LEXIS 90290, at *6-7 (June 9, 2017) (holding that when City Council entered executive session to discuss pending litigation—this case—and allegedly made the decision not to mediate, those discussions were privileged and not subject to discovery in the subsequent litigation when (1) the Council did not violate the Open Meetings Act and (2) even if it had, the information was protected by attorney-client privilege).

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Note: The privacy afforded by the Open Meetings Act to executive session discussions does not make confidential any documents that a public body may discuss in executive session. If a document is a “public record” and is not otherwise exempt under one of the exemptions to the Public Records Act, the record will still be subject to public disclosure even if the public body appropriately discussed it in executive session. In other words, an executive session under the Open Meetings Act is not an exemption for public records under the Public Records Act. For instance, if a public body properly discusses pending litigation in executive session, a settlement agreement negotiated during that executive session and reduced to writing may be subject to public disclosure.¹⁰¹⁹

B. Permissible Discussion Topics in Executive Session

There are very limited topics that the members of a public body may consider in executive session:

1. Certain personnel matters when particularly named in motion¹⁰²⁰

A public body may adjourn into executive session:

- To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official; and
- To consider the investigation of charges or complaints against a public employee, official, licensee, or regulated individual,¹⁰²¹ unless the employee, official, licensee, or regulated individual requests a public hearing;¹⁰²²

but

- A public body may not hold an executive session to consider the discipline of an elected official for conduct related to the performance of the official’s duties or to consider that person’s removal from office.

A motion to adjourn into executive session must specify which of the *particular* personnel matter(s) listed in the statute the movant proposes to discuss. **A motion “to discuss personnel matters” is not sufficiently specific and does not comply with the statute.**¹⁰²³ One court has concluded that a public body violated the Open Meetings Act by going into executive session for the stated purpose of an employee’s “evaluation.” That court did not “necessarily disagree” that the Act allows discussion on an employee’s “job performance” in executive session, but it concluded that “the public body must specify the context in which ‘job performance’ will be considered by identifying

¹⁰¹⁹ *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 138, 1997-Ohio-353 (“Since a settlement agreement contains the result of the bargaining process rather than revealing the details of the negotiations which led to the result, R.C. 121.22(G)(3), which exempts from public view only the conferences themselves, would not exempt a settlement agreement from disclosure.”) (quoting *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 664 (8th Dist. 1990)).

¹⁰²⁰ R.C. 121.22(G)(1).

¹⁰²¹ R.C. 121.22(B)(3) (defining “regulated individual” as (a) a student in a state or local public educational institution or (b) a person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or intellectual disability, disease, disability, age, or other condition requiring custodial care).

¹⁰²² This provision does not create a substantive right to a public hearing. *Matheny v. Frontier Local Bd. of Edn.*, 62 Ohio St.2d 362, 368 (1980) (“[T]he term ‘public hearing’ in subdivision (G)(1) of [R.C. 121.22] refers only to the hearings elsewhere provided by law.”). An employee who has a statutory right to a hearing may request a public hearing and prevent executive session. *Id.*; *Schmidt v. Village of Newton*, 1st Dist. No. C-110470, 2012-Ohio-890, ¶ 26 (“Only when a hearing is statutorily authorized, and a public hearing is requested, does R.C. 121.22(G) operate as a bar to holding an executive session to consider the dismissal of a public employee.”); *Brownfield v. Warren Local School Bd. of Edn.*, 4th Dist. No. 89 CA 26, 1990 WL 127054 (1990) (finding that, upon request, a teacher was entitled to have deliberations regarding his dismissal occur in open meetings). An employee with no statutory right to a hearing may not prevent discussion of his or her employment in executive session. *Stewart v. Lockland School Dist. Bd. of Edn.*, 1st Dist. No. C-130263, 2013-Ohio-5513; *State ex rel. Harris v. Indus. Comm. of Ohio*, 10th Dist. No. 95APE07-891, 1995 WL 739689 (1995).

¹⁰²³ R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding respondents violated R.C. 121.22(G)(1) by using general terms like “personnel” and “personnel and finances” instead of one or more of the specified statutory purposes listed in division (G)(1)); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶¶ 18-21 (finding that non-specific reference to “personnel matters” or “personnel issues” does not satisfy R.C. 121.22(G)); *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995) (stating that “[p]olice personnel matters” does not constitute substantial compliance because it does not refer to any of the specific purposes listed in R.C. 149.43(G)(1)); 1988 Ohio Op. Att’y Gen. No. 88-029, 2-120 to 2-121, n.1; *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶ 25 (finding that minutes stating that executive session was convened for “personnel issues” do not comply with R.C. 121.22(G)(1)); see also *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. No. CA2012-02-013, 2013-Ohio-1111, ¶¶ 63-65.

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one of the statutory purposes set forth in R.C. 121.22(G).¹⁰²⁴ The motion need not include the name of the person involved in the specified personnel matter¹⁰²⁵ or disclose “private facts.”¹⁰²⁶ Appellate courts disagree on whether a public body must limit its discussion of personnel in an executive session to a specific individual or may include broader discussion of employee matters. At least three appellate courts have held that the language of the Open Meetings Act clearly limits discussion in executive session to consideration of a specific employee’s employment, dismissal, etc.¹⁰²⁷ These court decisions are based on the plain language in the Act, which requires that “all meetings of any public body are declared to be open to the public at all times,”¹⁰²⁸ meaning any exemptions to openness should be drawn narrowly. A different appellate court, however, looked to a different provision in the Act that permits the public body to exclude the name of any person to be considered during the executive session as allowing general personnel discussions.¹⁰²⁹

2. Purchase or sale of property

A public body may adjourn into executive session to consider the purchase of property of any sort – real, personal, tangible, or intangible.¹⁰³⁰ A public body may also adjourn into executive session to consider the sale of real or personal property by competitive bid, or the sale or disposition of unneeded, obsolete, or unfit property under R.C. 505.10, if disclosure of the information would result in a competitive advantage to the person whose personal, private interest is adverse to the general public interest.¹⁰³¹ No member of a public body may use this exemption as subterfuge to provide covert information to prospective buyers or sellers.¹⁰³²

3. Pending or imminent court action

A public body may adjourn into executive session with the public body’s attorney to discuss a pending or imminent court action.¹⁰³³ Court action is “pending” if a lawsuit has been commenced, and it is “imminent” if it is on the brink of commencing.¹⁰³⁴ Courts have concluded that threatened litigation is imminent and may be discussed in executive session.¹⁰³⁵ A public body may not use this exemption to adjourn into executive session for discussions with a board member who also happens to be an attorney. The attorney should be the duly appointed counsel for the public body.¹⁰³⁶

¹⁰²⁴ *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶ 19; see also *Lawrence v. Edon*, 6th Dist. No. WM-05-001, 2005-Ohio-5883 (holding that the OMA does not prohibit a public body from discussing a public employee’s evaluations or job performance in executive session). Note: the proper context and enumerated exemption in *Lawrence v. Edon* was “dismissal or discipline” – other enumerated exemptions that might constitute proper contexts for considering employee evaluations include “employment,” “promotion,” “demotion,” or “compensation.”

¹⁰²⁵ R.C. 121.22(G)(1).

¹⁰²⁶ *Smith v. Pierce Twp.*, 12th Dist. No. CA2013-10-079, 2014-Ohio-3291, ¶¶ 50-55 (finding public body’s required publication of statutory purposes under R.C. 121.22(G)(1) for special meetings and executive sessions did not support claim of invasion of privacy under a publicity theory).

¹⁰²⁷ *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.*, 3d Dist. No. 12-13-05, 2014-Ohio-2717, ¶ 36; *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218 (4th Dist. 1988); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. No. 89-CA004624, 1990 WL 72316 (1990) (rejecting the argument that an executive session was illegally held for a dual, unauthorized purpose when it was held to discuss termination of a specific employee’s employment due to budgetary considerations).

¹⁰²⁸ R.C. 121.22(C).

¹⁰²⁹ *Wright v. Mt. Vernon City Council*, 5th Dist. No. 97-CA-7, 1997 Ohio App. LEXIS 4931 (1997) (finding it permissible for a public body to discuss merit raises for exempt city employees in executive session without referring to individuals in particular positions).

¹⁰³⁰ R.C. 121.22(G)(2); see also 1988 Ohio Op. Att’y Gen. No. 003.

¹⁰³¹ R.C. 121.22(G)(2); see also 1988 Ohio Op. Att’y Gen. No. 003.

¹⁰³² R.C. 121.22(G)(2).

¹⁰³³ R.C. 121.22(G)(3).

¹⁰³⁴ *State ex rel. Cincinnati Enquirer v. Hamilton Cty. Commrs.*, 1st Dist. No. C-010605, 2002-Ohio-2038 (determining that “imminent” is satisfied when a public body has moved beyond mere investigation and assumed an aggressive litigative posture manifested by the decision to commit government resources to the prospective litigation); *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728 (1st Dist. 1989); cf. *Greene Cty. Guidance Ctr., Inc. v. Greene-Clinton Community Mental Health Bd.*, 19 Ohio App.3d 1, 5 (2d Dist. 1984) (finding a discussion with legal counsel in executive session under 121.22(G)(3) is permitted when litigation is a “reasonable prospect”).

¹⁰³⁵ *Maddox v. Greene Cty. Children Servs. Bd.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶ 22 (finding letter expressly threatening litigation if a settlement is not reached “reasonably made a lawsuit appear imminent”); *Warthman v. Genoa Twp. Bd. of Trustees*, 5th Dist. No. 10CAH040034, 2011-Ohio-1775, ¶ 104.

¹⁰³⁶ *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 185 Ohio App.3d 707, 2009-Ohio-6993, ¶¶ 66-69 (10th Dist.) (finding three board members and executive director who were attorneys were not acting as legal counsel for the board when they discussed legal matters in executive session), *aff’d*, 127 Ohio St.3d 511, 2010-Ohio-6207, ¶¶ 8, 27-29; *Awadalla v. Robinson Mem. Hosp.*, 11th Dist. No. 91-P-2385, 1992 WL 188333 (1992) (finding executive session improper when a board’s “attorney” was identified as “senior vice president” in meeting minutes).

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Additionally, a general discussion of legal matters is not a sufficient basis for invoking this provision.¹⁰³⁷

4. *Collective bargaining matters*

A public body may adjourn into executive session to prepare for, conduct, or review a collective bargaining strategy.¹⁰³⁸

5. *Matters required to be kept confidential*

A public body may adjourn into executive session to discuss matters that federal law or regulations or state statutes require the public body to keep confidential.¹⁰³⁹ The common law attorney-client privilege does not qualify under this enumerated exemption to allow general legal advice in executive session because the public body is not *required* to assert the privilege.¹⁰⁴⁰

6. *Security matters*

A public body may adjourn into executive session to discuss details of security arrangements and emergency response protocols for a public body or public office if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.¹⁰⁴¹

7. *Hospital trade secrets*

Certain hospital public bodies established by counties, joint townships, or municipalities may adjourn into executive session to discuss trade secrets as defined by R.C. 1333.61.¹⁰⁴²

8. *Confidential business information of an applicant for economic development assistance*¹⁰⁴³

This topic requires that the information to be discussed in executive session be directly related to economic development assistance of specified types listed in the statute.¹⁰⁴⁴ “A unanimous quorum of the public body [must determine], by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.”¹⁰⁴⁵

9. *Veterans Service Commission Applications*

A Veterans Service Commission must hold an executive session when considering an applicant’s request for financial assistance unless the applicant requests a public hearing.¹⁰⁴⁶ Note that, unlike the previous seven discussion topics, discussion of Veterans Service Commission applications in executive session is mandatory.

¹⁰³⁷ *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶ 25 (finding minutes stating that executive session was convened for “legal issues” do not comply with R.C. 121.22(G)(1)).

¹⁰³⁸ R.C. 121.22(G)(4); see also *Back v. Madison Local School Dist. Bd. of Edn.*, 12th Dist. No. CA2007-03-006, 2007-Ohio-4218, ¶ 8 (finding a school board’s meeting with a labor organization to renegotiate teachers’ salaries was proper because the meeting was not an executive session but was a “collective bargaining meeting,” which, under R.C. 4117.21, was exempt from the open meeting requirements of R.C. 121.22).
¹⁰³⁹ R.C. 121.22(G)(5).

¹⁰⁴⁰ *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶¶ 75-79; *State ex rel. Cincinnati Enquirer v. Hamilton Cty. Commrs.*, 1st Dist. No. C-010605, 2002-Ohio-2038, *5; *Dispatch Printing Co. v. Columbus City School Dist. Bd. of Edn.*, Franklin C.P. No. 12CVH10-12707 (2014).

¹⁰⁴¹ R.C. 121.22(G)(6).

¹⁰⁴² R.C. 121.22(G)(7).

¹⁰⁴³ R.C. 121.22(G)(8).

¹⁰⁴⁴ R.C. 121.22(G)(8)(a).

¹⁰⁴⁵ R.C. 121.22(G)(8)(b).

¹⁰⁴⁶ R.C. 121.22(J).

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C. Proper Procedures for Executive Session

A public body may only hold an executive session at a regular or special meeting, and a meeting that includes an executive session must always begin and end in an open session.¹⁰⁴⁷ In order to begin an executive session, there must be a proper motion approved by a majority¹⁰⁴⁸ of a quorum of the public body, using a roll call vote.¹⁰⁴⁹

1. The motion

A motion for executive session must specifically identify “which one or more of the approved matters listed ... are to be considered at the executive session.”¹⁰⁵⁰ Thus, if the public body intends to discuss one of the matters included in the personnel exemption in executive session, the motion must specify which of those specific matters it will discuss (e.g., “I move to go into executive session to consider the promotion or compensation of a public employee.”).¹⁰⁵¹ The public body must specifically identify which of the listed personnel matters set forth in R.C. 121.22(G)(1) it will discuss. It is not sufficient to simply state “personnel” as a reason for executive session.¹⁰⁵² The motion does not need to specify by name the person whom the public body intends to discuss.¹⁰⁵³ Similarly, reiterating “the laundry list of possible matters from R.C. 121.22(G)(1) without specifying which of those purposes [will] be discussed in executive session” is improper.¹⁰⁵⁴

2. The roll call vote

Members of a public body may adjourn into executive session only after a majority of a quorum of the public body approves the motion by a roll call vote.¹⁰⁵⁵ The vote may not be by acclamation or by show of hands, and the public body should record the vote in its minutes.¹⁰⁵⁶

Although a proper motion is required before entering executive session, a motion to end the executive session and return to public session is not necessary because the closed-door discussion is “off the record.” Similarly, a public body does not take minutes during executive session. Note that any minutes taken during executive session may be subject to the Public Records Act.¹⁰⁵⁷ The minutes of the meeting need only document a motion to go into executive session that properly identifies the permissible topic or topics that the public body will discuss, as well as the return to open session (e.g., “We are now back on the record.”).

¹⁰⁴⁷ R.C. 121.22(G); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013 CA 38, 2014-Ohio-2312, ¶¶ 24-26.

¹⁰⁴⁸ To consider confidential business information of an application for economic development assistance under R.C. 121.22(G)(8), the motion must be approved by a unanimous quorum. R.C. 121.22(G)(8)(b).

¹⁰⁴⁹ *Vermillion Teachers' Assn. v. Vermillion Local School Dist. Bd. of Edn.*, 98 Ohio App.3d 524 (6th Dist. 1994); 1988 Ohio Op. Att'y Gen. No. 029 (detailing proper procedure for executive session).

¹⁰⁵⁰ R.C. 121.22(G)(1), (8).

¹⁰⁵¹ *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995); 1988 Ohio Op. Att'y Gen. No. 029; *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001).

¹⁰⁵² *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding that using general terms like “personnel” instead of one or more of the specified statutory purposes is a violation of R.C. 121.22(G)(1)); *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411843, *8 (1995) (“[A] reference to ‘police personnel issues’ does not technically satisfy [the R.C. 121.22(G)(1)] requirement because it does not specify which of the approved purposes was applicable in this instance.”); 1988 Ohio Op. Att'y Gen. No. 029, 2-120 to 2-121, n.1.

¹⁰⁵³ R.C. 121.22(G)(1); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. No. CA-678, 1990 WL 125485 (1990).

¹⁰⁵⁴ *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001).

¹⁰⁵⁵ R.C. 121.22(G).

¹⁰⁵⁶ R.C. 121.22(G); 1988 Ohio Op. Att'y Gen. No. 029; *State ex rel. MORE Bratenahl v. Village of Bratenahl*, 8th Dist. Cuyahoga No. 105281, 2017-Ohio-8484, ¶ 29 (finding evidence in the record and on audio recording of the Village Council meeting that a roll call vote that took place before the Council went in to executive session was sufficient to show compliance with the Open Meetings Act, even though the roll call vote technically took place before the court reporter began recording the transcript).

¹⁰⁵⁷ See Chapter Three: A. “General Principles.”

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IV. Chapter Four: Enforcement and Remedies

In Ohio, no state or local government official has the authority to enforce the Open Meetings Act. Instead, if any person believes a public body has violated or intends to violate the Open Meetings Act, that person may file suit in a common pleas court to enforce the law's provisions.¹⁰⁵⁸

The Open Meetings Act states that its provisions “shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.”¹⁰⁵⁹ The executive session exemptions contained in R.C. 121.22(G) are to be strictly construed.¹⁰⁶⁰

A. Enforcement

1. Injunction

Any person may file a court action for an injunction to address an alleged or threatened violation of the Open Meetings Act. This action must be “brought within two years after the date of the alleged violation or threatened violation.”¹⁰⁶¹ There must still be an actual, genuine controversy at the time the action is filed, or the claim may be dismissed as moot.¹⁰⁶² If granted by a court, an injunction compels the members of the public body to comply with the law by either refraining from the prohibited behavior or by lawfully conducting their meetings when they previously failed to do so.

a. Who may file and against whom

“Any person” has standing to file for an injunction to enforce the Open Meetings Act.¹⁰⁶³ The person need not demonstrate a personal stake in the outcome of the lawsuit.¹⁰⁶⁴

Open Meetings Act injunction actions sometimes include the public body as the defendant, or individual members of the public body, or both. No reported cases dispute that individual members of a public body are proper defendants, but some courts have found that the public body itself is not “sui juris” (capable of being sued) for violations of the Act.¹⁰⁶⁵ Other courts find that public bodies are “sui juris” for purposes of suits alleging violations of the Act.¹⁰⁶⁶ Persons filing an enforcement action should consult case law applicable to their appellate district.

b. Where to file

The Open Meetings Act requires that an action for injunction be filed in the court of common pleas in the county where the alleged violation took place.¹⁰⁶⁷

¹⁰⁵⁸ R.C. 121.22(I)(1).

¹⁰⁵⁹ R.C. 121.22(A).

¹⁰⁶⁰ *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶ 15; *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218, paragraphs 1-2 of syllabus (4th Dist. 1988); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013 CA 38, 2014-Ohio-2312, ¶ 17.

¹⁰⁶¹ R.C. 121.22(I)(1); see also *Mollette v. Portsmouth City Council*, 179 Ohio App.3d 455, 2008-Ohio-6342 (4th Dist.); *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶ 16.

¹⁰⁶² *Tucker v. Leadership Academy*, 10th Dist. No. 14AP-100, 2014-Ohio-3307, ¶¶ 14-17 (finding closure of charter school rendered allegedly improper resolution under OMA moot).

¹⁰⁶³ R.C. 121.22(I)(1); *McVey v. Carthage Twp. Trustees*, 4th Dist. No. 04CA44, 2005-Ohio-2869.

¹⁰⁶⁴ *Doran v. Northmont Bd. of Edn.*, 153 Ohio App.3d 499, 2003-Ohio-4084, ¶ 20 (2d Dist.); *State ex rel. Mason v. State Employment Relations Bd.*, 133 Ohio App.3d 213 (10th Dist. 1999). But see *Korchnak v. Civil Serv. Comm. of Canton*, 5th Dist. No. CA-8133, 1991 WL 6277 (1991) (finding a party had no standing to challenge a public body's failure to provide requested notices of meetings when he had not followed procedures entitling him to notice).

¹⁰⁶⁵ *Mollette v. Portsmouth City Council*, 169 Ohio App.3d 557, 2006-Ohio-6289 (4th Dist.) (finding suit should have been filed against the individual council members in their official capacities), holding reaffirmed in *Mollette v. Portsmouth City Council*, 179 Ohio App.3d 455, 2008-Ohio-6342 (4th Dist.); *Krash v. Alliance*, 5th Dist. Nos. CA-0846, CA-8058, 1990 WL 93914 (1990); *Maser v. Canton*, 5th Dist. No. CA-4664, 1977 WL 201008 (1977).

¹⁰⁶⁶ *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶¶ 10-14; *Krueck v. Kipton Village Council*, 9th Dist. No. 11CA009960, 2012-Ohio-1787, ¶¶ 3-4, 16.

¹⁰⁶⁷ R.C. 121.22(I)(1).

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One court has found that a party may not assert an alleged violation of the Open Meetings Act in a related action before a county board of elections.¹⁰⁶⁸ Courts have reached different conclusions as to whether a trial court may consider an alleged violation of the Act as a claim made within an administrative appeal.¹⁰⁶⁹ Those cases finding no jurisdiction have reasoned that the exclusive method to enforce the Act is as a separate original action filed in the common pleas court.

c. Proving a violation

The person filing an action under the Open Meetings Act generally has the burden of proving the alleged violation.¹⁰⁷⁰ When the plaintiff first shows that a meeting of a majority of the members of a public body occurred and alleges that the public was improperly excluded from all or part of that meeting, the burden shifts to the public body to produce evidence that the challenged meeting fell under one of the Act's exemptions.¹⁰⁷¹ Courts do not necessarily accept a public body's stated purpose for an executive session if other evidence demonstrates that the public body improperly deliberated during the executive session.¹⁰⁷² Upon proof of a violation or threatened violation of the Act, the court will conclusively and irrebuttably presume harm and prejudice to the person who brought the suit¹⁰⁷³ and will issue an injunction.¹⁰⁷⁴

d. Curing a violation

Once a violation is proven, the court must grant the injunction, regardless of the public body's subsequent attempts to cure the violation.¹⁰⁷⁵ Courts have different views as to whether and how a public body can then cure the violation, for instance with new, compliant discussions followed by compliant formal action.¹⁰⁷⁶ One court has explained that after a violation a public body must "start its decision-making process over with regard to what was illegally deliberated or decided in a closed meeting."¹⁰⁷⁷ The Ohio Supreme Court has held that a city's failure to have public deliberation

¹⁰⁶⁸ *State ex rel. Savko & Sons v. Perry Twp. Bd. of Trustees*, 10th Dist. No. 14AP-204, 2014-Ohio-1181.

¹⁰⁶⁹ **Courts finding jurisdiction:** *Brenneman Bros. v. Allen Cty. Commrs.*, 3d Dist. No. 1-13-14, 2013-Ohio-4635; *Hardesty v. River View Local School Dist. Bd. of Edn.*, 63 Ohio Misc.2d 145 (C.P. 1993). **Courts finding no jurisdiction:** *Stainfield v. Jefferson Emergency Rescue District*, 11th Dist. No. 2009-A-0044, 2010-Ohio-2282; *Fahl v. Athens*, 4th Dist. No. 06CA23, 2007-Ohio-4925; *Pfeiffer v. Bd. of Cty. Commrs. of Portage Cty.*, 11th Dist. No. 2000-P-0030, 2001 WL 799850 (2001).

¹⁰⁷⁰ *Paridon v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. No. 2012-T-0035, 2013-Ohio-881, ¶ 18 (requiring proof by clear and convincing evidence); *State ex rel. Masiella v. Brimfield Twp. Bd. of Trustees*, 11th Dist. No. 2016-P-0038, 2017-Ohio-2934, ¶ 53 (finding appellant failed to meet this burden, which required him "to demonstrate that a meeting occurred . . . [and] that a public action resulted from a deliberation in the meeting that was not open to the public.").

¹⁰⁷¹ *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶¶ 20-27; *Carver v. Deerfield Twp.*, 139 Ohio App.3d 64, 70 (11th Dist. 2000).

¹⁰⁷² *Sea Lakes, Inc. v. Lipstreu*, 11th Dist. No. 90-P-2254, 1991 WL 206663 (1991) (finding a violation when board was to discuss administrative appeal merits privately, appellant's attorney objected, board immediately held executive session "to discuss possible legal actions", then emerged to announce decision on appeal); *In the Matter of Removal of Smith*, 5th Dist. No. CA-90-11, 1991 WL 87166 (1991) (finding violation when county commission emerged from executive session held "to discuss legal matters" and announced decision to remove Smith from Board of Mental Health, there was no county attorney present in executive session, and a request for public hearing on removal decision was pending).

¹⁰⁷³ R.C. 121.22(l)(3); *Ream v. Civil Serv. Comm. of Canton*, 5th Dist. No. CA-8033, 1990 WL 187076 (1990).

¹⁰⁷⁴ R.C. 121.22(l)(1); see also *Doran v. Northmont Bd. of Edn.*, 153 Ohio App.3d 499, 2003-Ohio-4084, ¶ 21 (2d Dist.) (holding that statute's provision that an injunction is mandatory upon finding violation is not an unconstitutional violation of separation of powers); *Fayette Volunteer Fire Dept. No. 2, Inc. v. Fayette Twp. Bd. of Trustees*, 87 Ohio App.3d 51, 54 (4th Dist. 1993) (finding injunction mandatory even though challenged board action was nullified and there was no need for an injunction).

¹⁰⁷⁵ *McVey v. Carthage Twp. Trustees*, 4th Dist. No. 04CA44, 2005-Ohio-2869, ¶ 9 ("Because the statute clearly provides that an injunction is to be issued upon finding a violation of the Sunshine Law, it is irrelevant that the Trustees nullified their prior [offending] action."); *Doran v. Northmont Bd. of Edn.*, 153 Ohio App.3d 499, 2003-Ohio-4084 (2d Dist.); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. No. CA-678, 1990 WL 125485 (1990).

¹⁰⁷⁶ **Courts finding that violation was not cured:** *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 44-46 (finding cannot "cure" a violation by simply voting again on the same information improperly obtained in executive session); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 476 (10th Dist. 2001) (finding no cure of violation by conducting an open meeting prior to taking formal action); *M.F. Waste Ventures, Inc. v. Bd. of Amanda Twp. Trustees*, 3d Dist. No. 1-87-46, 1988 WL 17731, *9 (1988) (finding that "as a result of a violation, 'the resolutions were invalid, and the fact that they were later adopted at public meetings did not cure their invalidity'"); *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218, 221 (4th Dist. 1988) ("A violation of the Sunshine Law cannot be 'cured' by subsequent open meetings if the public body initially discussed matters in executive session that should have been discussed before the public."); **Courts finding violation was cured:** *Kuhlman v. Village of Leipsic*, 3d Dist. No. 12-94-9, 1995 WL 141528, *8 (1995) ("[A]n initial failure to comply with R.C. 121.22 can be cured if the matter at issue is later placed before the public for consideration."); *Carpenter v. Bd. of Allen Cty. Commr.*, 3d Dist. No. 1-81-44, 1982 WL 6848 (1982); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. No. CA-678, 1990 WL 125485 (1990) (discussing a permitted matter in executive session, without a proper motion, was cured by rescinding the resulting action and then conducting the action in compliance with the OMA).

¹⁰⁷⁷ *Danis Montco Landfill Co. v. Jefferson Twp. Zoning Commn.*, 85 Ohio App.3d 494, 501 (2d Dist. 1993); see also *Maddox v. Greene Cty. Children Servs. Bd.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶ 36 (finding violation in termination of an employee did not afford employee life

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regarding the adoption of a charter amendment was cured when the amendment was placed on the ballot and adopted by the electorate.¹⁰⁷⁸

2. Mandamus

When a person seeks access to the public body's minutes, that person may also file a mandamus action under the Public Records Act to compel the creation of or access to meeting minutes.¹⁰⁷⁹ Mandamus is also the appropriate action to order a public body to give notice of meetings to the person filing the action.¹⁰⁸⁰

3. Quo warranto

Once a court issues an injunction finding a violation of the Open Meetings Act, members of the public body who later commit a "knowing" violation of the injunction may be removed from office through a *quo warranto* action, which may only be brought by the county prosecutor or the Ohio Attorney General.¹⁰⁸¹

B. Remedies

1. Invalidity

A resolution, rule, or formal action of any kind is invalid unless a public body adopts it in an open meeting.¹⁰⁸² However, courts have refused to allow public bodies to benefit from their own violations of the Open Meetings Act.¹⁰⁸³ For instance, a public body may not attempt to avoid a contractual obligation by arguing that approval of the contract is invalid because of a violation of the Act.¹⁰⁸⁴

a. Failure to take formal action in public

The Open Meetings Act requires a public body to take all "official" or "formal" action in open session.¹⁰⁸⁵ Even without taking a vote or a poll, members of a public body may inadvertently take "formal action" in an executive session when they indicate how they intend to vote about a matter pending before them, making the later vote in open session invalid.¹⁰⁸⁶ A formal action taken in an open session also may be invalid if it results from deliberations that improperly occurred outside of

time employment but the public body has to re-deliberate "at least enough to support a finding that its discharge decision did not result from prior improper deliberations").

¹⁰⁷⁸ *Fox v. Lakewood*, 39 Ohio St.3d 19 (1998); see also *Skindell v. Madigan*, 8th Dist. Cuyahoga No. 103976, 2017-Ohio-398, ¶ 5.

¹⁰⁷⁹ *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54 (2001); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990).

¹⁰⁸⁰ *State ex rel. Vindicator Printing Co. v. Kirila*, 11th Dist. No. 91-T-4550, 1991 WL 280006 (1991).

¹⁰⁸¹ R.C. 121.22(H)(4); R.C. Chapter 2733 (Quo Warranto); *State ex rel. Bates v. Smith*, 147 Ohio St.3d 322, 2016-Ohio-5449 (granting *quo warranto* to remove township trustee from office because trustees unlawfully voted to declare that position vacant when officeholder was on active military service); *State ex rel. Newell v. Jackson*, 118 Ohio St.3d 138, 2008-Ohio-1965, ¶¶ 8-14 (finding that, to be entitled to a writ of *quo warranto* to oust a good-faith appointee, a relator must either file a *quo warranto* action or an injunction challenging the appointment before the appointee completes the probationary period and becomes a permanent employee; further, this duty applies to alleged violations of the open meeting provisions of R.C. 121.22); *Randles v. Hill*, 66 Ohio St.3d 32 (1993) (granting writ of *quo warranto* reinstating petitioner when vote to remove him was made at a meeting where the public was inadvertently excluded in violation of the Act); *McClarren v. Alliance*, 5th Dist. No. CA-7201, 1987 WL 18535 (1987) (finding that an injunction must be issued upon the finding of a violation to allow for removal from office after any future knowing violation).

¹⁰⁸² R.C. 121.22(H); *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 127 Ohio St.3d 511, 2010-Ohio-6207, ¶¶ 28-29; *State ex rel. Holliday v. Marion Twp. Bd. of Trustees*, 3d Dist. No. 9-2000-22, 2000 WL 1420281 (2000).

¹⁰⁸³ *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995); *Roberto v. Brown Cty. Gen. Hosp.*, 12th Dist. No. CA87-06-009, 1988 WL 12962 (1988).

¹⁰⁸⁴ *Roberto v. Brown Cty. Gen. Hosp.*, 12th Dist. No. CA87-06-009, 1988 WL 12962 (1988).

¹⁰⁸⁵ R.C. 121.22(A), (C), and (H).

¹⁰⁸⁶ R.C. 121.22(H); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. No. 03 CA 55, 2003 WL 23652878 (2003); see also *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 19 (4th Dist.) (finding that, in an executive session, board members gave personal opinions and indicated how they would vote on a proposal to create new school district and resolution to adopt proposal was invalid, though it was also later adopted in open session); *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 37-39 (finding an attempt to "cure" a violation "with an open vote that immediately followed presentations and discussions held behind closed doors in executive sessions is exactly the type of conduct the Act seeks to prohibit"); *Mathews v. E. Local School Dist.*, 4th Dist. Pike No. 00CA647, 2001 Ohio App. LEXIS 1677 (Jan. 4, 2001) (holding that a board was permitted to discuss employee grievance in executive session, but was required to take formal action by voting in an open meeting); *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 664 (8th Dist. 1990) (holding that, once a conclusion is reached regarding pending or imminent litigation, the conclusion is to be made public, even though the deliberations leading to the conclusion were private).

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an open meeting, e.g., at an informal, private meeting or in an improper executive session.¹⁰⁸⁷ Even a decision in executive session not to take action (on a request made to the public body) has been held to be “formal action” that should have been made in open session, and thus, was deemed invalid.¹⁰⁸⁸

b. Improper notice

When a public body takes formal action in a meeting for which it did not properly give notice, the action is invalid.¹⁰⁸⁹

c. Minutes

At least one court has found that minutes are merely the record of actions; they are not actions in and of themselves. Thus, failure to properly approve minutes does not invalidate the actions taken during the meeting.¹⁰⁹⁰

2. Mandatory civil forfeiture

If the court issues an injunction, the court will order the public body to pay a civil forfeiture of \$500 to the person who filed the action.¹⁰⁹¹ Courts that find that a public body has violated the law on repeated occasions have awarded a \$500 civil forfeiture for each violation.¹⁰⁹²

3. Court costs and attorney fees

If the court issues an injunction, it will order the public body to pay all court costs¹⁰⁹³ and the reasonable attorney fees of the person who filed the action.¹⁰⁹⁴ Courts have discretion to reduce or completely eliminate attorney fees, however, if they find that, (1) based on the state of the law when the violation occurred, a well-informed public body could have reasonably believed it was not violating the law; and (2) it was reasonable for the public body to believe its actions served public policy.¹⁰⁹⁵

¹⁰⁸⁷ R.C. 121.22(H); *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 30-31 (holding that action by the public body that resulted from improper discussion in executive session was invalid); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. No. 03 CA 55, 2003 WL 23652878 (2003) (finding council reached its conclusion based on comments in executive session and acted according to that conclusion); *State ex rel. Holliday v. Marion Twp. Bd. of Trustees*, 3d Dist. No. 9-2000-22, 2000 WL 1420281 (2000); see also *State ex rel. Delph v. Barr*, 44 Ohio St.3d 77 (1989); *State ex rel. Masiella v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage No. 2016-P-0038, 2017-Ohio-2934, ¶¶ 48-52.

¹⁰⁸⁸ *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. No. 03 CA 55, 2003 WL 23652878 (2003).

¹⁰⁸⁹ R.C. 121.22(H); see also *State ex rel. Stiller v. Columbiana Exempted Village School Dist. Bd. of Edn.*, 74 Ohio St.3d 113, 118 (1995). But see *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. No. L-97-1240, 1998 WL 172849 (1998) (illustrating that actions are not invalid merely because a reasonable method of notice had not been enacted by “rule”); *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 35-36 (finding notice of special meeting “to discuss the 2015-2016 school year” was not specific enough to meeting’s purpose to discuss a school closure); *Barbeck v. Twinsburg Twp.*, 73 Ohio App.3d 587 (9th Dist. 1992); *Huth v. Bolivar*, 5th Dist. No. 2014 AP 02 0005, 2014-Ohio-4889, ¶¶ 20-23 (holding that, even if notice was flawed, the second reading of a proposed ordinance was not “formal action”).

¹⁰⁹⁰ *Davidson v. Hanging Rock*, 97 Ohio App.3d 723, 733 (4th Dist. 1994).

¹⁰⁹¹ R.C. 121.22(I)(2)(a). But see *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶ 32 (2013) (declining to award civil forfeiture damages and attorney fees when case was filed as mandamus action in the court of appeals instead of a request for an injunction in the court of common pleas).

¹⁰⁹² *Specht v. Finnegan*, 6th Dist. No. 2-02-1012, 2002-Ohio-4660; *Manogg v. Stickle*, 5th Dist. No. 98CA00102, 1999 WL 173275 (1999); *Weisbarth v. Geauga Park Dist.*, 11th Dist. No. 2007-G-2780, 2007-Ohio-6728, ¶ 30 (holding that the only violation alleged was board’s failure to state a precise statutory reason for going into executive session and that this “technical” violation entitled appellant to only one statutory injunction and one civil forfeiture”); *Maddox v. Greene Cty. Children Servs. Bd.*, 2d Dist. No. 2013 CA 38, 2014-Ohio-2312, ¶¶ 40-51 (stacking forfeitures for certain violations but not others). But see *Doran v. Northmont Bd. of Edn.*, 2d Dist. No. 19956, 2003-Ohio-7097, ¶ 18, n.3 (determining that the failure to adopt rule is one violation with one \$500 fine – fine not assessed for each meeting conducted in absence of rule where meetings were, in fact, properly noticed and held in an open forum).

¹⁰⁹³ R.C. 121.22(I)(2)(a).

¹⁰⁹⁴ R.C. 121.22(I)(2)(a); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 60 (2001) and 93 Ohio St.3d 1230 (2001) (awarding a citizen over \$17,000 in attorney’s fees); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶ 60 (“[T]he OMA is structured such that an injunction follows a violation and attorney fees follow an injunction.”); *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001). But see *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶ 32 (2013) (declining to award civil forfeiture damages and attorney fees when case was filed as mandamus action in the court of appeals instead of a request for an injunction in the court of common pleas).

¹⁰⁹⁵ R.C. 121.22(I)(2)(a)(i), (ii); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶¶ 61-62 (holding that trial court could reasonably conclude that a well-informed public body would know that it must be specific when giving a reason for executive session, and that it cannot vote in executive session); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. No. 03 CA 55,

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If the court does not issue an injunction and decides the lawsuit was frivolous, the court will order the person who filed the suit to pay all of the public body's court costs and reasonable attorney fees as determined by the court.¹⁰⁹⁶ A public body is entitled to attorney fees even when those fees are paid by its insurance company.¹⁰⁹⁷

2003 WL 23652878 (2003) (declining to reduce fee award); *Mathews v. E. Local School Dist.*, 4th Dist. No. 00CA647, 2001 WL 243501 (2001) (holding that, when two board members knew not to take formal action during executive session, the board was not entitled to reduction).

¹⁰⁹⁶ R.C. 121.22(l)(2)(b); *McIntyre v. Westerville City School Dist. Bd. of Edn.*, 10th Dist. Nos. 90AP-1024, 90AP-1063, 1991 WL 101587 (1991) (finding a plaintiff engaged in frivolous conduct because her actions subjected the board to a baseless suit and the incurring of needless expense); *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. No. CA2013-03-025, 2014-Ohio-252, ¶ 19 (upholding award of attorney's fees when "there was no possible violation of the OMA as alleged in Relator's first four allegations").

¹⁰⁹⁷ *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. No. CA2013-03-025, 2014-Ohio-252, ¶ 23.

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Statutes: Public Records, Open Meeting & Personal Information Statutes¹

The full text of the Ohio Revised Code is available to the public online at www.codes.ohio.gov/orc. We recommend referring to that website for any updates to these statutes following the release of this publication.

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¹ Editor's Note: These sections of the Ohio Revised Code are current as of January 1, 2018.

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Ohio Revised Code § 9.01 – *Official records – preserving and maintaining*

When any officer, office, court, commission, board, institution, department, agent, or employee of the state, of a county, or of any other political subdivision who is charged with the duty or authorized or required by law to record, preserve, keep, maintain, or file any record, document, plat, court file, paper, or instrument in writing, or to make or furnish copies of any of them, deems it necessary or advisable, when recording or making a copy or reproduction of any of them or of any such record, for the purpose of recording or copying, preserving, and protecting them, reducing space required for storage, or any similar purpose, to do so by means of any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, or perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, or graphic or video display, or any combination of those processes, means, or displays, which correctly and accurately copies, records, or reproduces, or provides a medium of copying, recording, or reproducing, the original record, document, plat, court file, paper, or instrument in writing, such use of any of those processes, means, or displays for any such purpose is hereby authorized. Any such records, copies, or reproductions may be made in duplicate, and the duplicates shall be stored in different buildings. The film or paper used for a process shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards. All such records, copies, or reproductions shall carry a certificate of authenticity and completeness, on a form specified by the director of administrative services through the state records program.

Any such officer, office, court, commission, board, institution, department, agent, or employee of the state, of a county, or of any other political subdivision may purchase or rent required equipment for any such photographic process and may enter into contracts with private concerns or other governmental agencies for the development of film and the making of reproductions of film as a part of any such photographic process. When so recorded, or copied or reproduced to reduce space required for storage or filing of such records, such photographs, microphotographs, microfilms, perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or combination of these processes, means, or displays, or films, or prints made therefrom, when properly identified by the officer by whom or under whose supervision they were made, or who has their custody, have the same effect at law as the original record or of a record made by any other legally authorized means, and may be offered in like manner and shall be received in evidence in any court where the original record, or record made by other legally authorized means, could have been so introduced and received. Certified or authenticated copies or prints of such photographs, microphotographs, films, microfilms, perforated tape, magnetic tape, other magnetic means, electronic data processing, machine readable means, graphic or video display, or combination of these processes, means, or displays, shall be admitted in evidence equally with the original.

Such photographs, microphotographs, microfilms, or films shall be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers, and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging them whenever requested, during office hours.

All persons utilizing methods described in this section for keeping records and information shall keep and make readily available to the public the machines and equipment necessary to reproduce the records and information in a readable form.

Most Recent Effective Date: 09-26-2003

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Ohio Revised Code § 109.43 – *Public records training programs – model public records policy*

(A) As used in this section:

- (1) “Designee” means a designee of the elected official in the public office if that elected official is the only elected official in the public office involved or a designee of all of the elected officials in the public office if the public office involved includes more than one elected official.
- (2) “Elected official” means an official elected to a local or statewide office. “Elected official” does not include the chief justice or a justice of the supreme court, a judge of a court of appeals, court of common pleas, municipal court, or county court, or a clerk of any of those courts.
- (3) “Public office” has the same meaning as in section 149.011 of the Revised Code.
- (4) “Public record” has the same meaning as in section 149.43 of the Revised Code.

(B) The attorney general shall develop, provide, and certify training programs and seminars for all elected officials or their appropriate designees in order to enhance the officials’ knowledge of the duty to provide access to public records as required by section 149.43 of the Revised Code and to enhance their knowledge of the open meetings laws set forth in section 121.22 of the Revised Code. The training shall be three hours for every term of office for which the elected official was appointed or elected to the public office involved. The training shall provide elected officials or their appropriate designees with guidance in developing and updating their offices’ policies as required under section 149.43 of the Revised Code. The successful completion by an elected official or by an elected official’s appropriate designee of the training requirements established by the attorney general under this section shall satisfy the education requirements imposed on elected officials or their appropriate designees under division (E) of section 149.43 of the Revised Code.

(C) The attorney general shall not charge any elected official or the appropriate designee of any elected official any fee for attending the training programs and seminars that the attorney general conducts under this section. The attorney general may allow the attendance of any other interested persons at any of the training programs or seminars that the attorney general conducts under this section and shall not charge the person any fee for attending the training program or seminar.

(D) In addition to developing, providing, and certifying training programs and seminars as required under division (B) of this section, the attorney general may contract with one or more other state agencies, political subdivisions, or other public or private entities to conduct the training programs and seminars for elected officials or their appropriate designees under this section. The contract may provide for the attendance of any other interested persons at any of the training programs or seminars conducted by the contracting state agency, political subdivision, or other public or private entity. The contracting state agency, political subdivision, or other public or private entity may charge an elected official, an elected official’s appropriate designee, or an interested person a registration fee for

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attending the training program or seminar conducted by that contracting agency, political subdivision, or entity pursuant to a contract entered into under this division. The attorney general shall determine a reasonable amount for the registration fee based on the actual and necessary expenses associated with the training programs and seminars. If the contracting state agency, political subdivision, or other public or private entity charges an elected official or an elected official's appropriate designee a registration fee for attending the training program or seminar conducted pursuant to a contract entered into under this division by that contracting agency, political subdivision, or entity, the public office for which the elected official was appointed or elected to represent may use the public office's own funds to pay for the cost of the registration fee.

(E) The attorney general shall develop and provide to all public offices a model public records policy for responding to public records requests in compliance with section 149.43 of the Revised Code in order to provide guidance to public offices in developing their own public record policies for responding to public records requests in compliance with that section.

(F) The attorney general may provide any other appropriate training or educational programs about Ohio's "Sunshine Laws," sections 121.22, 149.38, 149.381, and 149.43 of the Revised Code, as may be developed and offered by the attorney general or by the attorney general in collaboration with one or more other state agencies, political subdivisions, or other public or private entities.

(G) The auditor of state, in the course of an annual or biennial audit of a public office pursuant to Chapter 117. of the Revised Code, shall audit the public office for compliance with this section and division (E) of section 149.43 of the Revised Code.

Most Recent Effective Date: 04-06-2017

Ohio Revised Code § 121.211 – *Retention and disposition of records*

Records in the custody of each agency shall be retained for time periods in accordance with law establishing specific retention periods, and in accordance with retention periods or disposition instructions established by the state records administration.

Most Recent Effective Date: 07-01-1985

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Ohio Revised Code § 149.011 – *Documents, reports, and records definitions*

As used in this chapter, except as otherwise provided:

(A) “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. “Public office” does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(B) “State agency” includes every department, bureau, board, commission, office, or other organized body established by the constitution and laws of this state for the exercise of any function of state government, including any state-supported institution of higher education, the general assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision. “State agency” does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(C) “Public money” includes all money received or collected by or due a public official, whether in accordance with or under authority of any law, ordinance, resolution, or order, under color of office, or otherwise. It also includes any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

(D) “Public official” includes all officers, employees, or duly authorized representatives or agents of a public office.

(E) “Color of office” includes any act purported or alleged to be done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.

(F) “Archive” includes any public record that is transferred to the state archives or other designated archival institutions because of the historical information contained on it.

(G) “Records” includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

Most Recent Effective Date: 02-18-2011

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Ohio Revised Code § 149.31 – *Archives administration for the state*

(A) The Ohio history connection, in addition to its other functions, shall function as the state archives administration for the state and its political subdivisions.

It shall be the function of the state archives administration to preserve government archives, documents, and records of historical value that may come into its possession from public or private sources.

The archives administration shall evaluate, preserve, arrange, service repair, or make other disposition of, including transfer to public libraries, county historical societies, state universities, or other public or quasi-public institutions, agencies, or corporations, those public records of the state and its political subdivisions that may come into its possession under this section. Those public records shall be transferred by written agreement only, and only to public or quasi-public institutions, agencies, or corporations capable of meeting accepted archival standards for housing and use.

The archives administration shall be headed by a trained archivist designated by the Ohio history connection and shall make its services available to county, municipal, township, school district, library, and special taxing district records commissions upon request. The archivist shall be designated as the “state archivist.”

(B) The archives administration may purchase or procure for itself, or authorize the board of trustees of an archival institution to purchase or procure, from an insurance company licensed to do business in this state policies of insurance insuring the administration or the members of the board and their officers, employees, and agents against liability on account of damage or injury to persons and property resulting from any act or omission of the board members, officers, employees, and agents in their official capacity.

(C) Notwithstanding any other provision of the Revised Code to the contrary, the archives administration may establish a fee schedule, which may include the cost of labor, for researching, retrieving, copying, and mailing copies of public records in the state archives. Revisions to the fee schedule shall be subject to approval by the board of trustees of the Ohio history connection.

Most Recent Effective Date: 09-29-2015

Ohio Revised Code § 149.33 – *State records program – office of state records administration*

(A) The department of administrative services shall have responsibility for establishing and administering a state records program for all state agencies, except for state-supported institutions of

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higher education. The department shall apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposition of state records.

There is hereby established within the department of administrative services a state records program, which shall be under the control and supervision of the director of administrative services or the director's appointed deputy.

(B) The boards of trustees of state-supported institutions of higher education shall have full responsibility for establishing and administering a records program for their respective institutions. The boards shall apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposition of the records of their respective institutions.

Most Recent Effective Date: 09-26-2003

Ohio Revised Code § 149.331 – *State record administration program*

The state records program of the department of administrative services shall do all of the following:

(A) Establish and promulgate in consultation with the state archivist standards, procedures, and techniques for the effective management of state records;

(B) Review applications for one-time records disposal and schedules of records retention and destruction submitted by state agencies in accordance with section 149.333 of the Revised Code;

(C) Establish "general schedules" proposing the disposal, after the lapse of specified periods of time, of records of specified form or character common to several or all agencies that either have accumulated or may accumulate in such agencies and that apparently will not, after the lapse of the periods specified, have sufficient administrative, legal, fiscal, or other value to warrant their further preservation by the state;

(D) Establish and maintain a records management training program, and provide a basic consulting service, for personnel involved in record-making and record-keeping functions of departments, offices, and institutions;

(E) Provide for the disposition of any remaining records of any state agency, board, or commission, whether in the executive, judicial, or legislative branch of government, that has terminated its operations. After the closing of the Ohio veterans' children's home, the resident records of the home and the resident records of the home when it was known as the soldiers' and sailors' orphans' home required to be maintained by approved records retention schedules shall be administered by the state department of education pursuant to this chapter, the administrative records of the home required to be maintained by approved records retention schedules shall be administered by the department of

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administrative services pursuant to this chapter, and historical records of the home shall be transferred to an appropriate archival institution in this state prescribed by the state records program.

(F) Establish a centralized program coordinating micrographics standards, training, and services for the benefit of all state agencies;

(G) Establish and publish in accordance with the applicable law necessary procedures and rules for the retention and disposal of state records.

This section does not apply to the records of state-supported institutions of higher education, which shall keep their own records.

Most Recent Effective Date: 09-26-2003

Ohio Revised Code § 149.332 – *Records management programs in the legislative and judicial branches of state government*

Upon request the director of administrative services and the state archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch under section 149.33 of the Revised Code. Prior to the disposal of any records, the state archivist shall be allowed sixty days to select for preservation in the state archives those records the state archivist determines to have continuing historical value.

Most Recent Effective Date: 09-26-2003

Ohio Revised Code § 149.333 – *Applying for record disposal or transfer*

No state agency shall retain, destroy, or otherwise transfer its state records in violation of this section. This section does not apply to state-supported institutions of higher education.

Each state agency shall submit to the state records program under the director of administrative services all applications for records disposal or transfer and all schedules of records retention and destruction. The state records program shall review the applications and schedules and provide written approval, rejection, or modification of an application or schedule. The state records program shall then forward the application for records disposal or transfer or the schedule for retention or destruction, with the program's recommendation attached, to the auditor of state for review and approval. The decision of the auditor of state to approve, reject or modify the application or schedule shall be based upon the continuing administrative and fiscal value of the state records to the state or its citizens. If the

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auditor of state disapproves the action by the state agency, the auditor of state shall so inform the state agency through the state records program within sixty days, and the records shall not be destroyed.

At the same time, the state records program shall forward the application for records disposal or transfer or the schedule for retention or destruction to the state archivist for review and approval. The state archivist shall have sixty days to select for custody the state records that the state archivist determines to be of continuing historical value. Records not selected shall be disposed of in accordance with this section.

Most Recent Effective Date: 09-26-2003

Ohio Revised Code § 149.34 – *Records management procedures*

The head of each state agency, office, institution, board, or commission shall do the following:

(A) Establish, maintain, and direct an active continuing program for the effective management of the records of the state agency;

(B) Submit to the state records program, in accordance with applicable standards and procedures, schedules proposing the length of time each record series warrants retention for administrative, legal, or fiscal purposes after it has been received or created by the agency. The head also shall submit to the state records program applications for disposal of records in the head's custody that are not needed in the transaction of current business and are not otherwise scheduled for retention or destruction.

(C) Within one year after their date of creation or receipt, schedule all records for disposition or retention in the manner prescribed by applicable law and procedures.

This section does not apply to state-supported institutions of higher education.

Most Recent Effective Date: 09-26-2003

Ohio Revised Code § 149.35 – *Laws prohibiting the destruction of records*

If any law prohibits the destruction of records, the director of administrative services, the director's designee, or the boards of trustees of state-supported institutions of higher education shall not order their destruction or other disposition. If any law provides that records shall be kept for a specified period of time, the director of administrative services, the director's designee, or the boards shall not order their destruction or other disposition prior to the expiration of that period.

Most Recent Effective Date: 09-26-2003

Ohio Revised Code § 149.351 – *Prohibiting destruction or damage of records*

(A) All records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code or under the records programs established by the boards of trustees of state-supported institutions of higher education under section 149.33 of the Revised Code. Those records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, destroyed, mutilated, or transferred unlawfully.

(B) Any person who is aggrieved by the removal, destruction, mutilation, or transfer of, or by other damage to or disposition of a record in violation of division (A) of this section, or by threat of such removal, destruction, mutilation, transfer, or other damage to or disposition of such a record, may commence either or both of the following in the court of common pleas of the county in which division (A) of this section allegedly was violated or is threatened to be violated:

(1) A civil action for injunctive relief to compel compliance with division (A) of this section, and to obtain an award of the reasonable attorney's fees incurred by the person in the civil action;

(2) A civil action to recover a forfeiture in the amount of one thousand dollars for each violation, but not to exceed a cumulative total of ten thousand dollars, regardless of the number of violations, and to obtain an award of the reasonable attorney's fees incurred by the person in the civil action not to exceed the forfeiture amount recovered.

(C) (1) A person is not aggrieved by a violation of division (A) of this section if clear and convincing evidence shows that the request for a record was contrived as a pretext to create potential liability under this section. The commencement of a civil action under division (B) of this section waives any right under this chapter to decline to divulge the purpose for requesting the record, but only to the extent needed to evaluate whether the request was contrived as a pretext to create potential liability under this section.

(2) In a civil action under division (B) of this section, if clear and convincing evidence shows that the request for a record was a pretext to create potential liability under this section, the court may award reasonable attorney's fees to any defendant or defendants in the action.

(D) Once a person recovers a forfeiture in a civil action commenced under division (B)(2) of this section, no other person may recover a forfeiture under that division for a violation of division (A) of this section involving the same record, regardless of the number of persons aggrieved by a violation of division (A) of this section or the number of civil actions commenced under this section.

(E) A civil action for injunctive relief under division (B)(1) of this section or a civil action to recover a forfeiture under division (B)(2) of this section shall be commenced within five years after the day in which division (A) of this section was allegedly violated or was threatened to be violated.

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Most Recent Effective Date: 09-29-2011

Ohio Revised Code § 149.352 – *Replevin of public records*

Upon request of the department of administrative services, the attorney general may replevin any public records which have been unlawfully transferred or removed in violation of sections 149.31 to 149.44 of the Revised Code or otherwise transferred or removed unlawfully. Such records shall be returned to the office of origin and safeguards shall be established to prevent further recurrence of unlawful transfer or removal.

Most Recent Effective Date: 07-01-1985

Ohio Revised Code § 149.36 – *Authority not restricted*

The provisions of sections 149.31 to 149.42, inclusive, of the Revised Code shall not impair or restrict the authority given by other statutes over the creation of records, systems, forms, procedures, or the control over purchases of equipment by public offices.

Most Recent Effective Date: 10-19-1959

Ohio Revised Code § 149.38 – *County records commission*

(A) Except as otherwise provided in section 307.847 of the Revised Code, there is hereby created in each county a county records commission, composed of a member of the board of county commissioners as chairperson, the prosecuting attorney, the auditor, the recorder, and the clerk of the court of common pleas. The commission shall appoint a secretary, who may or may not be a member of the commission and who shall serve at the pleasure of the commission. The commission may employ an archivist or records manager to serve under its direction. The commission may employ an archivist or records manager to serve under its direction. The commission shall meet at least once every six months and upon call of the chairperson.

(B) (1) The functions of the county records commission shall be to provide rules for retention and disposal of records of the county, and to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by county offices. The commission may dispose of records pursuant to the procedure outlined in this section. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule, subject to division (D) of this section.

(2) (a) As used in division (B)(2) of this section, “paper case records” means written reports of child abuse or neglect, written records of investigations, or other written records required to be prepared under section 2151.421, 5101.13, 5153.166, or 5153.17 of the Revised Code.

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(b) A county public children services agency may submit to the county records commission applications for one-time disposal, or schedules of records retention and disposition, of paper case records that have been entered into permanently maintained and retrievable fields in the state automated child welfare information system established under section 5101.13 of the Revised Code or entered into other permanently maintained and retrievable electronic files. The county records commission may dispose of the paper case records pursuant to the procedure outlined in this section.

(C) (1) When the county records commission has approved any county application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission shall send that application or schedule to the Ohio history connection for its review. The Ohio history connection shall review the application or schedule within a period of not more than sixty days after its receipt of it. During the sixty-day review period, the Ohio history connection may select for its custody from the application for one-time disposal of obsolete records any records it considers to be of continuing historical value, and shall denote upon any schedule of records retention and disposition any records for which the Ohio history connection will require a certificate of records disposal prior to their disposal.

(2) Upon completion of its review, the Ohio history connection shall forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the auditor of state for the auditor's approval or disapproval. The auditor of state shall approve or disapprove the application or schedule within a period of not more than sixty days after receipt of it.

(3) Before public records are to be disposed of pursuant to an approved schedule of records retention and disposition, the county records commission shall inform the Ohio history connection of the disposal through the submission of a certificate of records disposal for only the records required by the schedule to be disposed of and shall give the Ohio history connection the opportunity for a period of fifteen business days to select for its custody those records, from the certificate submitted, that it considers to be of continuing historical value. Upon the expiration of the fifteen-business-day period, the county records commission also shall notify the public libraries, county historical society, state universities, and other public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the commission has informed the Ohio history connection of the records disposal and that the notified entities, upon written agreement with the Ohio history connection pursuant to section 149.31 of the Revised Code, may select records of continuing historical value, including records that may be distributed to any of the notified entities under section 149.31 of the Revised Code. Any notified entity that notifies the county records commission of its intent to review and select records of continuing historical value from certificates of records disposal is responsible for the cost of any notice given and for the transportation of those records.

(D) The rules of the county records commission shall include a rule that requires any receipts, checks, vouchers, or other similar records pertaining to expenditures from the delinquent tax and assessment collection fund created in section 321.261 of the Revised Code, from the real estate assessment fund created in section 325.31 of the Revised Code, or from amounts allocated for the furtherance of justice

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to the county sheriff under section 325.071 of the Revised Code or to the prosecuting attorney under section 325.12 of the Revised Code to be retained for at least four years.

(E) No person shall knowingly violate the rule adopted under division (D) of this section. Whoever violates that rule is guilty of a misdemeanor of the first degree.

Most Recent Effective Date: 09-29-2015

Ohio Revised Code § 149.381 – *Review of applications for disposal of records or schedules of records retention and disposition by historical society*

(A) As used in this section, “records commission” means a records commission created under section 149.39 of the Revised Code, a school district records commission and an educational service center records commission created under section 149.41 of the Revised Code, a library records commission created under section 149.411 of the Revised Code, a special taxing district records commission created under section 149.412 of the Revised Code, and a township records commission created under section 149.42 of the Revised Code.

(B) When a records commission has approved an application for one-time disposal of obsolete records or any schedule of records retention and disposition, the records commission shall send that application or schedule to the Ohio history connection for its review. The Ohio history connection shall review the application or schedule within a period of not more than sixty days after its receipt of it. During the sixty-day review period, the Ohio history connection may select for its custody from the application for one-time disposal of obsolete records any records it considers to be of continuing historical value, and shall denote upon any schedule of records retention and disposition the records for which the Ohio history connection will require a certificate of records disposal prior to their disposal.

(C) Upon completion of its review, the Ohio history connection shall forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the auditor of state for the auditor of state’s approval or disapproval. The auditor of state shall approve or disapprove the application or schedule within a period of not more than sixty days after receipt of it.

(D) Before public records are to be disposed of pursuant to an approved schedule of records retention and disposition, the records commission shall inform the Ohio history connection of the disposal through the submission of a certificate of records disposal for only the records required by the schedule to be disposed of, and shall give the Ohio history connection the opportunity for a period of fifteen business days to select for its custody those public records, from the certificate submitted, that it considers to be of continuing historical value.

(E) The Ohio history connection may not review or select for its custody any of the following:

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(1) Records the release of which is prohibited by section 149.432 of the Revised Code.

(2) Records containing personally identifiable information concerning any pupil attending a public school other than directory information, as defined in section 3319.321 of the Revised Code, without the written consent of the parent, guardian, or custodian of each such pupil who is less than eighteen years of age, or without the written consent of each pupil who is eighteen years of age or older.

(3) Records the release of which would, according to the “Family Educational Rights and Privacy Act of 1974,” 88 Stat. 571, 20 U.S.C. 1232g, disqualify a school or other educational institution from receiving federal funds.

Most Recent Effective Date: 09-29-2015

Ohio Revised Code § 149.39 – *Records commission – municipal corporation*

There is hereby created in each municipal corporation a records commission composed of the chief executive or the chief executive’s appointed representative, as chairperson, and the chief fiscal officer, the chief legal officer, and a citizen appointed by the chief executive. The commission shall appoint a secretary, who may or may not be a member of the commission and who shall serve at the pleasure of the commission. The commission may employ an archivist or records manager to serve under its direction. The commission shall meet at least once every six months and upon the call of the chairperson.

The functions of the commission shall be to provide rules for retention and disposal of records of the municipal corporation, and to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by municipal offices. The commission may dispose of records pursuant to the procedure outlined in section 149.381 of the Revised Code. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule under the procedure outlined in that section.

Most Recent Effective Date: 09-29-2011

Ohio Revised Code § 149.40 – *Making only necessary records*

The head of each public office shall cause to be made only such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency’s activities.

Most Recent Effective Date: 07-01-1985

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Ohio Revised Code § 149.41 – *School district records commission – educational service center records commission*

There is hereby created in each city, local, joint vocational, and exempted village school district a school district records commission, and in each educational service center an educational service center records commission. Each records commission shall be composed of the president, the treasurer of the board of education or governing board of the educational service center, and the superintendent of schools in each such district or educational service center. The commission shall meet at least once every twelve months.

The function of the commission shall be to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the school district or educational service center. The commission may dispose of records pursuant to the procedure outlined in section 149.381 of the Revised Code. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule under the procedure outlined in that section.

Most Recent Effective Date: 09-29-2011

Ohio Revised Code § 149.411 – *Library records commission*

There is hereby created in each county free public library, municipal free public library, township free public library, school district free public library as described in section 3375.15 of the Revised Code, county library district, and regional library district a library records commission composed of the members and the fiscal officer of the board of library trustees of the appropriate public library or library district. The commission shall meet at least once every twelve months.

The functions of the commission shall be to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the library. The commission may dispose of records pursuant to the procedure outlined in section 149.381 of the Revised Code. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule under the procedure outlined in that section.

Most Recent Effective Date: 09-29-2011

Ohio Revised Code § 149.412 – *Special taxing district records commission*

(A) There is hereby created in each special taxing district that is a public office as defined in section 149.011 of the Revised Code and that is not specifically designated in section 149.38, 149.39, 149.41, 149.411, or 149.42 of the Revised Code a special taxing district records commission composed of, at a minimum, the chairperson, a fiscal representative, and a legal representative of the governing board of

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the special taxing district. The commission shall meet at least once every twelve months and upon the call of the chairperson.

The functions of the commission shall be to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the special taxing district. The commission may dispose of records pursuant to the procedure outlined in section 149.381 of the Revised Code. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule under the procedure outlined in that section.

(B) A special taxing district, the territory of which is coextensive with the territorial limits of a county, upon mutual assent between the special taxing district and the board of county commissioners, may designate the county records commission as the records commission for the special taxing district. Such a designation authorizes the county records commission to exercise all of the duties and responsibilities of a special taxing district records commission. The mutual assent may be manifested in an agreement defining the terms and conditions under which the county records commission is to perform public records-related functions, including establishing records retention and destruction schedules, on behalf of the special taxing district.

Most Recent Effective Date: 01-30-2014

Ohio Revised Code § 149.42 – *Township records commission*

There is hereby created in each township a township records commission, composed of the chairperson of the board of township trustees and the fiscal officer of the township. The commission shall meet at least once every twelve months and upon the call of the chairperson.

The function of the commission shall be to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by township offices. The commission may dispose of records pursuant to the procedure outlined in section 149.381 of the Revised Code. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule under the procedure outlined in that section.

Most Recent Effective Date: 09-29-2011

Ohio Revised Code § 149.43 – *Availability of public records for inspection and copying*

(A) As used in this section:

(1) “Public record” means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of

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educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. “Public record” does not mean any of the following:

- (a) Medical records;
- (b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;
- (c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;
- (d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;
- (e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;
- (f) Records specified in division (A) of section 3107.52 of the Revised Code;
- (g) Trial preparation records;
- (h) Confidential law enforcement investigatory records;
- (i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;
- (j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;
- (k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;
- (l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;
- (m) Intellectual property records;
- (n) Donor profile records;

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- (o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;
- (p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information;
- (q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;
- (r) Information pertaining to the recreational activities of a person under the age of eighteen;
- (s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;
- (t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;
- (u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;
- (v) Records the release of which is prohibited by state or federal law;
- (w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;
- (x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;
- (y) Records listed in section 5101.29 of the Revised Code;

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(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;

(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;

(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;

(dd) Personal information, as defined in section 149.45 of the Revised Code;

(ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record, and records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state. As used in this division, "confidential address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.

(ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

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(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) “Medical record” means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) “Trial preparation record” means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) “Intellectual property record” means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) “Donor profile record” means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) “Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information” means any information that discloses any of the following about a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer:

(a) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, an investigator of the bureau of criminal identification and investigation, or federal law enforcement officer, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer resides;

(b) Information compiled from referral to or participation in an employee assistance program;

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(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's compensation unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

As used in divisions (A)(7) and (B)(9) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who,

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in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in divisions (A)(7) and (B)(9) of this section, “correctional employee” means any employee of the department of rehabilitation and correction who in the course of performing the employee’s job duties has or has had contact with inmates and persons under supervision.

As used in divisions (A)(7) and (B)(9) of this section, “youth services employee” means any employee of the department of youth services who in the course of performing the employee’s job duties has or has had contact with children committed to the custody of the department of youth services.

As used in divisions (A)(7) and (B)(9) of this section, “firefighter” means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A)(7) and (B)(9) of this section, “EMT” means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. “Emergency medical service organization,” “EMT-basic,” “EMT-I,” and “paramedic” have the same meanings as in section 4765.01 of the Revised Code.

As used in divisions (A)(7) and (B)(9) of this section, “investigator of the bureau of criminal identification and investigation” has the meaning defined in section 2903.11 of the Revised Code.

As used in divisions (A)(7) and (B)(9) of this section, “federal law enforcement officer” has the meaning defined in section 9.88 of the Revised Code.

(8) “Information pertaining to the recreational activities of a person under the age of eighteen” means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person’s parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or

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sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) “Community control sanction” has the same meaning as in section 2929.01 of the Revised Code.

(10) “Post-release control sanction” has the same meaning as in section 2967.01 of the Revised Code.

(11) “Redaction” means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a “record” in section 149.011 of the Revised Code.

(12) “Designee” and “elected official” have the same meanings as in section 109.43 of the Revised Code.

(B) (1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office’s or person’s duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not

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preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person chooses to obtain a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking a copy of the public record to make the copies of the public record.

(7) (a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving request, copies of public records by the United States mail or by any other means of delivery or transmission pursuant to this division (B)(7) of this

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section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

(iii) For purposes of division (B)(7) of this section, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9) (a) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee,

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firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer and, if the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth service's employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(C) (1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following , and not both:

(a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

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(2) If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a) (i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

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(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to the provisions of division (C)(4) of this section:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

(c) The court shall not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

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- (a) The fees shall be construed as remedial and not punitive.
 - (b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.
 - (c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.
 - (d) The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.
- (5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.
- (D) Chapter 1347. of the Revised Code does not limit the provisions of this section.
- (E) (1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. In addition, all public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.
- (2) The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

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(F) (1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) “Actual cost” means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) “Bulk commercial special extraction request” means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. “Bulk commercial special extraction request” does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) “Commercial” means profit-seeking production, buying, or selling of any good, service, or other product.

(d) “Special extraction costs” means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. “Special extraction costs” include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, “surveys, marketing, solicitation, or resale for commercial purposes” shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(G) A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

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Most Recent Effective Date: 12-19-2016

Ohio Revised Code § 149.431 – *Records of governmental or nonprofit organizations receiving governmental funds*

(A) Except as provided in sections 9.833, 2744.081, and 3345.203 of the Revised Code, any governmental entity or agency and any nonprofit corporation or association, except a corporation organized pursuant to Chapter 1719 of the Revised Code prior to January 1, 1980 or organized pursuant to Chapter 3941. of the Revised Code, that enters into a contract or other agreement with the federal government, a unit of state government, or a political subdivision or taxing unit of this state for the provision of services shall keep accurate and complete financial records of any moneys expended in relation to the performance of the services pursuant to such contract or agreement according to generally accepted accounting principles. Such contract or agreement and such financial records shall be deemed to be public records as defined in division (A)(1) of section 149.43 of the Revised Code and are subject to the requirements of division (B) of that section, except that:

- (1) Any information directly or indirectly identifying a present or former individual patient or client or such an individual patient's or client's diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, treatment for a developmental disability, treatment for drug abuse or alcoholism, or counseling for personal or social problems is not a public record;
- (2) If disclosure of the contract or agreement or financial records is requested at a time when confidential professional services are being provided to a patient or client whose confidentiality might be violated if disclosure were made at that time, disclosure may be deferred if reasonable times are established when the contract or agreement or financial records will be disclosed;
- (3) Any nonprofit corporation or association that receives both public and private funds in fulfillment of any such contract or other agreement is not required to keep as public records the financial records of any private funds expended in relation to the performance of services pursuant to the contract or agreement.

(B) Any nonprofit corporation or association that receives more than fifty per cent of its gross receipts excluding moneys received pursuant to Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, in a calendar year in fulfillment of a contract or other agreement for services with a governmental entity shall maintain information setting forth the compensation of any individual serving the nonprofit corporation or association in an executive or administrative capacity. Such information shall be deemed to be public records as defined in division (A)(1) of section 149.43 of the Revised Code and is subject to the requirements of division (B) of that section.

Nothing in this section shall be construed to otherwise limit the provisions of section 149.43 of the Revised Code.

Most Recent Effective Date: 04-05-2017

Ohio Revised Code § 149.432 – *Releasing library record or patron information*

(A) As used in this section:

(1) “Library” means a library that is open to the public, including any of the following:

- (a) A library that is maintained and regulated under section 715.13 of the Revised Code;
- (b) A library that is created, maintained, and regulated under Chapter 3375. of the Revised Code;
- (c) A library that is created and maintained by a public or private school, college, university, or other educational institution;
- (d) A library that is created and maintained by a historical or charitable organization, institution, association, or society.

“Library” includes the members of the governing body and the employees of a library.

(2) “Library record” means a record in any form that is maintained by a library and that contains any of the following types of information:

- (a) Information that the library requires an individual to provide in order to be eligible to use library services or borrow materials;
- (b) Information that identifies an individual as having requested or obtained specific materials or materials on a particular subject;
- (c) Information that is provided by an individual to assist a library staff member to answer a specific question or provide information on a particular subject.

“Library record” does not include information that does not identify any individual and that is retained for the purpose of studying or evaluating the use of a library and its materials and services.

(3) Subject to division (B)(5) of this section, “patron information” means personally identifiable information about an individual who has used any library service or borrowed any library materials.

(B) A library shall not release any library record or disclose any patron information except in the following situations:

- (1) If a library record or patron information pertaining to a minor child is requested from a library by the minor child’s parent, guardian, or custodian, the library shall make that record or information

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available to the parent, guardian, or custodian in accordance with division (B) of section 149.43 of the Revised Code.

(2) Library records or patron information shall be released in the following situations:

(a) In accordance with a subpoena, search warrant, or other court order;

(b) To a law enforcement officer who is acting in the scope of the officer's law enforcement duties and who is investigating a matter involving public safety in exigent circumstances.

(3) A library record or patron information shall be released upon the request or with the consent of the individual who is the subject of the record or information.

(4) Library records may be released for administrative library purposes, including establishment or maintenance of a system to manage the library records or to assist in the transfer of library records from one records management system to another, compilation of statistical data on library use, and collection of fines and penalties.

(5) A library may release under division (B) of section 149.43 of the Revised Code records that document improper use of the internet at the library so long as any patron information is removed from those records. As used in division (B)(5) of this section, "patron information" does not include information about the age or gender of an individual.

Most Recent Effective Date: 11-05-2004

Ohio Revised Code 149.433 – *Exempting security and infrastructure records*

(A) As used in this section:

"Act of terrorism" has the same meaning as in section 2909.21 of the Revised Code.

"Express statement" means a written statement substantially similar to the following: "This information is voluntarily submitted to a public office in expectation of protection from disclosure as provided by section 149.433 of the Revised Code."

"Infrastructure record" means any record that discloses the configuration of critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of a building.

"Infrastructure record" includes a risk assessment of infrastructure performed by a state or local law enforcement agency at the request of a property owner or manager.

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“Infrastructure record” does not mean a simple floor plan that discloses only the spatial relationship of components of the building.

“Security record” means any of the following:

(1) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;

(2) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate or respond to acts of terrorism, including any of the following:

(a) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;

(b) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;

(c) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

(3) An emergency management plan adopted pursuant to section 3313.536 of the Revised Code.

(B) (1) A record kept by a public office that is a security record is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section.

(2) A record kept by a public office that is an infrastructure record of a public office or a chartered nonpublic school is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section.

(3) A record kept by a public office that is an infrastructure record of a private entity may be exempted from release or disclosure under division (C) of this section.

(C) A record prepared by, submitted to, or kept by a public office that is an infrastructure record of a private entity, which is submitted to the public office for use by the public office, when accompanied by an express statement, is exempt from release or disclosure under section 149.43 of the Revised Code for a period of twenty-five years after its creation if it is retained by the public office for that length of time.

(D) Notwithstanding any other section of the Revised Code, disclosure by a public office, public employee, chartered nonpublic school, or chartered nonpublic school employee of a security record or

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infrastructure record that is necessary for construction, renovation, or remodeling work on any public building or project or chartered nonpublic school does not constitute public disclosure for purposes of waiving division (B) of this section and does not result in that record becoming a public record for purposes of section 149.43 of the Revised Code.

Most Recent Effective Date: 09-28-2016

Ohio Revised Code § 149.434 – *Public offices to maintain employee database*

(A) Each public office or person responsible for public records shall maintain a database or a list that includes the name and date of birth of all public officials and employees elected to or employed by that public office. The database or list is a public record and shall be made available upon a request made pursuant to section 149.43 of the Revised Code.

(B) As used in this section:

- (1) “Employee” has the same meaning as in section 9.40 of the Revised Code.
- (2) “Public official” has the same meaning as in section 117.01 of the Revised Code.
- (3) “Public record” has the same meaning as in section 149.43 of the Revised Code.

Most Recent Effective Date: 09-01-2008

Ohio Revised Code § 149.435 – *Confidentiality of records regarding abused children*

(A) As used in this section:

- (1) “Abused child” has the same meaning as in section 2151.031 of the Revised Code.
- (2) “Confidential law enforcement investigatory record” has the same meaning as in section 149.43 of the Revised Code.
- (3) “Law enforcement agency” means a municipal or township police department, the office of a sheriff, the state highway patrol, federal law enforcement, a county prosecuting attorney, the office of the United States attorney, or a state or local government body that enforces criminal laws and that has employees who have a statutory power of arrest.
- (4) “Prosecutor” has the same meaning as in section 2935.01 of the Revised Code.

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(5) “Routine factual report” means a police blotter, arrest log, incident report, or other record of events maintained in paper, electronic, or other form by a law enforcement agency, other than a confidential law enforcement investigatory record.

(B) (1) Except as provided in division (C) of this section, a law enforcement agency or employee of a law enforcement agency shall not disclose a name or other information contained in a routine factual report that is highly likely to identify an alleged delinquent child or arrestee who is also an abused child and who is under eighteen years of age at the time the report is created. If the agency or employee does not know whether the alleged delinquent child or arrestee is an abused child, the agency or employee shall attempt to determine whether or not the alleged delinquent child or arrestee is an abused child and shall not disclose the name or other information before making the determination.

(2) No person to whom information described in division (B)(1) of this section is disclosed, and no employer of that person, shall further disclose that information except as provided in division (C) of this section.

(C) This section does not prohibit the disclosure of information described in division (B) of this section to any of the following:

(1) An employee of a law enforcement agency or a prosecutor for the purpose of investigating or prosecuting a crime or delinquent act;

(2) An employee of the department of youth services, a probation officer, a juvenile court judge, or an employee of a public children services agency or a county department of job and family services who is supervising the alleged delinquent child or arrestee who is also an abused child and who is under eighteen years of age;

(3) An employee of a law enforcement agency for use in the employee's defense of a civil or administrative action arising out of the employee's involvement in the case that gave rise to the civil or administrative action;

(4) An employee of the attorney general's office responsible for administering awards of reparations under section 2743.191 of the Revised Code;

(5) A parent, guardian, or custodian of the alleged delinquent child or arrestee who is also an abused child and who is under eighteen years of age or an attorney for such a parent, guardian, or custodian;

(6) Any other person pursuant to a court order.

Most Recent Effective Date: 06-20-2014

Ohio Revised Code § 149.44 – *Rules and procedures for operation of state records centers and archival institutions holding public records*

Any state records center or archival institution established pursuant to sections 149.31 and 149.331 of the Revised Code is an extension of the departments, offices, and institutions of the state and all state and local records transferred to records centers and archival institutions shall be available for use under section 149.43 of the Revised Code. The state records administration, assisted by the state archivist, shall establish rules and procedures for the operation of state records centers and archival institutions holding public records, respectively.

Most Recent Effective Date: 07-01-1985

Ohio Revised Code § 2743.75 – *Jurisdiction over claims alleging denial of access to public records*

(A) In order to provide for an expeditious and economical procedure that attempts to resolve disputes alleging a denial of access to public records in violation of division (B) of section 149.43 of the Revised Code, except for a court that hears a mandamus action pursuant to that section, the court of claims shall be the sole and exclusive authority in this state that adjudicates or resolves complaints based on alleged violations of that section. The clerk of the court of claims shall designate one or more current employees or hire one or more individuals to serve as special masters to hear complaints brought under this section. All special masters shall have been engaged in the practice of law in this state for at least four years and be in good standing with the supreme court at the time of designation or hiring. The clerk may assign administrative and clerical work associated with complaints brought under this section to current employees or may hire such additional employees as may be necessary to perform such work.

(B) The clerk of the court of common pleas in each county shall act as the clerk of the court of claims for purposes of accepting those complaints filed with the clerk under division (D)(1) of this section, accepting filing fees for those complaints, and serving those complaints.

(C) (1) Subject to division (C)(2) of this section, a person allegedly aggrieved by a denial of access to public records in violation of division (B) of section 149.43 of the Revised Code may seek relief under that section or under this section, provided, however, that if the allegedly aggrieved person files a complaint under either section, that person may not seek relief that pertains to the same request for records in a complaint filed under the other section.

(2) If the allegedly aggrieved person files a complaint under this section and the court of claims determines that the complaint constitutes a case of first impression that involves an issue of substantial public interest, the court shall dismiss the complaint without prejudice and direct the allegedly aggrieved person to commence a mandamus action in the court of appeals with appropriate jurisdiction as provided in division (C)(1) of section 149.43 of the Revised Code.

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(D) (1) An allegedly aggrieved person who proceeds under this section shall file a complaint, on a form prescribed by the clerk of the court of claims, with the clerk of the court of claims or with the clerk of the court of common pleas of the county in which the public office from which the records are requested is located. The person shall attach to the complaint copies of the original records request and any written responses or other communications relating to the request from the public office or person responsible for public records and shall pay a filing fee of twenty-five dollars made payable to the clerk of the court with whom the complaint is filed. The clerk shall serve a copy of the complaint on the public office or person responsible for public records for the particular public office in accordance with Civil Rule 4.1 and, if the complaint is filed with the clerk of the court of common pleas, shall forward the complaint to the clerk of the court of claims, and to no other court, within three business days after service is complete.

(2) Upon receipt of a complaint filed under division (D)(1) of this section, the clerk of the court of claims shall assign a case number for the action and a special master to examine the complaint. Notwithstanding any provision to the contrary in this section, upon the recommendation of the special master, the court of claims on its own motion may dismiss the complaint at any time. The allegedly aggrieved person may voluntarily dismiss the complaint filed by that person under division (D)(1) of this section.

(E) (1) Upon service of a complaint under division (D)(1) of this section, except as otherwise provided in this division, the special master assigned by the clerk under division (D)(2) of this section immediately shall refer the case to mediation services that the court of claims makes available to persons. If, in the interest of justice considering the circumstances of the case or the parties, the special master determines that the case should not be referred to mediation, the special master shall notify the court that the case was not referred to mediation, and the case shall proceed in accordance with division (F) of this section. If the case is referred to mediation, any further proceedings under division (F) of this section shall be stayed until the conclusion of the mediation. Any mediation proceedings under this division may be conducted by teleconference, telephone, or other electronic means. If an agreement is not reached, the special master shall notify the court that the case was not resolved and that the mediation has been terminated.

(2) Within ten business days after the termination of the mediation or the notification to the court that the case was not referred to mediation under division (E)(1) of this section, the public office or person responsible for public records shall file a response, and if applicable, a motion to dismiss the complaint, with the clerk of the court of claims and transmit copies of the pleadings to the allegedly aggrieved party. No further motions or pleadings shall be accepted by the clerk of the court of claims or by the special master assigned by the clerk under division (D)(2) of this section unless the special master directs in writing that a further motion or pleading be filed.

(3) All of the following apply prior to the submission of the special master's report and recommendation to the court of claims under division (F)(1) of this section:

(a) The special master shall not permit any discovery.

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- (b) The parties may attach supporting affidavits to their respective pleadings.
- (c) The special master may require either or both of the parties to submit additional information or documentation supported by affidavits.
- (F) (1) Not later than seven business days after receiving the response, or motion to dismiss the complaint, if applicable, of the public office or person responsible for public records, the special master shall submit to the court of claims a report and recommendation based on the ordinary application of statutory law and case law as they existed at the time of the filing of the complaint. For good cause shown, the special master may extend the seven-day period for the submission of the report and recommendation to the court of claims under this division by an additional seven business days.
- (2) Upon submission of the special master's report and recommendation to the court of claims under division (F)(1) of this section, the clerk shall send copies of the report and recommendation to each party by certified mail, return receipt requested, not later than three business days after the report and recommendation is filed. Either party may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk and sending a copy to the other party by certified mail, return receipt requested. Any objection to the report and recommendation shall be specific and state with particularity all grounds for the objection. If neither party timely objects, the court of claims shall promptly issue a final order adopting the report and recommendation, unless it determines that there is an error of law or other defect evident on the face of the report and recommendation. If either party timely objects, the other party may file with the clerk a response within seven business days after receiving the objection and send a copy of the response to the objecting party by certified mail, return receipt requested. The court, within seven business days after the response to the objection is filed, shall issue a final order that adopts, modifies, or rejects the report and recommendation.
- (3) If the court of claims determines that the public office or person responsible for the public records denied the aggrieved person access to the public records in violation of division (B) of section 149.43 of the Revised Code and if no appeal from the court's final order is taken under division (G) of this section, both of the following apply:
- (a) The public office or the person responsible for the public records shall permit the aggrieved person to inspect or receive copies of the public records that the court requires to be disclosed in its order.
- (b) The aggrieved person shall be entitled to recover from the public office or person responsible for the public records the amount of the filing fee of twenty-five dollars and any other costs associated with the action that are incurred by the aggrieved person, but shall not be entitled to recover attorney's fees, except that division (G)(2) of this section applies if an appeal is taken under division (G)(1) of this section.

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(G) (1) Any appeal from a final order of the court of claims under this section or from an order of the court of claims dismissing the complaint as provided in division (D)(2) of this section shall be taken to the court of appeals of the appellate district where the principal place of business of the public office from which the public record is requested is located. However, no appeal may be taken from a final order of the court of claims that adopts the special master's report and recommendation unless a timely objection to that report and recommendation was filed under division (F)(2) of this section. If the court of claims materially modifies the special master's report and recommendation, either party may take an appeal to the court of appeals of the appellate district of the principal place of business where that public office is located but the appeal shall be limited to the issue in the report and recommendation that is materially modified by the court of claims. In order to facilitate the expeditious resolution of disputes over alleged denials of access to public records in violation of division (B) of section 149.43 of the Revised Code, the appeal shall be given such precedence over other pending matters as will ensure that the court will reach a decision promptly.

(2) If a court of appeals in any appeal taken under division (G)(1) of this section by the public office or person responsible for the public records determines that the public office or person denied the aggrieved person access to the public records in violation of division (B) of section 149.43 of the Revised Code and obviously filed the appeal with the intent to either delay compliance with the court of claims' order from which the appeal is taken for no reasonable cause or unduly harass the aggrieved person, the court of appeals may award reasonable attorney's fees to the aggrieved person in accordance with division (C) of section 149.43 of the Revised Code. No discovery may be conducted on the issue of the public office or person responsible for the public records filing the appeal with the alleged intent to either delay compliance with the court of claims' order for no reasonable cause or unduly harass the aggrieved person. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records filed the appeal with the intent to either delay compliance with the court of claim's order for no reasonable cause or unduly harass the aggrieved person.

(H) The powers of the court of claims prescribed in section 2743.05 of the Revised Code apply to the proceedings in that court under this section.

(I) (1) All filing fees collected by a clerk of the court of common pleas under division (D)(1) of this section shall be paid to the county treasurer for deposit into the county general revenue fund. All such money collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court of common pleas to the county treasurer.

(2) All filing fees collected by the clerk of the court of claims under division (D)(1) of this section shall be deposited into the state treasury to the credit of the public records fund, which is hereby created. Money credited to the fund shall be used by the court of claims to assist in paying for its costs to implement this section. All investment earnings of the fund shall be credited to the fund. Not later than the first day of February of each year, the clerk of the court of claims shall prepare a report accessible to the public that details the fees collected during the preceding calendar year by the clerk of the court of claims and the clerks of the courts of common pleas under this section.

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(J) Nothing in this section shall be construed to limit the authority of the auditor of state under division (G) of section 109.43 of the Revised Code.

Most Recent Effective Date: 9-29-2017

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Ohio Revised Code § 121.22 – *Public meetings - exceptions*

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) “Public body” means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, “court of jurisdiction” has the same meaning as “court” in section 6115.01 of the Revised Code.

(2) “Meeting” means any prearranged discussion of the public business of the public body by a majority of its members.

(3) “Regulated individual” means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness, an intellectual disability, disease, disability, age, or other condition requiring custodial care.

(4) “Public office” has the same meaning as in section 149.011 of the Revised Code.

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

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The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D) This section does not apply to any of the following:

(1) A grand jury;

(2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;

(3) The adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon;

(4) The organized crime investigations commission established under section 177.01 of the Revised Code;

(5) Meetings of a child fatality review board established under section 307.621 of the Revised Code, meetings related to a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, and meetings conducted pursuant to sections 5153.171 to 5153.173 of the Revised Code;

(6) The state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code;

(7) The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to division (B) of section 4723.281 of the Revised Code;

(8) The state board of pharmacy when determining whether to suspend a license without a prior hearing pursuant to division (D) of section 4729.16 of the Revised Code;

(9) The state chiropractic board when determining whether to suspend a license without a hearing pursuant to section 4734.37 of the Revised Code;

(10) The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code;

(11) The board of directors of the nonprofit corporation formed under section 187.01 of the Revised Code or any committee thereof, and the board of directors of any subsidiary of that corporation or a committee thereof;

(12) An audit conference conducted by the audit staff of the department of job and family services with officials of the public office that is the subject of that audit under section 5101.37 of the Revised Code;

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(13) The occupational therapy section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license or limited permit without a hearing pursuant to division (D) of section 4755.11 of the Revised Code;

(14) The physical therapy section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to division (E) of section 4755.47 of the Revised Code;

(15) The athletic trainers section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to division (D) of section 4755.64 of the Revised Code.

(E) The controlling board, the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122 or 166 of the Revised Code, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board or authority members present, may close the meeting during consideration of the following information confidentially received by the authority or board from the applicant:

(1) Marketing plans;

(2) Specific business strategy;

(3) Production techniques and trade secrets;

(4) Financial projections;

(5) Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority or board to accept or reject the application, as well as all proceedings of the authority or board not subject to this division, shall be open to the public and governed by this section.

(F) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of

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meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(G) Except as provided in divisions (G)(8) and (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2) To consider the purchase of property for public purposes, the sale of property at competitive bidding, or the sale or other disposition of unneeded, obsolete, or unfit-for-use property in accordance with section 505.10 of the Revised Code, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or regulations or state statutes;

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(6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(7) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.62 of the Revised Code;

(8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(a) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(b) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (8) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

A public body specified in division (B)(1)(c) of this section shall not hold an executive session when meeting for the purposes specified in that division.

(H) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

(I) (1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

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- (2) (a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:
- (i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;
 - (ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.
- (b) If the court of common pleas does not issue an injunction pursuant to division (I)(1) of this section and the court determines at that time that the bringing of the action was frivolous conduct, as defined in division (A) of section 2323.51 of the Revised Code, the court shall award to the public body all court costs and reasonable attorney's fees, as determined by the court.
- (3) Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.
- (4) A member of a public body who knowingly violates an injunction issued pursuant to division (I)(1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.
- (J) (1) Pursuant to division (C) of section 5901.09 of the Revised Code, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:
- (a) Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;
 - (b) Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;
 - (c) Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.

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(2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under sections 5901.01 to 5901.15 of the Revised Code, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.

(3) A veterans service commission shall vote on the grant or denial of financial assistance under sections 5901.01 to 5901.15 of the Revised Code only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

Most Recent Effective Date: 10-12-2016

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Ohio Revised Code § 111.41 – *Address confidentiality program – definitions*

As used in sections 111.41 to 111.99 of the Revised Code:

(A) “Application assistant” means an employee or volunteer at an agency or organization that serves victims of domestic violence, menacing by stalking, human trafficking, trafficking in persons, rape, or sexual battery who has received training and certification from the secretary of state to help individuals complete applications to be program participants.

(B) “Confidential address” means the address of a program participant’s residence, school, institution of higher education, business, or place of employment, as specified on an application to be a program participant or on a notice of change of address filed under section 111.42 of the Revised Code, and shall be kept confidential.

(C) “Governmental entity” means the state, a political subdivision of the state, or any department, agency, board, commission, or other instrumentality of the state or a political subdivision of the state.

(D) “Guardian,” “incompetent,” “parent,” and “ward” have the same meanings as in section 2111.01 of the Revised Code.

(E) “Human trafficking” has the same meaning as in section 2929.01 of the Revised Code.

(F) “Process” means judicial process and all orders, demands, notices, or other papers required or permitted by law to be served on a program participant.

(G) “Program participant” means a person who is certified by the secretary of state as a program participant under section 111.42 of the Revised Code.

(H) “Tier I sex offender/child-victim offender,” “tier II sex offender/child-victim offender,” and “tier III sex offender/child-victim offender” have the same meanings as in section 2950.01 of the Revised Code.

Most Recent Effective Date: 09-08-2016

Ohio Revised Code § 111.43 – *Use of confidential addresses by governmental and non-governmental entities*

(A) A program participant may request that a governmental entity, other than a board of elections, use the address designated by the secretary of state as the program participant’s address. Except as otherwise provided in division (D) of this section and in section 111.44 of the Revised Code, if the program participant requests that a governmental entity use that address, the governmental entity shall accept that address. The program participant may provide the program participant’s address confidentiality program authorization card as proof of the program participant’s status.

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(B) If a program participant's employer, school, or institution of higher education is not a governmental entity, the program participant may request that the employer, school, or institution of higher education use the address designated by the secretary of state as the program participant's address. The program participant may provide the program participant's address confidentiality program authorization card as proof of the program participant's status.

(C) (1) The office of the secretary of state shall, on each day that the secretary of state's office is open for business, place all of the following that the secretary of state receives on behalf of a program participant into an envelope or package and mail that envelope or package to the program participant at the mailing address the program participant provided to the secretary of state for that purpose:

(a) First class letters, flats, packages, or parcels delivered via the United States postal service, including priority, express, and certified mail;

(b) Packages or parcels that are clearly identifiable as containing pharmaceutical agents or medical supplies;

(c) Packages, parcels, periodicals, or catalogs that are clearly identifiable as being sent by a governmental entity;

(d) Packages, parcels, periodicals, or catalogs that have received prior authorization from the office of the secretary of state for forwarding under this section.

(2) Except as provided in divisions (C)(1)(a) to (d) of this section, the office of the secretary of state shall not forward any packages, parcels, periodicals, or catalogs received on behalf of a program participant.

(3) The secretary of state may contract with the United States postal service to establish special postal rates for the envelopes or packages used in forwarding a program participant's mail under this section.

(4) (a) Upon receiving service of process on behalf of a program participant, the office of the secretary of state shall immediately forward the process by certified mail, return receipt requested, to the program participant at the mailing address the program participant provided to the secretary of state for that purpose. Service of process upon the office of the secretary of state on behalf of a program participant constitutes service upon the program participant under rule 4.2 of the Rules of Civil Procedure.

(b) The secretary of state may prescribe by rule the manner in which process may be served on the secretary of state as the agent of a program participant.

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(c) Upon request by a person who intends to serve process on an individual, the secretary of state shall confirm whether the individual is a program participant but shall not disclose any other information concerning a program participant.

(D) Division (A) of this section does not apply to a municipal-owned public utility. The confidential addresses of participants of the address confidentiality program that are maintained by a municipal-owned public utility are not a public record and shall not be released by a municipal-owned public utility or by any employee of a municipal-owned public utility.

Most Recent Effective Date: 09-29-2017

Ohio Revised Code § 111.47 – *Civil liability under the address confidentiality program*

(A) Notwithstanding division (A)(3) of section 2743.02 of the Revised Code and except if the performance or nonperformance was manifestly outside the scope of the officer's or employee's office or employment or the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty under the address confidentiality program.

(B) The secretary of state shall adopt rules under Chapter 119. of the Revised Code to facilitate the administration of sections 111.41 to 111.46 of the Revised Code.

Most Recent Effective Date: 09-08-2016

Ohio Revised Code § 111.99 – *Violations under the address confidentiality program*

(A) No person who submits an application under section 111.42 of the Revised Code shall knowingly make a false attestation in the application that the applicant fears for the applicant's safety, the safety of a member of the applicant's household, or the safety of the minor, incompetent, or ward on whose behalf the application is made because the applicant, household member, minor, incompetent, or ward is a victim of domestic violence, menacing by stalking, human trafficking, trafficking in persons, rape, or sexual battery.

(B) No person who has access to a confidential address or telephone number because of the person's employment or official position shall knowingly disclose that confidential address or telephone number to any person, except as required by law.

(C) No person who obtains a confidential address or telephone number from the Ohio law enforcement gateway shall knowingly disclose that confidential address or telephone number to any person, except as is necessary for a law enforcement purpose when related to the performance of official duties, or for another legitimate governmental purpose.

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(D) Whoever violates this section is guilty of a misdemeanor of the first degree.

Most Recent Effective Date: 09-08-2016

Ohio Revised Code § 149.45 – *Internet access to social security numbers*

(A) As used in this section:

(1) “Personal information” means any of the following:

(a) An individual’s social security number;

(b) An individual’s state or federal tax identification number;

(c) An individual’s driver’s license number or state identification number;

(d) An individual’s checking account number, savings account number, credit card number, or debit card number;

(e) An individual’s demand deposit account number, money market account number, mutual fund account number, or any other financial or medical account number.

(2) “Public record” and “peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information” have the same meanings as in section 149.43 of the Revised Code.

(3) “Truncate” means to redact all but the last four digits of an individual’s social security number.

(B) (1) No public office or person responsible for a public office’s public records shall make available to the general public on the internet any document that contains an individual’s social security number without otherwise redacting, encrypting, or truncating the social security number.

(2) A public office or person responsible for a public office’s public records that prior to October 17, 2011, made available to the general public on the internet any document that contains an individual’s social security number shall redact, encrypt, or truncate the social security number from that document.

(3) Divisions (B)(1) and (2) of this section do not apply to documents that are only accessible through the internet with a password.

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(C) (1) An individual may request that a public office or a person responsible for a public office's public records redact personal information of that individual from any record made available to the general public on the internet. An individual who makes a request for redaction pursuant to this division shall make the request in writing on a form developed by the attorney general and shall specify the personal information to be redacted and provide any information that identifies the location of that personal information within a document that contains that personal information.

(2) Upon receiving a request for a redaction pursuant to division (C)(1) of this section, a public office or a person responsible for a public office's public records shall act within five business days in accordance with the request to redact the personal information of the individual from any record made available to the general public on the internet, if practicable. If a redaction is not practicable, the public office or person responsible for the public office's public records shall verbally or in writing within five business days after receiving the written request explain to the individual why the redaction is impracticable.

(3) The attorney general shall develop a form to be used by an individual to request a redaction pursuant to division (C)(1) of this section. The form shall include a place to provide any information that identifies the location of the personal information to be redacted.

(D) (1) A peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, of federal law enforcement officer may request that a public office other than a county auditor or a person responsible for the public records of a public office other than a county auditor redact the address of the person making the request from any record made available to the general public on the internet that includes peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information of the person making the request. A person who makes a request for a redaction pursuant to this division shall make the request in writing and on a form developed by the attorney general.

(2) Upon receiving a written request for a redaction pursuant to division (D)(1) of this section, a public office other than a county auditor or a person responsible for the public records of a public office other than a county auditor shall act within five business days in accordance with the request to redact the address of the peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer making the request from any record made available to the general public on the internet that includes peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information of the person making the request, if

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practicable. If a redaction is not practicable, the public office or person responsible for the public office's public records shall verbally or in writing within five business days after receiving the written request explain to the peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer why the redaction is impracticable.

(3) Except as provided in this section and section 319.28 of the Revised Code, a public office other than an employer of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or a federal law enforcement officer or a person responsible for the public records of the employer is not required to redact the residential and familial information of the peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer from other records maintained by the public office.

(4) The attorney general shall develop a form to be used by a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer to request a redaction pursuant to division (D)(1) of this section. The form shall include a place to provide any information that identifies the location of the address of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer to be redacted.

(E) (1) If a public office or person responsible for a public office's public records becomes aware that an electronic record of that public office that is made available to the general public on the internet contains an individual's social security number that was mistakenly not redacted, encrypted, or truncated as required by division (B)(1) or (2) of this section, the public office or person responsible for the public office's public records shall redact, encrypt, or truncate the individual's social security number within a reasonable period of time.

(2) A public office or a person responsible for a public office's public records is not liable in damages in a civil action for any harm an individual allegedly sustains as a result of the inclusion of that individual's personal information on any record made available to the general public on the internet or any harm a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer sustains as a result of the inclusion of the address of the peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer on any record made available to the general public on the internet

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in violation of this section unless the public office or person responsible for the public office's public records acted with malicious purpose, in bad faith, or in a wanton or reckless manner or division (A)(6)(a) or (c) of section 2744.03 of the Revised Code applies.

Most Recent Effective Date: 09-28-2016

Ohio Revised Code § 319.28 – *General tax list and general duplicate of real and public utility property compiled – parcel numbering system*

(A) Except as otherwise provided in division (B) of this section, on or before the first Monday of August, annually, the county auditor shall compile and make up a general tax list of real and public utility property in the county, either in tabular form and alphabetical order, or, with the consent of the county treasurer, by listing all parcels in a permanent parcel number sequence to which a separate alphabetical index is keyed, containing the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in the auditor's county, placing separately, in appropriate columns opposite each name, the description of each tract, lot, or parcel of real estate, the value of each tract, lot, or parcel, the value of the improvements thereon, and of the names of the several public utilities whose property, subject to taxation on the general tax list and duplicate, has been apportioned by the department of taxation to the county, and the amount so apportioned to each township, municipal corporation, special district, or separate school district or part of either in the auditor's county, as shown by the certificates of apportionment of public utility property. If the name of the owner of any tract, lot, or parcel of real estate is unknown to the auditor, "unknown" shall be entered in the column of names opposite said tract, lot, or parcel. Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commissioner and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year.

Once a permanent parcel numbering system has been established in any county as provided by the preceding paragraph, such system shall remain in effect until otherwise agreed upon by the county auditor and county treasurer.

(B) (1) A person whose residential and familial information is exempt from the definition of a public record under division (A)(1)(p) of section 149.43 of the Revised Code may submit a written request by affidavit to the county auditor requesting the county auditor to remove the name of the person from any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property and insert the initials of the person on any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and

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public utility property and the general duplicate of real and public utility property as the name of the person that appears on the deed.

(2) Upon receiving a written request by affidavit described in division (B)(1) of this section, the county auditor shall act within five business days in accordance with the request to remove the name of the person from any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property and insert initials of the person on any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property, if practicable. If the removal and insertion is not practicable, the county auditor shall verbally or in writing within five business days after receiving the written request explain to the person why the removal and insertion is impracticable.

Most Recent Effective Date: 09-08-2016

Ohio Revised Code § 1347.01 – *Personal information systems definitions*

As used in this chapter, except as otherwise provided:

(A) “State agency” means the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state.

(B) “Local agency” means any municipal corporation, school district, special purpose district, or township of the state or any elected officer or board, bureau, commission, department, division, institution, or instrumentality of a county.

(C) “Special purpose district” means any geographic or political jurisdiction that is created by statute to perform a limited and specific function, and includes, but is not limited to, library districts, conservancy districts, metropolitan housing authorities, park districts, port authorities, regional airport authorities, regional transit authorities, regional water and sewer districts, sanitary districts, soil and water conservation districts, and regional planning agencies.

(D) “Maintains” means state or local agency ownership of, control over, responsibility for, or accountability for systems and includes, but is not limited to, state or local agency depositing or information with a data processing center for storage, processing, or dissemination. An agency “maintains” all systems of records that are required by law to be kept by the agency.

(E) “Personal information” means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person.

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(F) “System” means any collection or group of related records that are kept in an organized manner and that are maintained by a state or local agency, and from which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person. “System” includes both records that are manually stored and records that are stored using electronic data processing equipment. “System” does not include collected archival records in the custody of or administered under the authority of the Ohio history connection, published directories, reference materials or newsletters, or routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.

(G) “Interconnection of systems” means a linking of systems that belong to more than one agency or to an agency and other organizations, which linking of systems results in a system that permits each agency or organization involved in the linking to have unrestricted access to the systems of the other agencies and organizations.

(H) “Combination of systems” means a unification of systems that belong to more than one agency, or to an agency and another organization, into a single system in which the records that belong to each agency or organization may or may not be obtainable by the others.

Most Recent Effective Date: 09-29-2015

Ohio Revised Code § 1347.04 – *Exemptions from chapter*

(A) (1) Except as provided in division (A)(2) of this section or division (C)(2) of section 1347.08 of the Revised Code, the following are exempt from the provisions of this chapter:

(a) Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;

(b) The criminal courts;

(c) Prosecutors;

(d) Any state or local agency or part of any state or local agency that is a correction, probation, pardon, or parole authority;

(e) Personal information systems that are comprised of investigatory material compiled for law enforcement purposes by agencies that are not described in divisions (A)(1)(a) and (d) of this section.

(2) A part of a state or local agency that does not perform, as its principal function, an activity relating to the enforcement of the criminal laws is not exempt under this section.

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(B) The provisions of this chapter shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in section 149.43 of the Revised Code, or to authorize a public body to hold an executive session for the discussion of personal information if the executive session is not authorized under division (G) of section 121.22 of the Revised Code.

The disclosure to members of the general public of personal information contained in a public record, as defined in section 149.43 of the Revised Code, is not an improper use of personal information under this chapter.

(C) The provisions of this chapter shall not be construed to prohibit, and do not prohibit, compliance with any order issued pursuant to division (D)(1) of section 2151.14 of the Revised Code, any request for records that is properly made pursuant to division (D)(3)(a) of section 2151.14 or division (A) of section 2151.141 of the Revised Code, or any determination that is made by a court pursuant to division (D)(3)(b) of section 2151.14 or division (B)(1) of section 2151.141 of the Revised Code.

Most Recent Effective Date: 10-25-1995

Ohio Revised Code § 1347.05 – *Duties of state and local agencies maintaining personal information systems*

Every state or local agency that maintains a personal information system shall:

(A) Appoint one individual to be directly responsible for the system;

(B) Adopt and implement rules that provide for the operation of the system in accordance with the provisions of this chapter that, in the case of state agencies, apply to state agencies or, in the case of local agencies, apply to local agencies;

(C) Inform each of its employees who has any responsibility for the operation or maintenance of the system, or for the use of personal information maintained in the system, of the applicable provisions of this chapter and of all rules adopted in accordance with this section;

(D) Specify disciplinary measures to be applied to any employee who initiates or otherwise contributes to any disciplinary or other punitive action against any individual who brings to the attention of appropriate authorities, the press, or any member of the public, evidence of unauthorized use of information contained in the system;

(E) Inform a person who is asked to supply personal information for a system whether the person is legally required to, or may refuse to, supply the information;

(F) Develop procedures for purposes of monitoring the accuracy, relevance, timeliness, and completeness of the personal information in this system, and, in accordance with the procedures, maintain the personal information in the system with the accuracy, relevance, timeliness, and

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completeness that is necessary to assure fairness in any determination made with respect to a person on the basis of the information;

(G) Take reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure;

(H) Collect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions.

Most Recent Effective Date: 01-23-1981

Ohio Revised § 1347.06 – *Administrative rules*

The director of administrative services shall adopt, amend, and rescind rules pursuant to Chapter 119. of the Revised Code for the purposes of administering and enforcing the provisions of this chapter that pertain to state agencies.

A state or local agency that, or an officer or employee of a state or local agency who, complies in good faith with a rule applicable to the agency is not subject to criminal prosecution or civil liability under this chapter.

Most Recent Effective Date: 01-23-1981

Ohio Revised Code § 1347.07 – *Using personal information*

A state or local agency shall only use the personal information in a personal information system in a manner that is consistent with the purposes of the system.

Most Recent Effective Date: 01-23-1981

Ohio Revised Code § 1347.071 – *Placing or using information in interconnected or combined systems*

(A) No state or local agency shall place personal information in an interconnected or combined system, or use personal information that is placed in an interconnected or combined system by another state or local agency or another organization, unless the interconnected or combined system will contribute to the efficiency of the involved agencies in implementing programs that are authorized by law.

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(B) No state or local agency shall use personal information that is placed in an interconnected or combined system by another state or local agency or another organization, unless the personal information is necessary and relevant to the performance of a lawful function of the agency.

(C) When a state or local agency requests a person to supply personal information that will be placed in an interconnected or combined system, the agency shall provide the person with information relevant to the system, including the identity of the other agencies or organizations that have access to the information in the system.

Most Recent Effective Date: 01-23-1981

Ohio Revised Code § 1347.08 – *Rights of persons who are subject of personal information*

(A) Every state or local agency that maintains a personal information system, upon the request and the proper identification of any person who is the subject of personal information in the system, shall:

(1) Inform the person of the existence of any personal information in the system of which the person is the subject;

(2) Except as provided in divisions (C) and (E)(2) of this section, permit the person, the person's legal guardian, or an attorney who presents a signed written authorization made by the person, to inspect all personal information in the system of which the person is the subject;

(3) Inform the person about the types of uses made of the personal information, including the identity of any users usually granted access to the system.

(B) Any person who wishes to exercise a right provided by this section may be accompanied by another individual of the person's choice.

(C) (1) A state or local agency, upon request, shall disclose medical, psychiatric, or psychological information to a person who is the subject of the information or to the person's legal guardian, unless a physician, psychiatrist, or psychologist determines for the agency that the disclosure of the information is likely to have an adverse effect on the person, in which case the information shall be released to a physician, psychiatrist, or psychologist who is designated by the person or by the person's legal guardian.

(2) Upon the signed written request of either a licensed attorney at law or a licensed physician designated by the inmate, together with the signed written request of an inmate of a correctional institution under the administration of the department of rehabilitation and correction, the department shall disclose medical information to the designated attorney or physician as provided in division (C) of section 5120.21 of the Revised Code.

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(D) If an individual who is authorized to inspect personal information that is maintained in a personal information system requests the state or local agency that maintains the system to provide a copy of any personal information that the individual is authorized to inspect, the agency shall provide a copy of the personal information to the individual. Each state and local agency may establish reasonable fees for the service of copying, upon request, personal information that is maintained by the agency.

(E) (1) This section regulates access to personal information that is maintained in a personal information system by persons who are the subject of the information, but does not limit the authority of any person, including a person who is the subject of personal information maintained in a personal information system, to inspect or have copied, pursuant to section 149.43 of the Revised Code, a public record as defined in that section.

(2) This section does not provide a person who is the subject of personal information maintained in a personal information system, the person's legal guardian, or any attorney authorized by the person, with a right to inspect or have copied, or require an agency that maintains a personal information system to permit the inspection of or to copy, a confidential law enforcement investigatory record or trial preparation record, as defined in divisions (A)(2) and (4) of section 149.43 of the Revised Code.

(F) This section does not apply to any of the following:

(1) The contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;

(2) Information contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(3) Papers, records, and books that pertain to an adoption and that are subject to inspection in accordance with section 3107.17 of the Revised Code;

(4) Records specified in division (A) of section 3107.52 of the Revised Code;

(5) Records that identify an individual described in division (A)(1) of section 3721.031 of the Revised Code, or that would tend to identify such an individual;

(6) Files and records that have been expunged under division (D)(1) or (2) of section 3721.23 of the Revised Code;

(7) Records that identify an individual described in division (A)(1) of section 3721.25 of the Revised Code, or that would tend to identify such an individual;

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(8) Records that identify an individual described in division (A)(1) of section 5165.88 of the Revised Code, or that would tend to identify such an individual;

(9) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.04 of the Revised Code or contracts under that section with a private government entity to administer;

(10) Information contained in a database established and maintained pursuant to section 5101.13 of the Revised Code.

(11) Information contained in a database established and maintained pursuant to section 5101.612 of the Revised Code.

Effective Until: 09-28-2018. Effective 09-29-2018, “5101.631” will replace “5101.612” in part F(11).

Ohio Revised Code § 1347.09 – *Disputing information*

(A) (1) If any person disputes the accuracy, relevance, timeliness, or completeness of personal information that pertains to him and that is maintained by any state or local agency in a personal information system, he may request the agency to investigate the current status of the information. The agency shall, within a reasonable time after, but not later than ninety days after, receiving the request from the disputant, make a reasonable investigation to determine whether the disputed information is accurate, relevant, timely, and complete, and shall notify the disputant of the results of the investigation and of the action that the agency plans to take with respect to the disputed information. The agency shall delete any information that it cannot verify or that it finds to be inaccurate.

(2) If after an agency’s determination, the disputant is not satisfied, the agency shall do either of the following:

(a) Permit the disputant to include within the system a brief statement of his position on the disputed information. The agency may limit the statement to not more than one hundred words if the agency assists the disputant to write a clear summary of the dispute.

(b) Permit the disputant to include within the system a notation that the disputant protests that the information is inaccurate, irrelevant, outdated, or incomplete. The agency shall maintain a copy of the disputant’s statement of the dispute. The agency may limit the statement to not more than one hundred words if the agency assists the disputant to write a clear summary of the dispute.

(3) The agency shall include the statement or notation in any subsequent transfer, report, or dissemination of the disputed information and may include with the statement or notation of the

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disputant a statement by the agency that it has reasonable grounds to believe that the dispute is frivolous or irrelevant, and of the reasons for its belief.

(B) The presence of contradictory information in the disputant's file does not alone constitute reasonable grounds to believe that the dispute is frivolous or irrelevant.

(C) Following any deletion of information that is found to be inaccurate or the accuracy of which can no longer be verified, or if a statement of dispute was filed by the disputant, the agency shall, at the written request of the disputant, furnish notification that the information has been deleted, or furnish a copy of the disputant's statement of the dispute, to any person specifically designated by the person. The agency shall clearly and conspicuously disclose to the disputant that he has the right to make such a request to the agency.

Most Recent Effective Date: 01-23-1981

Ohio Revised Code § 1347.10 – *Wrongful disclosure*

(A) A person who is harmed by the use of personal information that relates to him and that is maintained in a personal information system may recover damages in civil action from any person who directly and proximately caused the harm by doing any of the following:

(1) Intentionally maintaining personal information that he knows, or has reason to know, is inaccurate, irrelevant, no longer timely, or incomplete and may result in such harm;

(2) Intentionally using or disclosing the personal information in a manner prohibited by law;

(3) Intentionally supplying personal information for storage in, or using or disclosing personal information maintained in, a personal information system, that he knows, or has reason to know, is false;

(4) Intentionally denying to the person the right to inspect and dispute the personal information at a time when inspection or correction might have prevented the harm.

An action under this division shall be brought within two years after the cause of action accrued or within six months after the wrongdoing is discovered, whichever is later; provided that no action shall be brought later than six years after the cause of action accrued. The cause of action accrues at the time that the wrongdoing occurs.

(B) Any person who, or any state or local agency that, violates or proposes to violate any provision of this chapter may be enjoined by any court of competent jurisdiction. The court may issue an order or enter a judgment that is necessary to ensure compliance with the applicable provisions of this chapter or to prevent the use of any practice that violates this chapter. An action for an injunction may be prosecuted by the person who is the subject of the violation, by the attorney general, or by any prosecuting attorney.

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Most Recent Effective Date: 01-23-1981

Ohio Revised Code § 1347.12 – *Agency disclosure of security breach of computerized personal information data*

(A) As used in this section:

(1) “Agency of a political subdivision” means each organized body, office, or agency established by a political subdivision for the exercise of any function of the political subdivision, except that “agency of a political subdivision” does not include an agency that is a covered entity as defined in 45 C.F.R. 160.103, as amended.

(2) (a) “Breach of the security system” means unauthorized access to and acquisition of computerized data that compromises the security or confidentiality of personal information owned or licensed by a state agency or an agency of a political subdivision and that causes, reasonably is believed to have caused, or reasonably is believed will cause a material risk of identity theft or other fraud to the person or property of a resident of this state.

(b) For purposes of division (A)(2)(a) of this section:

(i) Good faith acquisition of personal information by an employee or agent of the state agency or agency of the political subdivision for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used for an unlawful purpose or subject to further unauthorized disclosure.

(ii) Acquisition of personal information pursuant to a search warrant, subpoena, or other court order, or pursuant to a subpoena, order, or duty of a regulatory state agency, is not a breach of the security of the system.

(3) “Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer’s creditworthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(a) Public record information;

(b) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

(4) “Encryption” means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.

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(5) “Individual” means a natural person.

(6) (a) “Personal information” means, notwithstanding section 1347.01 of the Revised Code, an individual’s name, consisting of the individual’s first name or first initial and last name, in combination with and linked to any one or more of the following data elements, when the data elements are not encrypted, redacted, or altered by any method or technology in such a manner that the data elements are unreadable:

(i) Social security number;

(ii) Driver’s license number or state identification card number;

(iii) Account number or credit or debit card number, in combination with and linked to any required security code, access code, or password that would permit access to an individual’s financial account.

(b) “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or any of the following media that are widely distributed:

(i) Any news, editorial, or advertising statement published in any bona fide newspaper, journal, or magazine, or broadcast over radio or television;

(ii) Any gathering or furnishing of information or news by any bona fide reporter, correspondent, or news bureau to news media described in division (A)(6)(b)(i) of this section;

(iii) Any publication designed for and distributed to members of any bona fide association or charitable or fraternal nonprofit corporation;

(iv) Any type of media similar in nature to any item, entity, or activity identified in division (A)(6)(b)(i), (ii), or (iii) of this section.

(7) “Political subdivision” has the same meaning as in section 2744.01 of the Revised Code.

(8) “Record” means any information that is stored in an electronic medium and is retrievable in perceivable form. “Record” does not include any publicly available directory containing information an individual voluntarily has consented to have publicly disseminated or listed, such as name, address, or telephone number.

(9) “Redacted” means altered or truncated so that no more than the last four digits of a social security number, driver’s license number, state identification card number, account number, or credit or debit card number is accessible as part of the data.

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(10) “State agency” has the same meaning as in section 1.60 of the Revised Code, except that “state agency” does not include an agency that is a covered entity as defined in 45 C.F.R. 160.103, as amended.

(11) “System” means, notwithstanding section 1347.01 of the Revised Code, any collection or group of related records that are kept in an organized manner, that are maintained by a state agency or an agency of a political subdivision, and from which personal information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual. “System” does not include any collected archival records in the custody of or administered under the authority of the Ohio history connection, any published directory, any reference material or newsletter, or any routine information that is maintained for the purpose of internal office administration of the agency, if the use of the directory, material, newsletter, or information would not adversely affect an individual and if there has been no unauthorized external breach of the directory, material, newsletter, or information.

(B) (1) Any state agency or agency of a political subdivision that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system, following its discovery or notification of the breach of the security of the system, to any resident of this state whose personal information was, or reasonably is believed to have been, accessed and acquired by an unauthorized person if the access and acquisition by the unauthorized person causes or reasonably is believed will cause a material risk of identity theft or other fraud to the resident. The disclosure described in this division may be made pursuant to any provision of a contract entered into by the state agency or agency of a political subdivision with any person or another state agency or agency of a political subdivision prior to the date the breach of the security of the system occurred if that contract does not conflict with any provision of this section. For purposes of this section, a resident of this state is an individual whose principal mailing address as reflected in the records of the state agency or agency of a political subdivision is in this state.

(2) The state agency or agency of a political subdivision shall make the disclosure described in division (B)(1) of this section in the most expedient time possible but not later than forty-five days following its discovery or notification of the breach in the security of the system, subject to the legitimate needs of law enforcement activities described in division (D) of this section and consistent with any measures necessary to determine the scope of the breach, including which residents’ personal information was accessed and acquired, and to restore the reasonable integrity of the data system.

(C) Any state agency or agency of a political subdivision that, on behalf of or at the direction of another state agency or agency of a political subdivision, is the custodian of or stores computerized data that includes personal information shall notify that other state agency or agency of a political subdivision of any breach of the security of the system in an expeditious manner, if the personal information was, or reasonably is believed to have been, accessed and acquired by an unauthorized person and if the access and acquisition by the unauthorized person causes or reasonably is believed will cause a material risk of identity theft or other fraud to a resident of this state.

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(D) The state agency or agency of a political subdivision may delay the disclosure or notification required by division (B), (C), or (F) of this section if a law enforcement agency determines that the disclosure or notification will impede a criminal investigation or jeopardize homeland or national security, in which case, the state agency or agency of a political subdivision shall make the disclosure or notification after the law enforcement agency determines that disclosure or notification will not compromise the investigation or jeopardize homeland or national security.

(E) For purposes of this section, a state agency or agency of a political subdivision may disclose or make a notification by any of the following methods:

(1) Written notice;

(2) Electronic notice, if the state agency's or agency of a political subdivision's primary method of communication with the resident to whom the disclosure must be made is by electronic means;

(3) Telephone notice;

(4) Substitute notice in accordance with this division, if the state agency or agency of a political subdivision required to disclose demonstrates that the agency does not have sufficient contact information to provide notice in a manner described in division (E)(1), (2), or (3) of this section, or that the cost of providing disclosure or notice to residents to whom disclosure or notification is required would exceed two hundred fifty thousand dollars, or that the affected class of subject residents to whom disclosure or notification is required exceeds five hundred thousand persons. Substitute notice under this division shall consist of all of the following:

(a) Electronic mail notice if the state agency or agency of a political subdivision has an electronic mail address for the resident to whom the disclosure must be made;

(b) Conspicuous posting of the disclosure or notice on the state agency's or agency of a political subdivision's web site, if the agency maintains one;

(c) Notification to major media outlet, to the extent that the cumulative total of the readership, viewing audience, or listening audience of all of the outlets so notified equals or exceeds seventy-five per cent of the population of this state.

(5) Substitute notice in accordance with this division, if the state agency or agency of a political subdivision required to disclose demonstrates that the agency has ten employees or fewer and that the cost of providing the disclosures or notices to residents to whom disclosure or notification is required will exceed ten thousand dollars. Substitute notice under this division shall consist of all of the following:

(a) Notification by a paid advertisement in a local newspaper that is distributed in the geographic area in which the state agency or agency of a political subdivision is located, which advertisement shall be of sufficient size that it covers at least one-quarter of a page in the

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newspaper and shall be published in the newspaper at least once a week for three consecutive weeks;

(b) Conspicuous posting of the disclosure or notice on the state agency's or agency of a political subdivision's web site, if the agency maintains one;

(c) Notification to major media outlets in the geographic area in which the state agency or agency of a political subdivision is located.

(F) If a state agency or agency of a political subdivision discovers circumstances that require disclosure under this section to more than one thousand residents of this state involved in a single occurrence of a breach of the security of the system, the state agency or agency of a political subdivision shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis of the timing, distribution, and content of the disclosure given by the state agency or agency of a political subdivision to the residents of this state. In no case shall a state agency or agency of a political subdivision that is required to make a notification required by this division delay any disclosure or notification required by division (B) or (C) of this section in order to make the notification required by this division.

(G) The attorney general, pursuant to sections 1349.191 and 1349.192 of the Revised Code, may conduct an investigation and bring a civil action upon an alleged failure by a state agency or agency of a political subdivision to comply with the requirements of this section.

Most Recent Effective Date: 09-29-2015

Ohio Revised Code § 1347.15 – *Access rules for confidential personal information*

(A) As used in this section:

(1) "Confidential personal information" means personal information that is not a public record for purposes of section 149.43 of the Revised Code.

(2) "State agency" does not include the courts or any judicial agency, any state-assisted institution of higher education, or any local agency.

(B) Each state agency shall adopt rules under Chapter 119. of the Revised Code regulating access to the confidential personal information the agency keeps, whether electronically or on paper. The rules shall include all of the following:

(1) Criteria for determining which employees of the state agency may access, and which supervisory employees of the state agency may authorize those employees to access, confidential personal information;

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- (2) A list of the valid reasons, directly related to the state agency's exercise of its powers or duties, for which only employees of the state agency may access confidential personal information;
 - (3) References to the applicable federal or state statutes or administrative rules that make the confidential personal information confidential;
 - (4) A procedure that requires the state agency to do all of the following:
 - (a) Provide that any upgrades to an existing computer system, or the acquisition of any new computer system, that stores, manages, or contains confidential personal information include a mechanism for recording specific access by employees of the state agency to confidential personal information;
 - (b) Until an upgrade or new acquisition of the type described in division (B)(4)(a) of this section occurs, except as otherwise provided in division (C)(1) of this section, keep a log that records specific access by employees of the state agency to confidential personal information;
 - (5) A procedure that requires the state agency to comply with a written request from an individual for a list of confidential personal information about the individual that the state agency keeps, unless the confidential personal information relates to an investigation about the individual based upon specific statutory authority by the state agency;
 - (6) A procedure that requires the state agency to notify each person whose confidential personal information has been accessed for an invalid reason by employees of the state agency of that specific access;
 - (7) A requirement that the director of the state agency designate an employee of the state agency to serve as the data privacy point of contact within the state agency to work with the chief privacy officer within the office of information technology to ensure that confidential personal information is properly protected and that the state agency complies with this section and rules adopted thereunder;
 - (8) A requirement that the data privacy point of contact for the state agency complete a privacy impact assessment form; and
 - (9) A requirement that a password or other authentication measure be used to access confidential personal information that is kept electronically.
- (C) (1) A procedure adopted pursuant to division (B)(4) of this section shall not require a state agency to record in the log it keeps under division (B)(4)(b) of this section any specific access by any employee of the agency to confidential personal information in any of the following circumstances:
- (a) The access occurs as a result of research performed for official agency purposes, routine office procedures, or incidental contact with the information, unless the conduct resulting in the

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access is specifically directed toward a specifically named individual or a group of specifically named individuals.

(b) The access is to confidential personal information about an individual, and the access occurs as a result of a request by that individual for confidential personal information about that individual.

(2) Each state agency shall establish a training program for all employees of the state agency described in division (B)(1) of this section so that these employees are made aware of all applicable statutes, rules, and policies governing their access to confidential personal information.

The office of information technology shall develop the privacy impact assessment form and post the form on its internet web site by the first day of December each year. The form shall assist each state agency in complying with the rules it adopted under this section, in assessing the risks and effects of collecting, maintaining, and disseminating confidential personal information, and in adopting privacy protection processes designed to mitigate potential risks to privacy.

(D) Each state agency shall distribute the policies included in the rules adopted under division (B) of this section to each employee of the agency described in division (B)(1) of this section and shall require that the employee acknowledge receipt of the copy of the policies. The state agency shall create a poster that describes these policies and post it in a conspicuous place in the main office of the state agency and in all locations where the state agency has branch offices. The state agency shall post the policies on the internet web site of the agency if it maintains such an internet web site. A state agency that has established a manual or handbook of its general policies and procedures shall include these policies in the manual or handbook.

(E) No collective bargaining agreement entered into under Chapter 4117. of the Revised Code on or after the effective date of this section shall prohibit disciplinary action against or termination of an employee of a state agency who is found to have accessed, disclosed, or used personal confidential information in violation of a rule adopted under division (B) of this section or as otherwise prohibited by law.

(F) The auditor of state shall obtain evidence that state agencies adopted the required procedures and policies in a rule under division (B) of this section, shall obtain evidence supporting whether the state agency is complying with those policies and procedures, and may include citations or recommendations relating to this section in any audit report issued under section 117.11 of the Revised Code.

(G) A person who is harmed by a violation of a rule of a state agency described in division (B) of this section may bring an action in the court of claims, as described in division (F) of section 2743.02 of the Revised Code, against any person who directly and proximately caused the harm.

(H) (1) No person shall knowingly access confidential personal information in violation of a rule of a state agency described in division (B) of this section.

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(2) No person shall knowingly use or disclose confidential personal information in a manner prohibited by law.

(3) No state agency shall employ a person who has been convicted of or pleaded guilty to a violation of division (H)(1) or (2) of this section.

(4) A violation of division (H)(1) or (2) of this section is a violation of a state statute for purposes of division (A) of section 124.341 of the Revised Code.

Most Recent Effective Date: 04-07-2009

Ohio Revised Code § 1347.99 – *Penalty*

(A) No public official, public employee, or other person who maintains, or is employed by a person who maintains, a personal information system for a state or local agency shall purposely refuse to comply with division (E), (F), (G), or (H) of section 1347.05, section 1347.071, division (A), (B), or (C) of section 1347.08, or division (A) or (C) of section 1347.09 of the Revised Code. Whoever violates this section is guilty of a minor misdemeanor.

(B) Whoever violates division (H)(1) or (2) of section 1347.15 of the Revised Code is guilty of a misdemeanor of the first degree.

Most Recent Effective Date: 04-07-2009

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Statutory Provisions Exempting Records from the Ohio Public Records Act or Declaring Records Confidential

This chart is based on one previously created by the Ohio Legislative Service Commission, which was current through October 23, 2008. The editors of this publication searched for amendments to the existing list and any new statutes, but do not represent this to be an exhaustive list. Independent legal research to determine whether there are additional applicable exemptions elsewhere in Ohio or Federal law that may apply to records being requested is still recommended.

The exemptions listed in this Appendix include those addressed in R.C. 149.43 itself. If an exemption is contained in both R.C. 149.43 and a specific area of law, the specific area of law is cited first, with the R.C. 149.43 citation following. Some of the listed exemptions are qualified exemptions. The statutes enumerated in the first column should be examined to determine whether there are qualifications that operate to remove or qualify any confidentiality provision or other exemption from the topical description in the second column.

<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
3.16(C)(2)	Records of a special commission formed by the Chief Justice of the Ohio Supreme Court to determine whether a public official should be suspended as a result of being charged with a felony, until the special commission issues its written report.
9.235(C)(1)	Records of the receipt or expenditure of non-public money by the recipient of a contract with a governmental entity.
9.28(B), (C) <i>eff. Apr. 4, 2017</i>	Materials submitted to a public office in response to a competitive solicitation, until the date the public office either announces the award of a contract based on the competitive solicitation or cancels the competitive solicitation. This holds true even if the office rejects all bids, while at the same time issues notice of intent to reissue.
9.312(A)	Additional financial information requested by a state agency or political subdivision from an apparent low bidder on a public contract.
9.37(G)	Specified written authorizations provided by public officials under county, municipal, or township direct deposit payroll policies.
9.92(E) and 2981.12(F)	Records maintained relative to a citizens' reward program.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
9.96(C)	Records of ownership, registration, transfer, and exchange of securities kept by a public issuer and contracted to a qualified financial institution.
101.30(B)	Legislative documents arising out of confidential General Assembly member/staff and legislative staff relationship.
101.34(F)(1)	Certain files of former House and Senate ethics committees.
102.02(B)	Certain disclosure statements filed with the Ohio Ethics Commission.
102.06(B), (C)(2), and (F)	Information and records concerning investigations of complaints and charges by appropriate ethics commission.
102.07	Information and records presented to the Ohio Ethics Commission, Joint Legislative Ethics Committee (JLEC), or Board of Commissioners on Grievances and Discipline of the Supreme Court, including certain information that appears on disclosure statements.
102.08(D)	Privately sought written opinions and associated records of the JLEC.
109.28	Any investigation of a charitable trust by the Attorney General.
109.365	Information obtained by the Attorney General in an investigation to determine whether to defend a state officer or employee.
109.57(D), (E), and (H)	Information and materials furnished to the Superintendent of the Bureau of Criminal Identification and Investigation (BCI) as criminal history; information gathered or disseminated through the Ohio Law Enforcement Gateway (OHLEG); and information obtained by a government entity or person under R.C. 109.57.
109.571, Art. IV(C)	Records obtained under national crime prevention and privacy compact.
109.5721(C), (E), and (H)	Information in the Retained Applicant Fingerprint Database maintained by BCI, and information regarding the arrest, conviction, or guilty plea of a person of which the Superintendent of BCI is required to notify a participating public office.
109.573(E), (G) and 149.43(A)(1)(j)	Certain DNA-related records, fingerprints, photographs, and personal information BCI receives.
109.75(L)	Ohio Peace Officer Training Commission certification examinations, either before or after completion; however, results are public records.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
109.88(C)	Information gathered by the Attorney General during the course of an investigation of telecommunications fraud is a confidential law enforcement investigatory record.
109.89	National precursor log information that is specified and governed by the terms of a contract or memorandum between the attorney general and the national association of drug diversion investigators or its successor organization.
109.94(C)(1)	An application, and any supporting documentation, made with the Attorney General for an identity fraud passport.
111.41(B) through 111.46	The residence, school, institution of higher education, business, or place of employment address of a participant in the Secretary of State's address confidentiality program. However, this information shall be provided to the Attorney General for inclusion into the Ohio Law Enforcement Gateway (OHLEG) system, and may be accessed only by listed officials and/or their designees, or by court order when requested by a city law director or similar chief legal officer.
113.041(E)	The report of a BCI criminal records check of an individual who applies for employment with, or is employed by, the Treasurer of State's Office.
117.14	Annual audit report of the Auditor of State's office until filed with state library.
117.15	Annual audit report of the Treasurer of State's office until specified submission.
117.26	Certified copies of completed audit reports until specified filing.
120.38	Information obtained by a public defender when determining if a person is indigent and communications between a defendant and public defender.
121.22(E)	Specified information provided regarding an applicant or members of the applicant's immediate family to the Controlling Board, the Tax Credit Authority, or the Minority Development Financing Advisory Board in relation to an application for economic development assistance or assistance from the Department of Development. Note that unanimous vote of the Board or Authority is required to close the meeting.
121.37(A)(2)(c) and (C)(6)	Records of meetings of the Ohio Family and Children First Cabinet Council that identify individual children and personal family information disclosed during county service coordination meetings or in service coordination plans.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
121.44(A), 121.45, 121.47, and 121.48	Reports of an investigation conducted and designated confidential by the Inspector General or a deputy inspector general and confidential information acquired in the course of such an investigation.
121.481(B)	Information that would risk impairing an investigation conducted by the Inspector General, when the Inspector General is requesting a transfer of money to the Special Investigations Fund.
121.51	The random review program of the processing of contracts associated with building and maintaining the state's infrastructure that is conducted by the Deputy Inspector General for the Department of Transportation, and any confidential information the Deputy Inspector General accesses in the course of an investigation.
121.52	Any confidential information the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission accesses in the course of an investigation.
122.073(B)	Records concerning tourism market research of TourismOhio.
122.075(D)	A report to the Director of Development (DOD) from the recipient of an Alternative Fuel Transportation Grant that identifies the gallon, or gallon equivalent, amounts of alternative fuel the applicant sells at retail in Ohio.
122.17(G) and 122.171(G)	Certain financial statements and information submitted to the DOD or the Tax Credit Authority.
122.175(H)	Financial statements and other information submitted to the Department of Developmental Services or Tax credit Authority by an applicant for or recipient of the computer data center tax exemption.
122.36	Trade secrets or commercial or financial information received by the DOD Director or the Controlling Board.
122.42(D)	Financial statements and data submitted to the DOD Director in connection with certain loan applications.
122.561	Financial statements and data submitted to the DOD Director or the Controlling Board in connection with applications for mortgage payments insurance.
122.74(C)(2)	Financial statements and other data submitted to the DOD Director in connection with specified financial assistance.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
123.152(C)	Business and personal financial information and trade secrets submitted by Encouraging Diversity, Growth, and Equity Program applicants to the Director of the Department of Administrative Services (DAS).
124.88(B)	Identity, diagnosis, prognosis, or treatment of any person maintained in connection with the employee assistance program for state employees.
125.071(C)	Proposals and related documents submitted to DAS in response to requests for competitive sealed proposals, until after the award of the contract.
125.30(B)	Information that has been designated as confidential by any state agency on the business reply form established by DAS.
126.48, 149.433, and 5703.21	A preliminary or final report of an internal audit's findings and recommendations produced by the Office of Internal Auditing in the Office of Budget and Management and all work papers of the internal audit, until submission of the final report. Additionally, internal audit reports that are security records or are derived from State tax return information.
128.32(G) and 128.99	Telephone numbers, addresses, or names obtained from a 911 database maintained pursuant to R.C. 128.32.
128.60(B)(1)	Information provided to the Statewide Emergency Services Internet Protocol Network Steering Committee and the Tax Commissioner by a telephone company operating public safety answering points for countywide wireless 9-1-1 systems, if that information consists of trade secrets or regards the customers, revenues, expenses, or network information of the telephone company.
131.02(F)(4) and 131.022(I)	Information contained in an uncollectible claim owed to the state that is sold, conveyed, or transferred to a private entity and that is confidential under federal or state law.
145.27(A), (B), and (D)(4), 3305.20, 3307.20(A)(1), (B), (C), and (E)(4), and 3309.22(A), (B), and (D)(4)	Certain information and records of the Public Employees Retirement Board, State Teachers Retirement Board, School Employees Retirement Board, or an entity providing an alternative retirement plan.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
149.431(A)(1) through (3)	Certain contracts, agreements, and financial records of governmental entities, agencies, and non-profit organizations receiving governmental funds that identify a present or former patient or client or his diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, developmental disability, drug abuse or alcoholism, or counseling for personal or social problems, or certain financial records that pertain to any private funds expended in relation to the performance of services pursuant to the contract or agreement made between entities or organizations and the federal government.
149.432(B)	Library records and patron information.
149.433(B) and (C)	Security records kept by public offices are not public records. Infrastructure records of public offices or chartered non-public schools that are kept by public offices are not public records. Infrastructure records of private entities that are prepared by, submitted to, or kept by public offices may be exempted from release when specified conditions are met.
149.435	Name or other information contained within a routine factual report that is highly likely to identify an alleged delinquent child or arrestee who is also an abused child and who is under eighteen years of age at the time the report is created, except to specified individuals and agencies.
149.45	If a public office makes a document available on the Internet, an individual's social security number and any personal information that the individual has asked to have redacted from that document.
166.05(C)	Financial statements and other data submitted to the Director of Development Services or the Controlling Board by a private sector person in connection with specified financial assistance, and information taken from the same.
166.14(B)	Financial statements and other data submitted to the Director of Development Services or the Controlling Board by a private sector person in connection with the Innovation Financial Assistance Program, and information taken from same.
166.19(B)	Financial statements and other data submitted to the Director of Development Services or the Controlling Board by a private sector person in connection with the Research and Development Financial Assistance Program, and information taken from same.
169.03(F)(4)	Audited records of holders of unclaimed funds.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
173.061	Records identifying recipients of Golden Buckeye Cards, subject to the Director of Aging's discretion, but never a recipient's medical history.
173.22	Certain investigative and other files and information, including any proprietary records of a long-term care provider or records relating to advocacy visits, contained in the State Long-Term Care Ombudsman Program's or regional program's office.
173.27(G)	The report of a criminal records check of a person who is under final consideration for employment with the Office of the State Long-Term Care Ombudsman Program or an employee of a regional long-term care ombudsman program in a position that involves providing ombudsman services to long-term care residents and recipients.
173.38(I)	The report of a criminal records check of a person who is under final consideration for employment with a community-based long-term care agency in a position that involves providing direct care to an individual.
173.381(G)	The report of a criminal records check of a self-employed provider conducted pursuant to a self-employed provider's request for a community-based long-term care services contract with the Department of Aging.
173.393(B)	A part of a record of an evaluation of a community-based long-term care agency, if the release of the record would violate a federal or state statute, regulation, or rule.
175.12(B) and 149.43(A)(1)(x)	Financial statements and data submitted for any purpose to the Ohio Housing Finance Agency or the Controlling Board in connection with applying for, receiving, or accounting for financial assistance the Agency provides and information that identifies any individual who benefits directly or indirectly from financial assistance the Agency provides.
177.02(F)	Information concerning the filing of a complaint alleging organized criminal activity and the investigation of said activity, for a specified time.
177.03(D)(4) and (5)	Task force information concerning the investigation and potential prosecution of organized criminal activity.
187.04(C)	Records created or received by JobsOhio, regardless of who may have custody of the records, unless specifically designated as public records by contract between JobsOhio and the Director of Development Services.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
307.626(C), 307.627, 307.629, 3701.045(A)(4), and 149.43(A)(1)(s)	Certain information, documents, and reports presented to the child fatality review board; statements made by board members at meetings; work product of a child fatality review board, and child fatality review data submitted by board to department of health or national child fatality review database.
307.862(C)	Proposals and any documents or other records related to a subsequent negotiation for a final contract by a county contracting authority that uses competitive sealed proposals, until after the award of the contract.
307.987	Information received by a private or government entity pursuant to a contract to provide workforce development activities or family service duties, a plan of cooperation, a regional plan of cooperation, or a transportation work plan that was confidential in the hands of the entity that provided the information.
313.091	Medical or psychiatric record provided to a coroner.
313.10(A)(2), (D), and (E)	The following records in a coroner's office, except in specified circumstances: preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision, photographs of a decedent made by the coroner or anyone acting under the coroner's direction and supervision, suicide notes, and medical and psychiatric records provided to the coroner, records of a deceased individual that are confidential law enforcement investigatory records under R.C. 149.43, and lab reports generated from the analysis of physical evidence by the coroner's laboratory that is discoverable under Criminal Rule 16.
313.121(B)	Reporting forms completed by or for county coroners regarding the sudden death of a child under two years of age within that county.
317.24(B)(2)(a), (b) and 149.43(A)(1)(z)	Records of a discharged armed forces member recorded with a county recorder for a period of seventy-five years after the date of recording.
317.241(G)	All application materials concerning applications for Ohio veterans identification cards, including applications, photographs, documents, or other information submitted with the application or obtained by a county recorder or county veterans service office, except for specified purposes and to specified individuals or entities.
319.34	County auditor's classified tax list and county treasurer's classified tax duplicate of taxable property.
339.81	Information, data, and reports of a tuberculosis case furnished to, or procured by, a county or district tuberculosis control unit or the Department of Health.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
340.15(B)	Certain information obtained or maintained by a public children services agency addiction or mental health program.
351.24	Records or proprietary information relating to lessees or other users obtained by a convention facilities authority or other person acting under Chapter 351 of the Revised Code.
718.11(F)	Records of transactions of a municipal corporation board of appeals relative to income taxation obligations.
718.13	Information from tax returns, investigations, hearings, or verifications concerning municipal corporation income taxes, except pursuant to a proper judicial order in connection with the performance of that person's official duties, or the official business of a municipal corporation.
742.41(A)(2), (B), (C), and (E)(4)	Certain personal information in records of the Board of Trustees of the Ohio Police and Fire Pension Fund.
901.13(E)	Any business plan submitted to the Ethanol Incentive Board as part of an ethanol production plant construction and operation application.
901.27	Information acquired by a Department of Agriculture agent in an investigation.
905.57	Information in an annual tonnage report (agricultural liming material sold or distributed) and certain other information maintained by the Department of Agriculture.
917.17	Information furnished to or procured by the Director of Agriculture under Chapter 917 of the Revised Code.
921.02(E)	Trade secret or confidential business information on a pesticide registration application.
921.04(B)	Information on a pesticide registration or permit application designed as a trade secret or confidential commercial or financial information.
924.05(B)	Information contained in the individual reports filed with the Director of Agriculture by producers, handlers, or processors of any Ohio agricultural commodity for which a marketing program is proposed.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
924.17	Any record submitted to the Department of Agriculture that indicates how an individual has voted in a referendum to establish or amend an Agricultural Commodity Marketing Program, or how an individual has voted in an election of the members of an operating committee for an Agricultural Commodity Marketing Program.
926.06(D)	Financial information in the Department of Agriculture's records identifying commodity handler license applicants.
1112.23	Certain information concerning family trust companies, except for specified purposes and to specified individuals or entities.
1121.18(A)	Information related to an examination of a bank or other financial institution by the Superintendent of Financial Institutions.
1121.25(A) and (E)	Commercial or financial information in an application or notice declared confidential by the Superintendent of Financial Institutions.
1121.43(B)	Any written agreement or other writing for which a violation may be enforced by the Superintendent of Financial Institutions, if the Superintendent determines that publishing it and making it available to the public would be contrary to the public interest; a final order issued by the Superintendent of Financial Institutions, if the Superintendent determines that publishing it and making it available to the public would seriously threaten the safety and soundness of a bank or trust company, for a reasonable time.
1121.45(C)	Certain records and information presented at a meeting with regulated persons called by the Superintendent of Financial Institutions.
1306.23	Records that would jeopardize the state's use or security of computer or telecommunications devices or services associated with electronic signatures, records, or transactions.
1315.03(C) and 1315.10(C)	Information in or related to an application for a money transmitter license or an application to acquire control of a money transmitter license to which the Superintendent of Financial Institutions decides to grant confidential treatment.
1315.122(A)	Information leading to, arising from, or obtained in the course of the examination of a licensee or other person conducted under the money transmitter laws.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
1315.53(H)	A report, record, information, analysis, or request obtained by the Attorney General or an agency pursuant to the Currency and Foreign Transactions Reporting Act, 31 U.S.C. §§ 5311 to 5326.
1315.54(C)	A record, other document, or information obtained by the Attorney General pursuant to an investigation of a money transmitter.
1321.09(A)	Reports filed with the Superintendent of Financial Institutions by small loans licensees.
1321.422(B)	Individual reports required to be filed with the Superintendent of Financial Institutions by licensees under the short-term loan laws regarding the business and operation for the preceding calendar year.
1321.46(C)(4) and (E)	The database of short-term loan borrowers that the Superintendent of Financial Institutions may develop to permit licensees to determine whether a borrower is eligible for a loan.
1321.48(B), (C), (D), and (F)	Examination and investigation information, and any information leading to or arising from an examination or an investigation that is maintained by the Superintendent of Financial Institutions or released to the Attorney General under the short-term loan laws.
1321.55(B)(2)	Annual individual reports filed by second mortgage security loans registrants with the Superintendent of Financial Institutions.
1321.76(C)	Information obtained by the Superintendent of Financial Institutions regarding insurance premium finance company licensees.
1322.06(D)(2)	Individual reports filed with the Superintendent of Financial Institutions or the Nationwide Mortgage Licensing System and Registry regarding mortgage broker registrants.
1322.061(A), (B), 1349.43(E), and 1349.44(B)	Examination, investigation, and certain application information (i.e. SSNs, employer identification numbers, particular banking and financial information, etc.) obtained by the Superintendent of Financial Institutions regarding mortgage broker registrants.
1331.16(L)	Certain records and information provided to the Attorney General pursuant to an investigative demand under Chapter 1331 of the Revised Code.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
1332.24(A)(3) and 1332.25(G)	Information in an application made to the Director of Commerce for a video service authorization that the applicant identifies, and the Director affirms, as trade secret information.
1332.30(E)(2)(b)	Quarterly reports to a municipal corporation or township identifying the total number of video service subscribers served within the municipal corporation or the unincorporated area of the township for the purposes of deriving pro rata shares.
1345.05(A)(7)	Identity of suppliers investigated or facts developed in investigations of Consumer Sales Practices Act violations.
1346.03	Certain tax information about a tobacco product manufacturer.
1501.012(B), 1501.091, and 1501.10	Questionnaires and financial statements submitted to the Director of Natural Resources by a public service facility construction contract bidder, by a bidder for a contract for the operation of public service facilities, or by a bidder for a lease of public service facilities in a state park.
1505.03	Geological records accepted and retained on a confidential basis by the Chief of the Division of Geological Survey of the Department of Natural Resources (DNR).
1506.32(J)	Revelation by the Director of Natural Resources of abandoned property's location during certain time periods.
1509.73(E)	Information contained in a bid for a lease for a formation within a parcel of land submitted to the Oil and Gas Leasing Commission shall be confidential and shall not be disclosed before a person is selected, unless the Oil and Gas Leasing Commission determines otherwise.
1510.08(E)	Any additional information provided to the operating committee of the Oil and Gas Marketing Program by a producer seeking a refund, when the information is requested by the operating committee in order to support the refund request.
1513.07(B)(2), (C)(12), and (D)	Information pertaining to the analysis of the chemical and physical properties of coal and certain other information by the Chief of DNR's Division of Mineral Resources Management.
1513.072(B)	Trade secrets or certain privileged commercial or financial information submitted to the Chief of DNR's Division of Mineral Resources Management (coal exploration operations).

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1514.02(A)(9)	Information relating to test boring results submitted to the Chief of DNR's Division of Mineral Resources Management.
1522.17	Information contained within a facility water conservation plan submitted to the Chief of the Division of Soil and Water that the applicant requests, and the Chief affirms, as trade secret information.
1531.04(E)	Information regarding sensitive site locations of endangered plant species and of unique natural features that are included in the Ohio Natural Heritage Database, if the Chief of Natural Areas and Preserves determines that the release of the information could be detrimental to the conservation of a species or unique natural feature.
1531.06(M)	Information regarding sensitive site locations of endangered wildlife species and of features that are included in the Wildlife Diversity Database, if the Chief of the Division of Wildlife determines that the release of the information could be detrimental to the conservation of a species or feature.
1547.80(C)	A copy of the registration, security plan, and emergency locator map provided by certain port facilities to the Department of Public Safety, the Department of Natural Resources, the sheriff of the county in which the port is located, and the chief of police of each municipal corporation in which the port is located.
1551.11(B)	Trade secrets or other proprietary information submitted to the Director of Development regarding utilization of present, new or alternative energy sources, the conservation of energy, energy resource development facilities, the attraction of funding in emerging and established national or state priority areas, or the enhancement of the state's economic development.
1551.35(C) and 1555.17	Trade secrets or proprietary information in materials or data submitted to the Ohio Air Quality Development Authority or the Director of the Ohio Coal Development Office in connection with agreements for financial assistance relative to coal research and development projects.
1707.12(B) and (C)	Investigation information, confidential law enforcement investigatory records, trial preparation records, and certain exempt transaction information of the Department of Commerce's Division of Securities.
1710.02(C)	Records of organizations contracting with a special improvement district.

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1716.05(B)(5)(a)	Attorney General cannot disclose, as reflected in a fund-raising counsel's solicitation campaign records, a contributor's name and address and the date and amount of each contribution to the fund-raising counsel, except to the extent necessary for investigative or law enforcement purposes.
1716.07(G)(1)(a)	Attorney General cannot disclose, as reflected in a professional solicitor's solicitation campaign records, a contributor's name, address, and telephone number and the date and amount of each contribution to the professional solicitor, except to the extent necessary for investigative or law enforcement purposes. (Note that these records must be kept not less than three years after the completion of a solicitation campaign).
1724.11(A)(1) and (2)	Certain financial, proprietary, and other information submitted by an entity to a community improvement corporation acting as a political subdivision's agent.
1733.32(H)	Information obtained by the Superintendent of Financial Institutions under an examination or independent audit of a credit union.
1733.327(A)	Certain conferences and administrative proceedings, and associated documents, regarding a credit union.
1739.16(E)	Written agreement between a multiple employer welfare arrangement operating a group self-insurance program and a third party administrator.
1751.19(C)	Any document or information pertaining to a complaint or response that contains a medical record that is provided to the Superintendent of Insurance for inspection by a health insuring corporation.
1751.52(B)	Data or information concerning an enrollee's or applicant's diagnosis, treatment, or health obtained by a health insuring corporation from specified sources.
1751.80(A)	Health insuring corporation's clinical review rationale when made available to government agency.
1753.38(A) and (C)(1) and 3903.88	The risk-based capital plans, reports, information, and orders maintained by the Superintendent of Insurance.
1761.08(A)(3)	Certain financial statements and analyses furnished to a credit union share guaranty corporation.
1761.21(A)	Conferences and administrative proceedings, and associated documents, regarding a credit union share guaranty corporation.

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2111.021	A file, record, petition, motion, account, or paper pertaining to a conservatorship upon probate court order.
2151.14(B)	Reports and records of a juvenile court's probation department.
2151.141(B)(2)	Under specified circumstances, certain records of a law enforcement agency or prosecuting attorney regarding abused, neglected, or dependent child complaints (protective orders).
2151.142(B) and (C)	Under specified circumstances, residential address of an officer or employee, or person related by blood or marriage to an officer or employee, of a public children services agency or private child placing agency (the agency, the juvenile court, and any law enforcement agency cannot disclose).
2151.313(C)	Originals and copies of fingerprints and photographs of a child and the child's related records of arrest or custody released only in limited circumstances.
2151.356, 2151.357 and 2151.358	Juvenile court records that have been sealed by court order.
2151.421(I)(1)	Reports by specified individuals regarding their knowledge or suspicion of a suffered, or threat of a, physical or mental wound, injury, disability, or condition reasonably indicating abuse or neglect of a minor or of a mentally retarded, developmentally disabled, or physically impaired child under age 21.
2151.422(D)	Information in the possession of a homeless shelter that identifies the last known residential address and county of residence of a homeless person.
2151.423	Information discovered during an investigation of the neglect or abuse of a child that is disclosed to any federal, state, or local government entity that needs the information to carry out its responsibilities to protect children from abuse or neglect.
2151.85(F), 2505.073(B), 2919.121(C)(7), and 149.43(A)(1)(c)	The complaint and all other papers and records that pertain to an action brought by a pregnant, unmarried, and unemancipated minor woman who wishes to have an abortion without the notification of her parents, guardian, or custodian and all papers and records that pertain to an appeal of such an action.

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2151.86(E)	With some exceptions, BCI criminal records check information relative to a person under final consideration for employment as a child caregiver in out-of-home care, a prospective adoptive parent, or a prospective recipient of a foster home certificate from the Department of Job and Family Services (DJFS).
2152.19(D)(3), 2930.13(D), and 2947.051(C)	A victim impact statement associated with a felony that was committed by an adjudicated delinquent child or adult offender and that involved a specified “physical harm” aspect.
2305.24	Information, data, reports, or records furnished to a quality assurance or utilization committee of a hospital, long-term care facility, specified not-for-profit health care corporation, state or local medical society, or to a quality assurance committee of the bureau of workers’ compensation or the industrial commission.
2305.252(A) and (B)	Proceedings and records of a peer review committee of a health care entity.
2307.46(A)	Upon court order in a civil action, except for limited purposes, the identity of a woman, upon whom an abortion was allegedly performed, induced, or attempted.
2317.02, 2317.021, and 4732.19	Certain privileged communications between an attorney, physician, dentist, psychologist, school psychologist, school guidance counselor, professional clinical counselor, professional counselor, social worker, independent social worker, social work assistant, mediator, communications assistant, member of the clergy, spouse, or chiropractor and a client, patient, person being religiously counseled, other spouse, or parent.
2329.154(E) and 2329.271(B)(2)	The email address, telephone number, and financial transaction device information of a person who has registered to bid in an online property sale, or who has purchased lands and tenements taken in execution.
2710.03(A), 2710.07, and 149.43(A)(1)(i)	Mediation communications.
2743.62(A)(2)(a)	A record or report that the Court of Claims or Attorney General obtains under the Crime Victims Reparations Awards Law that is confidential or exempt from public disclosure when in its creator’s possession, except it may be used by specific individuals in proceedings in the Court of Claims.
2909.15(E)(2)	Registry of arson offenders and out-of-state arson offenders established and maintained by the BCI.

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2921.22(G)	Information about the commission of a felony that would otherwise have to be reported, under specified circumstances, such as an attorney-client relationship, doctor-patient relationship, etc.
2921.24(A)	Law enforcement agency, court, or court clerk's office cannot disclose in absence of court order the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in a pending criminal case.
2921.25(A)	Judge or mayor's court may not order a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee to disclose their home address during examination in a criminal court case or mayor's court case, unless court determines defendant has a right to the disclosure.
2923.129(B) and (D)	Sheriff records concerning the issuance, renewal, suspension, or revocation of a concealed handgun license or temporary emergency concealed handgun license. Information available through the Law Enforcement Automated Data System is also not a public record.
2930.07	The victim's or victim's representative's address, place of employment, or similar identifying fact, if the prosecutor in a case determines that there are reasonable grounds for the victim in a case to be apprehensive regarding acts or threats of violence or intimidation by the defendant or alleged juvenile offender and the court issues an order that the information should be confidential.
2930.13(D), 2947.06, 2951.03, and 2953.08(F)(1)	Certain or all information in presentence investigation reports (contents and summaries) and those reports, psychiatric reports, victim impact statements and other investigative reports in a court record to be reviewed.
2930.14(A)	Written statement submitted by a victim, defendant, or alleged juvenile offender before sentencing.
2930.16(D)(2)	Record kept by prosecutors or custodial agencies that reflects attempted notices by those agencies to notify victims of specified crimes of specified activity concerning the incarceration or release of a defendant is not a public record, but note that the record of attempts and notices given to persons other than victims <i>is</i> a public record.

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2933.231(E)	Until search warrant is returned, the recording and transcript of proceeding concerning a request for a waiver of the statutory precondition for nonconsensual entry.
2939.18	Information that an indictment has been found against a person not in custody or under bail, before the indictment is filed and the case docketed.
2949.221 and 2949.222	Information in the possession of any public office that identifies persons who manufacture or participate in the testing, provision, or use of drugs or medical equipment used in the administration of a death sentence by lethal injection is not a public record under R.C. 149.43, and is not subject to disclosure during any judicial proceeding unless a court finds that the person whose identity is protected appears to have acted unlawfully. The information can also be disclosed to the Ohio Ethics Commission for the sole purpose of confirming specific stated facts.
2950.08	Certain statements, information, photographs, fingerprints, and other material required under the Sex Offender Registration Law.
2950.10(A)(4)	Certain information a sheriff obtains regarding the victim of a sexually oriented offense or a child-victim oriented offense who wishes to be notified of the offender's or delinquent child's registration status.
2950.13(A)(1) and (13)	BCI's Internet database of the State Registry of Sex Offenders and Child-Victim Offenders and information obtained by local law enforcement representatives through use of the database.
2951.03(A)(2), (D)(1)	The contents of, and any written or oral summary of, a presentence investigation report, including an offender background investigation report prepared for purposes of a presentence investigation report, are confidential information and are not public records.
2953.32(C) and (D), 2953.321, 2953.33 to 2953.35	Official records and related investigatory work product in an eligible offender's case sealed by court order.
2953.52(B), 2953.53(D), 2953.54, 2953.55, and 2953.59	Official records and related investigatory work product pertaining to a case sealed by court order (in cases where person found not guilty; complaint, indictment, or information against person dismissed; or no bill entered by grand jury) whether in the possession of court or another public office or agency.

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2953.60	Information or data concerning any arrest, complaint, indictment, information, trial, adjudication, or correctional supervision contained in sealed records. Any officer or employee of the state who knowingly releases or disseminates such information is guilty of divulging confidential information, which is a fourth degree misdemeanor.
2981.03(B)(4)	Until property is seized under the Forfeiture Law, the recording and transcript of certain hearings or proceedings in relation to the forfeiture of that property.
3101.05(A) and 3101.051	In connection with marriage license applications, under specified circumstances, a record containing applicant social security numbers.
3107.17(B)(1) and (D)	Certain placement or adoption records and information; forms concerning the social or medical histories of the biological parents of an adopted person (only specified individuals may access).
3107.52(A) and 149.43(A)(1)(f)	The Department of Health's records pertaining to adoption proceedings regarding a person available or potentially available for adoption on or after September 18, 1996.
3111.94(A)	A physician's files concerning non-spousal artificial inseminations.
3113.31(E)(8)(b)	The address of a person who petitions for a civil protection order or a consent agreement, if the person requests that the person's address be confidential.
3113.36(A)(5)	Any information that would identify individuals served by a domestic violence shelter.
3113.40	Information in the possession of a domestic violence shelter that identifies the residential address and county of residence information for a person admitted to the shelter. (It may, however, be released to a public children services agency, in certain circumstances).
3113.453	Any contact information of a petitioner for a civil protection order who has sought the transfer of rights and billing responsibilities for a wireless service number in use by the petitioner or any minor children in his/her care shall be kept confidential by a court from the wireless service account holder.
3121.76	Information obtained from a financial institution pursuant to an account information access agreement.
3121.894 and 149.43(A)(1)(o)	Records contained in the new hires directory maintained by the Department of Job and Family Services (DJFS).

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3121.899(A)	New hire reports filed by employers with DJFS.
3301.079(I)(4), 3301.0711(I) and (O)	Individual student assessment scores and proposed assessment questions. Student achievement assessments received by an English language arts academic standards review committee are not public records until the thirty-first day of July following the school year that the assessments were administered, with the specified exceptions. Field test or anchor questions are not public records and must be redacted from any released assessment.
3301.0714(I)	Data collected or maintained in the Statewide Education Management Information System that identifies a pupil.
3301.12(A)(3)	Individual student data used in studies and research projects for the improvement of public school education that are conducted under the authority of the Superintendent of Public Instruction.
3301.32(D), 3301.541(D), 3301.88(E), and 3319.39(D)	BCI criminal records check information relative to a Head Start employment applicant, a preschool employment applicant, an applicant to participate in a program established under the Classroom Reading Improvement Grants Program in a specified manner, or a school district, educational service center, or chartered non-public school employment applicant.
3302.021(A)(2)	Individual student test scores and reports used in the Value-Added Progress Dimension.
3304.21	Lists of names or information concerning persons applying for or receiving services in connection with the Ohioans with disabilities agency.
3310.11(D)	Any document relative to the Educational Choice Scholarship Pilot Program that the Department of Education holds in its files and that contains both a student's name or other personally identifiable information and the student's data verification code.
3313.173	Certain identifying information provided pursuant to a school district or educational service center reward offer relative to crimes committed against school employees or pupils or on school property.
3317.20(D)(3) and (E)	Any data verification code that the Department of Developmental Disabilities (DODD) receives, except as provided by law; and any document relative to special education and related services provided by the county board of developmental disabilities that the department holds in its files that contains personally identifiable information.

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3319.311(A)(1)	Information obtained during an investigation by the State Board of Education or the Superintendent of Public Instruction on behalf of the Board.
3701.14(B) and (D)	Information obtained during the course of an investigation or inquiry that the Director of the Department of Health currently is conducting.
3701.17(B)	Protected health information reported to or obtained by the Director of the Department of Health, the Department of Health, or a board of health of a city or general health district is confidential and shall not be released without the written consent of the individual who is the subject of the information unless specified exceptions apply.
3701.241	Information obtained or maintained under the partner notification system developed by the Director of Health to alert and counsel sexual contacts of individuals with HIV infection.
3705.12, 3705.122, 3705.123, and 3705.124	Adoption file maintained by the department of health containing all records, papers and documents relating to the original birth record of an adopted child sent from the probate court.
3706.20	Records or information relating to secret processes or secret methods of manufacture or production that may be obtained by the Air Quality Development Authority or other persons acting under the Authority.
3727.101(E)(2)	Documents and information in reports furnished to the Director of Health by the trauma center regarding the consultative or reverification visit obtained from the American College of Surgeons and a copy of the approved plan and timetable for obtaining verification or reverification.
3745.71	The contents of an environmental audit report, and the contents of communications between the owner or operator of a facility or property who conducts an environmental audit and employees or contractors of the owner or operator, or among employees or contractors of the owner or operator, that are necessary to the audit and are made in good faith as part of the audit after the employee or contractor is notified that the communication is part of the audit (applies to audits initiated after March 13, 1997).
3750.02(B)	Certain information obtained by the Emergency Response Commission and local emergency planning committees, such as trade secrets, confidential business information, and the name and address of a person who seeks access to information in the Commission's files.

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3750.09 and 3751.04	For purposes of the Emergency Planning Law and the Hazardous Substances Law, trade secrets or confidential business information obtained under the Emergency Planning and Community Right-to-Know Act of 1986.
3750.10(B)(5)	Under certain circumstances, the storage location of a hazardous chemical at a facility provided on an emergency and hazardous chemical inventory form to the Emergency Response Commission or a local emergency planning committee.
3750.22(B)(1)	Any vulnerability assessment or other security-sensitive information a public office receives from an owner or operator of a facility where chemicals are produced, or the owner or operator of any other facility or business of any type.
3769.041(A) and (E)	Certain information submitted, collected or gathered as a part of an application to the State Racing Commission for horse racing license or permit, including information received by the commission from another jurisdiction relating to a person who holds, held, or has applied for a horse racing license or permit.
3770.02(B)	State Lottery Commission meeting records available upon prior notification of the Director and a showing of good cause.
3770.07(A)(1) and (4)	The name, address, and social security number of each beneficial owner of a trust that is making a claim for a lottery prize award, unless the beneficial owner consents to the inspection or copying in writing.
3770.22(A)	Information submitted, collected or gathered as part of an application to the State Lottery Commission for a video lottery related license.
3772.061	Report of an internal audit of the Ohio Casino Control Commission, until such a report is forwarded to the commission and the auditor of state.
3772.07	The criminal records check of a person who is to be appointed or licensed obtained by certain appointing or licensing authorities.
3772.16(A)	Certain information submitted, collected, or gathered as part of an application to the Ohio Casino Control Commission for a license.

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3901.045	Documents and information the Superintendent of Insurance receives from local, state, federal, and international regulatory and law enforcement agencies, from local, state, and federal prosecutors, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, from the Chief Deputy Rehabilitator, from the Chief Deputy Liquidator, from other deputy rehabilitators and liquidators, and from any other person employed by, or acting on behalf of, the Superintendent, if the documents or information were confidential or privileged when held by the provider.
3901.378(A) and (B)	Documents, materials or other information, including the own risk and solvency assessment summary report, in the possession or control of the Department of Insurance that are obtained by, created by, or disclosed to the superintendent of insurance, or any other person, containing trade secrets.
3901.36	Information and documents obtained by the Superintendent of Insurance in an examination or investigation of an insurer's financial condition or legality of conduct.
3901.44(B), (C), and (D)	Documents, reports, and evidence in the possession of the Superintendent of Insurance pertaining to an insurance fraud investigation.
3901.48(A), (B), and (C)	Certain records concerning an audit of an insurance company or health insuring company; and the work papers of the Superintendent of Insurance resulting from specified insurer examinations, financial analyses, and performance regulation examinations.
3901.70(A)	Reports obtained by or disclosed to Superintendent of Insurance relative to insurer material transactions.
3903.11	Certain records pertaining to delinquency proceedings against an insurer and judicial reviews of those proceedings.
3903.7211(B)(1)	A memorandum and information received by the Superintendent of Insurance in support of a qualified actuary's opinion on the valuation of an insurance company's reserves for policies and annuities and other related information.
3903.77(E)	Actuarial opinion summary, report, work papers, and any documents, materials or other information provided in support of the state of actuarial opinion prepared for a property and casualty insurance company doing business in Ohio.

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3905.24	Under certain circumstances, records and other information obtained by the Superintendent of Insurance in an investigation of an insurance agent license applicant, or of an agent, solicitor, broker, or other person licensed or appointed under the Insurance Producers Licensing Law, the Public Insurance Adjusters Law, the Home Warranty Companies Law, or the Third-Party Administrators Law.
3905.50(H)	Information or documentation provided to an agent or to the Superintendent of Insurance by an insurer regarding termination of an independent insurance agency contract.
3911.021	Reports maintained by the Superintendent of Insurance regarding measures taken by a life insurance company to detect and prevent stranger-originated life insurance.
3916.11(D), 3916.12(E), and 3916.18(E)(1) and (G)(2)	Certain viator-related and other information, documents, reports, etc., produced or acquired by the Superintendent of Insurance in the course of an examination under the Viatical Settlements Law; documents and evidence obtained by the Superintendent in an investigation of a suspected or actual fraudulent viatical settlement act; antifraud plans submitted to the Superintendent under that law; proprietary information of viatical settlement licensees; individual transaction data, and data that could compromise the privacy of the viator's or insured's personal, financial, and health information.
3922.21(A)	Records containing information pertaining to the medical history, diagnosis, prognosis, or medical condition of a covered person provided to the Superintendent of Insurance for any reason regardless of the source.
3929.302(G) and (I)	Information reported to the Department of Insurance by insurers and related entities or by attorneys or law firms regarding any medical, dental, optometric, or chiropractic claim asserted against a risk located in Ohio, if the claim resulted in a final judgment in any amount, a settlement in any amount, or a final disposition of the claim resulting in no indemnity payment on behalf of the insured.
3929.68	Reports and communications made in connection with certain actions of the Medical Liability Underwriting Association, the Stabilization Reserve Fund, the Superintendent of Insurance, and others.

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3930.10	Reports and communications concerning the performance of powers and duties by the Ohio Commercial Insurance Joint Underwriting Association, the Superintendent of Insurance, and others under the Commercial Market Assistance Plan Law.
3935.06	Information submitted for an examination of policies, etc. by an insurance rating bureau.
3937.42(F)	Information a law enforcement or prosecuting agency receives from an insurance company investigating a claim involving motor vehicle or vessel insurance, until a specified time.
3953.231(E)	Statements and reports submitted by a financial institution regarding trust account (IOLTA) interest used to fund legal aid programs.
3955.14(A)(2)	Ohio Insurance Guaranty Association's recommendations regarding the status of certain member insurers.
3956.12(A)(4), (C), and (E)	Certain records concerning the detection and prevention of life and health insurance company insolvencies (Superintendent of Insurance and the Board of Directors of the Ohio Life and Health Insurance Guaranty Association).
3961.07(C) and (G)	All records and other information concerning a discount medical plan organization obtained by the Superintendent of Insurance in an examination or investigation of the business and affairs of such an organization.
3964.08(B) and 3964.193(A)	Documents and information submitted by a captive insurance company to the Department of Insurance superintendent or any employee. Examination reports, results, working papers, recorded information, documents obtained by or disclosed to the superintendent or any other person in the course of an examination.
3999.36(C)	Written notice of impairment sent by an insurer to the Superintendent of Insurance.
4104.19(E)(1)	The examination for a license to operate as a steam engineer, high pressure boiler operator, or low pressure boiler operator.
4111.14(H) and (I)	The name of a person who makes a complaint, and all records and information related to investigations by the state, regarding an employer's compliance with the constitutional minimum wage requirements.

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4112.05(B)(2) and (3)(c) and 149.43(A)(1)(i)	All information that was obtained as a result of or that otherwise pertains to a Civil Rights Commission preliminary investigation into allegedly unlawful discriminatory practices, prior to certain Commission actions.
4121.44(H)(1) and (L)(3)	Certain managed care and other information associated with the Bureau of Workers' Compensation qualified health plan system, health partnership program, and health care data program.
4121.45	Information in a claim file that an Industrial Commission ombudsperson accesses that would tend to prejudice the case of either party to a claim or that would tend to compromise a privileged attorney-client or doctor-patient relationship.
4123.27	Information contained in employer annual statements filed with the Bureau of Workers' Compensation (BWC) and information regarding recipients of public assistance provided to BWC by DJFS.
4123.88	Claim files and other information concerning a claim or appeal filed with the Bureau of Workers' Compensation or the Industrial Commission and information directly or indirectly identifying the address or phone number of a claimant.
4125.05(F) and (G)	All records, reports, client lists, and other information obtained by BWC from a professional employer organization.
4141.162(E), 4141.21, and 4141.22	Certain information maintained by the Director of Job and Family Services under the Unemployment Compensation Law; and redisclosure of information declared confidential by the Unemployment Compensation Law.
4163.07(C)	Information pertaining to any shipment of special nuclear material or by-product material, until shipment of the material is completed (Executive Director of Emergency Management Agency).
4167.12	Information reported to or otherwise obtained by the administrator of workers' compensation or the administrator's designee in connection with any investigation, inspection or proceeding pertaining to Public Employment Risk Reduction that reveals a trade secret of any person.
4501.15	Social security and credit information obtained in connection with a driver's license or vehicle registration, with limited exceptions.
4501.27 and 4501.272	After September 13, 1997, certain personal information in motor vehicle records may be disclosed for permitted use only.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
4501.271	Residence address of a peace officer, correctional employee, or youth service employee contained in Bureau of Motor Vehicle records. Business address to be displayed on driver's license or certificate of registration at the request of the peace officer, correctional employee, or youth service employee.
4501.81(A)	Information contained in Bureau of Motor Vehicles' next of kin database accessible only to employees of the bureau and to criminal justice agencies.
4507.20	Report submitted to the registrar of motor vehicles by physicians regarding the examination of a licensee's competency.
4507.53	Digitalized photographic records of the Department of Public Safety, except to state, local or federal governmental agencies for criminal justice purposes and to any court.
4509.10	Accident reports submitted for use of the registrar of motor vehicles, subject to exemptions.
4517.43(A)	Motor vehicle dealer, motor vehicle auction owner, motor vehicle distributor, and motor vehicle salesperson license applications and copies of contracts.
4701.19(B)	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, including those documents in the possession of the Auditor of State, except reports submitted by the accountant to the client.
4701.29(D)	Investigative proceedings of the Accountancy Board.
4719.02(E)	Social security numbers, bank accounts, and solicitation scripts, outlines or presentations in application to register with the attorney general as a telephone solicitor.
4727.18	Information relating to an investigation by the Superintendent of Financial Institutions of a person licensed as a pawnbroker or of any person the Superintendent reasonably suspects has violated Chapter 4727 of the Revised Code.
4729.80(C)	Information contained in and obtained from the drug database established by the State Board of Pharmacy. Information contained in the records of requests for information from the database.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
4734.45(B)	Information received by the State Chiropractic Board pursuant to an investigation.
4738.14	Motor vehicle salvage dealer, salvage motor pool, or salvage motor vehicle auction license applications.
4755.02(E)	Information and records received or generated by the Ohio Occupational Therapy, Physical Therapy and Athletic Trainers Board pursuant to an investigation.
4757.38(B)(1)	Information received by the Counselor, Social Worker, and Marriage and Family Therapist Board pursuant to a complaint or investigation, except the Board may disclose information to law enforcement officers and government entities for purposes of an investigation.
4758.31	Chemical Dependency Professionals Board records pertaining to a pending investigation.
4765.06(C)	Information that identifies or tends to identify a specific recipient or provider of emergency medical services or adult or pediatric trauma care.
4765.102(B)	Information received by the state board of emergency medical services pursuant to an investigation or complaint, until completion of the investigation and any resulting adjudication proceedings.
4776.04	Results or reports of criminal records checks required for certain occupational licenses available only in response to specific requests.
5101.131 and 5101.132	Information contained in or obtained from the Child Welfare Information System.
5101.27, 5101.273, 5101.28, 5101.29, and 5101.30	Information regarding a public assistance recipient, except for specified purposes and to specified entities, unless voluntary written authorization is provided by the recipient, an authorized representative, a legal guardian, or the recipient's attorney.
5101.29(A)-(C)	Names and other identifying information regarding children enrolled in or attending a publicly funded child day-care center or home; children placed with a foster caregiver or foster home; or any person who submits a complaint to the Department of Job and Family Services, or other entity responsible for enforcing Chapters 5103 or 5104 of the Revised Code, regarding a publicly funded child day-care center or home or a foster caregiver or foster home.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
5119.17(D)	A record or information DADAS obtains or maintains for the Addicted Pregnant Women Program that could identify a specific woman or her child.
5119.26	Health and medical records of a person treated for alcoholism or drug addiction.
5119.27	Records or information pertaining to the identity, diagnosis, or treatment of any DADAS-licensed or certified drug treatment program patient.
5119.28	Records and reports, other than court journal or docket entries, identifying a person and pertaining to the person's mental health condition, assessment, care or treatment in connection with services certified by the department of mental health and addiction services, unless disclosed by a permitted party.
5120.21(E) and (F)	Inmate records released by the Department of Rehabilitation and Correction (ODRC) to the Department of Youth Services (DYS) or court of record. Records of inmates committed to ODRC as well as records of persons under the supervision of the Adult Parole Authority.
5122.311(B)	Notices received by the Ohio Attorney General's Office from a hospital, community mental health services provider or facility used for the purpose of conducting incompetency records checks.
5123.61(M) and 5126.31(E)	Reports of abuse, neglect, and other major unusual incidents made to the DODD; reports received from county boards of developmental disabilities; and reports submitted to the law enforcement agency responsible for investigating the report are not public records.
5123.89(B)	All certificates, applications, records, and reports made for the purpose of Ohio Revised Code Chapter 5123, that directly or indirectly identify a resident or former resident of an institution for persons with intellectual disabilities or persons whose institutionalization has been sought shall be kept confidential, except in limited situations.
5139.56(C)	Written statement or written comments submitted by a victim or victim's representative to release authority to notify the victim of all release and discharge reviews of the child offender that has been committed to the legal custody of the Department of Youth Services.
5153.17 and 5153.173	Records kept by a public children services agency concerning certain investigations; and information an agency possesses concerning a deceased child if a court determines disclosing the information would not be in the best interest of the deceased child's sibling or another specified child.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
5153.171, 149.43(A)(1)(t), 5153.172, and 5153.173	Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney under certain circumstances involving deceased children whose deaths may have been caused by abuse, neglect, or other criminal conduct. The director shall not disclose any information pertaining to the deceased child(ren) if a judge of the county common pleas court where child resided at time of death determines that disclosing the information would not be in the best interest of a sibling of the deceased child or another child residing in the household.
5153.175(C)	Information provided to DJFS or a county department of job and family services by a public children services agency regarding child abuse or neglect that involves a person who has applied for licensure or renewal of licensure as a type A family day-care home or certification or renewal of certification of a type B family day-care home.
5153.176(D)	Information provided to the Superintendent of Public Instruction by a public children services agency regarding the agency's investigation of a report of child abuse or neglect involving a person who holds a license issued by the State Board of Education if the agency has determined that child abuse or neglect occurred and that abuse or neglect is related to the person's duties and responsibilities under the license.
5164.342(H)	Reports of any criminal records check conducted as a condition of employment for any applicant in a position that involves providing home and community-based services is not a public record, except in limited circumstances.
5164.752	Responses of terminal distributors of dangerous drugs to a survey initiated by the Department of Medicaid regarding the cost of dispensing drugs.
5501.55(D) and 5501.56(B)	Reports of an investigation or audit the Department of Transportation (ODOT) or an ODOT contractor conducts relative to the safety practices of rail fixed guideway systems; and any part of a transit agency's system safety program plan that concerns security for the system.
5501.71(F)	Materials, data, and financial information received by the director of transportation related to a proposal consisting of trade secrets.
5502.03(B)(2)	Information collected, analyzed, maintained, and disseminated by the Division of Homeland Security to support local, state, and federal law enforcement agencies, other government agencies, and private organizations in detecting, deterring, preventing, preparing for, responding to, and recovering from threatened or actual terrorist events.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
5502.12	State Highway Patrol (SHP) reports, statements, and photographs relative to accidents it investigates, in the Director of Public Safety's discretion and until a specified time.
5505.04(C) and (E)(4)	State Highway Patrol Retirement Board records containing a personal history record of monthly allowance or benefit information; the identity of recipients of public assistance.
5525.04 and 5525.15	Information the Director of Transportation receives from transportation construction project contract bidders, and the estimate of cost of any project to be constructed by ODOT by competitive bidding, in the Director's discretion until the occurrence of specified events.
5537.07(A)	The cost estimate for the construction, demolition, alteration, repair, improvement, renovation, or reconstruction of roadways and bridges for which the Ohio Turnpike Commission is required to receive bids, in the Commission's discretion and until all bids for the public improvement have been received or the deadline for receiving bids has passed.
5703.21(A), (C)(9), and (C)(16), and 5703.53(I)	Information acquired by a Department of Taxation agent as to any person's transactions, property, or business; notices or documents provided to a county auditor concerning the taxable value of property in the county; certain opinions the Tax Commissioner prepares for a taxpayer; and identifying information in an opinion.
5709.081(D)	Certain records of a corporation that owns tax-exempt "public recreational facility" property used by a major league professional team.
5711.10, 5711.101, 5711.11, 5711.18, 5711.25, and 5711.26	An investments-related document filled with returns of taxable property under certain circumstances; a document filed with returns of taxable property when the Tax Commissioner requires a business to file a financial statement or balance sheet; tax returns listing personal property used in business or credits and other returns; information about a taxpayer's business, property, or transactions the Tax Commission obtains for the purpose of adopting or modifying the method of determining true value; and preliminary, amended, and final assessment certificates concerning certain taxpayers.
5715.49 and 5715.50	Taxpayer transactions, property, or business information acquired by a county auditor; county board of revision member; expert, clerk, or employee of a county auditor, a county board of revision, or the Tax Commissioner; or Tax Commissioner deputy, assistant, or agent, in the course of employment.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
5727.11(I)	Information about the business, property, or transactions of any tax payer obtained by the Tax Commissioner in adopting or modifying the utility's composite annual allowance.
5731.90(A)(1)	For purposes of the Ohio Estate Tax Law, certain tax returns and information the probate court, Department of Taxation, county auditor or treasurer, municipal or township fiscal officers, Attorney General, or other authorized person possesses.
5733.03, 5733.056(B)(4), and 5733.42(E)	For purposes of the Corporation Franchise Tax Law, information gained from returns, investigations hearings, or verifications; a financial institution's balance sheet made available upon the Tax Commissioner's request; and financial statements and other information submitted to the Director of Job and Family Services for an employee "eligible training program" tax credit.
5735.33	For purposes of the Motor Vehicle Fuel Tax Law, information the Tax Commissioner acquires by examination of records, books, and papers, and information acquired by Department of Taxation employees in an investigation.
5739.35, 5741.24, 5743.45, and 5747.60	Information acquired by Department of Taxation employees in an investigation under the Sales Tax Law, the Use Tax Law, the Cigarette Tax Law, or the Personal Income Tax Law.
5747.18	Information from a return, investigation, hearing, or verification associated with the Personal Income Tax Law.
5751.12	Any information required by the Tax Commissioner under the Commercial Activity Tax.
5740.08	For purposes of the Interstate Streamlined Sales and Use Tax Law, personally identifiable information of consumers who buy, lease, or rent tangible personal property or services from a certified service provider as required by the Department of Taxation for taxpayer information.
5901.09(A), (B), and (C), and 5902.04(B) and (C)	Certain documents and information relative to applications for financial assistance to a county veterans service commission and, generally, commission documents that the Director of Veterans Services obtains that identify applicants for or recipients of financial assistance.

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<u>REVISED CODE SECTION</u>	<u>TOPIC</u>
6111.05	Records, reports, or information accessible under the Federal Water Pollution Control Act by the Director of Environmental Protection that constitutes trade secrets. If the Director is to divulge any alleged trade secret information, the Director must give ten days' written notice to the person claiming trade secrecy.
6121.21 and 6123.20	Records or information relating to secret processes or secret methods of manufacture or production the Ohio Water Development Authority obtains.

Ohio Attorney General Opinions Interpreting Ohio's Public Records Act

The following are summaries of selected Opinions of the Ohio Attorney General that have addressed or interpreted the Public Records Act. Be aware that the validity of any one opinion may have been affected by a subsequent court opinion or statutory change. The full text of these opinions can be found at <http://www.ohioattorneygeneral.gov/opinions>.¹

2014-030

When a county law library resources board deems it necessary, and subject to the approval of the board of county commissioners, a county law library resources board may contract with and pay a vendor to digitize public records of the county recorder, and to post those records and the public records of the clerk of court on a third-party website. A county law library resources board may also purchase a public access computer for placement in the county law library.

2014-029

Whether personal email addresses that are contained in a public record are themselves public records is a fact-specific inquiry that must be determined on a case-by-case basis. Personal email addresses that are contained in an email sent by a township fiscal officer that do not document the organization, functions, policies, decisions, procedures, operations or other activities of the township do not constitute "records," as defined in R.C. 149.011(G), and are not required to be disclosed by R.C. 149.43.

To determine whether personal email addresses document the organization, functions, policies, decisions, procedures, operations, or other activities of the township, the township must determine whether disclosure of the email addresses would facilitate the public's ability to monitor the functions of the township in performing its statutory duties, and whether the township actually used the email addresses in making decisions or in performing its functions.

2014-021, n. 5

A law enforcement agency's access to information about a public assistance recipient that is found within the records of a county department of job and family services, including by public records request, is limited by the statutes controlling the release of such information.

2014-009

For purposes of R.C. 149.43, a county auditor makes a public record available for inspection when he provides access to the public records online through the county's website. A county auditor may not charge and collect a fee for making public records available for inspection on a county website.

¹ When searching the full text of these opinions on the Attorney General's website, use the numbers found in bold above each body of text. If using another search method (such as LexisNexis or Westlaw), the citation format will be different. For example, to locate the first opinion listed on this page, the format would be: 2014 Ohio Op. Att'y Gen. No. 2014-030.

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2014-007

A social security number, driver's license number, name (first, middle, and last), street name, city and state received by the Secretary of State from the Bureau of Motor Vehicles are personal information as defined in 18 U.S.C. § 2725(3) and R.C. 4501.27(F)(3). Other information that the Bureau of Motor Vehicles provides to the Secretary of State is personal information for purposes of 18 U.S.C. § 2725(3) and R.C. 4501.27(F)(3) if the information identifies an individual. The Secretary of State is an authorized recipient of personal information under 18 U.S.C. § 2721(c) and R.C. 4501.27(C), and may disclose personal information for the permissible uses set forth in 18 U.S.C. § 2721(b)(1)-(10) and (13)-(14) and R.C. 4501.27(B)(2)(a)-(k) and (n)-(o).

The Secretary of State may disclose personal information to a member of the General Assembly pursuant to 18 U.S.C. § 2721(b)(1) and R.C. 4501.27(B)(2)(a), provided the information is sought for use in carrying out the functions of the General Assembly. The Secretary of State may disclose personal information to a journalist pursuant to 18 U.S.C. § 2721(b)(5) and R.C. 4501.27(B)(2)(f), provided the journalist intends to use the information for research activities and does not publish or re-disclose the information or use the information to contact the individuals to whom the information pertains.

2013-006

The term "special taxing district," as used in R.C. 149.412, means a separate and distinct territorial division of government throughout which a tax may be levied to promote or achieve a public purpose. A county veterans service commission and a county board of developmental disabilities are subject to the jurisdiction of a county records commission under R.C. 149.38. The entities subject to the jurisdiction of a special taxing district records commission under R.C. 149.412 include, but are not limited to: (1) a county soil and water conservation district; (2) a single county alcohol, drug addiction, and mental health service district; (3) a general health district; and (4) a combined general health district.

2012-036

Pursuant to R.C. 307.862(C), information in a competitive sealed proposal submitted to a county contracting authority pursuant to R.C. 307.862 becomes a public record that must be made available for public inspection and copying under R.C. 149.43 after the contract is awarded, unless the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1) and is redacted from the proposal by the contracting authority.

Pursuant to R.C. 307.87 and R.C. 307.88, information in a competitive bid submitted to a county contracting authority under R.C. 307.86-.92 becomes a public record that must be made available for public inspection and copying under R.C. 149.43 after the bid is opened by the contracting authority, unless the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1) and is redacted from the bid by the contracting authority.

2012-032

The Ohio Vendors Representative Committee is a public office subject to the requirements of R.C. 149.43. The Committee is responsible for maintaining the public records of the Committee. The chairperson of the Committee is responsible for developing a records retention schedule for the Committee under R.C. 149.34.

2012-028

Pursuant to R.C. 4141.22, information that is (1) maintained by the Ohio Department of Job and Family Services and provided to the Unemployment Compensation Review Commission by the Department and (2) placed in a director's file, review file, or decision of the Commission is not a public record that must be made available for inspection and copying under R.C. 149.43. Information in a director's file, review file, or decision of the Commission that is not subject to the confidentiality provision of R.C. 4141.22 is a public record for purposes of R.C. 149.43, unless the information is not a "record," as defined in R.C. 149.011(G), or the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1).

2011-012

A provisional ballot envelope is subject to state elections laws mandating the seal and preservation of ballots until any possible recount or election contest is completed; state law, within the meaning of R.C. 149.43(A)(1)(v) and R.C. 3501.13(C), prohibits the release of provisional ballot envelopes during the time a board of elections is required to preserve ballots under seal. A provisional ballot envelope is a "public record" subject to release once the time has passed during which a board of elections is required to preserve ballots under seal. R.C. 3505.181(B)(5)(b) does not prohibit the release of provisional ballot envelopes. Rather, R.C. 3505.181(B)(5)(b) prohibits the release of particular voter information through the free access system to anyone other than the voter to whom that information pertains. The free access system established pursuant to R.C. 3505.181(B)(5)(b) may be used only by a voter to gain access to information about his individual provisional ballot.

2010-029

The Ohio Department of Job and Family Services, in support of civil or criminal prosecutions arising out of investigations by the Bureau of Workers' Compensation, may provide certified copies of employer payroll records to the Bureau or the appropriate prosecuting authority and may allow a Department representative to testify regarding those records at trial.

APPENDIX C

2010-016

R.C. 1347.15 requires every state agency to adopt rules under R.C. Chapter 119 regulating access to its confidential personal information systems, but exempts the courts, any “judicial agency,” any state assisted institution of higher education, and any local agency from such requirements. A judicial agency is part of the judicial branch of government or renders judgments in quasi-judicial proceedings. The Board of Tax Appeals (BTA) renders judgments to resolve justiciable disputes arising under Ohio’s tax laws and its proceedings are quasi-judicial in nature. The BTA is therefore not subject to the requirements of R.C. 1347.15.

2008-019

An audio tape recording of a meeting of a board of township trustees that is created by the township fiscal officer for the purpose of taking notes to create an accurate record of the meeting, as required by R.C. 507.04(A), is a public record for purposes of R.C. 149.43. The audio tape recording must be made available for public inspection and copying, and retained in accordance with the terms of the township records retention schedule for such a record.

2008-003

Depending on the manner in which it is formed and operated, a non-profit corporation formed under R.C. 183.061 might be subject to the public records law in R.C. 149.43, the open meetings law in R.C. 121.22, or particular contracting controls governing state agencies.

2007-042

A county coroner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, is not required by R.C. 313.09 to keep the autopsy and examination reports he prepares, but he must keep copies of the reports in conformance with his office’s records retention schedule, as filed and approved in accordance with R.C. 149.38.

A county coroner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, is required by R.C. 149.43 to make available to any person for inspection and copying the copies of the autopsy and forensic examination reports that he prepared for the jurisdictional coroner, unless a report is not a public record under a statutorily defined or constitutionally mandated exception.

A county corner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, has no duty under R.C. 313.10(D) or (E), or R.C. 149.43, to make available to journalists or insurers copies of any records that his office has retained in connection with performance of the contract if the records are not public records.

2007-039

In the context of R.C. 2923.129, which concerns the powers and duties of a county sheriff with respect to information kept pertaining to licenses to carry concealed handguns, a journalist is prohibited from making a reproduction by any means, other than through his own mental processes, of the information the journalist is permitted to view under the statute. A sheriff may exercise his discretion in determining a reasonable manner by which a journalist may view, but not copy, that information so long as the confidentiality of other information relative to licenses to carry concealed handguns is maintained. Any party subject to the journalist exception is prohibited from revealing, disclosing, or otherwise making known any of the information made confidential by the statute, is prohibited except as required by a court order, or unless a statute specifically authorizes or requires other uses of such information. R.C. 2923.129(B)(1) does not prohibit a newspaper from publishing information that a journalist has viewed in accordance with the statute.

2007-034

A piece of physical evidence collected by law enforcement in connection with a criminal investigation and held by a county prosecuting attorney following conclusion of the trial, appeals, and post-conviction proceedings to which the evidence pertains is not a public records for purposes of R.C. 149.43.

2007-026

Article II, Section 34a of the Ohio Constitution and Am.Sub. HB690, 126th Gen. A. (2006) (eff. April 4, 2007) do not render confidential information about a public employee's rate of pay, the number of hours worked by the employee, or the amount of compensation paid to the employee, nor do they otherwise exempt this information from inspection and copying under R.C. 149.43. Therefore, any person, including any co-worker of the public employee, has the right under R.C. 149.43 to inspect and copy information about a public employee's pay rate, hours worked, and amounts paid.

2007-025

The "good cause" standard described in 1991 Ohio Op. Att'y Gen. No. 91-003, under which the executive director of a public children services agency (PCSA) determines whether to grant access to child abuse or neglect investigation records included as confidential records under R.C. 5153.17, is applicable to all PCSA records described in R.C. 5153.17, including records pertaining to matters other than child abuse or neglect investigations. (1991 Ohio Op. Att'y Gen. No. 91-003, approved and clarified).

A PCSA is responsible for keeping records described in R.C. 5153.17 confidential and may disclose them only as authorized by statute, in accordance with the "good cause" standard described in 1991 Ohio Op. Att'y Gen. No. 91-003. If, in conjunction with a criminal proceeding or investigation or a civil proceeding, a PCSA received a subpoena requesting the disclosure of information that is confidential under R.C. 5153.17, the PCSA, in order to preserve the confidentiality prescribed by statute, may file a motion to quash the subpoena, thereby seeking from the court an in camera review of the PCSA's records and a determination as to whether and to what extent the information may be disclosed.

2006-038

In the absence of a statute to the contrary, foreign individuals and entities domiciled in a foreign country are “persons” who are entitled to inspect and copy public records pursuant to R.C. 149.43.

2006-037

Except as provided in R.C. 149.43 (A)(1)(a)-(y) and R.C. 1724.11, information kept in the records of a community improvement corporation designated as an agency of a county under R.C. 1724.10 is a public record for purposes of R.C. 149.43.

2005-047

Because individuals possess a constitutionally protected privacy right in their social security numbers, such numbers when contained in a court’s civil case are not public records for purposes of R.C. 149.43. Prior to releasing information from a court’s civil case files, the clerk of court has a duty to redact social security numbers included in those files. An individual’s personal financial information contained in a court’s civil case files is a public record for purposes of R.C. 149.43 unless the information is not a “record” of the court or the information falls within one of the exceptions to the definition of the term “public record” set forth in R.C. 149.43(A)(1).

2005-039

R.C. 3701.741(C)(1)(c) requires a health care provider or a medical records company to provide one free copy of an individual’s medical records only to the Ohio Department of Job and Family Services, not to the various county departments of job and family services. A *county* department of job and family services is not included within the language “[t]he department of job and family services, in accordance with [R.C. Chapter 5101] and the rules adopted under those chapters,” as used in R.C. 3701.741(C)(1)(c).

2004-050

Under Ohio law, a board of elections has a duty to preserve ballots in sealed containers until any possible recount or election contest is completed. Ballots are therefore not “public records” for purposes of R.C. 149.43 while they remain under seal or where they are subject to a court order prohibiting their release. In addition, they are not subject to inspection under R.C. 3501.13 during such time.

However, once the time within which a possible recount or election contest may occur has passed, pursuant to R.C. 3501.13, such ballots are subject to public inspection “under such reasonable regulations as shall be established by the board.” Nonetheless, the board of elections remains under a duty to “carefully preserve” ballots used in an election for the remainder of the preservation period prescribed by R.C. 3505.31.

In addition, upon completion of the canvass of election returns under R.C. 3505.32, poll books used in an election are public records of a board of elections and are subject to public inspection in accordance with any reasonable regulations the custodian board of elections has established under R.C. 3501.13.

2004-045

Information of a personal nature within a criminal case file is subject both to Ohio's public records law and a constitutional right of access. Therefore, whether information within a criminal case file may be withheld depends on whether the information meets or is exempt from the definition of a "public record" under the Public Records Act, R.C. 149.43(A)(1), and whether the qualified constitutional right has been overridden.

2004-033

A county recorder who makes available in her office a photocopying machine for use by the public may not charge the two-dollar per page fee set forth in R.C. 317.32(l) where the public without the assistance of the recorder or her staff operates the photocopier. The recorder is, instead, subject to R.C. 149.43(B), which requires a public office to provide copies of public records "at cost."

2004-011

A county recorder may not impose a fee upon a requester to inspect records or make copies using their own equipment. However, the county recorder may impose reasonable rules governing the use and operation of such equipment.

2003-030

R.C. 2303.26 requires the clerk of courts to carry out her duties "under the direction of [her] court." Once the judges of a court of common pleas have delegated to the judges of a division of that court authority to determine whether to make that division's records available to the public through the Internet, and the judges of that division have ordered that its records are not to be accessible to the public through the Internet, the clerk of courts must obey that order, unless a court of competent jurisdiction reverses that order or prohibits its enforcement.

2003-025

Pursuant to R.C. 2953.321, R.C. 2953.54, and R.C. 2151.358, a county sheriff may not disclose to the public information in an investigatory work product report that pertains to a case the records of which have been ordered sealed or expunged pursuant to R.C. 2953.31-.61 or R.C. 2151.358. But the sheriff must disclose information in the report that relates to a defendant, suspect, or juvenile offender who has not had this information ordered sealed or expunged, unless one of the exceptions set forth in R.C. 149.43(A) applies to the information.

APPENDIX C

2002-040

Except as provided in R.C. 149.43(A)(1) and R.C. 2950.081(B), sex offender registration information submitted to a county sheriff by a sex offender who is required to register with the sheriff under R.C. Chapter 2950 may be made available to the general public on the Internet through the sheriff's website, provided such access to the public records does not endanger the safety and integrity of the records or interfere with the discharge of the sheriff's duties.

A county sheriff that provides sex offender registration information to the general public on the Internet through a website must provide a written notice containing the information set forth in R.C. 2950.11(B) to all the persons listed in R.C. 2950.11(A). Except for the persons listed in R.C. 2950.11(A)(1) and Ohio Admin. Code 109:5-2-03(A)(1)(c), a county sheriff may use email to electronically transmit the written notice required by R.C. 2950.11(A). The persons listed in R.C. 2950.11(A)(1) and Rule 109:5-2-03(A)(1)(c) must receive the written notice required by R.C. 2950.11(A) by regular mail or by personal delivery to their residences.

2002-030

In the absence of facts indicating that the names and addresses of a county sewer district's customers fall within one of the exceptions to the definition of "[p]ublic record" contained in R.C. 149.43(A)(1), such names and addresses are public records that are subject to disclosure by the sewer district in accordance with R.C. 149.43.

2002-014

Transcripts prepared pursuant to R.C. 2301.23 by a court reporter of the court of common pleas are public records under R.C. 149.43, unless the transcripts include or comprise a record that is exempt from the definition of "public record" in R.C. 149.43(A)(1). (1989 Op. Att'y Gen. No. 89-073, syllabus, paragraph two, approved and followed.) A party in a trial of a civil action in the court of common pleas that requests a photocopy of a transcript previously prepared pursuant to R.C. 2301.23 in the action is required to pay the compensation fixed by the judges of the court of common pleas under R.C. 2301.24 in order to obtain the photocopy of the transcript from the court.

Each party in a trial of a civil or criminal action in the court of common pleas that requests a transcript pursuant to R.C. 2301.23 is required to pay the court reporter of the court of common pleas who prepares the transcript the compensation fixed by the judges of the court of common pleas in accordance with R.C. 2301.24.

Each time that a party in a trial of a civil or criminal action in the court of common pleas requests a transcript pursuant to R.C. 2301.23, the court reporter of the court of common pleas who prepares the transcript is entitled to the entire compensation fixed by the judges of the court of common pleas in accordance with R.C. 2301.24, unless the party requests at the same time more than one transcript of the same testimony or proceeding. In such a situation, pursuant to R.C. 2301.25, the court reporter is entitled to the entire compensation fixed by the judges of the court of common pleas in accordance

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with R.C. 2301.24 for the first copy and to one-half the compensation allowed for the first copy for each additional copy.

A prosecuting attorney in a trial of a civil or criminal action in the court of common pleas or the court of appeals may not obtain a photocopy of a transcript previously prepared in the action from the court's file without paying the court reporter of the court of common pleas or the court of appeals, respectively, the compensation fixed by the judges of the court of common pleas in accordance with R.C. 2301.24 or the judges of the court of appeals in accordance with R.C. 2501.17.

2001-041

Information on a run sheet created and maintained by a county emergency medical services (EMS) organization that documents medication or other treatment administered to a patient by an EMS unit, diagnostic procedures performed by an EMS unit, or the vital signs and other indicia of the patient's condition or diagnosis satisfied the "medical records" exception of R.C. 149.43(A)(1)(a), and thus, is not a "public record" that must be released to the public pursuant to R.C. 149.43(B). (1999 Op. Att'y Gen. No. 006, approved and followed.)

Information on a run sheet created and maintained by a county emergency medical services organization that documents medication or other treatment administered to a patient by an EMS unit, diagnostic procedures performed by an EMS unit, or the vital signs and other indicia of the patient's condition or diagnosis, and is relied upon by a physician for diagnostic or treatment purposes, is a communication covered by the physician-patient testimonial privilege of R.C. 2317.02(B), and thus, is confidential information, the release of which is prohibited by law for purposes of R.C. 149.43(A)(1)(v). (1996 Op. Att'y Gen. No. 005 and 1999 Op. Att'y Gen. No. 006, approved and followed.) If a physician authorizes an emergency medical technician (EMT) to administer a drug or perform other emergency medical services, documentation of the physician's authorization and administration of the treatment or procedure by the EMS unit may also fall within the physician-patient testimonial privilege.

A written protocol, developed pursuant to R.C. 4765.41, without reference to a particular patient, for use by emergency squad personnel in cases where communication with a physician is not possible and the patient's life is in danger, does not establish, for purposes of R.C. 149.43(A)(1)(v), a physician-patient testimonial privilege between the physician who prepared the protocol and a patient who is treated by an EMS unit pursuant to that protocol, where there is no further communication by the EMS unit with the physician about the condition or treatment of the patient.

If an EMS unit administers a controlled substance to a patient, the patient's name and address documented on the run sheet will, pursuant to Ohio Admin. Code 4729-9-14(A)(3) (Supp. 2000-2001), be deemed to meet a portion of the record keeping requirements of R.C. 3719.07, and thus, will be confidential under the terms of R.C. 3719.13, if the run sheet becomes a permanent part of the patient's medical record. However, information on the run sheet that pertains to the administration of a drug that is not a controlled substance is not required by R.C. 3719.07 or other provision of R.C. Chapter 3719, and thus, does not fall within the confidentiality requirements of R.C. 3719.13.

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2001-012

Data, photographs, maps, and other information created, collected, prepared, maintained, and published pursuant to R.C. 1504.02(A)(6) by the Department of Natural Resources' Division of Real Estate and Land Management are public records for purposes of R.C. 149.43. If the Department of Natural Resources stores, produces, organizes, or compiles public records in such a manner that enhances the value of data or information included therein, it may charge for copies an amount that includes the additional costs of copying the information in such enhanced or "value-added" format. R.C. 1501.01, which authorizes the director of the Department of Natural Resources to "publish and sell" data, reports and information, does not authorize the director to charge an amount in excess of its actual cost for providing copies of the records created and maintained pursuant to R.C. 1504.02(A)(6).

2000-046

A county recorder may make indexed public records available through the Internet, provided this does not endanger the records or interfere with the recorder's duties. A fee cannot be charged or collected to inspect or copy records from the Internet when a person does not use equipment maintained by the recorder. Internet access cannot be limited to real estate companies.

2000-036

Governor's Office of Veterans Affairs is prohibited by 32 C.F.R. § 45.3(e)(4) from releasing a copy of a Certificate of Release or Discharge from Active Duty (DD Form 214) without the written consent of the service member who is the subject of the DD Form 214.

2000-021

R.C. 149.43, as amended by Am. Sub. S.B. 78, 123rd Gen. A. (1999) (eff. Dec. 16, 1999), imposes no duty upon any particular individual or office to notify public offices of a peace officer's residential and familial information or to update the database. For purposes of R.C. 149.43, a child of a peace officer includes a natural or adopted child, a stepchild, and a minor or adult child.

Under the definition in R.C. 149.43(A)(7), peace officer residential and familial information encompasses only records that both contain the information listed in the statute and disclose the relationship of the information to a peace officer or a spouse, former spouse, or child of the peace officer, and those are the only records that come within the statutory exception to mandatory disclosure provided by R.C. 149.43(A)(1)(p). The exception for peace officer residential and familial information applies only to information contained in a record that presents a reasonable expectation of privacy, and does not extend to records kept by a county recorder or other public official for general public access. The general provisions of R.C. 149.43 excluding peace officer residential and familial information from mandatory disclosure do not operate to impose requirements or limitations on systems of public records that have been designed and established for general public access, where there is no reasonable basis for asserting a privacy interest and no expectation that the information will be identifiable as peace officer residential and familial information.

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R.C. 149.43 provides no liability for disclosing information that comes within an exception to the definition of “public record.” Liability may result, however, from disclosing a record that is made confidential by a provision of law other than R.C. 149.43.

1999-012

When county office chooses to create customized document from an existing public record it may only charge its actual cost, which does not include employee time or computer programming fees.

1999-006

Information on a county EMS run sheet that does not satisfy either the medical records exception or the “catch-all” exception is a public record and must be disclosed pursuant to R.C. 149.43(B). HIV testing information contained in run sheets must not be disclosed.

1997-038

Information submitted to a county sheriff pursuant to R.C. Chapter 2950 by an individual who has been convicted of or pleaded guilty to a sexually oriented offense is a public record that must be made available for inspection to any person, except to the extent that such information comprises “records the release of which is prohibited by state or federal law.”

1997-010

Information within a workers’ compensation claim file that does not fall within one of the exceptions listed in R.C. 149.43(A)(1) is a public record which must be disclosed to the public pursuant to R.C. 149.43(B) when the Bureau of Workers’ Compensation, a member of the Industrial Commission, the claimant, or the employer has authorized the examination of the claim file as required by R.C. 4123.88. (1975 Op. Att’y Gen. No. 75-062 (syllabus, paragraph one), overruled.)

Information in a workers’ compensation claim file that indicates that an individual has been diagnosed as having AIDS or an AIDS-related condition is not a public record that the Bureau of Workers’ Compensation must disclose to the public.

1996-034

A county recorder is not required to remove or obliterate social security numbers from mortgages, mortgage releases, veterans discharges, and financing statements before recording those instruments.

1996-005

Records collected for trauma system registry or emergency medical services incidence reporting systems that constitute medical records or physician/patient privilege do not constitute public records. The State Board of Emergency Medical Services is not required to disclose such records, and the Board is required to maintain confidentiality of any patient identifying information contained therein.

1995-001

PASSPORT administrative agency operated by a private non-profit agency is a public office for purposes of Ohio Public Records Act and public body for purposes of Ohio Open Meetings Act.

1994-089

A clerk of court may not remove, from a court file, a pleading that is stricken from the record or an original pleading when a substitute pleading is filed in its place unless removal is permitted by law or by the appropriate records commission.

1994-084

A county human services department may release the address of a current recipient of aid to dependent children, general assistance, or disability assistance to a law enforcement agency that has authority to apprehend an individual under an outstanding felony warrant.

1994-058

A township clerk is authorized to have access to estate tax returns or other records or information made confidential by R.C. 5731.90 in connection with the duties and responsibilities of the clerk. A county treasurer who reports collection of estate tax to a township clerk is permitted to reveal the identity of taxpayer to the township clerk in the course of making the report.

1994-046

All information pertaining to LEADS is not public record subject to disclosure.

1994-006

If a person requesting copies of public records stored by the county recorder on microfiche or film presents a legitimate reason why paper copies are insufficient or impracticable and assumes the expense of making the copies in that medium, the county recorder is required to make available in the same medium a copy of the portions of the microfiche or film containing the public records.

1993-038

When a court orders official records of a case sealed and such order does not require sealing of the pertinent official records of an administrative licensing agency, the agency is not required to seal its records. The agency may seal its records containing information prohibited from disclosure pursuant to R.C. 2953.35(A).

1993-033

Pursuant to R.C. 5715.07, all documents relating to the assessment of real property that are in the office of a county board of revision or in the official custody or possession of the board of revision are required to be open to public inspection.

A member or an employee of a county board of revision who, pursuant to R.C. 5715.07, makes available for public inspection documents concerning the transactions, property, or business of any person, company, firm, corporation, association, or partnership that are in the office of the county auditor or county board of revision or in the official custody or possession of such officer or board, does not violate R.C. 5715.49 or R.C. 5715.50.

1993-010

Blueprints submitted to a county building inspection department for approval under R.C. 3791.04 are public records while in possession of the department.

1992-076

Estate tax returns and other tax returns filed pursuant to R.C. Chapter 5731 are confidential and may be inspected or copied only as provided in R.C. 5731.90. A township clerk has no authority to inspect or copy estate tax materials that are made confidential by R.C. 5731.90 except pursuant to court order for good cause shown.

1992-071

A county board of mental retardation and developmental disabilities may not disclose to a parent organization the names of the board's clients or the names, addresses, and phone numbers of the parents of the board's clients unless proper consent is obtained.

1992-046

Reports and investigations pursuant to R.C. 2151.421 are confidential and dissemination of such information to an agency or organization is permitted only if the agency or organization has rules or policies governing the dissemination of confidential information consistent with Ohio Admin. Code 5101:2-34-38. Ohio Admin. Code 5101:2-34-38(F) permits disclosure of child abuse and neglect investigation information when the dissemination of information is believed to be in the best interest of an alleged child victim, his family, or caretaker, a child residing, or participating in an activity at an out-of-home care setting where alleged abuse or neglect has been reported, or a child who is an alleged perpetrator.

1992-005

A copy of a federal income tax Form W-2 prepared and maintained by a township as an employer is subject to inspection as a public record.

1991-053

Federal tax return information filed by an individual pursuant to R.C. 3113.215(B)(5) and a local rule of court is a public record. Confidentiality of federal income tax returns is inapplicable to income tax returns submitted to a court of common pleas by a litigant in connection with a child support determination or modification proceeding in that court.

1991-003

A county prosecuting attorney may release children services agency's child abuse or neglect investigation file only with the written permission of the agency executive secretary. The executive secretary may only grant permission for good cause. Child abuse or neglect investigation records are not public records.

1990-103

Absent statutory authority, a county recorder is without authority to delete documents from the records of the county recorder.

1990-102

Ohio Public Records Act does not make confidential all records filed with Ohio taxation authorities. Specific revised code sections make particular information confidential.

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1990-101

Records of juvenile offenders are not public records to the extent they are law enforcement investigatory records. Sealed or expunged juvenile records are not public records.

1990-099

Public school officials may not release, without proper consent on behalf of the student, information concerning illegal drug or alcohol use by students to law enforcement agencies where such information is personally identifiable information, other than directory information concerning any student attending a public school.

1990-057

Subject to the provisions of R.C. 149.351(A), a county official may, pursuant to a valid contract, temporarily transfer physical custody of the records of his office to a private contractor to microfilm such records at the facilities of the contractor. A contract must incorporate sufficient safeguards to prevent loss, damage, mutilation, or destruction of the records.

1990-050

Names, addresses, and telephone numbers of employees of a public school district are public records open to inspection by any person. Motive is irrelevant even if for commercial purposes.

1990-007

Unless state or federal law prohibits disclosure to a person who is the subject of information kept by an Ohio public office, R.C. Chapter 1347 permits the person to inspect and copy such information. Chapter 1347 is not a provision of state law prohibiting the release of information under R. C. 149.43.

1989-084

Records that do not constitute personal information systems as used in R.C. Chapter 1347 are not subject to the disclosure provision of Chapter 1347. Child abuse and neglect investigatory records maintained by public children services agency constitute investigatory material compiled for law enforcement purposes within the meaning of R.C. 1347(A)(1)(e).

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1989-073

Shorthand notes taken pursuant to R.C. 2301.20 and transcripts prepared pursuant to R.C. 2301.23 are public records unless they include or comprise a record excepted from the definition of public record.

1989-055

A judicial determination that a particular entity is a public office under R.C. 149.011(A) is not determinative of the question whether that entity is a public office under R.C. 117.01(D) for purposes of audit and regulation by the Auditor of State.

1989-042

Providing that properly approved record retention schedules under R.C. 149.333 permit disposal of paper or other original documents after recording by optical disk process, original documents may be destroyed and the recorded information stored on optical disks becomes the original of the public record.

1988-103

An application to the County Veterans Service Commission for assistance under R.C. Chapter 5901 is a public record (now exempt, R.C. 121.22 and 149.43).

1987-024

A community improvement corporation organized pursuant to R.C. Chapter 1724 is not a political subdivision as that term is defined in R.C. 2744.01(F).

1987-010

A public school may not forward personal information regarding the first-time use of drugs or alcohol by a student on school property to local law enforcement agencies without the consent of the student's parent or guardian, or the student, where appropriate.

1986-096

Disclosure of the number of persons employed by an applicant at the time of application for a loan is prohibited where such information is submitted to the Director of Development, the Controlling Board, or the Minority Development Financing Commission in connection with a loan application.

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1986-089

A personnel file maintained by an exempted village school district is a public record except to the extent such file may include records that are exempt from the definition of the term public record.

1986-069

A letter requesting an advisory opinion from the Ohio Ethics Commission under R.C. 102-08 and the documents held by the commission concerning such advisory opinion are public records.

1986-033

The Unemployment Compensation Board of Review may, in accordance with the specific terms of the schedule of retention pertaining thereto and approved by the State Records Commission, destroy or dispose of its hearing records six months after a decision by the Board of Review becomes final. The hearing records shall be destroyed or disposed of within 60 days after the expiration of the six-month retention period, unless, in the opinion of the Board of Review, they pertain to any pending case, claim or action.

1985-087

Appraisal cards that are kept by the office of the county auditor and that contain information used in the valuation and assessment of real property for purposes of taxation are subject to public inspection, and disclosure of such documents does not violate either R.C. 5715.49 or R.C. 5715.50.

1984-084

Client records held by the Rehabilitation Services Commission in connection with the state vocational rehabilitation services program are not public records and cannot be disclosed without the consent of the person to whom the records relate.

1984-079

Grand jury subpoenas while in possession of the clerk of courts prior to issuance in accordance with R.C. 2939.12 are not public records.

1984-077

Under R.C. 1347.08, a juvenile court must permit a juvenile or a duly-authorized attorney who represents the juvenile to inspect court records pertaining to the juvenile unless the records are exempted under R.C. 1347.04(A)(1)(e), 1347.08(C) or (E)(2). Under Juv. R. 37(B), the records may not be put to any public use except in the course of an appeal or as authorized by order of the court.

1984-015

The director of the Ohio Department of Mental Retardation and Developmental Disabilities may make available to persons approved by the director the medical, psychological, social, and educational records of persons who have been nominated for protective services pursuant to R.C. 5123.58.

1983-100

The Ohio State Board of Psychology does not have the authority to expunge or actually destroy its official records except as provided by law. It is not required to seal any of its official records unless an order sealing the same specifically directs the Board to do so by the court. The Board may seal information or data contained in its official records that are not public records within the meaning of R.C. 149.43(A)(1).

1983-099

Since the examinations administered by the State Board of Examiners of Architects are records under R.C. 149.40 and there is no law prohibiting the destruction of such examinations or requiring the retention of such examinations for a specified period of time, such examinations may be disposed of in accordance with a schedule of records retention or an application for records disposal approved by the State Records Commission pursuant to R.C. 149.32.

1983-071

A county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of aid to Families with Dependent Children or poor relief unless such law enforcement personnel are prosecuting fraud or seeking child support and are directly connected with the enforcement of the Food Stamp Act or regulations, other federal assistance programs or general relief programs, or the applicant or recipient has consented in writing.

1983-003

Materials of all varieties (including but not limited to, correspondence, memorandums, notes, reports, audio and video recordings, motion picture films, and photographs) that are received by public officials and employees, or created and maintained by them at public expense, are considered records if they serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office.

Ohio Attorney General Opinions Interpreting Ohio’s Open Meetings Act

The following are summaries of selected Opinions of the Ohio Attorney General that have addressed or interpreted the Ohio Open Meetings Act. Be aware that the validity of any one opinion may have been affected by a subsequent court opinion or statutory change. The full text of these opinions can be found at <http://www.ohioattorneygeneral.gov/opinions>.¹

2012-032

The Ohio Vendors Representative Committee is a public body subject to the requirements of R.C. 121.22. A subcommittee of the Committee is a public body subject to the requirements of R.C. 121.22 when the subcommittee provides advice and recommendations to the Committee.

2012-022

To hold an executive session pursuant to R.C. 121.22(G)(1), a person must, in the motion and vote to hold that executive session, state which one or more of the approved purposes listed in R.C. 121.22(G)(1) are the purposes for which the executive session is to be held. This requirement is not satisfied if the motion and vote state, without further explanation, that the session is to discuss a “personnel matter.”

Any vote or action by a county children services board officially placing its executive director on administrative leave is a formal action under R.C. 121.22(H) that must occur in a meeting open to the public. The failure to comply with this requirement renders the vote or action invalid.

2011-038

A public body that is subject to the requirements of the Open Meetings Act may not vote in an open meeting by secret ballot. R.C. 121.22 is intended to ensure openness and accountability in government. Voting by secret ballot is inconsistent with the purpose of the open meetings law and denies the people their right to view and evaluate the workings of their government. A meeting is not “open” to the public where members of a public body vote by way of secret ballot. (1980 Ohio Op. Att’y Gen. No. 083 (syllabus, paragraph 4), overruled).

¹ When searching the full text of these opinions on the Attorney General’s website, use the numbers found in bold above each body of text. If using another search method (such as LexisNexis or Westlaw), the citation format will be different. For example, to locate the first opinion listed on this page, the format would be – 2012 Ohio Op. Att’y Gen. No. 2012-032.

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2009-034

During a declared emergency, R.C. 5502.24(B) provides a limited exception to fulfilling the requirements of the Open Meetings Act. A public body may meet at an alternative location, and exercise their powers and functions “in the light of the exigencies of the emergency without regard to or compliance with time-consuming procedures and formalities prescribed by law pertaining thereto.” However, this is not an exception to the “in person” meeting requirement of R.C. 121.22(C) and does not permit the public body to meet by teleconference.

2008-003

Depending on the manner in which it is formed and operated, a non-profit corporation formed under R.C. 183.061 might be subject to the public records law in R.C. 149.43, the open meetings law in R.C. 121.22, or particular contracting controls governing state agencies.

2007-019

A board of township trustees has authority to enforce its own rules as to how to maintain order at, approve the minutes of, and provide and distribute a written agenda for its regular meetings.

2000-035

Public hearings conducted by a township board of zoning appeals to consider the matters described in R.C. 519.14(A)-(C) are not “meetings” for purposes of R.C. 121.22, but rather, are quasi-judicial proceedings. (1985 Ohio Op. Att’y. Gen. No. 044 (syllabus, paragraph two, overruled); followed by *Groff-Knight v. Bd. of Zoning Appeals of Liberty Twp.*, 5th Dist. No. 03CAH08042, 2004 Ohio App. LEXIS 2856 (June 14, 2004).

1996-046

The health care quality advisory council created by R.C. 4121.442 is without authority to permit a member who is appointed by the Governor to designate an alternate to vote on such member’s behalf at council meetings.

Pursuant to R.C. 121.05, the Administrator of Workers’ Compensation may designate his assistant or a deputy to serve in his place as a member and chairman of the health care quality advisory council.

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1996-010

Absent adoption of a rule by a county board of mental retardation and developmental disabilities specifying the day on which its annual organizational meeting is to be held, the board's annual organizational meeting is not one of the regularly scheduled meetings for purposes of the removal provision of R.C. 5126.04.

1995-030

A district advisory council, established pursuant to R.C. 3709.03 has inherent authority to call special meetings of the council by acting through the concurrence of a majority of its members with respect to a particular meeting or by promulgating a procedural rule authorizing specified officers or members of the council to call special meetings; the board of health of a general health district and the state director of health, as expressly provided in R.C. 3709.03, are the only other public authorities with power to call a special meeting of the district advisory council.

1995-001

A PASSPORT administrative agency that is operated by a private not-for-profit agency pursuant to Ohio Admin. Code 5101:3-31-03(A)(1) is a public office as defined at R.C. 149.011(A) for purposes of the public records law and a public body as defined at R.C. 121.22 for purposes of the open meetings law.

1994-096

A committee of private citizens and various public officers or employees that is established by the board of health of a general health district for the purpose of advising the board on matters pertaining to the administration of a state or federal grant program is a public body; where the establishment of the committee is not required or authorized by the terms of the grant or any action of the general health district board, such committee is not a public body.

1994-014

The panel created by the Erie County Court of Common Pleas in Local Rule 17.08(F) for the purpose of making recommendations to that Court on the reasonableness of requests for attorney fees for the representation of indigent clients is not subject to the open meeting requirements of R.C. 121.22.

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1993-033

Pursuant to R.C. 5715.07, all documents relating to the assessment of real property that are in the office of a county board of revision or in the official custody or possession of the board of revision are required to be open to public inspection.

1993-012

The Industrial Commission is a “public body,” as defined in R.C. 121.22(B)(1), and is, therefore, subject to the open meeting requirements of R.C. 121.22. R.C. 4121.36 provides that orders, rules, memoranda, and decisions of the Industrial Commission with respect to hearings conducted under R.C. 4121.36 may be adopted either in a meeting of the Commission or “by circulation to individual commissioners,” and thereby establishes an exception to the requirement of R.C. 121.22 that the Industrial Commission adopt all resolutions, rules, or formal actions in an open meeting.

1992-078

The board of directors of a county agricultural society is a public body subject to the open meeting requirements of R.C. 121.22.

1992-077

An advisory committee legislatively created by a board of county commissioners to make recommendations to the board on matters relating to a proposed county jail is a public body subject to the provisions of R.C. 121.22.

1992-065

A housing advisory board created by a county under R.C. 176.01 is a public body for purposes of R.C. 121.22.

1992-032

A board of township trustees must conduct its open meetings in a public meeting place, as determined in its fair and impartial discretion; board of township trustees may not conduct an executive session from which the public is excluded in order to deliberate about a proposed zoning change, even if the board ultimately votes on that matter in an open meeting, unless the deliberations were solely for the purpose of discussing one or more of the six subject areas listed in R.C. 121.22(G).

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1990-028

Unless a statutory or constitutional provision expressly grants a specific officer of a public body the power to make the decision to call a meeting of such body, the power to make the decision is vested in the body itself and not inherently in an individual officer; the decision that a meeting is necessary requires a concurrence of a majority of the body; pursuant to R.C. 5715.09, the secretary of the board of revision has the power to call a meeting of the board as necessary.

1988-087

A board of township trustees has authority to adopt reasonable rules for the conduct of its meetings; such rules may not prohibit audio and video recording of township proceedings, but may regulate such recording to promote the orderly transaction of business without unreasonably interfering with the rights of those present.

1988-029

The Public Utilities Commission Nominating Council is a public body as defined in R.C. 121.22.

1988-003

The word “property,” as used in R.C. 121.22(G)(2), means real and personal property, which includes both tangible and intangible property; the PERS may discuss in executive session the purchase or sale of tangible or intangible property authorized under R.C. 145.11, including but not limited to such items as bonds, notes, stocks, shares, securities, commercial paper, and debt or equity interests.

1985-046

In its development of amendments to the state health plan, the Statewide Health Coordinating Council (SHCC) must, pursuant to R.C. 3702.56(C), follow the procedures set forth in R.C. 119.03(A), (B), (C) and (H), with the exception of requirements imposed pursuant to R.C. 121.24 or 127.18, but need not comply with 119.03(D), (E), (F), (G) and (I); in particular, the SHCC must follow the public notice and hearing procedures of R.C. 119.03(A) and (C) and must file proposals with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review under R.C. 119.03(B) and (H); but proposed amendments to the state health plan are not subject to invalidation by the General Assembly pursuant to R.C. 119.03(I).

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1985-044

A township board of zoning appeals is a public body for purposes of R.C. 121.22; a township board of zoning appeals may not conduct, in an executive session, deliberations concerning a zoning appeal heard pursuant to R.C. 519.14(A) or (B). (Syllabus, paragraph two, overruled by 2000 Ohio Op. Att’y Gen. No. 035).

1982-081

A soldiers’ relief commission established pursuant to R.C. 5901.02 is a public body for the purposes of R.C. 121.22.

1981-005

Because the superintendent’s offices are, pursuant to R.C. 3319.19, to be used by the county board of education when it is in session, and because the board’s meetings are required by R.C. 121.22 to be open to the public, the duty of the board of county commissioners to provide and equip offices includes the duty to provide some type of conference facility.

1980-083

A county central committee of a political party is a public body and its members are public officials for purposes of R.C. 121.22; convening the committee pursuant to R.C. 305.02 is a meeting as defined by R.C. 121.22(B)(2), even when the number of members present is fewer than the majority of the total membership; the committee may discuss appointment of a person pursuant to its duties under R.C. 305.02 in executive session under R.C. 121.22(G), however, final voting on such appointment must be held in a public meeting; convening the committee for conducting purely internal party affairs unrelated to the committee’s duties of making appointments to vacant public offices is not a meeting as defined by R.C. 121.22(B)(2). (Syllabus, paragraph four, overruled by 2011 Ohio Op. Att’y Gen. No. 038).

1979-110

The Safety Codes Committee, created by resolution of the Industrial Commission for the purpose of reviewing safety code requirements and drafting revisions for consideration by the Industrial Commission, is not a public body for the purposes of R.C. 121.22.

APPENDIX D

1979-061

The governing board of a community improvement corporation, organized in the manner provided in R.C. 1702.04 and R.C. 1724.01 to R.C. 1724.09, inclusive, does not constitute a public body for the purposes of R.C. 121.22 unless it has been designated an agency of a county, municipal corporation, or any combination thereof, pursuant to R.C. 1724.10.

1978-059

The Internal Security Committee, established by the Industrial Commission and the Bureau of Workers' Compensation pursuant to R.C. 4121.22(D), is a public body for purposes of R.C. 121.22.

1977-075

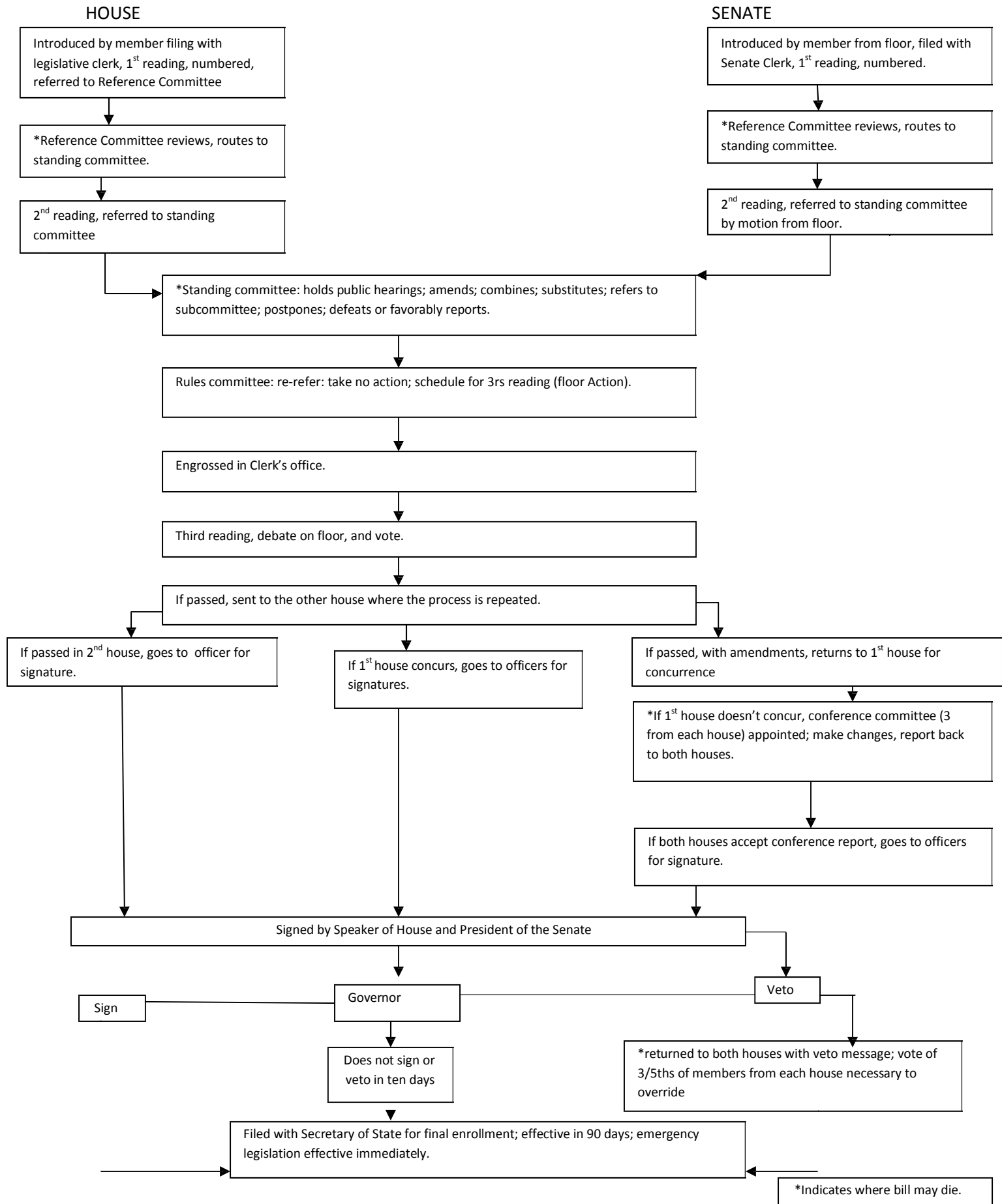
Pursuant to R.C. 4112.05(B), the Ohio Civil Rights Commission may not reveal the final terms of conciliation, written or unwritten, to members of the general public who are not parties to the matters conciliated.



Mike DeWine

Mike DeWine
Attorney General

HOW A BILL BECOMES A LAW IN OHIO



Ohio Sunshine Laws FAQs

What is the Ohio Public Records Act?

The Ohio Public Records Act is built on the United States' historical position that the records of government are "the people's records." The Public Records Act provides citizens with steps to take in order to request records from any public office in Ohio while protecting certain specific types of records from release. It also establishes a legal process to enforce compliance when a requester feels that a public office has failed to satisfy its public records obligations.

Who can make a request for public records?

Any person can request public records by simply asking for them. Usually, the request can be made in any manner the requester chooses: by phone, in person, or in an e-mail or letter. The requester cannot be required to identify him- or herself, or to explain why the records are being requested, unless a specific law requires it. Often, however, a voluntary discussion about the requester's purposes or interest in seeking certain information can aid the public office in locating and producing the desired records.

What does a public office have to do when it receives a public records request?

A public office must organize and maintain its records to meet its duty to respond to public records requests and must keep a copy of its records retention schedule at a location readily available to the public. When it receives a public records request for specific existing records, the public office must provide inspection of the requested records during regular business hours or provide copies within a reasonable period of time. A requester is entitled to delivery of copies at the actual cost of packaging and delivery by any available means of delivery or transmission him or her requests.

The public office may withhold specific records or specific portions of records that are covered by an exception to the Public Records Act but is required to give the requester an explanation for any part of a record withheld, including the legal authority that requires or permits that withholding. In addition to denials based on an exception, a public office may deny a request in the extreme circumstance where compliance would unreasonably interfere with the discharge of the office's duties. A request can also be refused if the office no longer keeps the records, if the request is for items that are not records of the office, if the requester does not revise an ambiguous or overly broad request, or if the requester refuses to pay the cost of copies.

To whom does the Public Records Act apply?

The rights and duties set out in the act apply only to a "public office or person responsible for public records," which includes governmental subdivisions, private entities that are the "substantial equivalent" of public institutions, and other "persons responsible for public records." The act does not apply to private corporations or other organizations and is also different from the federal Freedom of Information Act (FOIA), which applies only to federal agencies.

If someone is not given public records, what recourse does that person have?

People who believe they have been wrongly denied a public record that they requested can file a lawsuit, called a mandamus action, against the public office, and the burden will be on the office to show the court that any record that it withheld was clearly protected by one or more valid exceptions under the law. If not, the public office will be ordered to provide the record, and may be subject to a civil penalty and payment of attorney fees. The Public Records Act is a “self-help” statute, in that citizens who believe that the act has been violated must independently pursue a remedy, rather than asking a public official such as the Ohio Attorney General to initiate the legal action on their behalf.

Does a public office have to work with the requester to find public records?

If a requester makes an ambiguous or overly broad request that the public office denies, the Public Records Act provides for negotiation between the parties to help identify, locate and deliver the requested records. Unless a specific law says otherwise, a requester does not have to give the reason for wanting the records, give his or her name or make the request in writing, but the request does have to be clear and specific enough for the public office to reasonably identify what public records are being requested.

Where can I find more details about the Public Records Act?

For more information about the Public Records Act, the 2009 Ohio Sunshine Laws manual is a great resource for finding answers to common and complex questions.

What is the Ohio Open Meetings Act?

The Open Meetings Act requires public bodies in Ohio to conduct all public business in open meetings that the public may attend and observe. This means that if a public body is meeting to discuss and vote on or otherwise decide public business, the meeting must be open to the public.

What is a public body, as applicable in the Ohio Open Meetings Act?

Public bodies are decision-making groups of state or local government agencies or institutions. Examples of these bodies include school boards, city councils and boards of trustees. However, the Open Meetings Act does not apply to some public bodies, such as the Ohio General Assembly and grand juries.

What is a meeting, as applicable in the Ohio Open Meetings Act?

In order for the Open Meetings Act to apply, the members of a public body must be meeting to discuss the public’s business. A meeting is a prearranged gathering of a majority of the members of a public body for the purpose of discussing public business. For example, if there are five members of a school board, and only two get together to discuss public business, this is not a meeting and the Open Meetings Act would not require it to be open to the public. However, if three members gather to discuss public business, this is a meeting and the Open Meetings Act would require it to be open to the public. Also, if there is a meeting, the public body must give notice to the public.

What kind of notice should be given to the public when a meeting is planned?

Public bodies must notify the public when and where each meeting will take place and must sometimes say what will be discussed. Also, every public body must establish, by rule, a reasonable method for notifying the public in advance of meetings. There are three types of meetings, each requiring different types of notice. "Regular meetings" are held at predictable intervals, such as once a month. The notice required for this type of meeting includes letting the public know of the time and place of the meeting. A "special meeting" is any other kind of meeting. Public notice must be given of the time, place and purpose of the special meeting. At least 24 hours notice must be given to the public and only topics related to the stated purpose of the meeting can be discussed. "Emergency meetings" are special meetings that are needed because a situation requires immediate action. The public body must immediately notify certain media outlets and individuals of the time, place and purpose of the emergency meeting. As with special meetings, only topics related to the stated purpose of the meeting can be discussed.

Are detailed minutes required to be taken at a public meeting?

A public body must keep full and accurate minutes of its meetings, but those minutes do not have to be an exact transcript of every word said. Minutes must be promptly prepared, filed and made available for public inspection.

What are executive sessions, as applicable in the Open Meetings Act, and when can they be used?

Closed-door sessions, or executive sessions, are initiated when a member makes a motion for a closed-door session and the public body votes on it. These sessions are attended by only members of the public body and persons they invite. Executive sessions may be held for only a few specific purposes. No votes may be taken or decisions made on the matter(s) discussed during the executive session. Members would have to reconvene their meeting and then openly conduct a vote.

What can be done if there are violations of the Open Meetings Act?

If any citizen believes that a public body has violated the Open Meetings Act, that citizen may file an injunctive action in common pleas court to compel the public body to obey the act. If an injunction is issued, the public body must correct its actions, may have to pay court costs, and must pay a fine of \$500. Whichever party loses the lawsuit pays the reasonable attorney fees of the other party as ordered by the court.

If someone is seeking access to a public body's minutes, and the body is not turning them over, that person can file a mandamus action under the Public Records Act to force the creation of, or access to, meeting minutes. Mandamus can also be used to order a public body to give notice of meetings to the person filing the action.

Any action taken by a public body while that body is in violation of the Open Meetings Act is invalid. A member of the public body who violates an injunction imposed for a violation of the Open Meetings Act may be subject to a court action removing that official from office.

What if I want more details about the Open Meetings Act?

The 2009 Ohio Sunshine Laws manual is a great resource for finding answers to common and complex questions.

What makes a “record” a “public record?”

While the rights of records access under the Ohio Public Records Act apply to all records kept by an Ohio public office, the terms “records” and “public records” do not include every document or item found in a public office -- only those that document the policies, operations and other activities of the office.

Can some public records be withheld from a requester?

The General Assembly has passed a number of laws that protect certain records by either requiring or allowing a public office to withhold them from public release. Where a public office uses one of these “exceptions,” the office may only withhold a record or part of a record clearly covered by the exception and must tell the requester what legal authority it is relying on to withhold the record. If only part of a page, audiotape or image is protected by an exception, then the public office must redact (obscure or delete) only that part of the record and provide the unprotected remainder to the requester.

The General Assembly can change the preceding rights and duties for any particular records, for particular public offices, for particular requesters or in specific situations. In other words, the general rules of public records law may be modified in a variety of ways. In applying the Public Records Act, the courts interpret the act and any claimed exceptions in favor of disclosure.

Visit the following website for additional information on the Sunshine Laws, including the manual referenced above: www.ohioattorneygeneral.gov/Sunshine

You can also view or download a pdf copy of the manual, *Ohio Sunshine Laws: An Open Government Resource Manual*, on the Erie-Ottawa MHRB website by clicking on the “General Information” tab under “About MHRB” in the left column.



Public Health Futures

Considerations for a New Framework for Local Public Health in Ohio

Final Report



Prepared by the Health Policy Institute of Ohio
June 15, 2012



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We are grateful to Pat Libbey, consultant to the Robert Wood Johnson Foundation, for his guidance and comments.

We are very thankful for the 25 key informants who took time out of their busy schedules to participate in interviews, including eighteen Public Health Futures Steering Committee members and seven state-level stakeholders (a list of the key informants is provided in the Appendix).

This project was funded by: Sisters of Charity Foundation of Canton, Mt. Sinai Foundation, St. Luke's Foundation, Health Foundation of Greater Cincinnati, the George Gund Foundation and Anonymous.

Patrick Lanahan, J.D., of Health & Human Services Consulting, LLC and HealthCare Perspectives, LLC, served as a consultant to the Health Policy Institute of Ohio (HPIO) throughout this project. Patrick contributed critical facilitation and consensus-building skills and content expertise, conducted and analyzed the key-informant interviews, and assisted with project management and preparation of the report.

Amy Bush Stevens, MSW, MPH of HPIO served as the Project Manager, assisted with facilitation, and prepared this report.

Reem Aly, Mary Wachtel, Amy Rohling McGee, Janet Goldberg and Nick Wiselogel, all of HPIO, contributed to this project.



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The Public Health Futures report is submitted by an ad hoc steering committee appointed by the Board of Directors of the Association of Ohio Health Commissioners. The representative steering committee was established to consider and make recommendations from the perspective of local Ohio health commissioners on the functions, fiscal requirements and organization of local health districts in Ohio. We were supported in this process by a consulting team from the Health Policy Institute of Ohio.

From the onset, the Steering Committee acted to facilitate and guide the collection and interpretation of data, information and opinions on the current status and potential for local health districts in Ohio. This information was gathered through a survey, an all-member meeting and regional dialogues to assure input from all corners of our local health district leadership community. Although the Steering Committee's mark is patently evident in the report, we trust the final product represents the measured consensus of all our membership.

The Report provides a summary of the current state of local public health in Ohio and some recommendations for the future. It documents a remarkable variety of activities local public health agencies perform at the local level with very limited resources. Unfortunately, the Report also illuminates significant disparities in funding and service capacity between health districts in Ohio and in many ways reflects an unsustainable system in decline.

The Report is not a road map nor is it prescriptive. The findings and recommendations should however help steer a continued discourse on strengthening our agencies' capacity to effect and improve the health status of all Ohioans. The discussion will need to be expanded to include the broader public health system including; the Ohio Department of Health and other state agencies, our sister public health associations, hospital and health care systems, elected officials and others. The Report provides a foundation based on sound research for transitioning local public health to an appropriately structured and well financed system positioned to meet core public health responsibilities at the local level.

We wish to thank the Health Policy Institute of Ohio, particularly the project support team of Patrick Lanahan, Amy Bush Stevens and Amy Rohling McGee. They were fast learners of the complex world of local public health, offered keen insight, patient facilitation and exceeded our expectations. Thanks to the AOHC leaderships whose terms this project overlapped: Wally Burden boldly launched the project and Jim Adams continued strong support through its completion; their timely guidance and statesmanship assured the project's success. Our appreciation also is extended to the generous support of the project funders. Thanks also to the Steering Committee members for their commitment and fortitude; it was a true privilege working with you. And finally, thank you to the AOHC membership for their contribution, utmost dedication to their profession and their vision for the future.

Respectfully,

Kathleen Meckstroth
Health Commissioner
Washington County Health District

Gene Nixon
Health Commissioner
Summit County Public Health



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Executive Summary

Public Health Futures

Considerations for a New Framework for Local Public Health in Ohio

Purpose

Recognizing the need to critically assess the feasibility of sustaining 125 local health departments (LHDs) and to develop proactively new approaches to improving effectiveness and efficiency, the Association of Ohio Health Commissioners (AOHC) established the Public Health Futures Project in 2011 to explore new ways to structure and fund local public health. The project has guided AOHC members through a critical look at the current status of local public health and a careful examination of cross-jurisdictional shared services and consolidation as potential strategies for improving efficiency and quality.

This process prompted members to clarify the role of local public health in Ohio by defining a Minimum Package of Local Public Health Services and to assert a vision that upholds the values of community engagement, quality, accountability, efficiency, and public health science. In order to attain this vision, Ohio's local public health infrastructure will need to be strengthened. This report presents a decision framework that will help LHDs to explore the use of cross-jurisdictional sharing and voluntary consolidation as tools to bolster foundational capacities (such as quality improvement, information management, and policy development) and to assure basic public health protections in all Ohio communities. The report also provides a set of recommendations designed to address the complex financial and political challenges facing LHDs in order to better position local public health as a vital leader in improving Ohio's health outcomes.

Objectives

The Public Health Futures Project Steering Committee, made up of 17 AOHC members from a wide variety of LHDs (urban and rural, city and county departments, and all regions of the state), identified the following objectives for the project:

1. Describe the current status of Ohio's LHDs, including structure, governance, funding, and current collaboration.
2. Identify rules, policies, and standards that may impact the future of local public health (including statutory mandates, national public health accreditation standards, and policy changes affecting health care, such as the Affordable Care Act).
3. Identify stakeholder interests and concerns and develop a set of criteria for assessing new models of collaboration or consolidation.
4. Identify and assess potential models of collaboration and consolidation and the factors that would contribute to successful implementation of those models.
5. Foster consensus among LHDs to prioritize a small number of preferred frameworks.
6. Create a decision-making guide for LHDs to use when moving forward with a new framework.



Methods

AOHC contracted with the Health Policy Institute of Ohio (HPIO) to conduct research, facilitate a consensus-building process among members, and prepare this report. HPIO and the Steering Committee used the following methods to meet the project objectives:

Current Status of Ohio's Local Health Departments

- Review of descriptive information about Ohio LHDs
- State-level regulatory scan and review of relevant standards and policies (e.g., Public Health Accreditation Board standards, Affordable Care Act, State Health Improvement Plan)
- Online survey of AOHC members regarding current collaboration
- Ohio law allows for three different types of health districts—city, general, and combined. Currently, about three-quarters of Ohio LHDs (71%) are “general” or “combined” districts that encompass all or part of a county. The remaining 29% are comprised of a single city. Ohio does not currently have any LHDs that encompass two or more counties.
- Three-quarters of Ohio counties have only one LHD, while the remaining quarter of counties have up to five LHDs operating within their borders.
- Ohio is home to many LHDs that serve small population sizes. More than half of Ohio LHDs serve fewer than 50,000 residents.

Stakeholder Considerations, Lessons Learned, and Guiding Concepts

- Key-informant interviews with Steering Committee members and state-level policymakers
- Targeted review of research literature related to public health systems, local government reform, and models for collaboration and consolidation

Consensus and Recommendations

- Series of consensus-building meetings: AOHC all-members meeting in March 2012, five regional district meetings in April 2012, and Steering Committee meetings in May and June 2012
- Steering Committee development and approval of recommendations in June 2012

Current status of Ohio's local health departments

Structure and governance

- Public health is governed and administered at the local level in Ohio. The system is decentralized, resulting in significant variability across LHDs in terms of population size served, per-

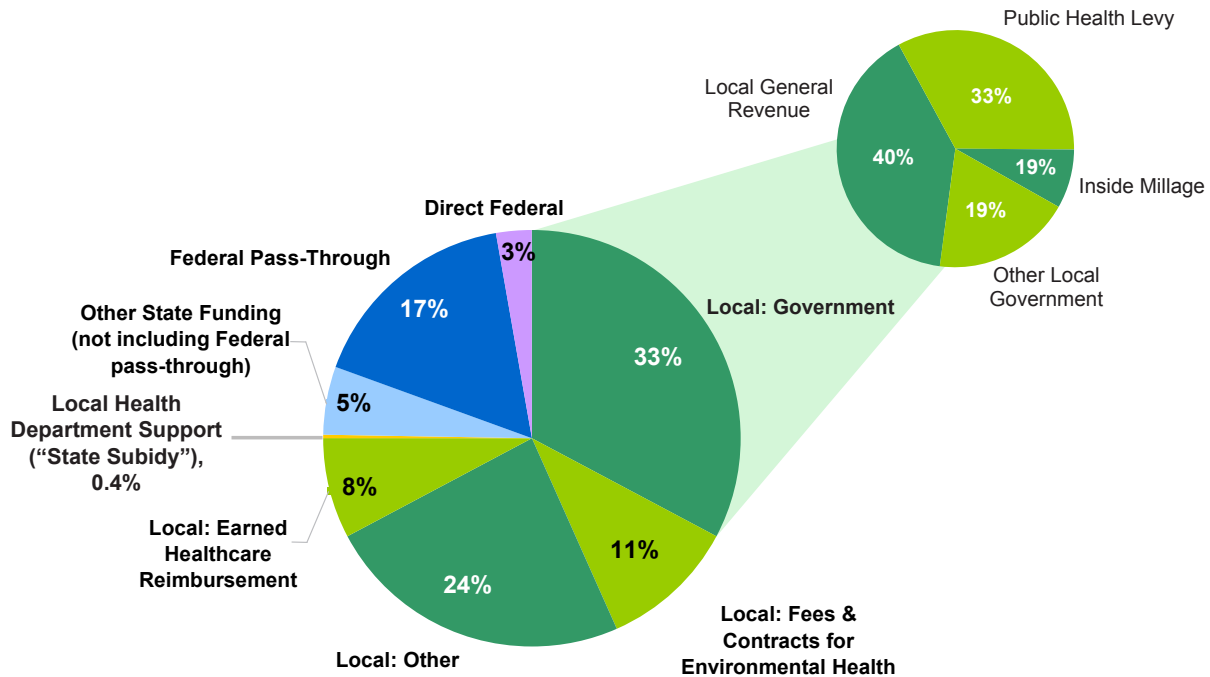
- capita expenditures, and capacity.
- Ohio law allows for three different types of health districts—city, general, and combined. Currently, about three-quarters of Ohio LHDs (71%) are “general” or “combined” districts that encompass all or part of a county. The remaining 29% are comprised of a single city. Ohio does not currently have any LHDs that encompass two or more counties.
- Three-quarters of Ohio counties have only one LHD, while the remaining quarter of counties have up to five LHDs operating within their borders.
- Ohio is home to many LHDs that serve small population sizes. More than half of Ohio LHDs serve fewer than 50,000 residents.

Funding

- LHDs face many resource constraints. Relative to other states, Ohio ranks quite low in terms of median annual per capita LHD expenditures (33rd) and state public health expenditures (41st), and in obtaining federal funding for public health (50th for CDC funding, 39th for HRSA funding).
- Local funding (fees, levy funds, and other local government sources) provides about three-quarters of LHD revenue overall, although these local sources vary widely by jurisdiction. For example, only 39% of LHDs reported local public health levy revenue in 2010. Local funding can also be inconsistent over time because it is vulnerable to local political conditions.
- State-generated funding provides a relatively small portion of LHD revenue. Local Health Department Support (“state subsidy”) provided less than 1% of LHD revenue in 2010 and other state sources provided 5%.
- Combining federal pass-through funds, state grants and contracts, and the state subsidy, 22% of LHD revenue flows through the state. However, only



2010 LHD Revenue, by category (total: \$564,835,411)



Source: 2010 Annual Financial Report, provided by ODH March 2012

one-quarter of that state-controlled portion is generated from state coffers, while three-quarters of the funds come from federal sources.

- Funding for local public health is extremely complex and fragmented. There appears to be considerable misalignment between current funding streams and the services that LHDs are mandated and expected to provide.

Current collaboration and future opportunities

- Since 1919 when the current system was established, the number of functioning LHDs has decreased from 180 to 125 through voluntary unions (city-county mergers) and contract arrangements. Contract arrangements have been far more common than full consolidations.
- LHDs have engaged increasingly in a range of collaborative arrangements over the past ten years, including "pooling" funds for shared services and

contracts between LHDs to provide services.

- According to a 2012 survey of AOHC members, the vast majority of LHDs are currently sharing some services with other jurisdictions, including "pooled funding" and contracts with other LHDs. The types of services that are shared the most are epidemiology, HIV testing, lead assessment, and STD testing and treatment.
- Administrative functions (information technology, human resources, purchasing) and expertise (subject matter experts, leadership and policy development, and accreditation and quality improvement guidance) appear to be the areas in which health commissioners are most interested in sharing services in the future. Respondents reported little current sharing in these areas, possibly because there have been few grant-funded incentives to collaborate in these areas.



Economic and policy environment

- In the past few years LHDs report experiencing widespread job losses and program cuts. In 2009, 72% of LHDs reported loss of staff and 85% reported cuts to at least one programmatic area.
- Like all local government agencies in Ohio, LHDs are grappling with the challenges of “leaner government.” Furthermore, the Ohio Department of Health has experienced a reduction in staff and can no longer provide as many functions for LHDs as it did in the past.
- Accreditation for state and local health departments is a new process launched in 2011. Although accreditation is voluntary, Ohio LHDs are now required to conduct annual “improvement standard” self-assessments using the Public Health Accreditation Board measures. The accreditation standards delineate the essential functions of public health, providing a new tool for assessing LHD capacity and performance. They also present a new opportunity to re-examine the relationship between public health governance structures and financing and contemporary agreed-up standards of essential public health services.
- The Patient Protection and Affordable Care Act of 2010 (ACA) has several potential implications for public health. Most significantly, public health’s traditional role in assuring access to care will be affected by decreases in the number of uninsured Ohioans and changes to the health care delivery system. The ACA presents challenges and opportunities for LHDs and will require careful coordination with the broader health care system.

Stakeholder considerations

HPIO conducted 25 key-informant interviews in January and February 2012. The key-informants represented two distinct groups:

- *Local Public Health Group* (n=18): Public Health Futures Steering Committee members and AOHC staff (Executive Director).
- *Statewide Policy Group* (n=7): Senior officials from the Ohio Department of Health and the Governor’s Office of Health Transformation; experts on “leaner government” and shared services; and representatives from academic public health.

The following themes emerged as strong messages and areas of consensus across both groups of stakeholders:

- Nearly every key informant believes that the *time is right* for a systematic approach to develop a model for the future. Almost all felt that figuring this out may be difficult, but is necessary.
- There is broad agreement that the new model should define a *minimum standard of health protection*. Most informants believe that the new model needs to address ways of organizing, funding, and providing capacity to support such a standard as a high priority.
- Everyone in the Local Public Health group reported that they are *already doing a great deal of collaborating* within the public health system. All but a few view this positively and most are motivated to do more for reasons other than pure necessity. Only a few were negative or skeptical about collaboration in general; these respondents tended to view resource sharing as a necessity related to factors beyond their control.
- *Motivations are high and interest in new approaches is pervasive* among representatives of nearly all types of



jurisdictions and sizes. Informants pointed to many examples of success in their current collaboration, along with acknowledging that there are probably more efficient ways to organize and do things together.

- Nearly everyone prefers that *next steps taken should be initiated from within the public health system*, rather than being imposed externally.
- *Deciding what are truly local needs* was a common theme, as is figuring out how to address these needs within a new model.
- Most interviewees urged that the future model should *prioritize services and activities that public health can do and others systems cannot or do not do*.
- Most believe that public health should be *more connected with and do more partnering with the broader health care system*.

Lessons learned

Results of an AOHC survey on LHD collaboration and a review of the research literature on shared government services identified the following factors associated with successful collaboration:

- Mutual trust and a history of collaboration
- Strong commitment from top-level leadership
- Partnerships between communities with similar demographics and/or ability to customize to local needs for each community; equity for all partners, while being sensitive to unique local needs
- Success at increasing efficiency and/or cost reductions
- Ability to maintain services that are needed and expected by the community but are no longer feasible for one LHD to provide.
- Achieving clarity of purpose about the reasons for engaging in collaboration
- Weighing the costs of collaboration,

including transactional costs, and anticipating systems and business process barriers

Consensus and recommendations

The purpose of the Public Health Futures project is to develop a proposed model for Ohio's local governmental public health system that includes a mechanism for governance and sustainable financing, considers cross jurisdictional sharing and/or regionalization, enhances quality and assures value. While *cross jurisdictional sharing and/or regionalization* were initially the primary focus of the project, it became clear during the consensus-building process that *enhancing quality and assuring value* were equally—if not more—important. Recognizing that mechanisms for governance and financing are means not ends, AOHC members voiced the need to first describe a vision for what local public health should be doing, and then to develop a framework for *how* to fulfill that vision. To that end, the Steering Committee developed the following vision statement.

Vision for the Future of Local Public Health in Ohio

The Association of Ohio Health Commissioners (AOHC) envisions a future where all Ohioans are assured basic public health protections, regardless of where they live, and where local public health continues to be a vital leader in improving Ohio's health outcomes. We envision a network of local health departments that:

- Are rooted in strong engagement with local communities;
- Are supported by adequate resources and capabilities that align with community need and public health science; and
- Deliver high quality services, demonstrate accountability and outcomes, and maximize efficiency.



Rationale for the recommendations

The Steering Committee's recommendations aim to address the following challenges and opportunities related to the *role of public health*:

- Maintain the communicable disease prevention and environmental health protections that have historically been the core function of local public health.
- Respond to increasing recognition that public health has a strong role to play in preventing chronic disease and that the population health approach is critical to improving health outcomes.
- Re-balance public health's role in providing clinical services within the new healthcare landscape, and modernize payment and quality systems when medical services and care coordination are provided.
- Ensure that local public health is positioned to help achieve the outcomes prioritized in the State Health Improvement Plan and Local Community Health Improvement Plans in order to improve the overall health of Ohioans.

These recommendations also aim to address the following *financial and structural* challenges and opportunities:

- Strike a balance between local control and statewide standardization. Support continued local community engagement and preserve the amount of funding generated from local sources, while at the same time improving the consistency of performance, quality, and outcomes for all LHDs. Home rule and the heavy reliance on local funding (76% of all LHD revenue) help LHDs to be strongly rooted in their local communities, although this local structure also presents potential barriers to formal cross-jurisdictional sharing and consolidation (e.g., city/county officials' concerns about resource allocation, lack of parity in fee structures, wide variability in LHD per-capita expenditures and services provided, etc.).
- Use cross-jurisdictional sharing and consolidation as tools for building LHD capacity and improving performance. Transitions to cross-jurisdictional sharing and consolidation must balance local choice with a shift toward more formal and efficient models of collaboration, and must critically assess the feasibility of sustaining 125 LHDs, more than half of which serve fewer than 50,000 residents.
- Build political support for increasing—or at least maintaining—funding for local public health.
- Identify initial steps to address the problems caused by the complex, fragmented, and categorical grant-driven funding environment. These problems include:
 - Lack of dedicated funding sources for the Foundational Capabilities needed to support effective services (e.g., quality assurance, information management, policy development)
 - Lack of dedicated funding sources for cross-jurisdictional sharing and consolidation
 - Inability to make long-term investments to improve efficiency and quality due to revenue instability (e.g., competitive grants, local political conditions, changes in funder priorities, etc.), and
 - Misalignment between current funding streams and the services that LHDs are mandated and expected to provide based on current public health science and local community need.



Recommendations

Local public health capacity, services, and quality

1. All Ohioans, regardless of where they live, should have access to the Core Public Health Services described in the Ohio Minimum Package of Local Public Health Services. (see Minimum Package diagram)
2. All local health departments (LHDs) should have access to the skills and resources that make up the Foundational Capabilities in order to effectively support the core services.
3. The Ohio Minimum Package of Local Public Health Services should be used to guide any future changes in funding, governance, capacity building, and quality improvement. (see Structure Analysis diagram)
4. All LHDs should become eligible for accreditation through the Public Health Accreditation Board (PHAB).
5. LHDs that meet Minimum Public Health Package standards should be prioritized for grant funding in their jurisdiction.
6. The biennial LHD Health Improvement Standards reported to the Ohio Department of Health via the Ohio Profile Performance Database should serve as the platform for assessing LHD provision of the Minimum Package. The Profile Performance Database may need to be updated periodically to capture the Core Public Health Services and Foundational Capabilities.
7. The Association of Ohio Health Commissioners (AOHC) supports a review of current laws and regulations to determine where mandates may need to be revised or eliminated and should advocate for elimination of mandates that do not align with the Minimum Package of Public Health Services.

Jurisdictional structure

8. Decisions about the jurisdictional structure of local public health in Ohio should be based upon LHD ability to efficiently and effectively provide the Minimum Package of Public Health Services. Additional factors that should be considered are:
 - a. Number of jurisdictions within a county,
 - b. Population size served by the LHD, and
 - c. Local geographic, political, and financial conditions. (see Structure Analysis diagram)
9. All LHDs should assess:
 - a. Their ability to provide the Minimum Package of Public Health Services,
 - b. The potential impact of cross-jurisdictional sharing or consolidation on their ability to provide those services, and,
 - c. The feasibility of and local conditions for cross-jurisdictional sharing or consolidation.
10. Most LHDs, regardless of size, may benefit from cross-jurisdictional sharing. However, LHDs serving populations of <100,000 in particular may benefit from pursuing cross-jurisdictional sharing or consolidation to ensure adequate capacity to provide the Minimum Package.



11. LHDs in counties with multiple LHDs should consider the feasibility of voluntary consolidation.
12. Statutory barriers to voluntary multi-jurisdictional consolidation and cross-jurisdictional sharing should be removed, such as allowing for:
 - a. Multi-county levy authority, and
 - b. Consolidation of non-contiguous cities or counties, and
 - c. Addressing other barriers identified in feasibility analyses.

Financing

13. All LHDs should have adequate funding to maintain the Minimum Package of Public Health Services. AOHC should continue the work of the Public Health Futures Financing Workgroup to identify cost estimates for the Minimum Package (Core Services and Foundational Capabilities) by November 2012.
14. The Ohio Department of Health and LHDs should work together to shift the focus from managing fragmented program silos and funding streams toward improving and coordinating state and local organizational capacity to effectively deliver the Minimum Package.
15. AOHC should advocate for block grants or direct contracts when possible so that communities can implement programs based on Community Health Assessment and Improvement Plan priorities.
16. AOHC should work to assure that local health departments are able to obtain fair reimbursement from public and private payers for eligible services (including efforts to streamline insurance credentialing).
17. AOHC should explore new mechanisms for improving the stability and sustainability of federal, state, and local funding, such as:
 - a. Dedicated percentage of inside millage in lieu of local levies,
 - b. Standardized cost methodology to establish fees for programs where no explicit fee-setting authority currently exists,
 - c. Increasing Local Health Department Support (“state subsidy”) to LHDs to support Foundational Capabilities,
 - d. Excise taxes (e.g., tobacco, sugar-sweetened beverages, medical transactions), and
 - e. Integrated health care delivery reimbursement.

Implementation Strategy

18. AOHC should seek funds to support feasibility assessments, transition planning, and incentives necessary for LHDs to implement the new framework (such as submitting a proposal to the RWJF Center for Sharing Public Health Services grant program).
19. AOHC should convene a meeting with state health policy leaders to formally present and discuss the recommendations of the Public Health Futures final report and to collaboratively plan strategies and action steps to advance forward progress toward the vision for the future.

Ohio Minimum Package of Local Public Health Services

Core public health services

All LHDs should be responsible for providing the following services in their district — directly or by contracting with another LHD

- **Environmental health services**,* such as water safety, school inspections, nuisance abatement, and food safety (restaurant and grocery store inspections)
- **Communicable disease control**, vaccination capacity, and quarantine authority*
- **Epidemiology** services for communicable disease outbreaks and trending* and disease prevalence and morbidity/mortality reporting*
- **Access to birth and death records**
- **Health promotion and prevention** (health education* and policy, systems, and environmental change)
 - Chronic disease prevention (including tobacco, physical activity, nutrition)
 - Injury prevention
 - Infant mortality/preterm birth prevention
- **Emergency preparedness**, response, and ensuring safety of an area after a disaster
- **Linking people to health services** to make sure they receive needed medical care*
- **Community engagement**, community health assessment and improvement planning, and partnerships

*Service mandated by state of Ohio (ORC, OAC) (Note: Ohio law mandates several specific services related to environmental health and communicable diseases. Not all are listed here. See Appendix D for complete list.)

Other public health services

(Varies by community need as determined by Community Health Assessments) LHDs play a role in assuring that these services are provided in their community — either by local public health or other organization(s), including health care providers and other government agencies

Clinical preventive and primary care services

- Immunizations
- Medical and dental clinics (primary care)
- Care coordination and navigation
- Reproductive and sexual health services (including STD testing, contact tracing, diagnosis, and treatment)

Specific maternal and child health programs, such as

- WIC (Women Infants and Children) nutrition program
- Help Me Grow home visiting program (HMG)
- Bureau for Children with Medical Handicaps program (BCMH)

Non-mandated environmental health services, such as

- Lead screening, radon testing, residential plumbing inspections, etc.

Other-optional depending on community need and other available providers

- Home health, hospice care, home visiting programs (other than HMG)
- School nurses; Drug and alcohol use prevention; Behavioral health
- Municipal ordinance enforcement

Foundational Capabilities

All LHDs should have access to the following skills and resources. Access can occur through cross-jurisdictional sharing.

Quality assurance

- Accreditation
- Quality improvement and program evaluation
- Identification of evidence-based practices

Information management and analysis

- Data analysis expertise for surveillance, epidemiology, community health assessment, performance management, and research
- Information technology infrastructure
- Interface with health information technology

Policy development

- Policy analysis and planning
- Expertise for policy, systems, and environmental change strategies

Resource development

- Grant writing expertise and grant seeking support
- Workforce development (training, certification, recruitment)
- Service reimbursement, contracting, and fee collection infrastructure (interface with third party payers)

Legal support

- Specialized consultation and analysis on public health law

Laboratory capacity

- Environmental health lab
- Clinical lab services (as appropriate)

Support and expertise for LHD community engagement strategies

- Community and governing entity engagement, convening and planning
- Public information, marketing, and communications
- Community health assessment and improvement planning
- Partnerships to address socio-economic factors and health equity





Local Public Health Structure Analysis

Does the Local Health Department (LHD) have the capacity to efficiently provide the Ohio Minimum Package of Public Health Services?

- Adequate funding to support FTEs necessary for Core Services, and
- Adequate funding to support FTEs necessary for Foundational Capabilities, and
- Able to complete PHAB accreditation pre-requisites and apply for accreditation

Yes

No

Number of Jurisdictions in County
AND
Population Size Served by LHD

County has
more than one
LHD
OR
LHD population
size is <100,000

County has one
LHD
OR
LHD population
size is 100,000+

A

Maintain continuous
quality improvement,
maximize efficiency, and
seek accreditation

B

Assess feasibility and
local conditions for LHD
consolidation

Local choice based on
feasibility assessment

- Relationships and leadership
- Local geographic, political, and financial context
- Potential impact on efficiency, capacity, and quality

Is consolidation feasible
and beneficial?

If yes, pursue
consolidation

No

C

Obtain needed
capabilities from
formal cross-
jurisdictional
sharing (such as
Council of
Governments,
Service Center or
other contractual
arrangements)



Overview

The Association of Ohio Health Commissioners (AOHC) established and led an effort called Public Health Futures started in late 2011 to explore approaches to cross-jurisdictional shared services, consolidation, and/or regionalization in order to develop a new model or a set of preferred models for Ohio's local governmental public health system that enhances quality, assures value, and attains sustainable financing.

History. Ohio's current local public health system was established in 1919 by the Hughes-Griswold Act. Partly in response to a global influenza pandemic, the Act required Ohio's 2,158 city, village, and township health units to combine into 88 county ("general") and 92 city health districts in order to strengthen the system's ability to protect the health of all Ohioans (Healthy People- Healthy Communities, 1993). Successful public health efforts and scientific advances have greatly extended life expectancies since then, and the primary threats to health have transitioned from communicable diseases such as influenza and tuberculosis, to chronic conditions such as heart disease, diabetes, and cancer.

The science of public health has continued to advance in recent decades. Evidence-based approaches that focus on population-based health and the social and environmental context of individual behavior, rather than individual clinical care and education, have been identified as the most effective ways to improve health, particularly related to preventable chronic conditions and injuries (Frieden, 2010). Technology has improved the capacity to collect, analyze, and share health data. Yet the basic organizational, jurisdictional, and financial underpinnings of Ohio's local public health system continue to reflect century-old mechanisms that focus on infectious-disease-related environmental health (sanitation, quarantine measures, water purification, pest control, food safety) and direct services for specific vulnerable populations (Bureau of Children with Medical Handicaps, Help Me Grow, WIC).

Recent changes within the system have been driven largely by local-level decisions and by reactions to major national events. Despite a 1993 recommendation from a legislatively-mandated study committee that the boundaries of local health jurisdictions should be "coincident with county boundaries," the basic structure of local health jurisdictions established in 1919 has not undergone any significant restructuring. Some local districts have chosen to combine and many others have elected to contract with another department for services. Along the way, reactions to a number of events have also shaped the current system. Recent examples include the nation's focus on emergency preparedness following the September 11, 2001 terror attacks and subsequent anthrax scares, and the need for coordinated action to protect Ohio's citizens from the H1N1 virus. The result of this history is a patchwork of programs, mandates, and funding streams that include vestiges of public health's original environmental health functions, "last resort" safety net services, new emphasis on disaster preparedness, and more proactive approaches to health promotion.

Current challenges and opportunities. Presently, a series of additional unprecedented factors are converging that pose fundamental challenges and bring



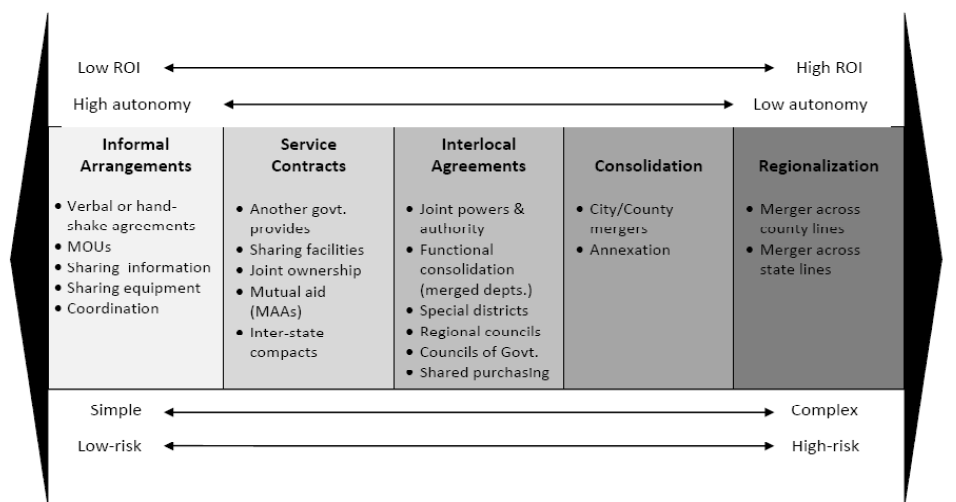
significant opportunities to the relevance, capacity, and sustainability of Ohio's local public health agencies. First, changes are occurring in the broader health care delivery system (in part due to the Affordable Care Act), including greater emphasis on prevention and care coordination, expanded coverage for those who were uninsured previously and served by public health safety net services, and new opportunities to improve quality through data integration and electronic health records. Second, national accreditation standards for state and local public health were introduced in 2011, providing new opportunities for performance assessment and quality improvement. Added to this milieu, Ohio's public agencies are coping with reductions in available state and local government funding and the need to produce better value by optimizing shrinking resources.

The potential impact of the scope and pace of these changes is profound. Many of Ohio's local public agencies, including local health departments, are struggling with the increasingly desperate task of merely trying to "survive." Some agencies within public health and throughout all levels and areas of government are re-shaping themselves, adopting new tools, building on longstanding and newly formed relationships, and re-examining their purpose, role and capacity to bring maximum value for Ohio's residents.

Determining what to do next in public health through a fragmented series of localized or funding-driven reactions is not a viable option. Such a course would very likely imperil the system's overall ability to meet rising and changing expectations, and many local health departments likely would not survive. Ohio's residents deserve better—and Ohio's local public health agencies can do better.

Possibilities being considered. The AOHC Public Health Futures project began without any preconceived notions about the type of model that will work best for local public health in the future. Recognizing the complexity of the current environment and the need to obtain stakeholder feedback before defining a new framework, the project is exploring the full range of collaborative approaches. As shown in Figure 1, the project recognizes that there is a continuum of shared services, from informal and contract arrangements that retain current jurisdictional autonomy to consolidation and regionalization of jurisdictions. (The glossary in the appendix provides definitions of the terms used in this continuum model.)

Figure 1. Government Shared Services Continuum



Source: Kauffmann, N.J., *Regionalization of Government Services: Lessons Learned & Application for Public Health Delivery*, July 2010. Prepared for the Robert Wood Johnson Foundation.



Purpose and objectives

Recognizing the need to respond to current challenges and proactively propose new approaches to improving the effectiveness and efficiency of local public health, AOHC determined that a comprehensive analysis of the factors and feasible options was needed. AOHC established and led Public Health Futures, guided by a Steering Committee of 17 AOHC members from a wide variety of LHDs (urban and rural, city and county departments, all regions of the state). AOHC contracted with the Health Policy Institute of Ohio (HPIO) to conduct research, facilitate a consensus-building process among members, and prepare a document that summarizes the findings. The Steering Committee identified the following objectives for the project:

1. Describe the current status of Ohio's local public health departments (LHDs), including structure, governance, funding, and current collaboration.
2. Identify rules, policies, and standards that may impact the future of local public health (including statutory mandates, national public health accreditation standards, and policy changes affecting health care, such as the Affordable Care Act).
3. Identify stakeholder interests and concerns and develop a set of criteria for assessing new models of collaboration or consolidation.
4. Identify and assess potential models of collaboration and consolidation and the factors that would contribute to successful implementation of those models.
5. Foster consensus among LHDs to prioritize a small number of preferred frameworks.
6. Create a decision-making guide for LHDs to use when moving forward with a new framework.

The Steering Committee also identified the following questions to be explored by the project:

Role and functions of public health

- What should the minimum capacity of public health look like in the future? What do Ohio residents need and deserve from the public health system?
- What are the potential impacts of various models of shared services and consolidation on LHDs' ability to deliver the essential functions of public health?

Addressing concerns about the current system

- Is the current system sustainable?
- How should the local public health system address longstanding (but now more intense) and fundamental funding shortfalls and fragmentation?
- How can local public health become more proactive and driven by evidence about what works and what is most needed, rather than re-active and driven by chasing after available funding streams?

Considerations for new approaches

- Are there changes in policy or law that are necessary and ought to be considered?
- What models or business practices are available that will help LHDs to go beyond "talk and relationship-based" collaboration to more efficient and standardized collaboration?
- What models or business practices are available that will help LHDs to improve quality and outcomes?



Methods

This report will include three sections, reflecting the descriptive, exploratory, and consensus-building phases of the project. HPIO and the Steering Committee used the following methods to meet the objectives of the project:

Part 1. The Current Status of Ohio's Local Health Departments

- Review of descriptive information about Ohio LHDs
- State-level regulatory scan and review of relevant standards and policies (e.g., Public Health Accreditation Board standards, Affordable Care Act, State Health Improvement Plan)
- Online survey of AOHC members regarding current collaboration

Part 2. Stakeholder Considerations, Lessons Learned, and Guiding Concepts

- Key-informant interviews with Steering Committee members and state-level policymakers
- Targeted review of research literature related to public health systems, local government reform, and models for collaboration and consolidation

Part 3. Consensus and Recommendations

- Series of consensus-building meetings: AOHC all-members meeting in March 2012, five regional district meetings in April 2012, and Steering Committee meetings in May and June 2012
- Steering Committee development and approval of recommendations in June 2012

HPIO presented Parts 1 and 2 of this report at an AOHC all-member meeting in March 2012. Input from members gathered through discussions at the all-member meeting, the regional district meetings, and Steering Committee meetings guided the development of Part 3 of the report.



PART ONE: THE CURRENT STATUS OF OHIO'S LOCAL HEALTH DEPARTMENTS

Objectives

Describe the current status of Ohio's local health departments (LHDs) with respect to:

- Jurisdiction type, size, and governance
- Funding (revenue sources, mechanisms and expenditures)
- Current collaborative arrangements
- National standards for public health functions and capacity
- Regulatory and policy environment factors (federal, state, and local) that may impact cross-jurisdictional sharing and/or regionalism

Summary of key findings

Structure and governance

- Public health is governed and administered at the local level in Ohio. The system is decentralized, resulting in significant variability across LHDs in terms of population size served, per-capita expenditures, and capacity.
- Ohio law allows for three different types of health districts—city, general, and combined. Currently, about three-quarters of Ohio LHDs (71%) are “general” or “combined” districts that encompass all or part of a county. The remaining 29% are comprised of a single city. Ohio does not currently have any LHDs that encompass two or more counties.
- Three-quarters of Ohio counties have only one LHD, while the remaining quarter of counties have up to five LHDs operating within their borders.
- Ohio is home to many LHDs that serve small population sizes. More than half of Ohio LHDs serve fewer than 50,000 residents.

Funding

- LHDs face many resource constraints. Relative to other states, Ohio ranks quite low in terms of median annual per capita LHD expenditures (33rd) and state public health expenditures (41st), and in obtaining federal funding for public health (50th for CDC funding, 39th for HRSA funding).
- Local funding (fees, levy funds, and other local government sources) provides about three-quarters of LHD revenue overall, although these local sources vary widely by jurisdiction. For example, only 39% of LHDs reported local public health levy revenue in 2010. Local funding can also be inconsistent over time because it is vulnerable to local political conditions.
- State-generated funding provides a relatively small portion of LHD revenue. The state subsidy provided less than 1% of LHD revenue in 2010 and other state sources provided 5%.
- Combining federal pass-through funds, state grants and contracts, and the state subsidy, 22% of LHD revenue flows through the state. However, only one-quarter of that state-controlled portion is generated from state coffers, while three-quarters of the funds come from federal sources.



- Funding for local public health is extremely complex and fragmented. There appears to be considerable misalignment between current funding streams and the services that LHDs are mandated and expected to provide.

Current collaboration and future opportunities

- Since 1919 when the current system was established, the number of functioning LHDs has decreased from 180 to 125 through voluntary unions (city-county mergers) and contract arrangements. Contract arrangements have been far more common than full consolidations.
- LHDs have engaged increasingly in a range of collaborative arrangements over the past ten years, including “pooling” funds for shared services and contracts between LHDs to provide services.
- According to a 2012 survey of AOHC members, the vast majority of LHDs are currently sharing some services with other jurisdictions, including “pooled funding” and contracts with other LHDs. The types of services that are shared the most are epidemiology, HIV testing, lead assessment, and STD testing and treatment.
- Administrative functions (information technology, human resources, purchasing) and expertise (subject matter experts, leadership and policy development, and accreditation and quality improvement guidance) appear to be the areas in which health commissioners are most interested in sharing services in the future. They reported little current sharing in these areas, possibly because there have been few grant-funded incentives to collaborate in these areas.

Economic and policy environment

- In the past few years, LHDs report experiencing widespread job losses and program cuts. In 2009, 72% of LHDs reported loss of staff and 85% reported cuts to at least one programmatic area.
- Like all local government agencies in Ohio, LHDs are grappling with the challenges of “leaner government.” Furthermore, the Ohio Department of Health has experienced a reduction in staff and can no longer provide as many functions for LHDs as it did in the past.
- Accreditation for state and local health departments is a new process launched in 2011. Although accreditation is voluntary, Ohio LHDs are now required to conduct annual “improvement standard” self-assessments using the Public Health Accreditation Board measures. The accreditation standards delineate the essential functions of public health, providing a new tool for assessing LHD capacity and performance. They also present a new opportunity to re-examine the relationship between public health governance structures and financing and contemporary agreed-upon standards of essential public health services.
- The Patient Protection and Affordable Care Act of 2010 (ACA) has several potential implications for public health. Most significantly, public health’s traditional role in assuring access to care will be affected by decreases in the number of uninsured Ohioans and changes to the health care delivery system. The ACA presents challenges and opportunities for LHDs and will require careful coordination with the broader health care system.



1.1 Current Landscape

Current structure, governance, and jurisdictions

Public health is governed and administered at the local level in Ohio. Ohio is one of 27 states with local health department governance; state control or shared local-state authority models are used in other states (NACCHO, 2010). Ohio's 88 counties are home to a total of 125 local health departments (LHD). Sixty-five Ohio counties have one LHD (74%), while the remaining 23 counties have two or more LHDs (see Table 1). Ohio law allows for three different types of health districts—city, general, and combined (ORC 3709.01). General districts encompass one county and include all townships and villages in the county. A combined district is the union of a general health district and one or more city districts.

Table 1. Number of LHDs per county

	Number of Counties	Percent of Counties (n=88)
County has 1 LHD	65	74%
County has 2 LHDs	13	15%
County has 3-5 LHDs	10	11%

Source: Ohio Local Health Department Census 2010, Ohio Department of Health, 2011.

Note: Two city health departments have geographic areas that cover two counties (Sharonville in Hamilton and Butler Counties, and Alliance in Stark and Mahoning Counties). For the purposes of this calculation, these city departments were assigned to one county each.

Throughout this report we will refer to “general” and “combined” districts as “county” districts. About three-quarters of Ohio LHDs (71%) encompass county districts. The remaining 29% comprise of a single city. Ohio does not currently have any LHDs that combine two or more counties (Ohio Department of Health, 2011). Nationwide, 68% of LHDs have jurisdictions based on county boundaries, while 21% are city jurisdictions and 12% are multi-county or other (Ohio Department of Health, 2011). Table 2 displays the statutes most relevant to LHD governance and cross-jurisdictional sharing.

Figure 1 displays the locations of Ohio LHDs. The red dots indicate city health departments. Counties with more than one LHD tend to be clustered in the northeast and southwest areas of the state.

Counties= county health departments

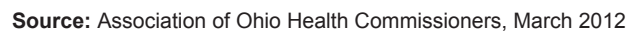




Table 2. Key statutes relevant to LHD governance and cross-jurisdictional sharing

Ohio Revised Code (ORC)	Governance
2744.01	Political subdivisions defined; powers of political subdivisions
2744.02	Governmental and proprietary functions of political subdivisions
3709.01	Establishes type of health districts (city, general, combined) – boundary and population relationship to number of districts
3709.03-.04	For general health districts, establishes District Advisory Council, provides for appointment of its members; Council appoints Board of Health (BOH) members;
3709.05-06	City health district legislative authority of each city constituting a city health district shall establish a BOH. BOH shall have four members appointed by the mayor and confirmed by the legislative authority and one member appointed by the health district licensing council.
	Union/Merger and Contract arrangements
3709.07	Union: combined health district is a union of a general and one or more city health districts. Two or more contiguous city district may unite to form single cite district; two or more contiguous general health districts, but not more than 5, may unite to form a single health district (subject to majority vote of the district advisory council)
307.15	Board of County Commissioners may contract with legislative authority of a health district or with the Board of Health
307.153	City Board of Health or General Health District may contract with Board of County Commissioners within same county in which the Board is totally or partially located
167.01	Provides for formation of Council of Governments
167.08	May contract with Council of Governments
3709.29	Special levy for general health districts: local revenue uses affect union/merger/contracting arrangement
OAC 3701-36-10	Formula for payment of health district subsidies; local revenue raising requirements affect union/merger/contracting arrangements
305.23	County Commissioner may establish and require centralized services
9.482	New, very broad “universal service agreements” Political subdivisions may enter into agreements with any subdivision agreeing to perform any power, perform any function, or render any service for another contracting recipient subdivision
	Other
Ohio Constitution Section 7 of Article XVIII	“Home Rule” Charter Cities



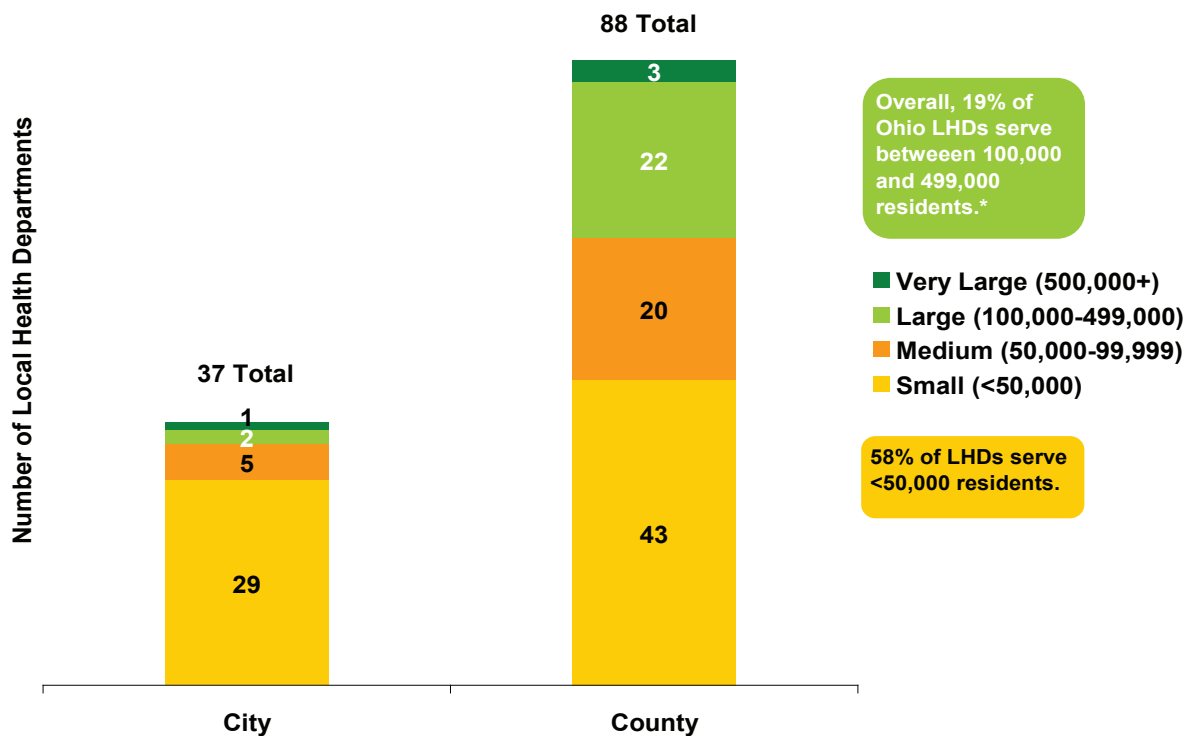
Population size

Ohio LHDs serve a wide range of population sizes, from 854,975 residents in the Cuyahoga County Board of Health's jurisdiction to less than 12,000 for several small city departments. Overall, 58% of LHDs in Ohio serve small population sizes (<50,000), 39% serve medium or large population sizes (50,000-499,999), and 3% serve very large population sizes (500,000+) (see Figure 2).

Throughout this report, the population size served by LHDs will be referred to in the following categories:

- Small (2010 population <50,000)
- Medium (50,000-99,999)
- Large (100,000-499,000)
- Very Large (500,000 +)

Figure 2. Number of city and county LHDs, by population size, 2011 (n=125)



Source: Ohio Local Health Department Census 2010, Ohio Department of Health, 2011.

*See Appendix for list of all districts sorted by pop size/type.



AOHC members are organized into five regions. The northeast region serves the largest total population, while the southeast serves the smallest total population. Table 3 displays the number of LHDs in each region and the population sizes served in those regions.

Table 3. Population Sizes Served by the Five LHD Districts (2012)

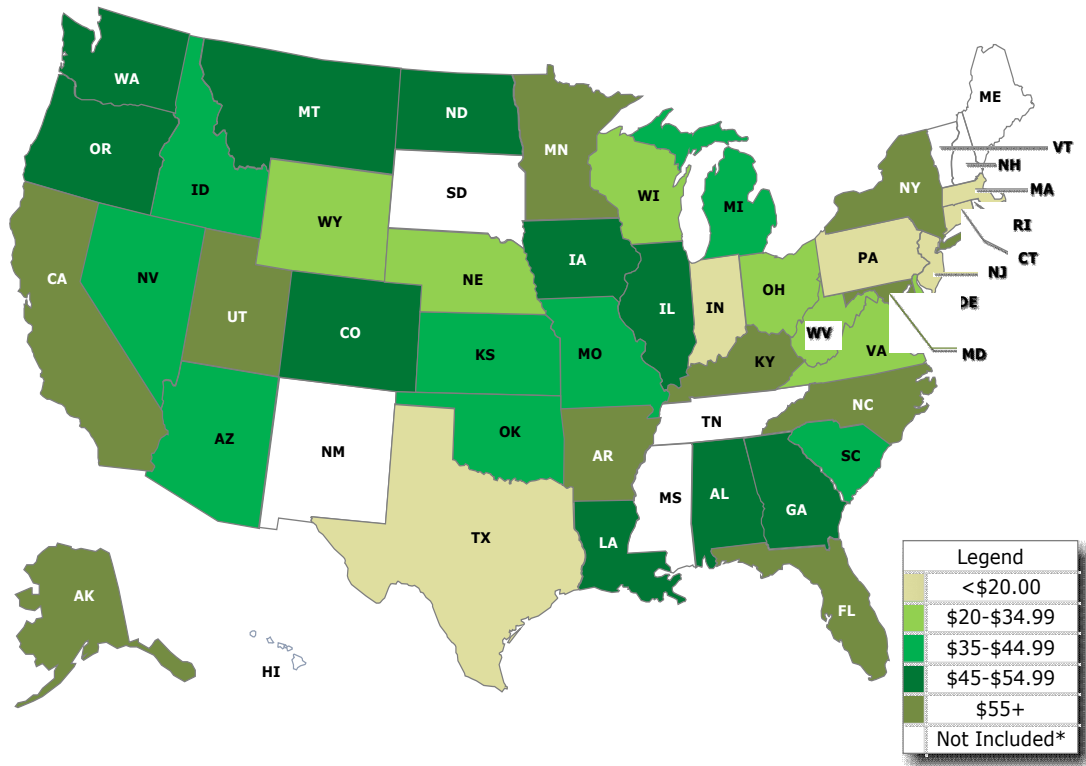
	All		Larger Population Size	Smaller Population Size	
	Number of LHDs	Total Population in District	Number of LHDs Serving >100,000	Number of LHDs Serving 5,000 to 99,999	Total Population of all <100,000 Pop. Districts Combined
Central	16	2,150,880	6	10	382,085
Northeast	39	4,209,835	11	28	1,063,781
Northwest	24	1,531,555	3	21	
Southeast	22	782,409	0	22	855,733
Southwest	24	2,861,825	8	16	
All	125		28 (22%)	97 (78%)	782,409



LHD expenditures per capita

Among the 44 states for which data were available, Ohio ranks 33rd in median annual per capita LHD expenditures. For the US overall, the median per capita expenditure for LHDs was \$41 in 2010, twenty percent higher than the Ohio median of \$33 per person (see Figure 3).

Figure 3. 2010 median annual per capita LHD expenditures, by state



***Non-participants: Hawaii and Rhode Island**
None or insufficient data for Maine, Mississippi, Nevada, New Hampshire,
New Mexico, South Dakota, Tennessee, and Vermont

Source: 2010 National Profile of Local Health Departments, NACCHO, 2011

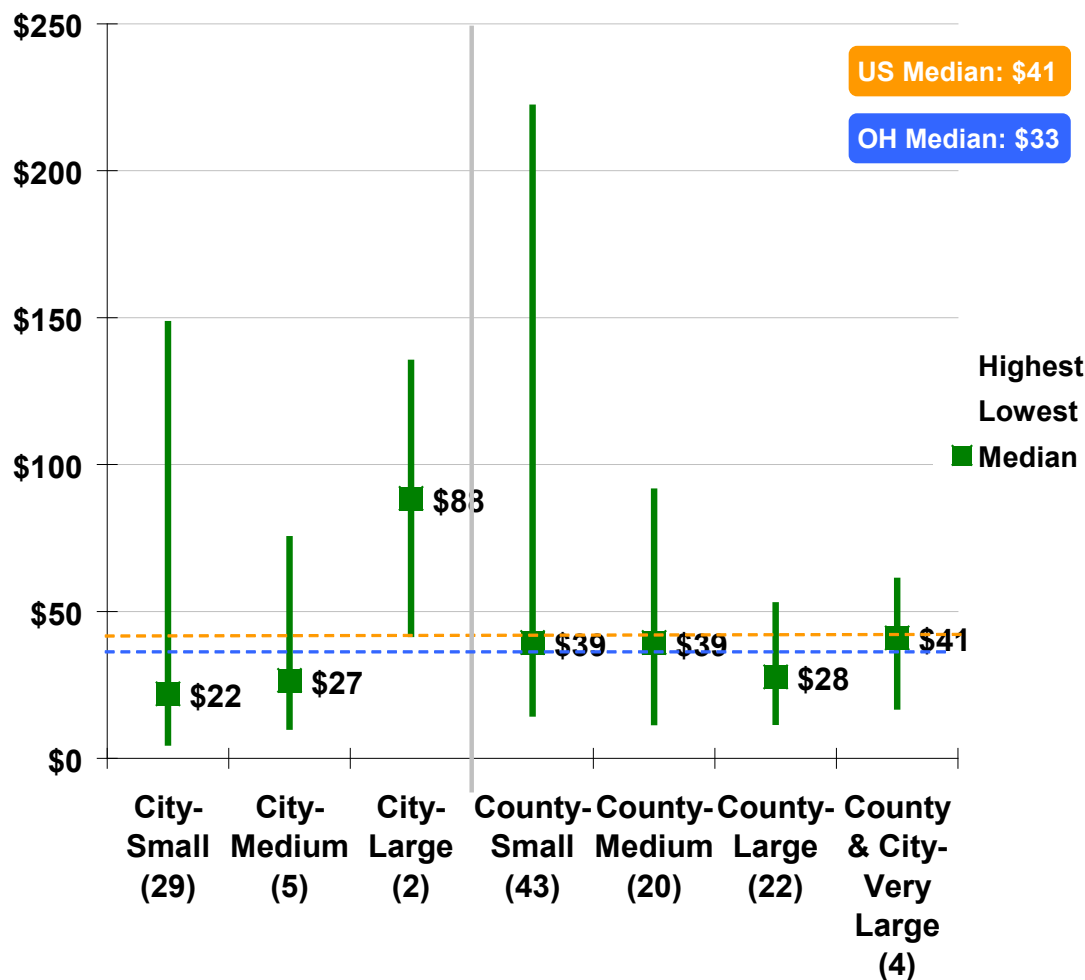
Note: Although there are considerable differences in how LHDs are funded in different states, the NACCHO survey methodology attempts to collect the most consistent data possible for all states from a standard set of funding source categories: city/township/town, county, state direct, federal pass-through, federal direct, Public Health Emergency Response (PHER), American Reinvestment and Recovery Act (ARRA), Medicaid, Medicare, private foundations, private health insurance, patient personal fees, non-clinical fees and fines, tribal, and other.

Within Ohio, per capita expenditures vary widely by district, from a low of \$5 per person per year to a high of \$221 (see Figure 4). Small cities and small counties experienced the greatest variation in per capita funding; the lowest and highest per capita amounts were both for small departments. Small city departments and large and very large county departments had the lowest median per capita amounts.

Much of the variation in per capita expenditures is likely explained by differences in the number and type of services provided. For example, some LHDs run primary care clinics or offer home health, while others do not provide clinical services.

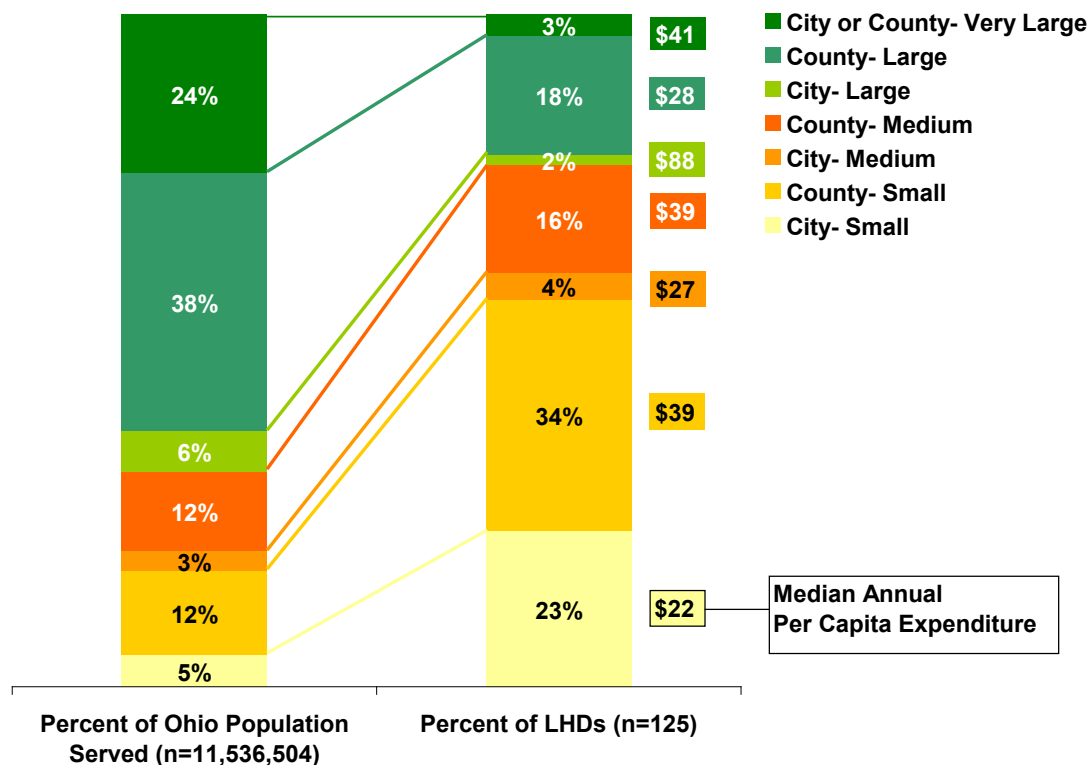


Figure 4. 2010 annual per capita LHD expenditures, by jurisdiction type and population size (median amount and highest/lowest amount within population size category)



Source: 2010 National Profile of Local Health Departments, NACCHO, 2011; and author's calculations of Annual Financial Report (ODHAFR008 Expenditure by Region, District Type and Population, 2010) provided by Ohio Department of Health
Note revised: Data for the category "City- Very Large" is not shown because there is only one department in that category (annual per capita expenditure of \$56).

Figure 5 combines the information presented above regarding jurisdiction type, population size, and median annual per capita expenditures. The colors indicate the jurisdiction type/population size category. The bar on the left displays the percent of Ohio's population served by each LHD category. For example, 5% of Ohioans are served by a small city LHD. The bar on the right shows the percent of LHDs within each category. For example, 23% of LHDs are small city departments. The boxes along the right side display the median annual per capita expenditure for each LHD category.

**Figure 5. Percent of Ohio Population Served by Different Types of LHDs (2010)**

Source: Ohio Local Health Department Census 2010, Ohio Department of Health, 2011; and author's calculations of Annual Financial Report (ODHA FR008 Expenditure by Region, District Type and Population, 2010) provided by Ohio Department of Health

LHD expenditures by service type

The Ohio Department of Health requires LHDs to report annual expenditures in eight service categories. Table 4 lists each category and indicates the percent of LHDs that reported any expenditure of funds in each category. Environmental Health and General Administration and Services were the two areas in which nearly every LHD reported some activity. Roughly three-quarters of departments reported expenditures in the areas of Vital Statistics, Laboratory, and Personal Health. Only 15% of departments reported Home Health activity and 64% had Health Promotion expenditures. Environmental Health and Personal Health were by far the largest expenses in 2010 (overall, personal health encompasses the WIC/BCMH/HMG, Other Personal Health, and Home Health categories). General Administration and Services represented 16% and Health Promotion was 10%, while Vital Statistics and Laboratory Services consumed <2%.

**Table 4. 2010 Ohio LHD Expenditures by program type**

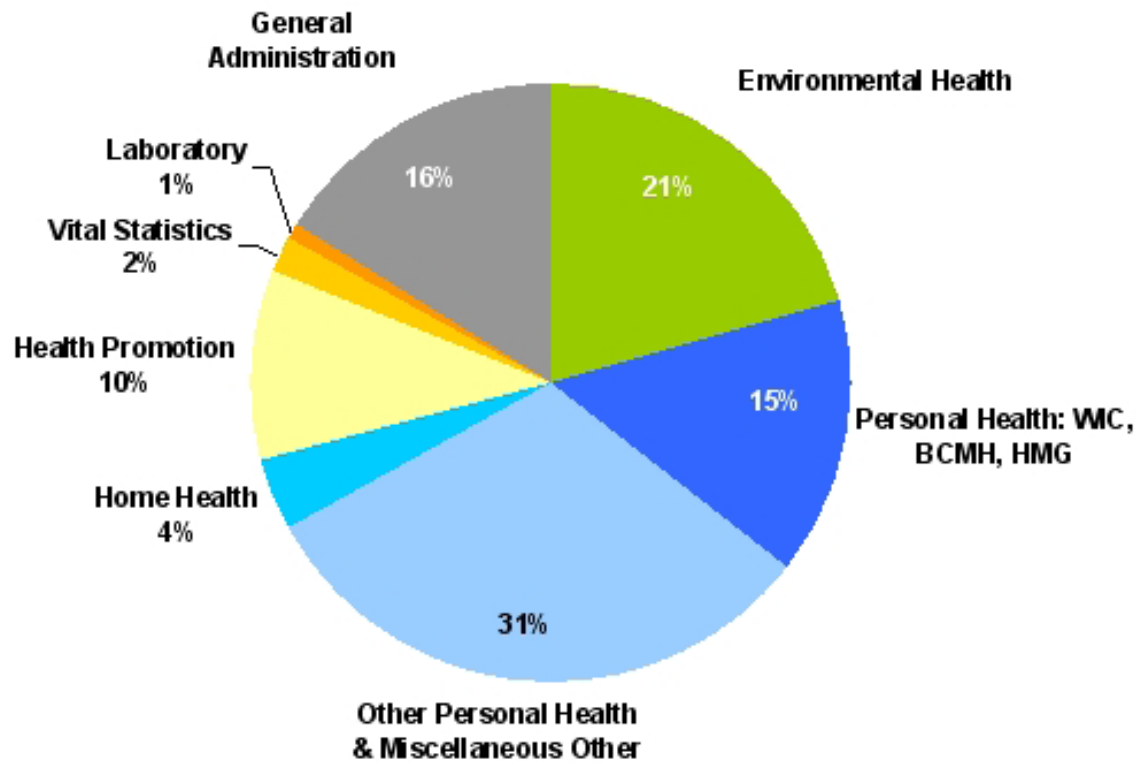
		LHDs reporting this type of expenditure for 2010 (>\$0)		Total amount	Percent of total expenditures generated by this source
		Number	Percent		
	Environmental health Activities such as food service, vending, water, sewage, nuisance, consumer protection and sanitation, air quality, noise pollution control, radiation control, and waste management	127	100%	\$90,289,850	21%
	Vital statistics Operation of local registrar	99	78%	\$8,624,275	2%
	Laboratory Medical and environmental, provided on-site or contracted out	54	73%	\$4,007,190	1%
	Health promotion Prevention and education (e.g., tobacco, obesity, or injury prevention; child car seat programs)	81	64%	\$45,604,188	10%
	Personal health: WIC, BCMH, and HMG Health services delivered to individuals by a nurse, physician, or other health professional (i.e., OT, PT, SW) in any setting (i.e., clinic, school, industry, nursing home, or institution)	91	72%	\$65,403,366	15%
	Other personal health and miscellaneous other Personal health expenditures other than WIC, BCMH, and HMG, such as health clinics, school health, immunizations, dental care, general nursing, women's health, reproductive health, and screening; Other services such as preparedness, tobacco prevention, drug-free communities, etc.*	93	73%	\$137,758,721	31%
	Home health Health services delivered to individuals by a nurse, physician, home health aide, or other professional or paraprofessional (i.e., OT, PT, SW) in the home (licensed providers)	19	15%	\$16,389,159	4%
	General administration and services General agency management not allocated specific program areas	126	99%	\$70,063,694	16%
	Total	127	100%	\$438,140,442	100%

Source: 2010 LHD Annual Financial Report (AFR)

* Unfortunately, we are not able to split out this category further.



Figure 6. 2010 LHD Expenditures, by category (total: \$438,140,442)



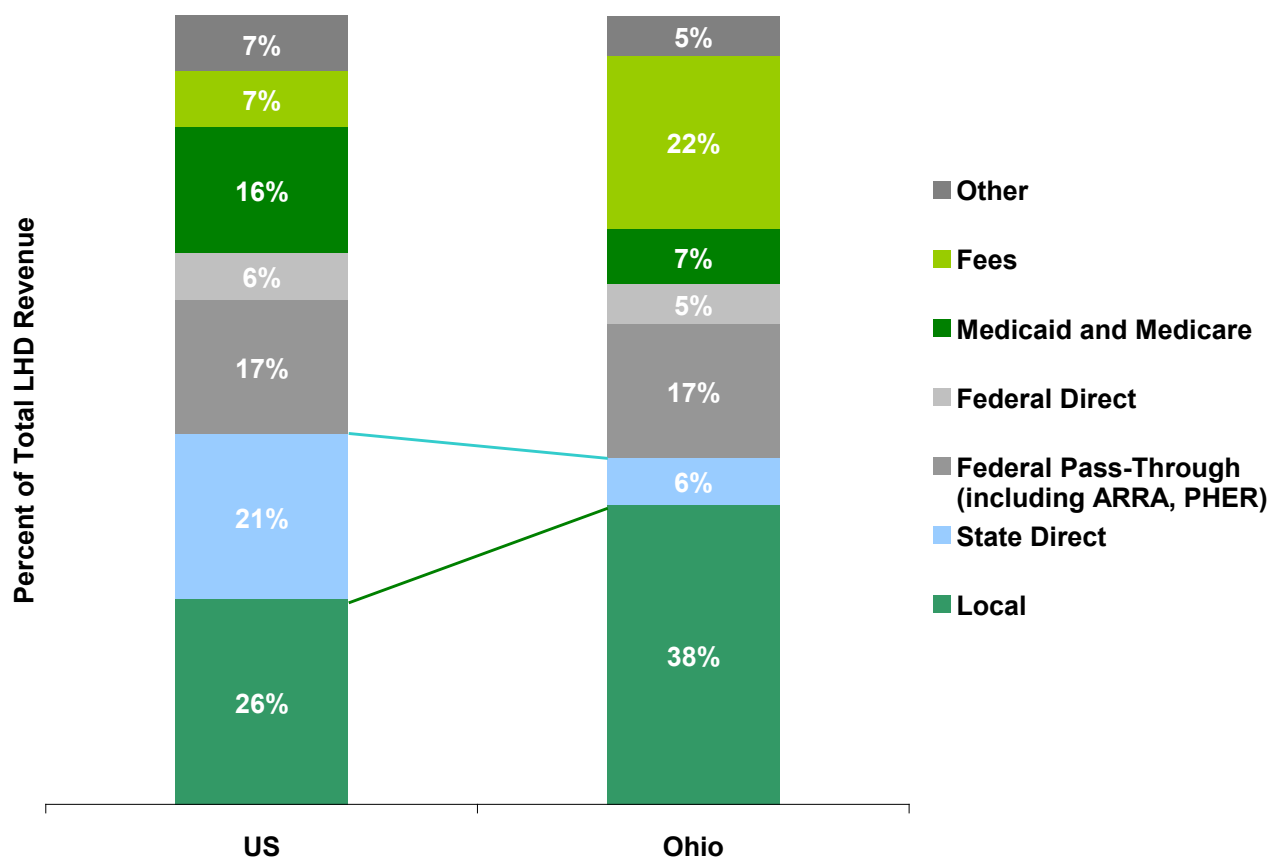
Source: 2010 LHD Annual Financial Report (AFR)



Revenue source overview

LHDs receive funding from a complex array of funding streams. The NACCHO 2010 National Profile of Local Health Departments provides for a comparison of how LHDs are funded in Ohio compared to other states. (Note that NACCHO's definition of "local" is narrower than that used in the Ohio LHD Annual Financial Reports [AFR], placing fees and direct reimbursement for health care services in separate non-local categories.) According to NACCHO, Ohio LHDs are much more dependent on local revenue sources and fees than are LHDs nationally, and rely upon direct state funding for a much smaller portion of their overall support (see Figure 7). In Ohio, local sources (38%), service fees (22%), and federal sources (direct and indirect: 22%) are the largest revenue sources. State direct funding accounts for only 6% of LHD revenue (as categorized in the NACCHO analysis).

Figure 7. Percent of total annual LHD revenue, US and Ohio, by revenue source (2010)



Source: 2010 National Profile of Local Health Departments, NACCHO, 2011

A 2011 report by the Trust for America's Health (TFAH) finds that Ohio ranks quite low among states when it comes to state public health budgets and federal public health grant revenue (*Investing in America's Health: A State-By-State Look at Public Health Funding and Key Health Facts*). This funding is not specific to LHDs, although some of it is allocated to LHDs in Ohio.

**Table 5. Per Capita State and Federal Funding for Public Health: How Ohio Compares to Other States**

	National Median/ Average* Per Capita Amount	Ohio Per Capita Amount	Ohio Per Capita State Ranking
State public health budget (FY09-10)	\$30.61	\$15.13	41
Centers for Disease Control and Prevention (CDC) (FY2010)	\$20.25	\$13.96	50
Health Resources and Services Administration (HRSA) (FY10)	\$22.32	\$17.27	39

Source: Investing in America's Health, Trust for America's Health (TFAH), 2011

*The TFAH report provides a national median for state public health budgets and a national average for CDC and HRSA funding.

A recent report from The Center for Community Solutions explores the reasons for Ohio's disproportionately lower share of federal funding for public health and describes funding categories in which Ohio has been successful and not successful in obtaining federal grants (*Federal Funding for Public Health and Health Services: Is Ohio Getting its Share?*, March 2012). No single reason for Ohio's disproportionate share emerges from this analysis, although lower disease incidence, population characteristics that make Ohio ineligible for some grants, and the lack of a state requirement for all Medicaid providers to enroll in a children's vaccine program, are among the most significant factors.

Revenue mix for LHDs

LHDs must report their annual revenue to ODH in 54 different program/service categories. These categories are condensed into eight revenue streams in Table 6. Three-quarters of all LHD revenue is generated at the local level in the form of local government revenue (33%), earned healthcare reimbursements (8%), fees and contracts for environmental health services (11%), and other local sources, including vital statistics fees (24%). The state allocates funding to LHDs in three different ways: the state subsidy (0.4%), state grants and contracts generated from state sources (5%), and federal "pass-through" funds from federal sources (17%). The state therefore controls 22% of overall LHD revenue, although only one-quarter of that state-controlled portion is generated from state sources (three-quarters of the funds that flow through the state come from federal sources).

Most departments receive funds from all of these local and state funding sources, although about 20% of LHDs do not receive any federal pass-through dollars. Direct federal funding is only received by 18% of departments and makes up only 3% of the total. Although large and very large city and county LHDs were overrepresented in the group of departments that received direct federal funding in 2010 (40% of the LHDs that got direct federal grants were large or very large), small (30%) and medium (30%) LHDs also received direct federal funds.



Table 6. 2010 LHD Revenue Sources and Amounts

	LHDs reporting this type of local revenue for 2010 (>\$0)		Total amount generated by this revenue source	Percent of total LHD revenue generated by this source
	Number of LHDs	Percent of LHDs (n=127*)		
Local: Government Inside millage, PH levy, local general revenue, local city/county contract, local county TB contract, local pass-through, local government entity, FCFC (see Table 6 for detail)	125	98%	\$184,364,981	33%
Local: Earned Healthcare Reimbursement Personal Health, Health Promotion, and Home Health (Medicaid, Medicare, private insurance, and fees)	120	95%	\$43,905,295	8%
Local: Fees & Contracts for Environmental Health Campground, food, parks, marina, private water, sewage, waste, pools, plumbing inspections, etc.	127	100%	\$59,727,132	11%
Local: Other Vital statistics fees; clinical and environmental laboratory; special contracts for health promotion, preparedness, school health, and other; donations; miscellaneous; local carryover	115	91%	\$135,204,225	24%
State Subsidy	127	100%	\$1,988,160	0.4%
Other State Funds (not including Federal pass-through) Grants from ODH and other agencies, state carryover	111	87%	\$29,951,829	5%
Federal Pass-through ODH grants and grants from federal sources	100	79%	\$93,988,745	17%
Federal Direct Grants and contracts directly from federal government, federal carry-over	23	18%	\$15,705,044	3%
Total	127	100%	\$564,835,411	100%

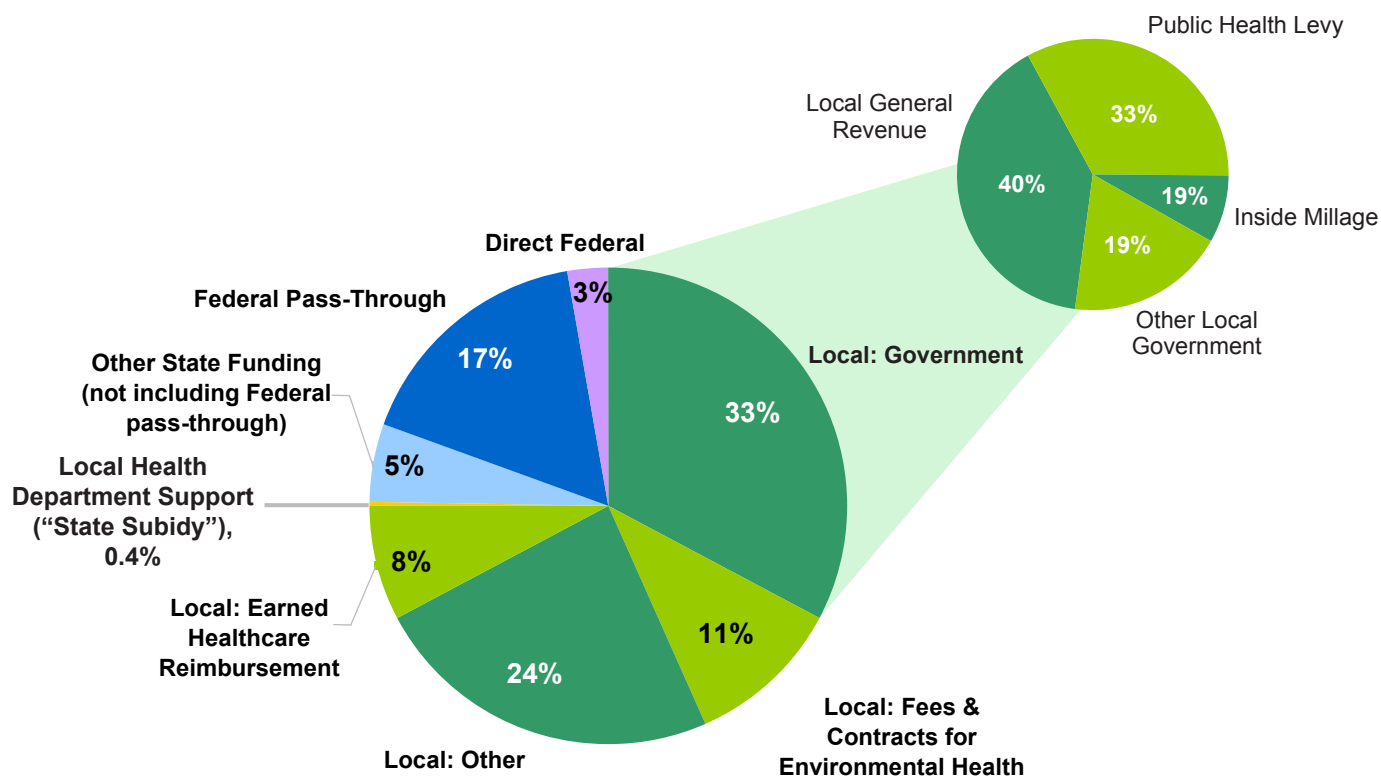
*This table includes data for St. Bernard and East Palestine health departments, which were transitioned to village status in 2011.

Source for state subsidy: 2010 State Subsidy Report, provided by OHD, March 2012

Source for all other categories: 2010 Annual Financial Report data provided by ODH, March 2012



Figure 8.
2010 LHD Revenue, by category (total: \$564,835,411)



Source: 2010 Annual Financial Report, provided by ODH March 2012

Local funding detail. In order to receive their annual state subsidy, LHDs must spend a minimum of three dollars per capita in local funds for public health services per year (OAC 3701-36-03). This local funding comes from a variety of sources, as shown in Table 7. In 2010, 40% of departments had funds generated by a public health levy and 31% received inside millage. These local sources vary widely by jurisdiction and health commissioners report that they can be inconsistent over time because they are vulnerable to sometimes volatile local political conditions.



Table 7. Local government funding sources and amounts for Ohio LHDs, 2010

	LHDs reporting this type of local revenue for 2010 (>\$0)		Total amount generated by this revenue source	Percent of total local government revenue generated by this source
	Number of LHDs	Percent of LHDs (n=127*)		
Local general revenue	73	57%	\$73,303,947	40%
Public health levy	50	39%	\$61,334,813	33%
Local pass-through	46	36%	\$6,517,076	4%
Other local government entity	45	35%	\$11,510,351	6%
Local city county contract	41	32%	\$8,038,866	4%
Inside millage	39	31%	\$14,653,982	8%
Local government FCFC	31	24%	\$6,539,833	4%
Local county TB contract	22	17%	\$2,466,115	1%
Total: Local government funding	125	98% **	\$184,364,981	100%

Source: Annual Financial Reports, Ohio Department of Health, March 2012

*This table includes data for St. Bernard and East Palestine health departments, which were transitioned to village status in 2011.

**St. Bernard City and Belpre City reported \$0 total local government revenue for 2010.



Workforce trends

Local workforce. National studies of job loss and program cuts in 2009 through 2011 found widespread reductions among Ohio LHDs and found that Ohio experienced more severe reductions compared to other states (see Table 8). For example, 72% of Ohio LHD representatives surveyed reported loss of staff through layoffs or attrition during 2009, compared to 46% among LHDs nationwide.

Table 8. Percent of LHDs with cuts in staffing or programs, 2009-2011

	July to December 2009*		July 2010 to June 2011**	
	US (n=704-718 LHDs)	Ohio (n=34 LHDs)	US (n=637- 662 LHDs)	Ohio (n=30 LHDs)
Loss of staff (layoffs and attrition)	46%	72%	44%	48%
Reduced staff time (hours cut and furlough)	23%	43%	22%	19%
Cuts to at least one programmatic area	50%	85%	55%	69%
Cuts to three or more programmatic areas	28%	47%	27%	39%

Sources: Local Health Department Job Losses and Program Cuts: State-Level Tables from January/February 2010 Survey, NACCHO, March 2010, and Local Health Department Job Losses and Program Cuts: State-Level Tables from July/August 2011 Survey, NACCHO, November 2011.

*The 2009 study drew a random sample and had an overall response rate of 72%. Ohio response rate not reported.

**The 2011 study drew a random sample and had an overall response rate of 70%. Ohio response rate not reported.

Note: In March 2012, NACCHO released results of a similar survey conducted in January 2012, although state-level data has not yet been released.

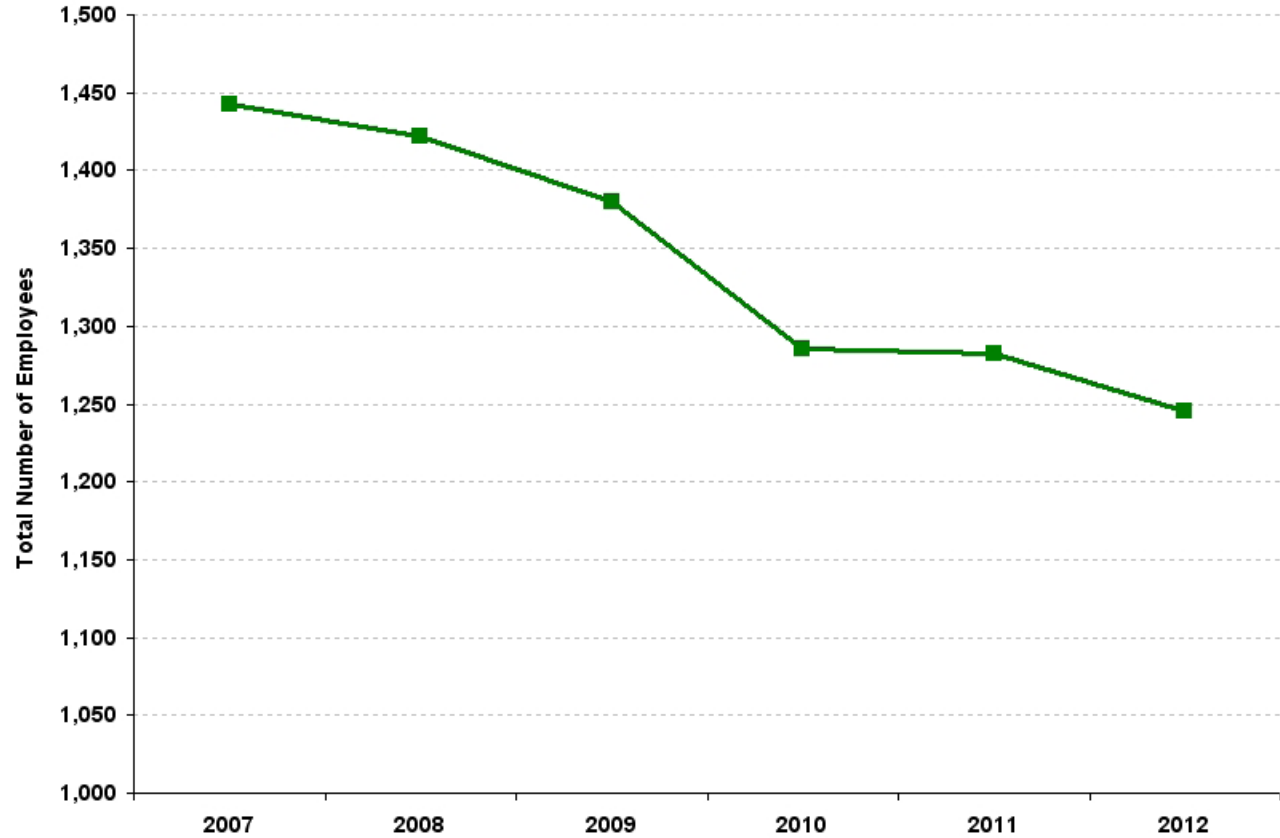
State-level workforce and impacts on LHDs. In addition to workforce reductions for LHDs, the Ohio Department of Health (ODH) has also scaled back some of the workforce capacity it has traditionally provided to LHDs. Overall, the number of ODH employees dropped from 1,442 in 2007 to 1,245 in 2012 (see Figure 9).

The reduction in the number of ODH Epidemiologists is one example of how the shrinking ODH workforce impacts local departments. State Epidemiologists assist LHDs with disease event investigations, particularly for unusual events such as large food-borne disease outbreaks that require advanced epidemiological support. This is particularly important when the local epidemiology capacity is lacking or significantly diminished due to lack of qualified and trained individuals.

ODH reports that from 2007 to 2012 the number of Epidemiologists fell from 47 to 39 employees. This reduction in the ODH epidemiology workforce may greatly reduce local department's ability to thoroughly or adequately investigate, interpret and/or report on disease events in Ohio.



Figure 9. Total Number of Ohio Department of Health Employees, 2007 to 2012



Note: Includes full-time, part-time, and temporary employees.

Source: Ohio Department of Health, March 2012



1.2 Current Collaboration

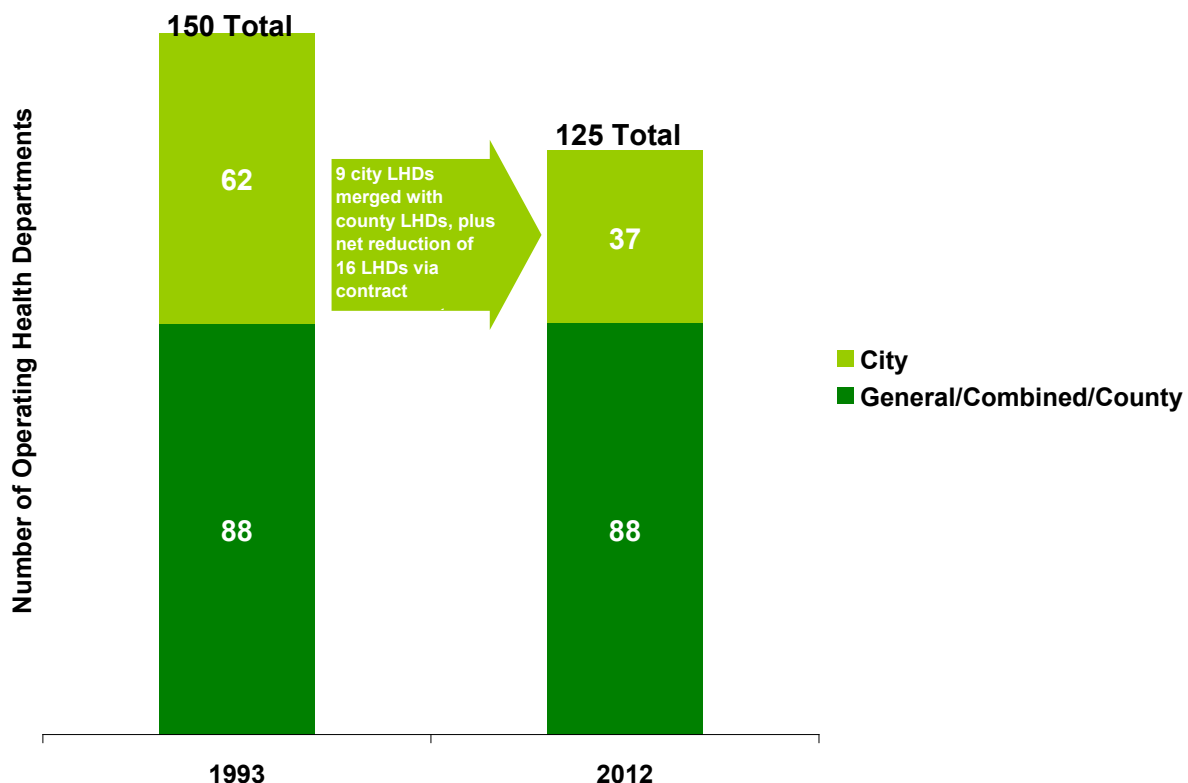
Recent mergers and cross-jurisdictional sharing

The Hughes Griswold Act of 1919 established 180 health districts in Ohio (88 county and 62 city). In 2012 there are 125 LHDs in Ohio, down from 150 in 1993 (see Figure 10). During that time period, nine departments combined. This is defined as a “union” in statute, but is commonly referred to as a “merger” or “consolidation.” All of these mergers involved city health departments combining with county health departments.

Additionally, there was a net reduction of 16 LHDs via contract arrangements (including several “back-and-forth” changes in which a LHD changed contract providers more than one time, and cities transitioning to village status and therefore losing their ability to function as an independent health department). Contracts involve an agreement between two autonomous jurisdictions (for example, when a city retains health district status and contracts with a county department to provide public health services in their district, or a city transitions to village status and contracts or combines with a county department).

During the 1993 to 2012 time period there was one “re-constitution” in which the Salem City Health Department re-established itself as a separate entity from Columbiana County in 2009.

Figure 10. Number of local health departments operating in Ohio, 1993 and 2012



Source for 1993 data: *Healthy People- Healthy Communities: An Agenda for Public Health Reform, The Report of the Ohio Public Health Services Study Committee*, Ohio Department of Health, 1993.

Source for 2012 data: Ohio Local Health Department Census 2010, Ohio Department of Health, 2011.

**Table 9. Changes in Local Health Department jurisdictions, 1994-2012**

Year	LHDs	Union*	Contract**
1994	Upper Arlington and Grandview Heights contract with Franklin Co. HD		
1994	Salem City contracts with Columbiana Co HD		
1995	Gallipolis City contracts with Gallia Co. HD		
1995	Cleveland Heights City contracts with Cuyahoga Co. HD		
1996	Springfield City combined with Clark County		
2000	Toledo City combined with Lucas County		
2000	Bellaire City transitioned to village status, to Belmont Co HD		
2001	Barberton contracts with Norton City		
2001	Martins Ferry contracts with Belmont Co HD		
2002	Bucyrus City combined with Crawford Co. HD		
2002	Lancaster City and Pickerington City combine with Fairfield Co. HD		
2003	Campbell City contracts with Mahoning Co. HD		
2003	Reading City contracts with Hamilton Co. HD		
2005	New Carlisle contracts with Clark County		
2006	Indian Hill City contracts with Hamilton Co. HD		
2006	Bellevue contracts with Huron Co. HD		
2007	Bexley contracts with Franklin Co. HD		
2007	Toronto contracts with Jefferson Co. HD		
2008	Lakewood contracts with Cuyahoga Co. HD		
2008	Newark City combines with Licking Co. HD		
2010	Marion City combines with Marion Co. HD		
2004	Crestline City contracts with Galion City		
2009	Salem City re-constituted (no longer part of Columbiana County HD)	NA	NA
2009	Barberton contracts with Summit Co HD		
2009	Struthers contracts with Mahoning Co. HD		
2009	Norton City combines with Summit Co HD (from Barberton)		
2010	Barberton combines with Summit Co HD		
2010	Pickerington contracts with Franklin Co. HD		
2010	Pickerington City separates from Fairfield County and contracts with Franklin		
2011	Akron combines with Summit Co HD		
2011	St. Bernard transitioned to village status, to Hamilton Co. HD		
2011	East Palestine City transitioned to village status, to Columbiana County HD		
2011	Crestline transitioned to village status, to Crawford Co. HD		

*Union: two or more jurisdictions combined. Sometimes referred to as a "merger" or "consolidation."

**Contractual agreement between two jurisdictions. For example, a city retains health district status and contracts with a general/combined/county department to provide public health services in their district, or city transitions to village status and contracts or combines with general/combined/county department.

Source: LHD District History, Ohio Department of Health, 2012.



Status of current collaboration: Results of 2012 Association of Ohio Health Commissioners Collaboration Survey

In order to document services already being shared by LHDs, AOHC conducted an online survey of its members in February 2012. Representatives of 93 LHDs completed the survey, for an overall response rate of 74%. (62% response rate for city departments; 80% response rate for county/combined departments) As shown in Table 9, a majority of LHDs are currently sharing some services. Contractual arrangements were the most common (90%).

Table 10. Percent of LHDs that report shared services (FY2012)

	All (n=90)	City (n=21)	County/ Combined (n=69)
Any shared services (“pooling”) Does your jurisdiction have any shared services? (Jointly contributing funds or sharing governance responsibility for decision making in a given program, e.g., CFHS.)	66%	52%	70%
Shared services with non-LHDs Do you share program services in your jurisdiction with agencies other than LHDs? (e.g., FCFC)	60%	52%	62%
Contractual arrangements Does your jurisdiction either provide or receive contractual services? (health department providing a service to another under some funding arrangement, e.g., epidemiology, plumbing)	90%	91%	90%
Cross-jurisdictional services Does your agency provide cross-jurisdictional services? (A program or service provided by your agency on behalf of several health departments through a regional or district contract, e.g., BCCP, PHEP regional coordination, HIV/AIDS.)	54%	48%	57%

Source: AOHC LHD Collaboration Survey, 2012

Among jurisdictions that receive contractual services, 86% said that these services were funded by grants. Another 50% reported that these services were “billed by the other health department,” 29% said they were paid for by fees, and 15% indicated the costs were billed to health insurance. Among departments that provide cross-jurisdictional services, 51% reported that these projects involve 4 or fewer different jurisdictions.

When asked how their use of shared, cross-jurisdictional, and contractual services had changed over the past four years:

- 51% reported more sharing,
- 42% reported no change, and
- 8% reported decreased sharing.

As shown in Table 11, grant requirements were the main driving force behind increased collaboration. Much of this may have been driven by emergency/disaster preparedness funding.



Table 11. “What is the reason(s) for changes to your levels of shared/cross-jurisdictional/contractual services?” (n=60)

	Percent
Grant funding requires multiple county collaboration	68%
Local funds could not support this program entirely	47%
Unable to meet minimum grant funding levels as a single county	37%
Loss of qualified staff to continue the program ourselves	17%

The survey listed several services commonly provided by LHDs and asked respondents to indicate if their department received the service from another agency or provided the service to another jurisdiction, including other LHDs, state agencies, and non-LHDs. LHD representatives that did not report any sharing for a specific service were then asked to rate their interest in future sharing as “high,” “low,” or “not interested.” Tables 12-15 display the results of a series of questions.

Overall, respondents indicated some degree of collaboration for every service listed, although the number of departments reporting collaboration varied widely by the specific type of activity. The services with the largest proportion of LHDs reporting sharing were:

- Epidemiology services for outbreaks and trending (53%)
- HIV testing (46%)
- Lead assessment (44%)
- STD testing and treatment (40%)

Primary medical care was among the services with the least sharing. Only 10% of LHDs said that they provided or received this service from another agency.

Among those who were not currently sharing, the following services received the greatest amount of “high interest” for future sharing:

- Subject matter experts (41%)
- Leadership development (36%)
- Information technology (34%)
- Policy development (33%)
- Accreditation guidance (33%)

Overall, the Administrative/Planning category had the least amount of current sharing and generated the most interest in future collaboration. Administrative tasks, often referred to as “back office” functions, and expert guidance appear to be areas of opportunity for future cross-jurisdictional relationships. These are areas that do not typically have discrete funding sources.

**Table 12. Nursing Services: Current and potential sharing (n=93)**

	Current Sharing Percent of responding LHDs that receive this service from another agency or provide this service to another jurisdiction*	Potential Future Sharing Percent of responding LHDs that report high interest in future sharing (among those not currently providing or receiving)
HIV Testing	46%	14%
STD Testing & Treatment	40%	27%
Local Disease Investigation	38%	22%
Breast and Cervical Cancer Project	37%	19%
TB Services	31%	9%
Family Planning	28%	22%
Help Me Grow	28%	21%
Child immunizations	26%	14%
Lead Screening	23%	19%
Adult immunizations	22%	27%
Prenatal Care	22%	21%
School Nursing	19%	9%
Infant Home Visiting (not HMG)	18%	18%
Vision/ Hearing with ODH	17%	10%
Blood Pressure Screening	17%	6%
Primary Medical Care	10%	14%

*Provide or receive this service from another LHD, multiple LHDs, a state agency, or a non-LHD agency.

Note: This table is sorted by frequency of current sharing (column 2). Bold font indicates top five responses in each column.

Source: AOHC LHD Collaboration Survey, 2012

**Table 13. Environmental Health Services: Current and potential sharing (n=93)**

	Current Sharing Percent of responding LHDs that receive this service from another agency or provide this service to another jurisdiction*	Potential Future Sharing Percent of responding LHDs that report high interest in future sharing (among those not currently providing or receiving)
Lead Assessment	44%	25%
Commercial Plumbing	37%	14%
Lead Abatement	32%	21%
Solid Waste	26%	12%
Smoke-free Ohio Enforcement	25%	16%
Water	19%	9%
Inspections of Food Service Operations	18%	9%
Inspections of Retail Food Establishments	18%	9%
Radon	18%	12%
General Sewage	18%	11%
Built Environment Initiatives	14%	19%
EPA Small Flow Program	13%	7%
Vector Control	12%	15%
Parks/Camps	11%	7%

*Provide or receive this service from another LHD, multiple LHDs, a state agency, or a non-LHD agency.

Note: This table is sorted by frequency of current sharing (column 2). Bold font indicates top five responses in each column.

Source: AOHLC LHD Collaboration Survey, 2012

**Table 14. Health Education/Other Services: Current and potential sharing (n=93)**

	Current Sharing Percent of responding LHDs that receive this service from another agency or provide this service to another jurisdiction*	Potential Future Sharing Percent of responding LHDs that report high interest in future sharing (among those not currently providing or receiving)
Epidemiology Services for Outbreaks and Trending	53%	25%
Emergency Preparedness	34%	15%
Medical Reserve Corps	31%	17%
Community Health Assessment Services	31%	28%
WIC	27%	16%
Vital Statistics	23%	8%
Safety Net Dental	22%	19%
Car Seats	20%	15%
Community Health Improvement Planning	19%	27%
Citizens Corps	18%	9%
Recycling/Litter Prevention	18%	9%
Corporate Wellness Program	16%	18%
General Health Education	13%	23%
Traffic Safety	13%	9%
Chronic Disease Reduction	11%	30%

*Provide or receive this service from another LHD, multiple LHDs, a state agency, or a non-LHD agency.

Note: This table is sorted by frequency of current sharing (column 2). Bold font indicates top five responses in each column.

Source: AOHC LHD Collaboration Survey, 2012

**Table 15. Administrative/Planning Services: Current and potential sharing (n=93)**

	Current Sharing Percent of responding LHDs that receive this service from another agency or provide this service to another jurisdiction*	Potential Future Sharing Percent of responding LHDs that report high interest in future sharing (among those not currently providing or receiving)
Legal Services	33%	16%
Laboratory	32%	27%
Information Technology	24%	34%
Insurance	20%	15%
Purchasing	15%	23%
Fiscal	15%	8%
Subject Matter Experts	15%	41%
Leadership Development	14%	36%
Public Relations/Public Information Officer	13%	17%
Policy Development	13%	33%
Human Resources/Recruiting	11%	22%
Evaluation/Quality Improvement	11%	29%
Marketing	10%	19%
Accreditation Guidance	8%	33%

*Provide or receive this service from another LHD, multiple LHDs, a state agency, or a non-LHD agency.

Note: This table is sorted by frequency of current sharing (column 2). Bold font indicates top five responses in each column.

Source: AOHLC LHD Collaboration Survey, 2012

Characteristics of successful collaboration

The survey asked respondents to identify what has made collaboration successful for them in the past. Qualitative analysis of these comments identified the following characteristics of collaborative arrangements that have worked well for LHDs:

- Mutual trust and a history of collaboration
- Willingness to “set aside turf issues and work for the betterment of public health and customer service”
- Strong commitment from top-level leadership
- Partnerships between communities with similar demographics and/or ability to customize to local needs for each community; equity for all partners, while being sensitive to unique local needs
- Success at increasing efficiency and/or cost reductions and arrangements that “make good business sense”
- Ability to maintain services that are needed and expected by the community but are no longer feasible for one LHD to provide, for example,

“In one case [collaboration] allowed us to offer a service we otherwise couldn’t because of licensure, training, and level of work required to maintain a person in the program, while at the same time it allowed our neighboring department to keep an inspector full time. A win-win for both agencies.”



1.3 Expected, Required, and Funded Services

This section presents expectations about what services local public health agencies should provide, as guided by the Public Health Accreditation Board (PHAB) standards. The Health Impact Pyramid provides additional guidance on the specific types of public health activities that have the greatest impact on improving population health. Together, the PHAB standards and the pyramid model provide reference points for what the national public health community has identified as “good public health.” Second, this section discusses what services LHDs are required to provide in Ohio, as specified in the Ohio Revised Code and the Ohio Administrative Code. Finally, this section assesses the extent to which there is alignment between the services LHDs are expected, required, and funded to provide.

What services are LHDs expected to provide?: National standards for essential public health services

Background: What are essential public health services?

There is a great deal of variation in the types of services local public health agencies provide and the way they are structured and governed. In order to clarify the role and functions of public health, the US Centers for Disease Control and Prevention (CDC) developed the Ten Public Health Essential Health Services in 1994, which served as the foundation for further efforts to define the functions of public health departments and to set standards for assessing the quality and performance of public health agencies. The new accreditation standards launched in September 2011 grew out of that work.

A 2003 IOM report, *The Future of Public Health*, called for the establishment of a national Steering Committee to examine the benefits of accrediting governmental public health departments. This led to the development of the Public Health Accreditation Board (PHAB), an independent non-profit entity charged with developing and implementing the new accreditation process. The Ohio Department of Health is in the process of completing prerequisites for state-level accreditation. Accreditation is voluntary at the state and local levels, although LHDs are now required to conduct annual “improvement standard” self-assessments using the PHAB measures.

Table 16 illustrates the evolution of national standards and alignment across models.



Table 16. National public health standards

10 Essential Public Health Services CDC, 1994	Operational Definition of a Functional Local Health Department, 10 standards NACCHO, 2005	Public Health Accreditation Board Standards, 12 domains PHAB, 2011
“Guiding framework for the responsibilities of local public health systems.”	“...Everyone, no matter where they live, should reasonably expect the local health department to meet” the following standards....	“...the range of public health services a department should provide”
1. Monitor health status to identify and solve community health problems.	Monitor health status and understand health issues facing the community.	Assess. Conduct and disseminate assessments focused on population health status and public health issues facing the community
2. Diagnose and investigate health problems and health hazards in the community.	Protect people from health problems and health hazards.	Investigate. Investigate health problems and environmental public health hazards to protect the community.
3. Inform, educate, and empower people about health issues.	Give people information they need to make healthy choices.	Inform & Educate. Inform and educate about public health issues and functions.
4. Mobilize community partnerships and action to identify and solve health problems.	Engage the community to identify and solve health problems.	Community Engagement. Engage with the public health system and the community to identify health problems.
5. Develop policies and plans that support individual and community health efforts.	Develop public health policies and plans.	Policies and plans. Develop public health policies and plans.
6. Enforce laws and regulations that protect health and ensure safety.	Enforce public health laws and regulations.	Public health laws. Enforce public health laws
7. Link people to needed personal health services and assure the provision of health care when otherwise unavailable.	Help people receive health services.	Access to care. Promote strategies to improve access to health care services.
8. Assure competent public and personal health care workforce.	Maintain a competent public workforce.	Workforce. Maintain a competent public workforce.
9. Evaluate effectiveness, accessibility, and quality of personal and population-based health services.		Quality Improvement. Evaluate and continuously improve processes, programs and interventions.
10. Research for new insights and innovative solutions to health problems.	Contribute to and apply the evidence base of public health.	Evidence-based Practice. Contribute to and apply the evidence base of public health.
		(11) Administration & Management. Maintain administrative and management capacity.
		(12) Governance. Maintain capacity to engage the public health governing entity.



LHD capacity: Results of the 2012 Performance Improvement Assessment

The 2012 results of Ohio's Profile Performance system provide an initial self-assessment of LHD capacity to provide the 10 Essential Public Health Services, as captured in the 12 PHAB domains. LHDs submitted their first-ever Profile Performance self-assessment in March 2012 using an online reporting system developed by ODH. All but one of the 125 LHDs participated. The results are presented in Part 3 of this report.

Implications of PHAB standards for cross-jurisdictional sharing and/or regionalism

The primary relevance of the PHAB standards is that they provide an agreed-upon list of the essential functions of LHDs. Any attempts to change the current LHD structure must keep in mind the basic services LHDs are supposed to provide. Criteria for assessing cross-jurisdictional sharing models should likely address questions such as:

- To what extent is the LHD currently providing the essential functions? Is there currently capacity to provide these essential services? What is the current level of performance and quality?
- How would the new model affect LHDs' ability to provide these essential functions? How would it affect the LHD's performance and the quality of its services?
- To what extent do current funding streams, service categories, and governance structures foster alignment with the PHAB domains? Where are there opportunities for re-alignment?

What services have the greatest impact on population health?: The Health Impact Pyramid

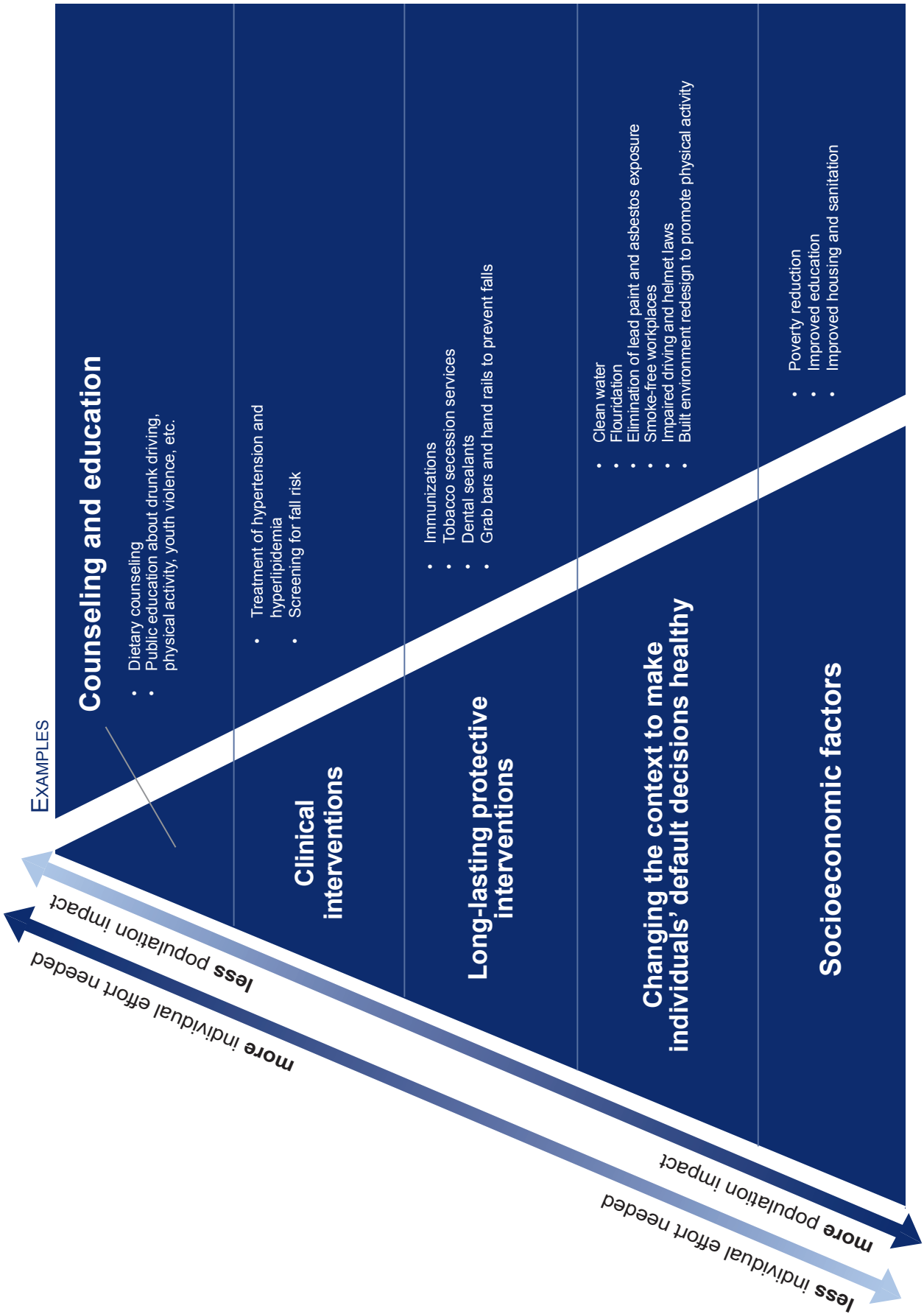
Frieden (2010) offers the useful construct of the Health Impact Pyramid to illustrate the types of interventions that evidence shows are most likely to result in improved population health (see Figure 11). Unlike the PHAB domains, which establish a list of core service categories that help form the basic minimum capacity of a public health agency, the pyramid gets at the effectiveness of public health—moving beyond capacity and performance toward outcomes and impact. It provides a framework for prioritizing which types of LHD activities are likely to have the greatest impact on the overall health of the community. With a focus on improving population health, the pyramid helps to emphasize the types of activities that are unique to public health and that public health does well. Specifically, local public health is often the primary provider of activities at the “changing the context” and “long-lasting protective factors” levels. The “socioeconomic factors” level is often seen as being the responsibility of the education sector and poverty-reduction programs. The “clinical interventions” and “counseling and education” levels have traditionally been shared between the health care system and public health, with LHDs providing “care of last resort” to underserved populations and health education services (e.g., school-based tobacco prevention).

Figure 11 displays the Health Impact Pyramid side-by-side with 2010 LHD expenditure amounts and categories in order to assess alignment. The bulk of LHD expenditures appear to be concentrated toward the middle of the pyramid, revealing some strengths and some opportunities to re-align funding. According to this model, it appears that local public health in Ohio could do more to improve its impact on population health by shifting resources away from “counseling and education” and “clinical interventions” and towards “socioeconomic factors,” and by maintaining or strengthening current investments in “changing the context to make default decisions healthy” and “long-lasting protective interventions.”



Figure 11.

The Health Impact Pyramid

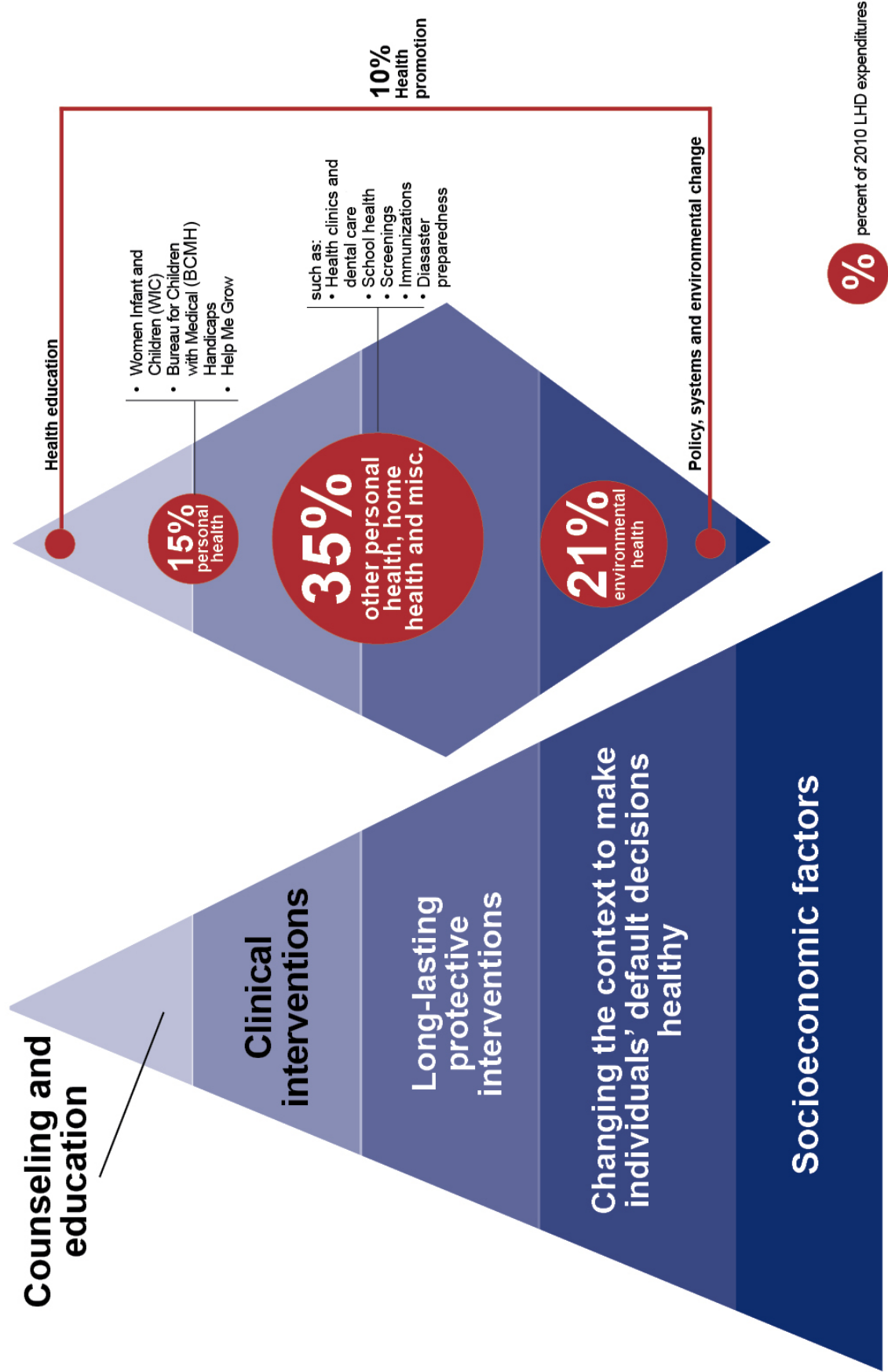


Source: A Framework for Public Health Action, The Health Impact Pyramid, Frieden, M.D., Thomas R, American Journal of Public Health, April 2010.



Figure 12.

Relationship between the Health Impact Pyramid and Ohio LHD Expenditures (2010)



Note: Expenditure category percentages do not add up to 100% because the following categories were excluded: General Administration, Vital Statistics, and Laboratory.
Source for expenditure data: 2010 LHD Annual Financial Report (AFR)



Mandated services

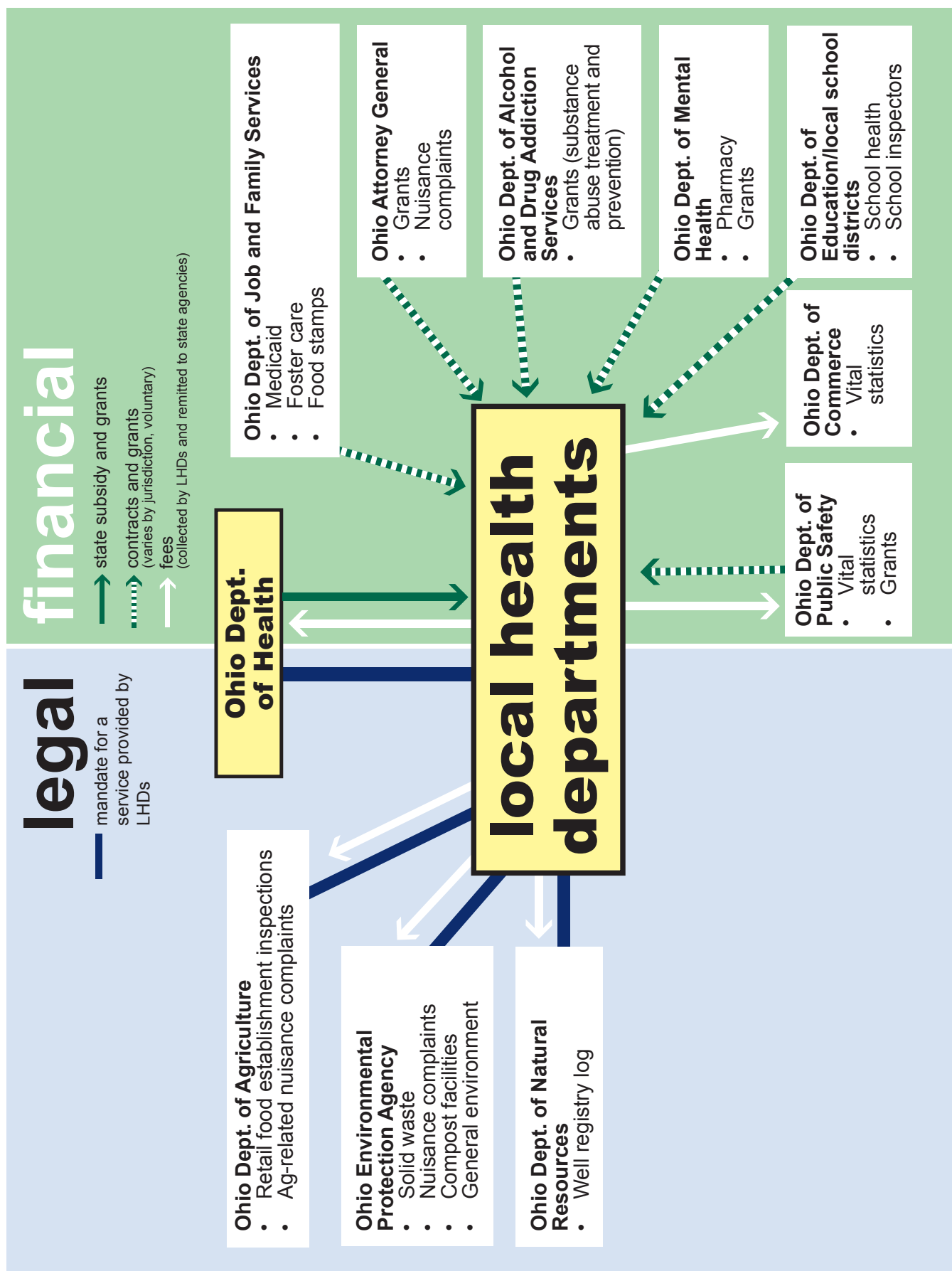
The Ohio Revised Code specifies a set of services LHDs are required to provide. Included are many specific requirements related to environmental health, including water system inspections and the abatement and removal of nuisances, and communicable disease surveillance and reporting. These statutes reflect public health's historical focus on controlling the spread of infectious diseases. The statutes and regulations in the Ohio Administrative Code also include some direct care requirements, such as involvement in the medically handicapped children program and a more general requirement for provision of access to primary care for medically underserved individuals. Although the ORC does include a general mandate for LHDs to provide health promotion and health education services, there is little reference to chronic disease prevention in the statutes. The LHD requirements in Ohio statutes, for example, have not been updated to reflect the epidemiologic shift in threats to health from infectious disease toward chronic disease. On the whole, the bulk of the statutory mandates continue to emphasize the earliest understanding of what LHDs should provide. Table 16 provides a list of mandated services and related relevant statutes are provided in the appendix.

Although the Ohio Department of Health is the primary state agency LHDs report to and receive funding from, LHDs also have legal and financial relationships with many other state agencies. As shown in Figure 13, LHDs are mandated to provide a range of inspection and registry services on behalf of the Ohio departments of Agriculture, Environmental Protection, and Natural Resources. In some cases, LHDs collect fees or fines related to these inspections and registries that are then remitted back to the relevant state agency. Some LHDs also receive grants from or enter into contracts with other state agencies, such as the Department of Job and Family Services. LHDs also have other voluntary interactions with additional state agencies, such as the Department of Commerce, the Department of Public Safety, and the Attorney General's Office.



Figure 13.

Legal and Financial Relationships between LHDs and State Agencies





Relationship between mandated, permitted, funded, and expected services

Figure 14 displays examples of the types of services provided by local health departments in Ohio. The seven Public Health Accreditation Board (PHAB) domains represent service categories recognized by the public health community as essential services that should be provided by health departments. Mandated and permitted services are specified in the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC). The services in the “funded” column refer to relevant revenue categories reported by LHDs. Based on this analysis, it appears that locally generated funds (often in the form of fees) are largely responsible for funding services related to the Assess, Investigate and Public Health Law functions, which overlap heavily with environmental health services. The Access to Care function is funded by a mix of local healthcare reimbursements (Medicaid, Medicare, insurance, fees) and state and federal grants (including Help Me Grow, WIC, and women’s health). Dedicated funding streams for the Inform and Educate, Community Engagement, and Policies and Plans functions are more difficult to identify, possibly indicating a lack of direct revenue in these areas.

The remaining PHAB domains — Workforce, Quality Improvement, Evidence-Based Practice, Administration and Management, and Governance — typically do not have dedicated funding streams. Ohio law does include some mandates related to workforce, quality improvement, and governance (see Appendix for full list of provisions).



Figure 14.

Expected, mandated, and funded services provided by local health departments in Ohio

Essential Public Health Services PHAB Domains related to service provision	Summary of Services Specified in ORC Statutes and OAC Regulations (see appendix for detail)		Funded Services Relevant revenue sources (AFR)
	Mandated Services	Permitted Services	
Assess Conduct and disseminate assessments focused on population health status and public health issues facing the community Investigate Investigate health problems and environmental public health hazards to protect the community	<ul style="list-style-type: none"> Water supply and sewerage investigation and reporting; heating, plumbing, and ventilation investigation in public buildings Communicable disease investigation, reporting, and control (including HIV/AIDS) Analysis of causes of morbidity and mortality Private water system assessment Disease vector inspection Disease prevalence reporting 	<ul style="list-style-type: none"> Community health assessment School, jail, and other public facility inspections Restaurant inspections Laboratory services Public nuisance inspections 	Local: Environmental Health fees and contracts 11% of total revenue Local: Vital Statistics fees 4% of total revenue Local: Laboratory (environmental) <1% of total revenue Portion of other local and state sources (dedicated sources and amounts not identified)
Inform & Educate Inform and educate about public health issues and functions	<ul style="list-style-type: none"> Health promotion and health education 	No specifically relevant statutes	Portion of some State and Federal grants (dedicated sources and amounts not identified)
Community Engagement Engage with the public health system and the community to identify health problems	<ul style="list-style-type: none"> Participation in the county Children and Family First Council 	<ul style="list-style-type: none"> Promote cooperative arrangements and coordinate with other agencies of local or state government, including area-wide planning 	No discrete identifiable funding source
Policies and plans Develop public health policies and plans	No specifically relevant statutes	<ul style="list-style-type: none"> Coordinate area-wide planning Review and make recommendations on public facility projects, programming, and policies 	No discrete identifiable funding source
Public health laws Enforce public health laws	<ul style="list-style-type: none"> Exclusive power to establish fees for administering and enforcing rules regarding private water systems and water system inspections Quarantine and isolation authority for individuals Abate and remove all nuisances within jurisdiction 	<ul style="list-style-type: none"> Ability to petition the court of common pleas to require an individual to comply with a quarantine order Regulate location, construction, and repair of privies, cesspools, drains, plumbing, yards, pens, stables, etc. Cause arrest or prosecution of persons who disregard a board of health order Quarantine authority for vehicles Ability to destroy infected clothing, bedding, etc. Ability to make regulations regarding the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances 	Portion of local Government Funds, Fees and Contracts for Environmental Health, and other local funding (dedicated sources and amounts not identified)
Access to care Promote strategies to improve access to health care services	<ul style="list-style-type: none"> Provide for access to primary health care for medically underserved individuals (to the extent included in minimum standards) Distribute anti-toxin for diphtheria 	<ul style="list-style-type: none"> Provide free or low-cost vaccinations Provide or contract for home health care Provide prenatal clinics and infant care ("infant welfare stations") Medical and dental supervision of school children Provide free treatment and quarantine for sexually transmitted diseases Establish and run detention hospitals for cases of communicable diseases Medically handicapped children program: service coordination, public health nursing, transportation, and outreach (BCMH) 	Local: Earned Healthcare Reimbursement 8% of total revenue Local: Laboratory (clinical) <1% of total revenue Portion of State Grants 5% of total revenue
			Portion of Federal Pass-through and Federal Direct Grants
			20% of total revenue



1.4 Other Regulatory and Policy Factors

Health care reform and related initiatives

The Affordable Care Act (ACA) contains numerous provisions relevant to public health agencies. Helpful lists and summaries of key provisions are available at www.naccho.org/advocacy/healthreform.cfm and www.ASTHO.org.

The following areas in particular provide the need and opportunity for LHDs to consider how their role can evolve in response to the ACA and other health care reform initiatives.

Access to care: Potential implications for clinical services, care coordination, and insurance outreach and “navigation”

Clinical services. If the ACA is implemented as planned, more Ohioans will gain coverage as a result of several provisions, including the extension of dependent coverage in private health plans, Medicaid eligibility expansions, insurance subsidies, and the individual mandate. An estimated 800,000 currently uninsured Ohioans may gain health coverage by 2017, although the number could range from a low of 500,000 to a high of one million (Milliman, 2011). Just as critical as the coverage expansions, the ACA requires first dollar coverage of clinical preventive services by all public and private insurers (new plans only).ⁱ In addition, essential benefit requirements will ensure access to a minimum level of benefits.ⁱⁱ

As a result, the role of local health departments in providing clinical services will need to evolve. While the leading example is immunizations, (97% of local health departments provide immunizations (2011) (Center for Public Health Statistics and Informatics, Ohio Department of Health, 2011),ⁱⁱⁱ local health departments provide a range of clinical services, to which significantly more Ohioans will have access after full ACA implementation. LHDs may have a role in providing safety net care for those who remain uninsured (e.g., undocumented immigrants, those exempt from individual mandate) and may need to develop new business models to bill insurance for covered patients or contract to provide services.

Care coordination. The role of care coordination and case management has gained increasing support within Ohio and nationally. Along with that is recognition that community partners and auxiliary health workers are an important part of the equation for effective care and improved outcomes. The ACA includes a range of provisions that encourage greater case management and care coordination, including Accountable Care Organizations (ACOs), Medicaid Health Homes, and Integrated Care Delivery System (ICDS) for dual eligibles. Many LHDs have staff and experience with case management for programs such as Bureau for Children with Medical Handicaps (BCMH) and Help Me Grow, among others. LHDs may therefore have a role providing case management capacity, although the mechanism for doing so is not yet clear.

Insurance outreach and Navigators. The actual number of uninsured Ohioans who gain insurance coverage will depend somewhat on the effectiveness and



aggressiveness of Medicaid and insurance exchange outreach and enrollment efforts. Ohio officials, led by the Governor's Office of Health Transformation, are already moving forward to modernize and streamline Medicaid eligibility and enrollment systems. LHDs may have a role in leading or supporting outreach and enrollment efforts for Medicaid.

The ACA created a Navigator function to help people obtain insurance through their state's health insurance exchange. Navigators are meant to help individuals and families address their health care needs with the right health plan and to educate people about their health plan options. Navigators will be funded through grants provided by state exchange funds. While public health departments are not named specifically as a type of group who can serve as Navigators, the ACA indicates that other entities capable of carrying out the required duties can serve.^{iv} LHDs may have a role serving as Navigators for underserved populations.

Data for community health assessments and quality improvement

Community Health Needs Assessments. For tax years beginning after March 23, 2012, the ACA requires nonprofit hospitals to conduct community health needs assessments (CHNAs). Failure to comply results in financial penalties and the potential loss of tax-exempt status. The primary purpose of a CHNA is to identify community health needs for the purpose of developing activities that improve community health status (The Hilltop Institute, 2011). Hospitals must:

- Conduct a CHNA within the 3-year period that begins on the first day of its first tax year beginning after 3/23/2010, and ending on last day of its first tax year that begins after 3/23/2012; and at least once every 3 years thereafter (Section 9007 (f)),
- Incorporate into its CHNA input from "persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health" (Section 9007(a), I.R. C. section 501(r)(3)(B)),
- Make its CHNA "widely available to the public" (Section 9007 (a), I.R.C. section 501(r)(3)(B)), and
- Develop an implementation strategy to meet the needs identified by the CHNA, describe identified needs not addressed by that strategy, and explain why these needs are not being addressed (Section 9007(a)-(b)).

This requirement provides a new opportunity for LHDs to collaborate with hospitals to conduct assessments, and may also provide LHDs with new sources of data and additional resources or capacity for conducting their own needs assessments.

Health Information Technology. Health information technology (HIT) can be used to track clinical conditions, coordinate care, report quality measures, and gather and report population health information. In the past seven years, Ohio has become a national leader in the adoption of health information technology (HIT). As of March 2012, Ohio had more primary care physicians (6,000) signed up to adopt electronic medical record systems through the Ohio Health Information Partnership than any other state in the nation. Cincinnati-based HealthBridge's Tri-State Regional Extension Center^v serving southwestern Ohio signed an additional 997 providers with more than 50 percent of those having already adopted an electronic health records (EHR). Ohio's overall vision



is to build an infrastructure that will allow all health care providers to seamlessly share patient health records electronically across the state.

The US Department of Health and Human Services (HHS) has issued proposed Stage Two Meaningful Use Standards assuming that data submitted through the regional Health Information Exchanges will be the source for public health related data (including, for example, immunization records). In addition, standards for Electronic Health Records have been changed to reduce the need for provider-specific customization and /or paying for capacity unrelated to the provider's needs. These standards focus on interoperability.

The public health community will need to be engaged in Ohio's evolving HIT process in order to ensure that LHDs are able to contribute to and access new data systems. Key questions to be addressed include:

- Will Ohio structure a public health information system able to exchange data between programs within and across public health agencies **and** with clinical systems?
- Should the Ohio Department of Health relieve LHDs of their statutory registry report receiving responsibilities since pertinent information should be available through the EHRs submitted by providers through the HIE?
- What information will local public health agencies report and access in order to support the shift to population-based health?
- Do LHDs have the technology and workforce capacity needed to interact with new data systems?

Resources for prevention and public health infrastructure

Prevention and Public Health Fund. The ACA included the creation of the Prevention and Public Health Fund, the nation's first mandatory funding stream dedicated to a comprehensive approach to wellness. The Fund is to be used for community prevention, including the Community Transformation Grants (two capacity-building grants awarded in Ohio in 2011), clinical prevention, public health infrastructure and training, and surveillance and prevention research. Unlike most other prevention and public health funding which relies upon discretionary appropriations that are vulnerable to annual fluctuations and cuts, the Fund is separate from the annual federal budget process. The Fund was intended to add to existing public health resources, although some observers are concerned that the funds will simply be used to offset cuts in existing prevention programs (Health Policy Brief: The Prevention and Public Health Fund, 2012). The ACA initially allocated \$15 billion over its first 10 years—a significant investment when compared to the CDC's FY2010 core program budget of \$6.46 billion. However, legislation signed by President Obama in February 2012 cuts the fund by \$5 billion over ten years starting in fiscal year 2013, a 33 percent reduction. LHDs will have opportunities to compete for the grant-funded programs, which will focus largely on community-based prevention of tobacco and obesity, improving awareness and access to preventive clinical services, and public health infrastructure. LHDs may also have a role in advocating to protect the Fund from future cuts or elimination.



National Prevention Strategy. Developed by the newly-formed National Prevention, Health Promotion, and Public Health Council, the National Prevention Strategy is the nation's first comprehensive prevention plan that includes all federal agencies. The Strategy may be useful to LHDs in that it provides a useful framework for planning and prioritizing prevention activities, specifies relevant evidence-based practices, and includes key indicators for assessing impact.

Ohio's health care reform strategies

At the state level, the Governor's Office of Health Transformation (OHT) is implementing several initiatives (many that flow from ACA provisions) that are relevant to public health. These include:

- Provide Accountable Care for Children
- Encourage Patient-Centered Medical Homes
- Health Homes for People with Chronic Conditions
- Reduce Tobacco Use
- Improve Medicaid managed care plan performance
- Improve Services for People with Mental Illness
- Provide GRF Funding for Pneumococcal Vaccines for Children
- Lower Infant Mortality Rates
- Accelerate the Adoption of Health Information
- Share Information across state and local data systems
- Modernize Medicaid and Health and Human Service programs eligibility

Several themes are common across these initiatives, including care coordination, integrated care, person-centered care (as opposed to provider-centered), focusing on "hotspots" (high cost centers that can yield savings with intervention), and payment reform. As LHDs plan for how their roles must evolve, considering these themes is essential.

State Health Improvement Plan (SHIP)

In 2010 and 2011, ODH convened a Planning Council made up of representatives from local health departments, academia, provider organizations, other health and human services state agencies, consumer advocacy groups, health professionals, and health policy and regional planning experts to conduct a State Health Assessment (SHA) and develop a State Health Improvement Plan (SHIP). According to ODH, the SHIP Planning Council will develop measurable and achievable goals, identify strategies and specific activities, identify key partners and funding sources, and establish 12-month and 24-month outcomes for 11 priority areas:

Health Improvements

- a. Chronic disease prevention
- b. Injury
- c. Infectious disease
- d. Infant mortality/pre-term birth
- e. Mental health and addiction

Service Improvements

- a. Access to care



- b. Patient-Centered Medical Home
- c. Integrate physical and mental health/addiction

Operational Improvements

- a. EHR/HIE/Data exchange
- b. Workforce development
- c. Funding (capacity building and technical assistance for grants)

ODH anticipates releasing the SHIP by fall 2012.

Relevance to cross-jurisdictional sharing

The SHIP provides guidance on statewide public health priorities and topics that ODH will likely be focusing on in the coming years. The priorities in the Health Improvements category highlight community needs that public health professionals in Ohio feel are the most important to address. As LHDs consider the range of services they will provide in the future, these areas warrant attention. All of the Service Improvements relate to direct health care services and are therefore relevant to LHDs that provide clinical services or work closely with health care providers. The Operational Improvements category may be more directly relevant to cross-jurisdictional sharing. In particular, the Funding work group will be exploring ways for public health agencies to leverage more funding, particularly from federal sources.



Ohio's health outcomes

Ohio's health outcomes lag behind those of many other states. Ohio ranks 42nd on the Commonwealth Fund State Scorecard Healthy Lives dimension and 39th in infant mortality. Ohio has more residents who are obese or are smokers compared to other states and Ohio's health care spending is relatively high (see Table 16). As discussed earlier, Ohio also ranks quite low when it comes to investments in public health. Efforts to modernize local public health will need to identify health outcome improvement as a top priority and make the case for the value of public health investment in reducing the burden of disease and health care costs in Ohio.

Table 16. Health Outcomes & Investments in Public Health: How does Ohio rank?

	State Rank (1= best)
Health outcomes	
Commonwealth Fund State Scorecard: Healthy Lives dimension ±	42
America's Health Rankings: All Outcomes €	37
Infant mortality €	39
Premature death €	32
Health factors	
America's Health Rankings: All Determinants €	36
Obesity €	35
Smoking €	45
Health care costs	
Health care expenditures per capita (better rank indicates lower per capita spending on personal health care services) ◇	33
Investment in public health	
State public health budget per capita* (better rank indicates higher per capita budget)	41
Centers for Disease Control and Prevention funding per capita*	50
Health Resources and Services Administration (HRSA) funding per capita*	39
Local health department expenditures, median annual per capita** (rank among 44 states with available data)	33
Tobacco prevention spending***	50

Sources:

*Investing in America's Health: A state-by-state look at public health funding and key health facts. Trust for America's Health, 2011.

**2010 National Profile of Local Health Departments, National Association of County and City Health Officials, 2011)

*** Campaign for Tobacco-Free Kids Key State-Specific Tobacco-Related Data & Rankings, 2012

± Commonwealth Fund State Scorecard on Health System Performance, 2009, <http://www.commonwealthfund.org/Maps-and-Data/State-Data-Center/State-Scorecard.aspx>

€ America's Health Rankings, United Health Foundation, 2011 <http://www.americashealthrankings.org/>

◇ Kaiser Family Foundation, statehealthfacts.org, Health Care Expenditures per Capita by State of Residence, 2009, <http://statehealthfacts.org/comparetable.jsp?ind=596&cat=5&sub=143&yr=92&typ=4&sort=a>



PART TWO: STAKEHOLDER CONSIDERATIONS AND LESSONS LEARNED

Objectives

- Identify key factors impacting the future of local public health and considerations for cross-jurisdictional sharing, as expressed by local health commissioners and state-level stakeholders
- Identify lessons learned from experiences with collaboration and consolidation within public health and related systems
- Introduce guiding concepts that may help to inform decisions about new models
- List criteria and considerations for assessing available models

2.1 Stakeholder Considerations

Key-informant interview results

Purpose and methods

The purpose of the key-informant interviews was to obtain feedback from key stakeholders on the following issues:

- Future role of public health and implications for the new model
- Current climate of collaboration
- Factors making future sharing/collaboration appealing and/or necessary
- Factors that might impede future sharing/collaboration
- Other considerations

HPIO conducted 25 key-informant interviews in January and February 2012. The interviewer used a semi-structured set of questions (see Appendix) and conducted 60-minute interviews by phone or in person based on participant availability and logistical considerations. HPIO worked with the Steering Committee to identify individuals with first-hand knowledge and experience with issues affecting the public health and the governmental collaboration landscape. All key-informants who were asked to participate agreed to do so (100% response rate). A full list of participants is provided in the Appendix. The key-informants represent two distinct groups:

- *Local Public Health Group* (n=18): All of the Public Health Futures Steering Committee members and its staff (Executive Director, AOHC). The Committee members were appointed by the AOHC Board of Directors and represented all geographic areas of Ohio and local district sizes.
- *Statewide Policy Group* (n=7): Senior officials from the Ohio Department of Health and the Governor's Office of Health Transformation were pre-selected by the Steering Committee (n=5). HPIO also identified additional informants with relevant knowledge and experience with "leaner government" and shared services (large regional Educational Service Center and Kent State University's College of Public Health and Center for Public Administration and Public Policy; n=2).



Interview questions were tailored somewhat to reflect the different experiences of the two groups. Both groups were asked to comment on the value and role of public health in the future and the current climate of collaboration. Two questions were asked only of the Statewide Policy Group:

- In what ways can your department or organization assist with opportunities for sharing or consolidating?
- Discuss information technology, performance measurement, and the preferred focus of locally delivered services.

Most Local Public Health Group members were interviewed first, followed by the Statewide Policy Group, although some deviations in staging occurred to accommodate interviewees' schedules.

Key Messages

The following themes emerged as strong messages and areas of consensus across both groups of stakeholders:

- Nearly every key informant believes that *the time is right* for a systematic approach to develop a model for the future. Almost all felt that figuring this out may be difficult, but is necessary.
- There is broad agreement that the new model should define and be developed with a *minimum standard of health protection* being available statewide in mind. Most informants believe that the new model needs to address ways of organizing, funding, and providing capacity to support such a standard as a high priority.
- Everyone in the Local Public Health group reported that they are *already doing a great deal of collaborating* within the public health system. All but a few view this positively and most are motivated to do more for reasons other than pure necessity. Only a few were negative or skeptical about collaboration in general; these respondents tended to view resource sharing as a necessity related to factors beyond their control.
- *Motivations are high and interest in new approaches is pervasive* among representatives of nearly all types of jurisdictions and sizes. Informants pointed to many examples of success in their current ways of collaboration, along with acknowledging that there are probably more efficient ways to organize and do things together.
- Nearly everyone prefers that *next steps taken should be initiated from within the public health system*, rather than being imposed externally.
- *Deciding what are truly local needs* was a common theme, as is figuring out how to address those needs within a new model.
- Most interviewees urged that the future model should *prioritize services and activities that public health can do and others systems cannot or do not do*.
- Most believe that public health should be *more connected with and do more partnering with the broader health care system*. Nearly all in the Local Public Health group and all of the Statewide Policy informants talked about needs and benefits related to this in terms of playing a role that helps achieve measurable outcomes or



that helps affect costs (administrative and/or health care). Most suggest factoring more connectedness into how public health's future model can think about ways to afford the capacity needed to meet a minimum standard of health protection.

No single strategy emerged about what future models of cross-jurisdictional sharing should look like. However, nearly everyone believes the future model has to address organizing, funding, and capacity needed, although the specifics vary. For example, the question of how many local public health agencies there should be is an area of disagreement, as is how to get there. Most participants mentioning a specific number talked about a number and size tied to the 88 counties. For example, one interviewee said, "I can't see any reason why we shouldn't or couldn't get to 88." In terms of how, as one informant put it, "consolidation isn't a silver bullet" and most people talked about doubting that "one size fits all."

Most informants feel there is a need to develop a better understanding of the variety of ways cross-jurisdictional sharing can be done, and to specify the purpose of different models. Most in the Local Public Health group talked about how they currently spend so much time trying to patch together funding that they have not had the luxury of researching models of successful consolidation and resource sharing. Of the few in the Local Public Health Group who mentioned a specific model, most pointed toward models from inside public health. On the other hand, in the Statewide Policy Group, there was more talk about looking at models and collaborative experiences from outside public health. Information about collaboration models mentioned in the interviews will be reported separately.

Future role of public health and implications for the new model

In describing the future role and value of public health, most key informants used the following words: preventing, promoting, protecting, and partnering to achieve outcomes. These terms therefore provide a useful starting place for describing the role of public health and the specific services and functions local public health should continue to provide.

All Local Public Health Group informants stressed that public health is a critical part of providing the health protection and promotion infrastructure in Ohio and that local authority and capacity is important. All mentioned the importance of roles that fall within the traditionally accepted three core functions of public health (Assessment, Assurance, and Policy Development). Nearly all mentioned at least several roles consistent with the ten standards in NACCHO's Operational Definition of a Functional Local Health Department (2005). Some informants described the future role more generally by simply referring to the Public Health Accreditation Board Standards (PHAB). One informant responded succinctly, "the PHAB standards tell us what we are supposed to be doing and that's what we should do." One informant in the Statewide Policy Group observed that "accreditation is fine, and should be pursued if public health thinks it is of value." This informant emphasized that accreditation is not considered to be a key strategy for getting to fewer entities.



Access to care. The idea that local public health's traditional role "no longer fits" was frequently mentioned. Most respondents in both groups felt that the new model should "scrutinize" public health as a provider of primary health care. While interviewees expressed this idea in various ways, key phrases included the need to consider future roles in primary care provision using a "last resort" standard, to be defined by thinking about factors like "providing low volume/high need preventive services no one else is likely to do." For example, questions about who would do travel immunizations were mentioned. Most people also mentioned the need to think about factors related to geographic disparities around access to primary care through the local health delivery system. This was especially prevalent among the informants from smaller sized districts in the Local Public Health group.

Most informants in both groups talked about public health's future model needing to shift the focus away from providing primary health care services (individual impacts), toward more population-based health, policy change, social norms marketing, and systems and environmental change. Most holding this view described "disease" in terms of focusing on chronic disease prevention. In general, there are varying views on what "population-based" means in terms of what should be done locally, regionally, or statewide. People in the Statewide Policy Group and also those from larger agencies in the Local Public Health Group emphasized regional or statewide markers for the population size. "Partnering" with the state or the broader health care system also was mentioned frequently.

Most informants in both groups also mentioned looking at the emphasis of "care coordination" for people with chronic diseases in state and federal health reforms, while considering where to go around the provision of health care.

Those in the Statewide Policy Group expressing a specific view emphasized that if a local public health agency is going to provide primary health care, it should consider local market conditions and focus on being a good provider. Models such as the primary care medical home initiative, or seeking health care provider accreditation/credentials were mentioned. Nearly everyone in the Statewide Policy Group talked about using shared services for "back room" and population-based activities, so that local agencies could focus on what they need to do or are best situated to do. For example, more than one interviewee cited the advantage of models like the Educational Service Centers that lets school districts focus on teaching, instead of administering.

Disease prevention. Nearly all the stakeholders interviewed said that the role around communicable disease prevention, intervention, and follow up is very important. Informants in the Local Public Health Group tended to emphasize environmental and food inspection functions more often than informants in the Statewide Policy Group. Of those, interviewees from smaller sized districts talked about disease prevention and environmental and food inspections, while informants from larger sized districts and the Statewide Policy Group were more likely to discuss disease prevention in the context



of broader health care reform impacts, mentioning the need to focus more on “chronic” disease prevention.

Convening and planning. The idea of public health being a convener and planner was mentioned by nearly everyone in the Local Public Health Group. Again, there are varying views about who should be being convened and what the purpose of the convening and planning roles ought to be. Frequently, people mentioned the idea that public health can be effective in this role when it can be perceived as “neutral” and concepts like “public versus private financial interests” and “a source for credible, science-informed health information” were also mentioned. The Statewide Policy Group informants discussed the convening and planning function in relation to looking at market conditions and partnering with other health or public systems (assisting a hospital-based system, for example; the key message was flexibility and “partnering” around the planning role).

Emergency preparedness. There is broad agreement across groups that maintaining Public Health Emergency Preparedness and Response is very important. Frequently mentioned ideas within the Local Public Health Group centered around the importance of paying attention to having local officials with the ability to act because they have “unique statutory powers no else has locally.” Many respondents in this group and some in the Statewide Policy Group also cited the regional approaches arising from grants and the response to 9/11/2011 as positive examples where sharing is occurring while this local capacity is being maintained. Two in the Statewide Policy Group encouraged thinking about a variety of ways to provide local response capacity, including through regional arrangements, or having the Ohio Department of Health being able to “deploy” what’s needed.

Current Climate of Collaboration

All but very few informants are open to and are currently doing collaboration. Overall, nearly everyone mentioned success in current regional and cross-jurisdictional approaches for some public health functions, some administrative functions, and especially making limited, but needed, specialized expertise available to local public health agencies who can not afford or attract people with these skills.

Most people in both groups feel good about what has been accomplished, although the Statewide Policy Group would like to see “more.” Nearly everyone in the Local Public Health Group feels that the positives around the current climate are something they should have a chance to build upon.

Most from the Local Public Health Group are open to the possibility of using regional shared services for some public health roles and functions. The most prevalent message among Local Public Health informants was one of being “open” to looking at regional distribution or pooling of funding and specialized expertise, if how can be determined. Most in the Statewide Policy Group also expressed being “open” and said they “look forward to specific proposals” from public health.



Almost no one in the local public health group wants regional solutions imposed externally. Most of the informants in the Local Public Health Group said that local autonomy is important and they would like to have more options than just consolidation. Most people in the Statewide Policy Group think that changes in governance are essential. Several in the Local Public Health Group mentioned that “it depends” on the local situation, whether changes in governance are the right approach. For example, one informant noted that they have to contract with “18 tiny jurisdictions” which each want different things and have varying ability or willingness to pay for “the basic infrastructure.” Several mentioned that too many jurisdictions within a county, for example, can lead to confusion for business, and can preclude greater economies of scale (citing inability to agree on county-wide food inspections rules and processes, for example).

Informants in the Statewide Policy Group emphasized that public health needs to look at what is being accomplished around the leaner government initiatives at the state level and locally and how fast. Several people in this group mentioned that they were open to hearing from public health “how they could help as soon as possible.” They pointed toward changes in the law to make contracting for shared services easier, mentioned examples of successes, noted trends, and in general expressed preferences for regional or consolidated approaches. These people view these as positive factors making the environment for cross-jurisdictional sharing more “conductive.”

Factors making future sharing/collaboration appealing and/or necessary

Statewide Policy Group members pointed out that “everyone” is looking at consolidating and sharing services, and that public health “is no different.” Most everyone in the local public health group agrees.

There is a perception among informants in the Statewide Policy Group that there is some “inertia” within public health. Everyone in this group noted that the environment is changing “around” public health. Words like “momentum” and “speed” were used when talking about systems or local governments outside public health. Several mentioned that a policy of “carrots and sticks” should be taken into account and that it ought to be expected to affect the future model for public health.

Areas mentioned often by most in both groups included pressures on county commissioners around millage, the erosion of the state employee workforce, cuts in state funding, and that most don’t have the resources to maintain a basic infrastructure within the status quo. The Statewide Policy Group reiterates that this is the case in many areas of government, not just public health, and that’s why the leaner government initiatives are so important. The agenda around the goal of reducing the number of local governmental entities is being aggressively pursued.

Both groups agreed that while much sharing is already being done, the costs of current approaches are still too high. Local public health group members most frequently



mentioned how the fragmented and uneven funding are what has been driving a lot of the collaboration to date. The Statewide Policy Group pointed toward consolidation and model shared service arrangements in other systems.

Many informants in the Local Public Health Group and all in the Statewide Policy Group talked about the costs and effort around the status quo. As one person in the local public health group put it, “we have a system that is being figured out one grant, one staff position, one tiny jurisdiction, or one program at a time.” Another said, “most of us cannot afford the basic infrastructure – we are too small.” One informant in the Statewide Policy Group said, “you need to identify the high-value targets for consolidation and sharing.”

Everyone agrees that costs have to be reduced. There are varying views about the best ways to do that. The Statewide Policy Group mentioned “standardizing regulations and processes” and “there are too many local public health districts.”

Most people in both groups mentioned that some public health functions could be at statewide or regional or “at least” the county level. Most people believe that figuring this out quickly is essential.

Everyone mentioned funding issues, with most pointing out that Ohio’s per capita funding for public health is low. On funding, interviews from the Statewide Policy Group emphasized that the overall amount of funding is not going to change in the near term (one said “well, it isn’t going to get any better, is it?”) and so public health and everyone else need to “figure it out” and “soon.” Another said “the issue isn’t that there isn’t more funding. People should think about how much funding there already is and figure out how to optimize those resources.”

Most in the Statewide Policy Group believe that time is running out for public health to get its proposals together. They pointed out that the health transformation and leaner government initiatives are proceeding quickly. One informant said “the world is changing around them so they had better hurry.” All described specific models and resources that public health should be considered.

Factors that might impede future sharing/collaboration

Financial issues

- There is broad agreement among informants in both groups that the fragmentation and complexity of the current funding streams are disincentives to sharing.
- Nearly everyone in both groups agrees that responsibilities, state and local expectations, and funding are not currently aligned. Frequently mentioned is the idea that current dependence on local funding is misaligned with where public health needs to go. About half in the Local Public Health Group think the state should provide more funding. Some in both groups mentioned the need to at least “take a look” at the subsidy distribution formula, which as more than one person said, “makes absolutely no sense whatsoever.”



- Many in the Local Public Health group talked about funding factors making it more difficult to pursue cross-jurisdictional sharing. For example, they mentioned that state agencies provide too little funding for public health to “really matter” or that the state distributes funds in regional ways “without consulting local agencies about the best configurations.” Many in Local Public Health Group point toward the overall “dependence” on local revenues tied to jurisdictional authority “built into” the system. One interviewee from Local Public Health pointed out that the state “loves having my small agency because we are revenue collectors for them.”
- Many people in the Local Public Health Group mentioned that there would be better ways to use state funding than parceling it out the way it’s being done now. It is not clear who “gets to decide” a new way. One person captured the idea by saying, “it’s a mystery how ODH makes decisions around how funding is distributed” and several mentioned that ODH draws regional boundaries for different grants or programs that have little to do with “reality here on the ground.” In addition, people mentioned that regional grants often carry “strings” that are irrelevant or “low priorities” in many jurisdictions under the grant, “diverting” or “diluting” resources from what would be most effective considering local conditions.
- Most people in both groups also mentioned that figuring out how to get more federal grants is important. Several noted a relationship between how state and local funding is “sliced and diced” as a factor impeding more success. Informants in the Local Public Health Group frequently mentioned the issue of having to “compete with each other” which affects Ohio’s overall competitiveness for federal money.
- Everyone in the Local Public Health Group thinks the funding issues “will” or “could” make it hard to figure things out for the future model. A few tied this to changes in governance and barriers to consolidation under current laws. For example, smaller jurisdictions would have disproportionate power (to their size and contributions in funding) if say a large city district and many smaller districts within in the county were to come together.

Lack of consensus on structure for change

- Areas of disagreement are a major impediment to moving forward. A member of the Statewide Policy Group said, “that is one reason why we asked public health to bring forward a proposal.”
- Most in the Statewide Policy Group acknowledge that these can be “thorny” issues, and mentioned that they were “open to proposals.” They again point toward changes in governance being looked at. Some expressed willingness to consider needed changes in the law around consolidation, stating again “we look forward to specific proposals from public health.”
- There are varying views around governance and jurisdiction size issues. One informant in the Local Public Health Group said “different solutions fit different communities and situations” – this is an idea that is very common among the local public health group members. Most respondents in the Statewide Policy Group expressed views about how many agencies or jurisdictions there ought to be more concretely, including “everyone knows there is a minimum number of population served and borders that will work.” Statements included “you can’t tell me that the



way it is now works” and “figure it out and we’re open to discussions” but it is “not 125.” One informant in the Statewide Policy Group suggested that research should be done into what the minimum size should be in public health.

- Statewide Policy Group informants consistently pointed toward systems outside public health as having similar issues, but taking action, and suggested that public health notice the trends toward consolidation.
- A few members in the Statewide Policy Group said they are “reluctant” to be too aggressive around the size issue because relationships with the current local agencies are “important” and “trying to be accommodated.” Others are very willing and can be expected to “lay out expectations” and the phrase “carrots and sticks” was again mentioned as ways being used to shape or incentivize decision-making. The common message is “figure it out” and “we are open to discussions.”
- Both groups mentioned back room functions being embedded in local governments (city or county) as an issue. Most agree this affects being able to invest or maintain the basic capacity desired. Nearly all Local Public Health members and all Statewide Policy Group informants identify this as something to “figure out.” Across both groups, several informants mentioned that embedded functions are “not aligned” with either public health’s future role or “available resources.” Most people in both groups see that it is challenging to reconcile “what we need or our local politicians want” with what “health care reform means” and the state “politicians” want. Several people in the Statewide Policy Group point toward consolidation and shared services through new contracting laws as the answer.
- Both groups are looking at mergers or consolidation as an issue, concern, or as a solution. Most respondents in the local public health group identified merger or consolidation as a less attractive option compared to other ways of achieving efficiencies. But among them, they talked about many different reasons for this and not all sound like pure “resistance.” Several mentioned impediments around specific statutory, political, or transitional barriers. There is more “reluctance” than “resistance.” One informant very clearly stated “I wish they would just leave me alone and let my local government continue to fund me they way they do.” Most Statewide Policy Group members see consolidation as a solution, if not an expectation.
- Most people in both groups believe that as one person put it, “great things can be done through contracting” but better ways should be found to achieve economies of scale not only around supplying the service but also how that is funded and purchased.
- Several informants in the Local Public Health Group mentioned conflicts around local political pressures versus the role of public health. Examples included looking to the city health department as a “jobs program.” More than a few cited conflicts between local economic development goals -- “we need jobs in our community” – and how regulations and enforcement should be done to protect public health. This appears to be tied to the “reluctance” to give up local authority mentioned by some.
- Many in the Local Public Health Group said they could see how governance changes might help but also mentioned downsides, especially around environmental health, inspections, and enforcement. The Statewide Policy Group mentioned that



standardizing processes can help, and more systems thinking can help in these areas, along with consolidation.

- Many in both groups mentioned how parochial and individual personalities/career issues can affect the difficulty and “timing” around considering consolidation.

Other considerations and concerns

- Both groups mentioned how ODH capacity has been weakened and acknowledge that weakening has occurred at the local level, too. The common message from both groups was for the new model to address those areas where ODH or regional shared services could be the right place for the resources around a function.
- Most people in both groups believe that it is necessary to clarify and “harmonize” perceived responsibilities, actual responsibilities, appropriate essential services, available funding and personnel and then determine what “platform” for where and how to do something “makes the most sense.”
- There are disagreements about whether consolidation should be the most useful tool to use. Information from the Local Public Health Group suggests a preference for a combination of approaches, while preserving local autonomy or authority. The Statewide Policy Group sees consolidation and shared services through contracting as the most effective tools to consider and is not very convinced about how much local autonomy is necessary.
- An area of disagreement among Local Public Health informants is what “regional” means, although there is agreement that it probably looks different in different areas of the state.
- With regard to health information technology, most in the Local Public Health Group expressed some frustration, citing the lack of incentive payments, confusions around where ODH is going, and being unable to afford the cost of adopting Electronic Health Records, or having to pay for EHR functionality they do not need. Statewide Policy Group members see the state’s efforts around regional Health Information Exchanges as a major change in the infrastructure that local public health agencies need to consider when thinking about EHRs. These informants suggested that public health think about the purposes behind specific public health functions where EHR provides an essential connection that can be used around core functions (“whether the data is supplied by local public health, or supplied by broader health system providers” is something to think about). They stressed that this should not be limited to their role as a provider of primary health care.
- Every informant expressed concerns about the future, constraints on resources, finding the capacity to meet expectations, and the impacts in the public health workforce.



2.2 Lessons Learned and Implications for a New Framework

Although the Public Health Futures key informants expressed high motivation to engage in more collaboration, they indicated a need to first get a better understanding of the variety of ways cross-jurisdictional sharing is being done successfully in Ohio and elsewhere. Informants mentioned a number of examples in Ohio and suggested that HPIO investigate these models further. In addition, review of the comments from respondents in the AOHC member survey about their positive experiences with collaboration revealed their perspective on key elements that tend to produce successful collaborative endeavors.

Literature Review

This section of the report highlights lessons learned from others about the experiences of local governments pursuing cross-jurisdictional collaborative and shared service arrangements. The discussion is based on a targeted review of literature studying a variety of collaborative arrangements used by local governments sharing services and identifying factors associated with achieving success, based on experience. This inquiry was shaped in part by questions arising from the key messages and themes expressed by key informants and the Public Health Futures Steering Committee. The topics and resources researched were also informed by the local governmental collaboration work currently being done by some members of the State Policy Group. Factors associated with successful collaboration reported in the literature are discussed. Examples of interest from within Ohio's public health and related sectors are described. Finally, this section of the report concludes by applying the implications and relevance of these lessons learned to suggest criteria to help guide consensus building among AOHC members.

This discussion relies heavily on a review of literature performed by Sowards and Beechy (2010), colleagues of John Hoornbeek, a key informant who has conducted a series of case studies and other research supporting local governments collaborating. Recent articles prepared for The Robert Wood Johnson Foundation by Kauffman (2010) and Libbey and Miyahara (2011) supplement the findings of Sowards and Beechy.

The Process of Local Government Collaboration

In 2010 Sowards and Beechy reviewed articles considering the definition of collaboration, historical interpretations, examples and forms of collaboration, incentives and barriers, and selected case studies. Their review cites Thomson's definition of collaboration as a process involving "autonomous actors" who determine by agreement the contours of their relationships, what mutual benefits they hope to achieve, and how they will work together (Thomson, 2001). Sowards and Beechy's survey includes Thomson's identification of complexities in governance, administration, organizational autonomy, mutuality and norms as what's inside "the black box" of complexity influencing local governments collaborating, first described by Wood and Gray (1991). Summing up Thomson's discussion, Sowards and Beechy suggest a lesson learned: "Don't collaborate unless you are willing to thoughtfully consider and educate yourself



about the nature of the process involved.”

The importance of thinking about the process element of collaboration is affirmed in Beechy, Hoornbeek, and Sell’s case studies of eight collaborations occurring in northeast Ohio (2012). For example, among the findings in the case study of Summit County public health agencies consolidating is that the complexities of the process affected project goals and planning. Two lessons emerged. First, Summit County did not set out to consolidate agencies, but to work on improving data-sharing capabilities. As they encountered the barrier posed by the complexity of the information system issues, local public health leaders determined that the challenges were a symptom of the bigger problem – the degree of fragmentation. Beechy, Hoornbeek and Sell include a description of the process used following the discovery. Key elements included initial discussions with the separate health districts and communications with community leaders and stakeholders. The plan for the collaboration was then changed to reflect the new goal. The process used included oversight by community leaders, support from consultants, and deliberate examination of advantages and disadvantages, logistical and funding issues. In addition to being what “really made a difference,” these are among the factors associated with successful local governments collaborating found elsewhere in the literature and discussed further below.

Factors Associated with Successful Collaboration

Choosing the Right Partners. The importance of choosing the right partners for collaboration underlies most of the success factors mentioned by AOHC survey respondents (mutual trust, prior history, setting aside turf issues, committed top-level leaders, and collaborations with similar communities focused on equity and sensitive to the needs of each partner). These are similar to Sowards and Beechy’s list of good governance model characteristics as described by the National Association of State Chief Information Officers (2007) and the principles for the best social partnerships mentioned by Billett (2007).

Moreover, they are remarkably similar to one AOHC member’s survey comment:

“1) We all WANT to work together; 2) We have a LONG history of working together successfully; 3) Our Boards expect us to work together well; 4) We accept that sometimes we can operate independently, and other times we must be dependent upon our neighbors; 5) We have a more competitive charge for funding as a group; 6) Our counties are very similar (similar demographics); and 7) We respect one another.”

—Key Informant

Sowards and Beechy’s reviews include another consideration for choosing the right partners: being aware of how many partners can successfully be managed in a particular collaboration (Berardo, 2009.)

Achieving Clarity of Purpose. In their initial summary report on information



learned through interviews and site visits about types of relationships among health departments, Libbey and Miyahara (2011) conclude that “elected policy makers and public health leaders.... must be very clear within themselves and with each other about the purpose of the endeavor.” This observation followed from their finding that the goals of working on cross-jurisdictional collaborations in public health can differ among key influencers (e.g., aiming to save money versus improve health). Libbey and Miyahara’s conclusions appear to validate the attention paid in crafting the intended outcomes statement of the Public Health Futures Committee, for example, and the project’s emphasis on consensus-building about the future role of public health and how to assess available collaboration options. These aspects of the project are intended to help achieve clarity of purpose.

Managing Political Issues Affecting the Process. The politics of regionalism affect many aspects of the process of collaborating. Sowards and Beechy’s review includes “five political challenges of regional action” identified in a case study by Parr, Rehm, and McFarland (2006):

- The Challenge of Regional Identity — highly important for collaborative success, but notoriously weak;
- The Challenge of Political Strategy — no consensus on speed, scope, or method;
- The Challenge of a Big Tent — mobilizing a broad base of support across multiple interests;
- The Challenge of Consensus — focusing on issues of consensus rather than conflict; and
- The Challenge of State and Federal Policy — encouragement of regional cooperation while institutions are undermined by the same mechanisms.

Because regional approaches can be fraught with political peril, Libbey and Miyahara observe that success requires elected officials and public health leaders to possess “a combination of openness to consider and willingness to implement” (2011).

A variety of issues, environmental pressures and opportunities, and areas of disagreement raised by key informants involve one or more of these challenges. Sowards and Beechy report on an exploration of collaboration practices that successfully manage highly controversial or divisive issues; these include bringing to the table the right kinds of people representing conflicting constituents’ interests and using certain consensus building techniques as tools to manage the issues (Booher, 2004). Bentrup’s 2001 case study of a process model for watershed planning collaboration emphasized the importance of involving stakeholders in “data collection and analysis, the establishment of measureable objectives, in-person communication, and the inclusion of stakeholders in each stage of the process.” As political considerations arise throughout the process, investments in stakeholder engagement provide an “up to speed” group of key constituents who can be called upon to negotiate and navigate the multi-faceted political dynamics accompanying any significant change in local government.



Anticipating Systems and Business Process Barriers. Dawes and Pardo's case studies of collaborative digital government initiatives in New York, included in Sowards and Beechy's review, cites other difficulties to anticipate. Multiple organizations working together toward a common goal have to deal with the potential for wide variation among participants in terms of roles, missions, operations, technology, and adaptability (Dawes and Pardo, no date). Participants' diverse business processes and capabilities, especially where information technology is involved, bring a number of challenges that can affect success. Sowards and Beechy include a list developed by Artigas, Elefante, and Marti (2009).

These are similar to types of systems and business process barriers discussed in Hoornbeek's case study of Summit County public health consolidation. They are also consistent with the kinds of challenges mentioned by key informants with regard to administrative functions being embedded in city or county agencies outside public health. It can be challenging, time-consuming, and/or costly to do the work necessary to map and reconcile participants' processes, resources, and ability to accomplish changes necessary to transition to something new. A lesson learned is that assessing and considering the potential pitfalls of potential systemic and business process barriers, from the outset, is an essential factor associated with collaboration success.

Weighing Costs of Collaboration. The complexity and fragmentation of Ohio's local public health system has implications, however, beyond the need to anticipate and plan for business process and systems barriers. One of the main ideas Soward and Beechy record after reviewing Thomson and Perry's 2006 discussion of the "black box" of collaborative process is that the "most costly resources of collaboration are not money but time and energy." Feiock, Steinacker, and Park's examination of voluntary service agreements among local governments, according to Sowards and Beechy, posits that whenever governments or agencies make decisions, the result is to create costs for others (2009). When the process of entering into service agreements is flexible and voluntary, rather than imposed externally by a "single central authority" the result is an environment where local governments can craft "customized" arrangements, which can bring both "collective" and "selective" benefits (Feiock, et al.). Sowards and Beechy's review includes Feiock's assertion that for the decision to voluntarily collaborate to be "rational" the benefits of collaborating must outweigh all of the costs of collaboration, including transactional costs (2007).

In other words, the process of cooperation carries a price in and of itself. Speaking of the time and effort of going to meetings with regional partners, for example, one key informant observed: "We will collaborate only if it meets a need in our community and makes financial sense." This is a factor that was mentioned frequently by key informants (although their views vary when it comes to identifying "silver bullets" to reduce the transactional costs of the patchwork of current arrangements). Weighing the transaction costs is a key factor associated with putting together "win-win" arrangements that "make good business sense."



Deciding Which Form of Shared Services to Use. If local public health leaders exploring a collaborative have considered all of these lessons learned, they should have important information to help them decide which of the several forms of collaboration, regionalism, or cross-jurisdictions sharing services they ought to use. Sowards and Beechy's summary of McGuire's 2006 article reviewing literature about public agencies collaborating, finds that the "size and type of network should be dependent upon task at hand."

As part of its effort assisting local public health agencies to accomplish the move to national accreditation standards, The Robert Wood Johnson Foundation asked Kauffman to study regionalism and collaboration outside the public health sector, to report on lessons learned and best practices (2010). Reviewing the history of regionalism, Kauffman finds that regional mergers "remain difficult to accomplish" despite the influence of external events (such as recessions or terrorism) and the desires of state and federal governments. Among her findings is that the "prime movers" motivating local governments to collaborate are improvements in quality, access, or the amount of services made available, along with the goal of reducing costs. Kauffman also found that accreditation "was not a factor that stimulates consolidation." Kauffman's list of key barriers and best practices are consistent with the findings of others summarized by Sowalds and Beechy.

One of the lessons learned, according to Kauffman, is that even the term "regionalism" can be a "non-starter." This is consistent with what may lay beneath statements from local public health key informants that they want options in addition to consolidation of agencies. While wide scale displacement of local governments through regionalism has not occurred, Kauffman finds instead that alternatives to complete mergers have proliferated.

Kauffman argues that given the "hot button" nature of regional action, a better term might be to replace "regionalism" with "shared services." Kauffman finds that local governments share services by using a number of forms of collaboration that obtain the benefits of regional arrangements, while avoiding the discomfort and political costs of giving up local identity and control. In addition, Kauffman's study describes a number of these models from non-health sectors; the details in her discussion help to reveal the contours of the variety of approaches being taken.

Kauffman asserts that these various vehicles for collaboration form a "shared services continuum." After defining the types of shared service arrangements she found, Kauffman lists their distinguishing features and arranges them from the least to the most formal. The categories Kauffman offers are driven by the details of what's being shared and the degree of formality or type of agreement memorializing commitments arising from the relationships and how the endeavor will be governed. The closer the form of collaborating comes to regionalism—mergers across county lines—the greater the



difficulty, complexity, and the risks (as well as potential benefits).

Examples from other systems

Figure 15 reproduces the five categories along Kauffman’s “Shared Services Continuum” and provides examples of general types of collaboration that are currently happening in Ohio within the local public health system and other governmental systems. The last row of the graphic displays specific Ohio-based examples of shared services that are described in this section.

**Figure 15.****Examples of Collaboration among Local Ohio Government Agencies on the “Shared Services Continuum”**

Informal arrangements	Service contracts	Interlocal agreements	Consolidation	Regionalization
<ul style="list-style-type: none"> • Verbal or hand-shake agreements • MOUs • Sharing information • Sharing equipment • Coordination 	<ul style="list-style-type: none"> • Another govt. provides • Sharing facilities • Joint ownership • Mutual aid (MAAs) • Inter-state compacts 	<ul style="list-style-type: none"> • Joint powers and authority • Functional consolidation (merged depts.) • Special districts • Regional councils • Shared purchasing 	<ul style="list-style-type: none"> • City/county mergers • Annexation 	<ul style="list-style-type: none"> • Merger across county lines • Merger across state lines

General types of collaborative shared service models currently used in Ohio

Coordination between LHDs for specific grants, projects, or services	Educational Service Centers (ESCs) LHDs contracting with each other to provide/receive specific services	Regional Council of Governments (COGs)	Unions between health districts	Agency consolidation across county lines
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Specific collaborative shared service examples in Ohio

“Collabor8” County DJFS Departments	DD Boards: Sharing Superintendents OCALI Center at Central Ohio ESC Central Ohio Shared Fleet Maintenance/Repair	DD Boards, Ohio Dept. of DD and COGs: County Collaborative Project and Project PLAY Three C Recovery and Health Care Network Hocking, Vinton, Ross County DJFS functional consolidation	Summit County Health District and Akron Health Department Consolidation Cuyahoga Community Mental Health and Alcohol Drug Addiction Services Board consolidation	Mental Health and Recovery Board of Clark, Green and Madison Counties
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Source: The “Shared Services Continuum” is presented in Kauffmann, N.J., Regionalization of Government Services: Lessons Learned & Application for Public Health Delivery, July 2010. Prepared for Robert Wood Johnson Foundation.



“Collabor8” County Departments of Job and Family Services Departments. This is a pilot project, initiated by the Ohio Job and Family Services Director Association, that brings eight county departments together to modernize, streamline, and share a platform for eligibility determinations. Currently, seven of the eight counties are participating, while the eighth, is waiting for implementation results from the first seven counties.

OCALI Center at Central Ohio Educational Services Center. There are two examples of interest. First, “ESCCO” provides a wide variety of services to 25 school districts serving more than 200,000 school children in Delaware, Franklin, and Union counties. The ESSCO website includes a “Shared Services Section” which includes a wealth of information about shared services, including how they are evolving. An example for public health to consider is that ESCCO had provided background checks and training for substitute teachers; the agency still does that, but now also offers substitute staffing services beyond background checks and training. Second, housed at ESCCO is the Ohio Center for Autism and Low Incidence disabilities (“OCALI”). Although it is housed (by statute) at a regional Educational Service Center, OCALI has a statewide reach and has received national recognition for its offerings. It is a good example of how to use statewide and regional approaches providing access to “specialized expertise.”

Central Ohio Shared Fleet Maintenance/Repair. The Central Ohio Education Service Center, Mid Ohio Regional Planning Consortium, Franklin County, and cities within the county worked to put together agreements enabling central Ohio political subdivisions to share fleet maintenance and repair services.

DD Boards, Ohio Department of DD, and COGs: County Collaborative Project. The Ohio Department of Developmental Disabilities and Mid East Regional Council of Government (a “COG” established by 18 collaborating DD county boards in southeastern Ohio) are working to develop ways to standardize processes like administering waiver services and payment procedures, as well as creating a shared IT platform to reduce financial and administrative burdens (the “County Collaborative Project”).

DD Boards, Ohio Department of DD, and COGs: Project PLAY. Another example is DODD working with a number of Northwestern Ohio county boards around a new model (and the training and capacity to deliver it) for in-home, multi-county early intervention services for families affected by autism (“Project PLAY”). DODD, in conjunction with the Ohio Center for Autism and Low Incidence (OCALI), provided training for autism early intervention and autism therapy to 42 County Boards of Developmental Disabilities employees from 18 different counties. The training is part of a pilot program called Play and Language for Autistic Youngsters (P.L.A.Y. Project). The project is a relationship-based therapy program that emphasizes helping parents become their child’s best P.L.A.Y. partner. The project empowers parents to have access to effective, family-focused, and affordable therapy and intervention for young children with autism, which will help children with autism connect, communicate and build relationships with others.



Three C Recovery and Health Care Network (“Three C”). The Alcohol, Drug Addiction, and Mental Health Services (ADAMHS) Board of Cuyahoga County; The Alcohol, Drug and Mental Health Board of Franklin County (FCADAMH) and the Hamilton County Mental Health and Recovery Services Board (HCMHR SB) have jointly formed a Council of Government (COG) entity known as the Three C Recovery and Health Care Network (Three C). The COG is working on multiple potential offerings for the three boards, and potentially other ADAMHS boards and other health-related local governmental entities. Three C, formed pursuant to Chapter 167 of the Ohio Revised Code, will provide a forum for the planning and development of an integrated system of behavioral health care and primary health care in a manner which is cost-effective and efficient to promote and protect the best interest of persons being served by the Boards. The arrangement is also a vehicle for developing common health information technology infrastructure that would be shared. (“Columbus/Cincinnati/Cleveland 3c’s SHARES Information Technology Platform”). Three C is currently planning and developing a new health care management information system known as the Shared Health and Recovery Enterprise System (SHARES). SHARES will be a health care management information system that will support management of client enrollment, benefit management, provider contracting, payment processes, and utilization and outcomes management.

Hocking, Vinton, Ross CDJFS functional consolidation. This is pilot project involving County Commissioners from three counties electing to do a “functional consolidation” of three county departments of job and family services, by entering into an operating agreement, pursuant to statutory authority to conduct the pilot. Legislation introduced for Governor Kasich’s Mid-Biennium Review includes proposed revisions to R.C. 329.40 expanding the pilot project authority to any county in Ohio.

Summit County Health District and Akron Health Department Consolidation. After Summit County identified fragmentation in governance as the root cause of its information system challenge, it moved toward consolidating agencies. The result has been better coordinated disease tracking and response systems. Consolidation also saved taxpayers money while providing expected services. Personnel changes associated with the consolidation yielded savings estimated to run into the hundreds of thousands of dollars. Facilities expenses were reduced, as well. (Tegan Beechey, John Hoornbeck, Heather Sell, “Improving Efficiency and Effectiveness for Public Health Services,” Kent State University, (1/25/2012), (p.3). <http://www.kent.edu/cpapp/upload/jan-2012-improving-efficiency-and-effectiveness-for-public-health-services.pdf>)

Cuyahoga Community Mental Health and Alcohol Drug Addiction Services Board Consolidation. Formerly separate behavioral-health related boards consolidated effective July 1, 2009.



Mental Health and Recovery Board of Clark, Greene, and Madison Counties. In the mid-1990s, three formerly “single county” alcohol, drug, and mental health service boards combined to form a three-county jurisdiction, using statutory authority providing that county commissioners can determine how to organize the community mental health and substance abuse services boards in their jurisdictions. The board plans and coordinates services for residents in the three counties. A similar multi-county merger occurring within Ohio’s behavioral health system is between Crawford and Marion counties.



2.3 Concepts and Considerations for Decision Making

Key concepts

The following set of terms and “touchstone” concepts emerged from the research literature and were useful during the Public Health Futures consensus-building discussions and for the Steering Committee’s development of recommendations.

Shared Services Continuum. This model describes the range of governmental shared service arrangements, from informal and contract arrangements that retain current jurisdictional autonomy to consolidation and regionalization of jurisdictions. (See Figures 1 and 14 in this report) (Kauffmann, 2010).

Clarity of Purpose. According to Libbey and Miyahara (2011), “elected policy makers and public health leaders ... must be very clear within themselves and with each other about the purpose of the endeavor.” For instance, is the purpose of a potential future model to realize cost efficiencies and improve sustainability? Or is the purpose to build capacity or improve performance? How will the parties involved know whether or not the model was successful?

Determinants of LHD Performance. Public health systems and services research (e.g., research about how to best structure public health systems) is an emerging field. Thus far, larger population size has surfaced as one of the most consistent predictors of stronger LHD performance (Bhandari, et. al., 2010; Cook, 2012; Mays, et. al, 2006; Minnesota Public Health Research to Action Network, 2011; Suen and Magruder, 2004). This research has found that performance on the Ten Essential Public Health Services is typically stronger for LHDs serving over 100,000 residents. After a replication of two earlier studies on this topic, Bhandari et al (2010) conclude that “population size is one of the strongest predictors of performance.... Particular attention should be given to improving performance when the population size is small or the jurisdiction is of the city/county type rather than of the county or multi-county type.”

Minimum Efficient Scale. In this context, the MES refers to the minimum population size that is most efficient for a LHD to serve. Looking at per-capita costs alone, Santerre (2009) found that the MES for LHDs is a population of approximately 100,000. Beyond 100,000 he finds little impact on per capita spending. Below 100,000 LHDs are less able to minimize per capita costs.

Public Health Accreditation Board Standards. An outgrowth of the “10 Essential Public Health Services,” the PHAB domains provide a list of core public health services. This framework provides a description of the basic minimum capacity for public health agencies and specific indicators of LHD capacity and performance. (See Table 16 in this report.)

Health Impact Pyramid. This construct illustrates the types of interventions that evidence shows are most likely to result in improved health. Public health activities that



reach broader segments of society and require less individual effort have been found to have a greater impact on population health and should therefore be a priority for state and local public health agencies. (See Figures 11 and 12 in this report.) (Frieden, 2010)

Minimum Package of Public Health Services. The April 2012 Institute of Medicine (IOM) report *For the Public's Health: Investing in a Healthier Future*, presents the minimum package concept as a way to delineate a specific set of basic public health services that can be linked to costs and outcome tracking. This Minimum Package of Public Health services includes Basic Programs, services commonly provided by LHDs, and Foundational Capabilities, which are the skills and resources that support Basic Programs.



Part Three: Consensus and Recommendations

Objectives

As stated in the project plan, the intended purpose of the Public Health Futures project is to “develop a proposed model for Ohio’s local governmental public health system that includes a mechanism for governance and sustainable financing, considers *cross jurisdictional sharing and/or regionalization*, enhances quality and assures value.”

While cross jurisdictional sharing and/or regionalization was initially the primary focus of the project, it became clear during the consensus-building process that *enhancing quality and assuring value* were equally—if not more—important. Recognizing that mechanisms for governance and financing are means, not ends, AOHC members voiced the need to first describe a vision for *what* local public health should be doing, and then to develop a framework for *how* to fulfill that vision.

After describing the Public Health Futures consensus-building process, this section of the report describes a vision for local public health in Ohio and then goes on to suggest the recommended structure and financing to support the vision.

The objectives for this section of the report are:

- Describe the process used by the Public Health Futures project to consider options and build consensus among Steering Committee members and the general AOHC membership regarding recommendations for modernizing local public health in Ohio.
- Clarify the role of local public health in Ohio and describe a compelling vision for the local public health system.
- Provide a framework for improving the structure, financing, and quality of local public health.
- Make specific recommendations regarding changes to the structure, governance, and financing of LHDs.
- Provide guidance for LHDs and AOHC on next steps to implement the report’s recommendations.

3.1 Consensus-building process

The Public Health Futures project was designed to engage AOHC members in a discussion about the future of local public health in Ohio and to build consensus around new approaches to jurisdictional structure and financing. Steering Committee members served as the primary representatives of the AOHC membership, although all members were invited to engage in the discussion and provide feedback at several points in the process.

Ohio’s 125 LHDs represent widely different local communities with varying needs, assets, funding sources, and political dynamics. Steering Committee members were selected to be representative of this diversity. Obtaining consensus within such a diverse group was a challenging task, particularly related to developing a Minimum Package of Local Public Health Services and potential changes in jurisdictional structure



that could affect the autonomy of local health departments. After many spirited and rich discussions, the Steering Committee unanimously approved the 19 recommendations put forth in this report at its final meeting on June 1, 2012.

The series of consensus-building meetings from March to June 2012 facilitated by HPIO are described below.

All-member meeting

On March 30, 2012, HPIO presented Parts 1 and 2 of the Public Health Futures report to an all-members AOHC meeting at the Union County Health Department. After reviewing the results of this preliminary report, members voted on “clarity of purpose” priorities and participated in small group discussions designed to elicit feedback regarding potential directions for cross-jurisdictional sharing and consolidation. HPIO presented 10 reasons for developing a new framework for local public health in Ohio that were generated by Steering Committee discussions and the key-informant interviews and asked members to vote for their top three priorities. **As shown in Table 17, addressing financial issues, improving quality, and clarifying the role of local public health were the top priorities.** All of these priorities guided the Public Health Futures process, and this report’s recommendations aim to address the top seven priorities in particular.

Table 17. Clarity of Purpose: “What are the most important reasons for developing a new framework?”

(priority vote tallies from March 30, 2012 AOHC all-members meeting)	Number of votes
Improve the stability and sustainability of revenue for LHDs.	39
Improve alignment between funding streams, mandated services, and the essential public health services. (Simplify funding streams, stop “robbing Peter to pay Paul,” and adequately fund mandated and expected services.)	37
Improve the quality of LHD services and improve health outcomes in local communities.	31
Clarify the role of local public health in Ohio, including greater clarity on services that should be provided by LHDs versus the broader health care system.	30
Retain local control, authority, and flexibility.	29
Retain and/or build upon current collaborative arrangements.	21
Specify a minimum standard range of services and ensure that LHDs have the capacity to provide those services.	20
Proactively propose a revised structure for the local public health system, facing the prospect of an externally imposed structure.	16
Reduce costs. Improve the efficiency of LHDs within the context of “leaner government.”	11
Reduce disparities in capacity and funding across LHDs.	8

Regional district meetings

Drawing upon the feedback gathered at the all-member meeting and guidance from the Steering Committee, HPIO prepared descriptions of three structural models for AOHC members to discuss at a series of regional meetings in April 2012. The three models were selected from the center of the “Shared Services Continuum.” 1) ad hoc



contracting with a shared services center (similar to Educational Service Centers), 2) Council of Governments (COGs), and 3) Consolidation. The *Characteristics and Issues to Consider for Potential Cross Jurisdictional Sharing (CJS) and Consolidation Models* matrix in Appendix F provides a description of the three recommended models and was used as a discussion guide in the regional meetings. HPIO traveled to each of the five AOHC district regions to facilitate discussions about the advantages and disadvantages of these models and other considerations. Each regional group provided a “message to the Steering Committee” that was shared with the committee at their May 4, 2012 meeting.

Although the content and tone of the five district meetings varied widely, the following themes emerged across multiple regions and helped to shape the Steering Committee’s recommendations:

- It is critical to address the “what” before developing the “how.” In other words, the Public Health Futures recommendations should first specify a core set of public health services and then design the structural changes to help LHDs to provide those core services. Cross-jurisdictional sharing and consolidation should be seen as “means to an end” not the end itself.
- The destination—high quality public health services—should be the same for all LHDs, but “how to get there” should be flexible enough to account for local political and financial conditions.
- LHDs should have choices and options in moving forward with new structural models. Arbitrary boundaries and/or strict population-size-based formulas without regard for local conditions would cause more problems than they would fix.
- Almost all participants were open to exploring the two CJS models (service centers and COGs), although some voiced skepticism about efficiency improvements. Members were very interested in learning more about the legal and financial aspects of inter-local agreements. They asserted that cost/benefit evidence, technical assistance, and incentives would help them to shift toward more formal CJS arrangements.
- Consolidation was described as a “nuclear strike” in one group and declared to be “off the table” in another group. Overall, there was consensus that “forced consolidation” would not work, but that voluntary consolidations may be beneficial in some cases. Participants described many barriers to consolidation, summed up as “right now it’s hard to marry and easy to divorce.”
- Members expressed frustration with the Local Health Department Support allocation and indicated that the relationship between ODH and LHDs is somewhat contentious. As one participant put it, “We can look out for each other better than they can look out for us.”
- Strong local community engagement, the AOHC five-district model, and current collaborative relationships are highly valued and should be maintained.
- Some participants called for an increased emphasis on quality improvement, health outcomes, and new relationships with the health care delivery system in the Public Health Futures report.



Steering Committee meetings

The Steering Committee met on May 4 to review district meeting results and new information that became available in April (April 2012 Institute of Medicine [IOM] report and the Ohio Profile Performance results). Four small workgroups then met by phone in May to continue crafting draft recommendations (Minimum Package of Public Health Services, Finance, Structure, and Strategy). These workgroup discussions identified some extremely complex finance and legal issues that will require further study after the release of this report. The Steering Committee met on June 1, 2012 to review the list of draft recommendations generated by the work groups. After revising the recommendations as a group, the committee came to unanimous consensus on 19 recommendations. Fifteen of the eighteen Steering Committee members were present at the meeting.

3.2 Vision for the future of local public health in Ohio

The role of public health has changed substantially since Ohio's local public health system was established in 1919. The recommendations in this report aim to clarify the role of public health and re-shape the structure of local public health in Ohio in order to fully support what public health does best. Sections 3.3 and 3.4 of this report will focus on the mechanisms for *how* to move toward this vision (structure, governance, and finance). First, however, this section will describe *what* local public health should be doing. Given the current state of the health care system and the health status of Ohioans, this effort to clarify the role of local public health should take into account the following challenges and opportunities:

- Maintain the communicable disease prevention and environmental health protections that have historically been the core function of local public health.
- Respond to increasing recognition that public health has a strong role to play in preventing chronic disease and that the population health approach is critical to improving health outcomes.
- Re-balance public health's role in providing clinical services within the new healthcare landscape, and modernize payment and quality systems when medical services and care coordination are provided.
- Ensure that local public health is positioned to help achieve the outcomes prioritized in the State Health Improvement Plan and Local Community Health Improvement Plans in order to improve the overall health of Ohioans.

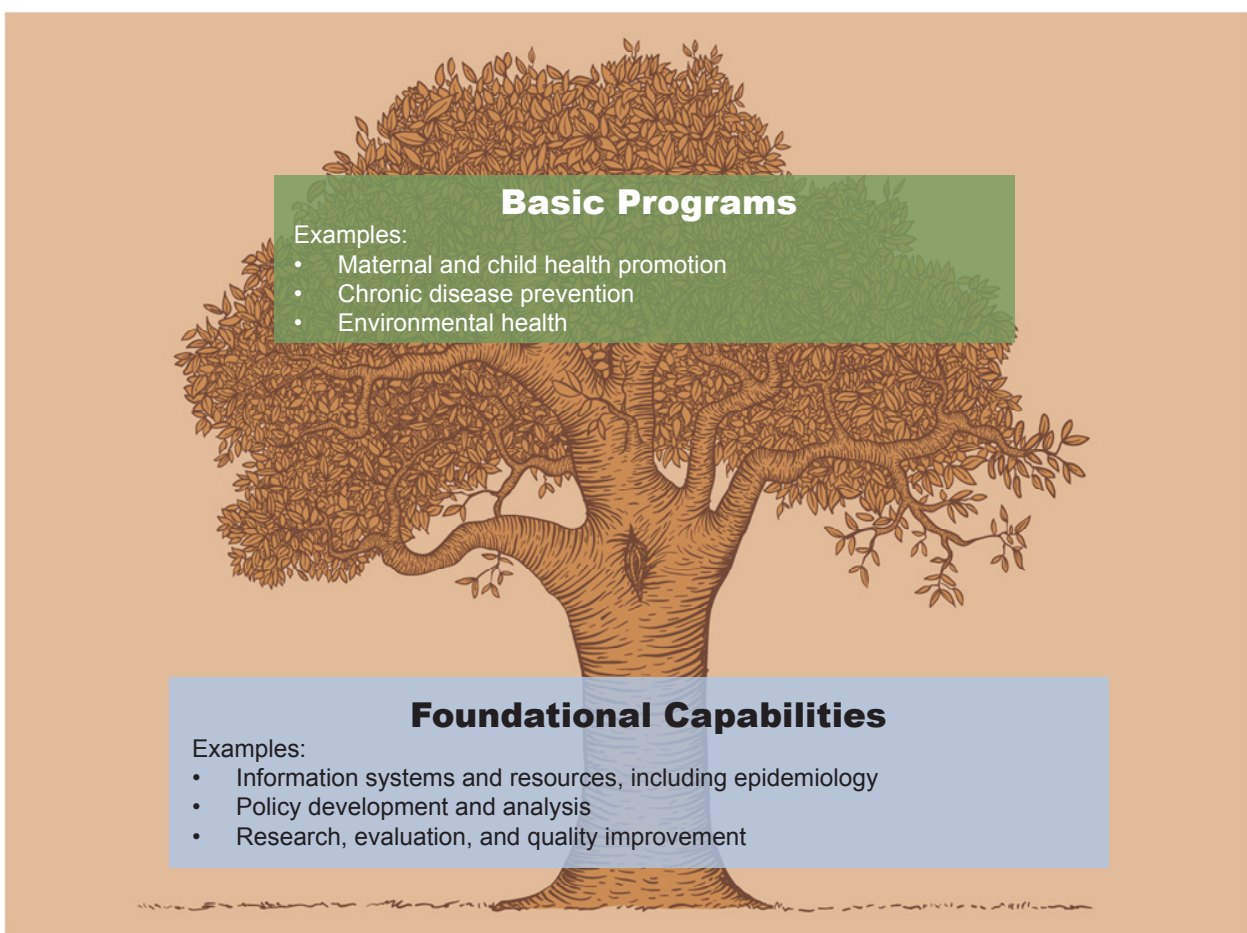
Public Health Futures stakeholders have called for a clear description of the role of local public health and the basic set of services that should be provided in all Ohio communities. The 10 Essential Public Health Services and the Public Health Accreditation Board (PHAB) standards provide a useful framework to begin developing this description, although, as discussed in the 2012 Institute of Medicine (IOM) report, *For the Public's Health*, these tools lack the specificity to link essential services to accountability data such as revenue and expenditures or health outcomes. It is also challenging to align the PHAB standards with the mandated services specified in Ohio law (see page 54). The IOM report presents the "Minimum Package of Public Health



Services” as an additional framework for specifying a basic set of services that should be available in all jurisdictions. This provides a structure for delineating services and capabilities in a way that is easier to align with current expenditure categories, grant programs, and mandates.

The Minimum Package includes Basic Programs, services commonly provided by LHDs, and Foundational Capabilities, which are skills and resources that support the Basic Programs. As shown in Figure 16, the IOM report uses a tree metaphor to describe the relationship between Foundational Capabilities (the trunk) and Basic Programs (the branches and leaves), and concludes that “Financially, the contemporary health department looks like a tree with heavy branches and a spindly trunk—an unsustainable state.” Most of the current grant mechanisms narrowly focus on direct service “silos” and do not typically provide support for the Foundational Capabilities. As shown in Figure 14 on page 43, Ohio LHDs often lack funding sources designated for basic infrastructure needs such as quality assurance and information technology. Consequently, the vision for the future of the local public health system must identify mechanisms to fund these capabilities which are essential to effective and efficient service delivery.

Figure 16. The Minimum Package of Public Health Services, as presented in the 2012 IOM report *For the Public's Health: Investing in a Healthier Future*





Ohio's Minimum Package of Local Public Health Services

The IOM report provides a starting place for the Minimum Package and recommends that a more detailed description of this basic set of services be developed in the future. Working from the basic IOM framework, the Public Health Futures Steering Committee developed a Minimum Package specific to Ohio local public health which took into consideration categories from the following sources:

- Mandated services (ORC, OAC)
- Annual Financial Report expenditure categories (used by LHDs to report expenditures to ODH)
- Public Health Accreditation Board standards (PHAB)
- State Health Improvement Plan
- Commonly used service categories and major grant programs

The committee expanded the IOM's list of Foundational Capabilities to include a broader range of skills and resources, many of which are necessary to achieve the PHAB accreditation. The committee delineated a list of "core public health services" that all LHDs should be responsible for providing in their health district, either directly or by contracting with another LHD or other entity. Recognizing the wide variety in local needs and resources, the committee also specified a list of "other public health services." LHDs have a role in assuring that these services are provided in their district, either by public health or other organizations, including health care providers. For example, a LHD in a suburban community with many health care providers and small number of uninsured residents may not need to provide immunizations, while a LHD in a rural county with few providers may need to do so. The following diagram (Figure 2) provides a preliminary framework for describing the Minimum Package and may need to be further refined as new structures for supporting local public health and tracking accountability are developed. This list of services should be periodically reviewed and updated to reflect changes in state mandates, public health science, emerging needs and the capacity of the broader health care system (including the extent to which provisions in the Affordable Care Act are implemented).

All Ohioans, regardless of where they live, should have access to the Core Public Health Services. All LHDs, regardless of size, should have access to the skills and resources that make up the Foundational Capabilities in order to effectively support the core services.

Figure 17 displays the Minimum Package of Public Health Services developed by the Public Health Futures Steering Committee. Figure 18 illustrates the Ohio version of the IOM's Minimum Package tree metaphor. See Appendix E for a cross-walk between the Ohio Minimum Package and the Public Health Accreditation Board domains.

Figure 17.

Ohio Minimum Package of Local Public Health Services

Core public health services

All LHDs should be responsible for providing the following services in their district — directly or by contracting with another LHD

- **Environmental health services**,* such as water safety, school inspections, nuisance abatement, and food safety (restaurant and grocery store inspections)
- **Communicable disease control**, vaccination capacity, and quarantine authority*
- **Epidemiology** services for communicable disease outbreaks and trending* and disease prevalence and morbidity/mortality reporting*
- **Access to birth and death records**
- **Health promotion and prevention** (health education* and policy, systems, and environmental change)
 - Chronic disease prevention (including tobacco, physical activity, nutrition)
 - Injury prevention
 - Infant mortality/preterm birth prevention
- **Emergency preparedness**, response, and ensuring safety of an area after a disaster
- **Linking people to health services** to make sure they receive needed medical care*
- **Community engagement**, community health assessment and improvement planning, and partnerships

*Service mandated by state of Ohio (ORC, OAC) (Note: Ohio law mandates several specific services related to environmental health and communicable diseases. Not all are listed here. See Appendix D for complete list.)

Foundational Capabilities

All LHDs should have access to the following skills and resources. Access can occur through cross-jurisdictional sharing.

Quality assurance

- Accreditation
- Quality improvement and program evaluation
- Identification of evidence-based practices

Information management and analysis

- Data analysis expertise for surveillance, epidemiology, community health assessment, performance management, and research
- Information technology infrastructure
- Interface with health information technology

Policy development

- Policy analysis and planning
- Expertise for policy, systems, and environmental change strategies

Resource development

- Grant writing expertise and grant seeking support
- Workforce development (training, certification, recruitment)
- Service reimbursement, contracting, and fee collection infrastructure (interface with third party payers)

Legal support

- Specialized consultation and analysis on public health law

Laboratory capacity

- Environmental health lab
- Clinical lab services (as appropriate)

Other public health services

(Varies by community need as determined by Community Health Assessments) LHDs play a role in assuring that these services are provided in their community — either by local public health or other organization(s), including health care providers and other government agencies

Clinical preventive and primary care services

- Immunizations
- Medical and dental clinics (primary care)
- Care coordination and navigation
- Reproductive and sexual health services (including STD testing, contact tracing, diagnosis, and treatment)

Specific maternal and child health programs, such as

- WIC (Women Infants and Children) nutrition program
- Help Me Grow home visiting program (HMG)
- Bureau for Children with Medical Handicaps program (BCMH)

Non-mandated environmental health services, such as

- Lead screening, radon testing, residential plumbing inspections, etc.

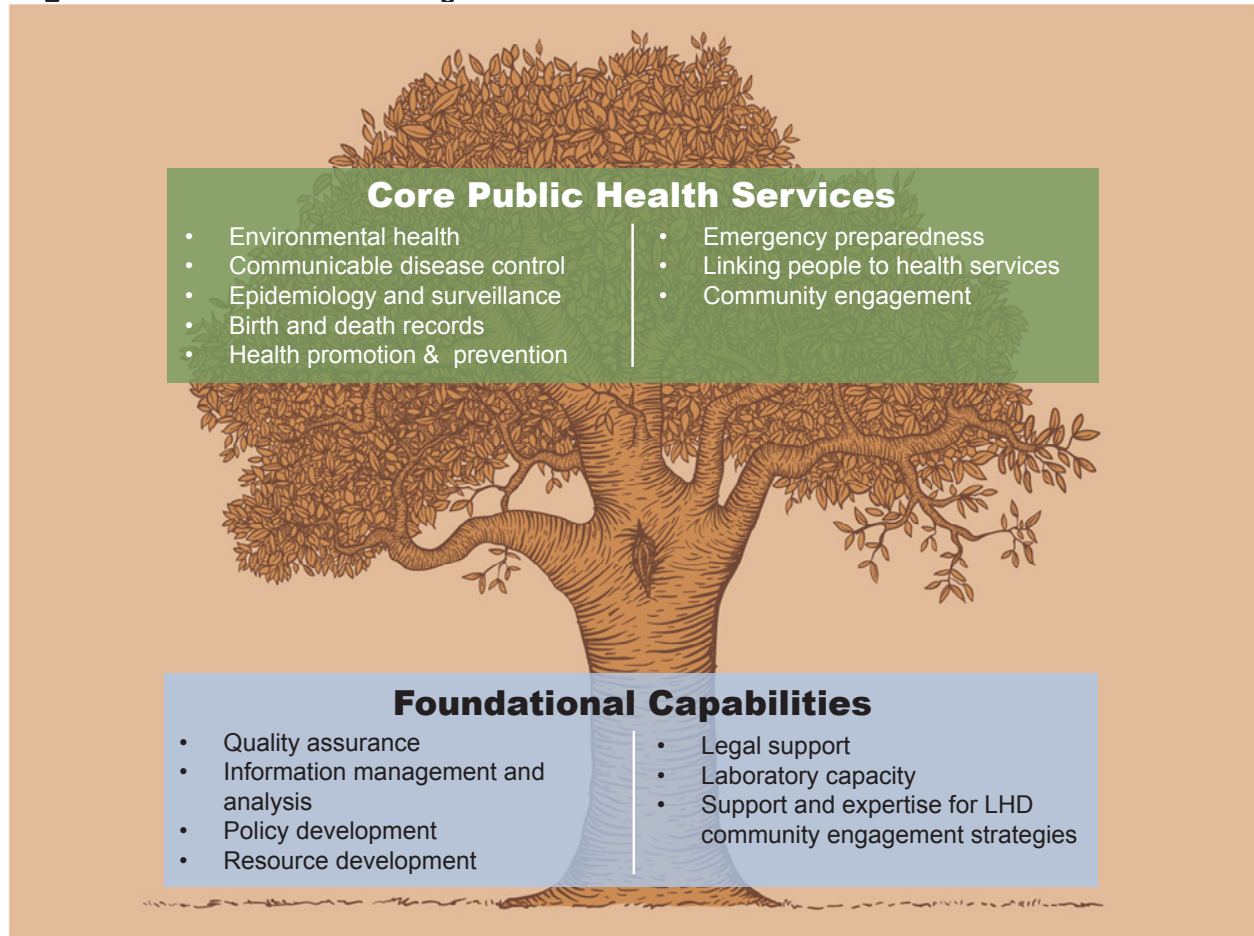
Other-optional depending on community need and other available providers

- Home health, hospice care, home visiting programs (other than HMG)
- School nurses; Drug and alcohol use prevention; Behavioral health
- Municipal ordinance enforcement

Support and expertise for LHD community engagement strategies

- Community and governing entity engagement, convening and planning
- Public information, marketing, and communications
- Community health assessment and improvement planning
- Partnerships to address socio-economic factors and health equity

Figure 18. Ohio Minimum Package of Public Health Services



Ohio LHD capacity for Foundational Capabilities and Basic Services

There is limited data available to assess the extent to which LHDs are currently providing the Minimum Package. Currently, the most accessible and comprehensive sources of this information are the Annual Financial Reports expenditure data (AFR) and the Ohio's Profile Performance results (self-assessment based on the PHAB accreditation measures). AFR expenditure categories do not align with the Foundational Capabilities and only align with three of the Core Services categories. As shown in Table 3 on page 19, 100% of LHDs reported Environmental Health expenditures in 2010, 78% reported Vital Statistics expenditures, and 64% reported Health Promotion expenditures. It is unclear, however, to what extent this data reflects actual services provided by individual LHDs, given the high prevalence of collaboration among LHDs.

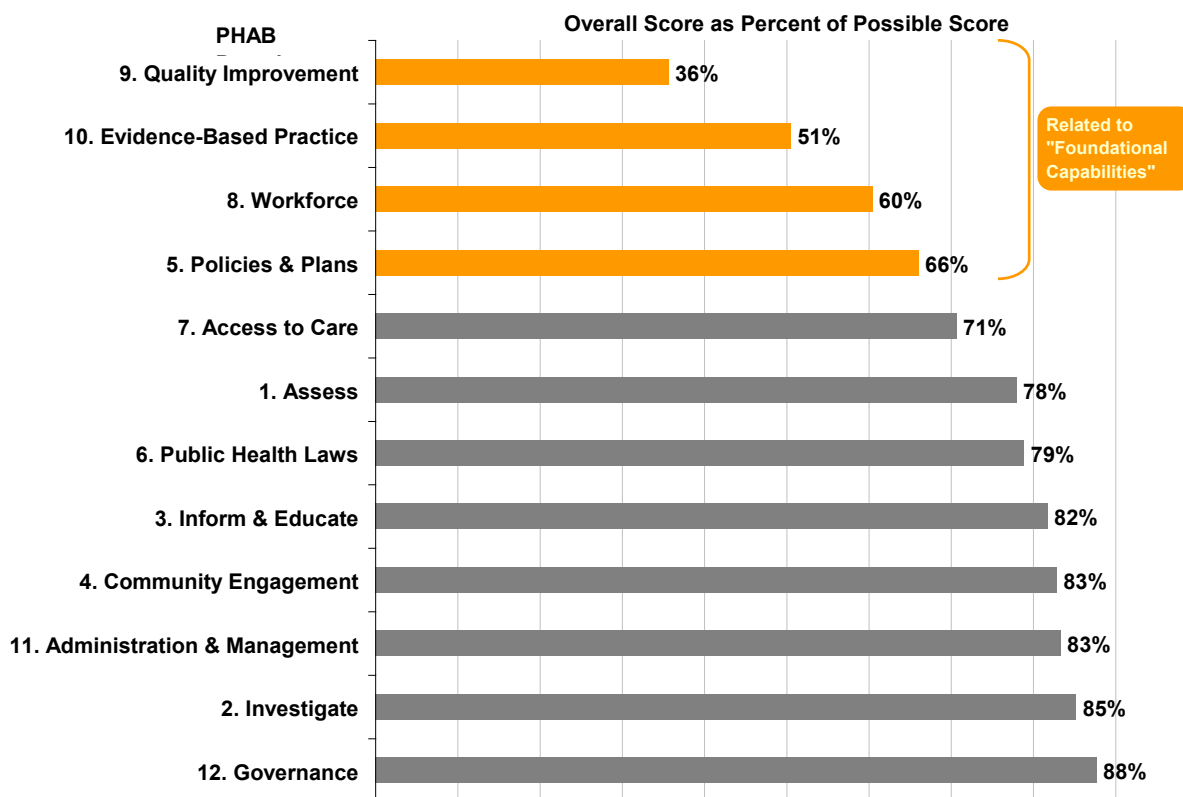
Ohio's Profile Performance Results

The 2012 results of Ohio's Profile Performance system provide an initial self-assessment of LHD capacity to provide the 10 Essential Public Health Services, as captured in the 12 PHAB domains. LHDs submitted their first-ever Profile Performance self-assessment in March 2012 using an online reporting system developed by ODH. All but one of the 125 LHDs participated.



There is clear alignment between some PHAB domains and the Foundational Capabilities (e.g., Quality Improvement and Evidence-based Practices), while it is more difficult to align the Core Services with specific PHAB domains. However, the Profile Performance system results seem to indicate that LHDs have greater capacity in the domains related to Core Services and less capacity in the domains related to the Foundational Capabilities (see Figure 19).

Figure 19. Ohio's 2012 Profile Performance: Total Domain Scores (n=124)

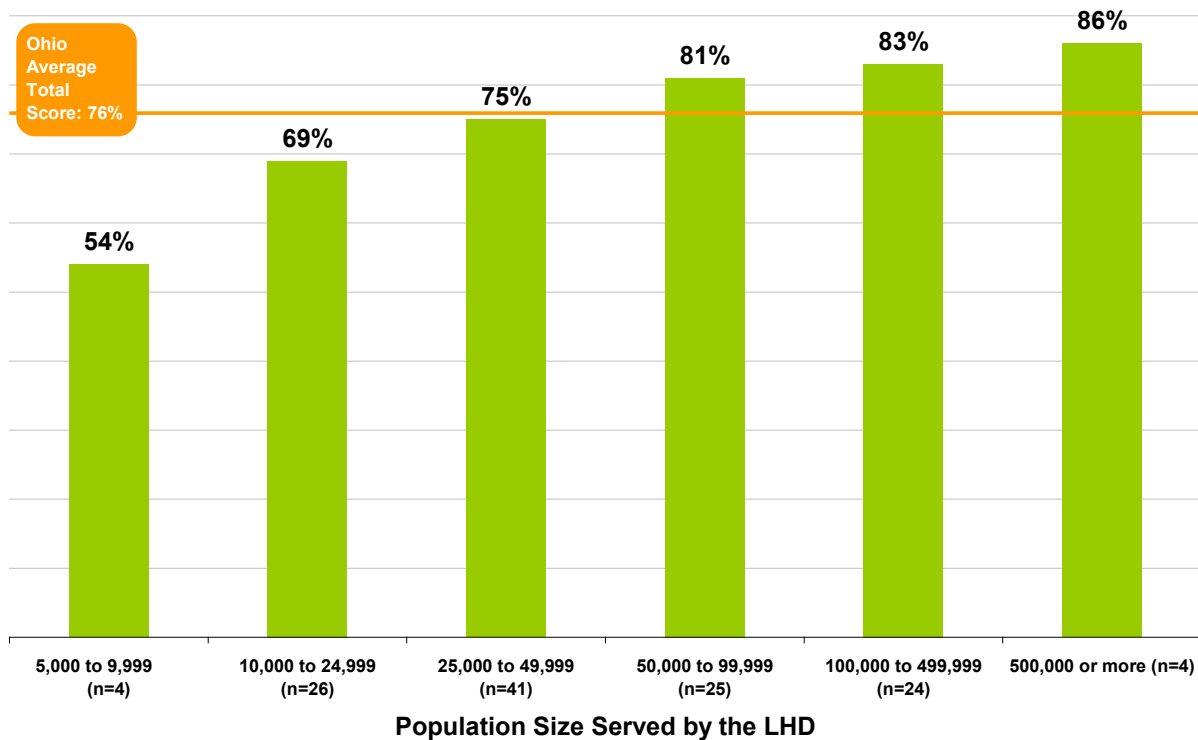


Source: ODH, 2012 Ohio's Profile Performance Database (LHD self-assessment using PHAB measures)

Overall, LHDs serving smaller population sizes received lower overall scores compared to LHDs serving larger population sizes (see Figure 20). These differences were most pronounced for domains related to the Foundational Capabilities. Figure 21 illustrates this difference for two domains. The "Investigate" domain largely refers to Environmental Health and Emergency Preparedness—both Core Public Health Services in the Ohio Minimum Package model. Differences between small and large LHDs are relatively small for this domain, likely due to sustained funding for this capacity. "Quality Improvement," a key Foundational Capability, saw widely differing results by LHD population size, indicating that smaller LHDs may be struggling to fulfill this Foundational Capability.

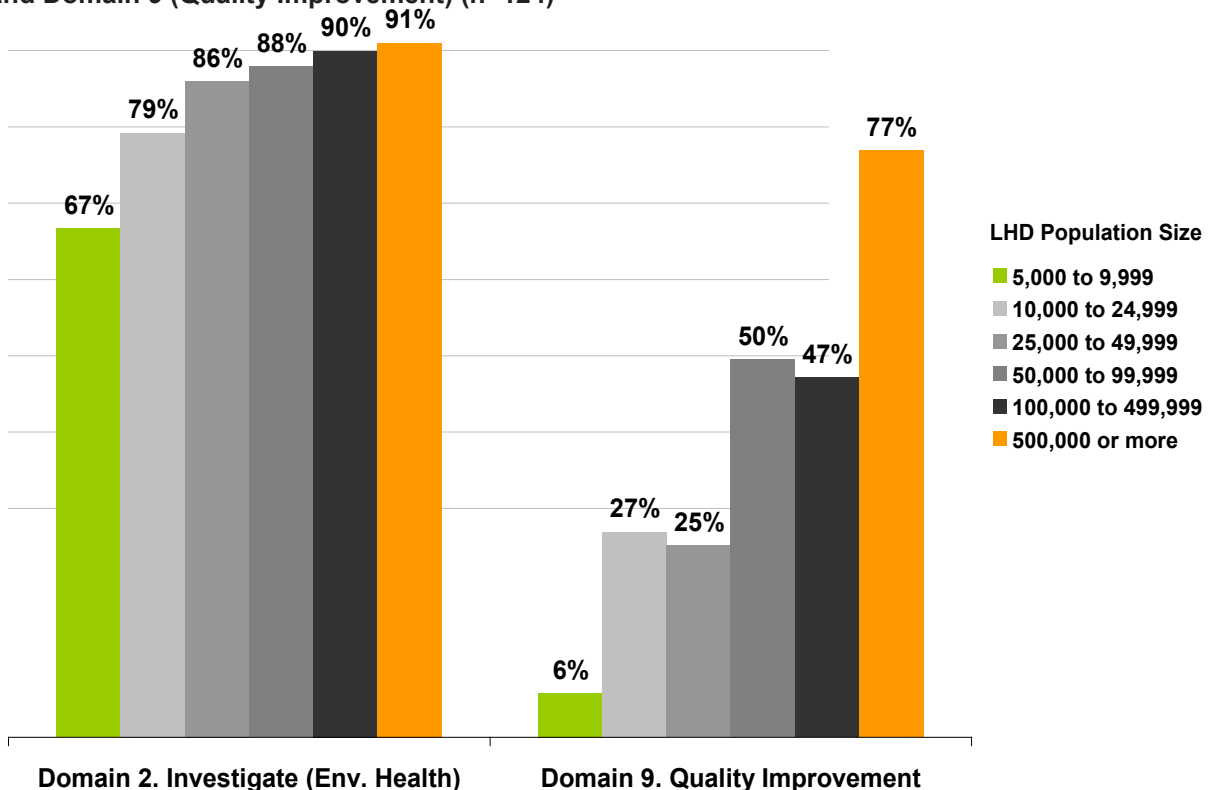


Figure 20. Average Total Score, by Population Size Served by the LHD (n=124 LHDs)



Source: ODH, 2012 Ohio's Profile Performance Database (LHD self-assessment using PHAB measures)

Figure 21. Total Domain Score, by Population Size Served by the LHD: Domain 2 (Investigate) and Domain 9 (Quality Improvement) (n=124)



Source: ODH, 2012 Ohio's Profile Performance Database (LHD self-assessment using PHAB measures)



Overall, these Profile Performance results indicate that:

- Smaller LHDs appear to have less capacity to meet standards than larger LHDs.
- Performance appears to be stronger for Basic Services-related domains than for some Foundational Capabilities—especially for smaller LHDs.
- All LHDs would likely benefit from assistance in strengthening their Foundational Capabilities and smaller LHDs in particular may need additional resources, infrastructure, and technical assistance to “strengthen the trunk.”

Re-defining local public health’s role in population health and health care delivery

Strong support for the Foundational Capabilities and clarification of the Core Public Health Services that should be provided by all LHDs should help local public health to assert a stronger role in improving population health and to modernize its involvement with the health care delivery system. The Health Impact Pyramid (Frieden, 2010) provides a useful framework for illustrating the role of local public health as envisioned by the Public Health Futures committee through the lens of population health. (See Part 1 of this report for a description of the Health Impact Pyramid.)

Population health

In the proposed Ohio framework, the Health Impact Pyramid is supported by the Foundational Capabilities. The primary role for LHDs should be focused at the bottom three levels of the pyramid where population impact can be maximized. This role encompasses the following general strategies:

- Assuring a safe and healthy environment (environmental health services)
- Protecting people from disease (communicable disease control)
- Promoting healthy living and preventing health problems (policy, systems, and environmental change), particularly related to:
 - Chronic disease prevention
 - Injury prevention
 - Infant mortality/preterm birth prevention, and
 - Strategies to address social determinants of health.

Local public health needs to maintain its traditional strengths in these areas (e.g., environmental health), while improving its ability to implement evidence-based prevention strategies (e.g., chronic disease). The critical importance of prevention and public health in reducing the burden of chronic disease and health care costs is well documented (Mays and Smith, 2012; Waidmann, TA, et. al., 2011; Trust for America’s Health, 2008; The Prevention Institute and The California Endowment, 2007). With enhanced capacity, local public health could leverage significant population health improvements. Providing guidance on how to prioritize public health resources, the national Transforming Public Health project made the following observation:



“Moving away from direct delivery of services when they can be provided by others in the community more efficiently or effectively, and focusing on systems and policy change with partners in and outside of government to develop and implement population-based health improvement strategies will help spur the change that needs to be achieved. Addressing the social determinants of health and combating the chronic disease challenge is not going to be solved by simply trying to help one person at a time – these are truly population level problems that need to be addressed as such. Governmental public health leaders understand what it takes to improve conditions and peoples’ lives and should actively lead in these areas.” (RESOLVE, 2012).

The Kane County, Illinois model provides one example of how a local health department restructured itself in response to a budget crisis in order to maximize the value and population health impact of its services. The Kane County Health Department aligned its functions with the PHAB standards and established “policy, systems, and built environment aligned to maximize population wellness” as a desired outcome. As a result, all personal health services were transferred to other providers and job descriptions were reconfigured to reflect the focus on policy and environmental change. (Kuehnert and McConnaughay, 2012). While novel and enlightening, the effectiveness of this model is yet to be determined and may not be a good fit in some communities where LHD direct health care services are a critical piece of the local safety net.

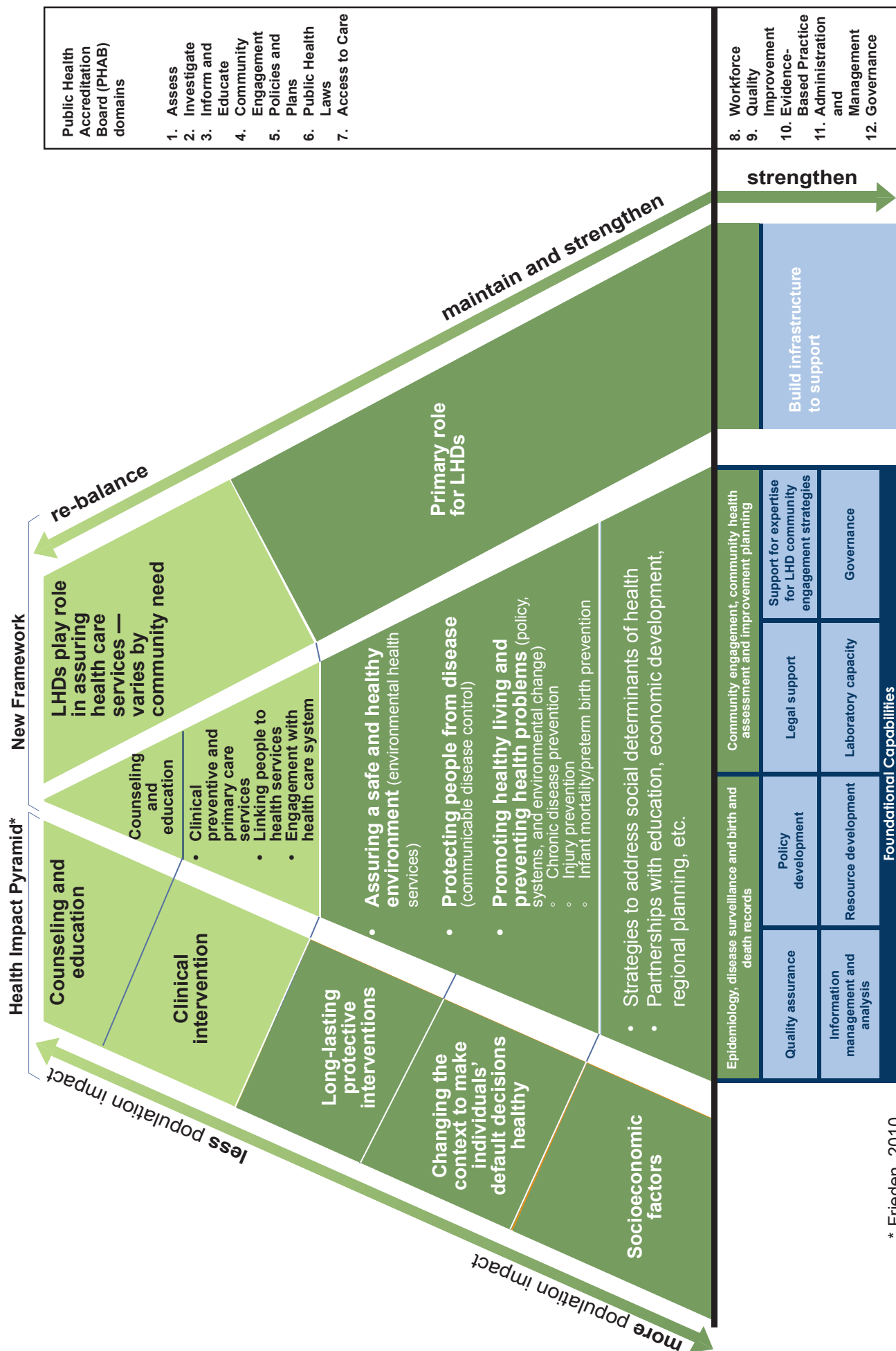
Health care delivery

Clinical preventive services and education/counseling delivered to individuals sit at the top of the Health Impact pyramid. This is an area of public health practice that is currently undergoing significant change and needs to be re-balanced in light of health care reform and the need to maximize the impact of shrinking public health resources. LHD response to these changes should be driven by Community Health Assessment findings. LHDs may need to provide primary care services when they are not sufficiently provided by others. When provided, LHDs need to modernize their approach to billing and reimbursement in order to sustain these services.

In addition to re-assessing their direct provision of primary care, LHDs have a role to play in partnering with the health care system to integrate clinical care and population health. Medical providers can learn from public health expertise in community-based prevention and public health workers can provide critical care coordination, case management, and health care system navigation functions. The 2012 IOM report *Primary Care and Public Health: Exploring Integration to Improve Population Health* provides guidance on this topic. Examples of integration models include the “Accountable Care Community” approach being implemented in Akron by the Austen BioInnovation Institute, the Community-Centered Health Homes model (Prevention Institute, 2011), and Community HUBs (AHRQ, 2010). Research shows that these types of multi-organizational partnerships between public health and other partners can be very effective, although they are difficult to develop and require incentives, changes in organizational culture, and strong commitment from administrators and policymakers (Mays and Scutchfield, 2010).



Figure 22.
Health Impact Pyramid* and Proposed Ohio Local Public Health Framework



* Frieden, 2010



Improving quality and outcomes

Quality improvement is critical for increasing the accountability of the public health system, the effectiveness of public health practices, and ultimately for improving population health outcomes. Unfortunately, current outcome tracking efforts are fragmented and little is actually known about the overall quality of local public health services in Ohio. There are three primary sources of data on LHD performance and quality:

- Ohio's Profile Performance system was first implemented in March 2012 and is likely the most comprehensive source of data about LHD performance. LHDs use this database to report the results of a self-assessment that is based on the PHAB accreditation standards and measures. This assessment is largely focused on capacity and performance, and may provide some indicators of quality. It is not, however, an outcome tracking tool. Self-assessments on the Quality Improvement domain may help LHDs to identify ways they can improve their approaches to program evaluation and continuous quality improvement.
- ODH collects output and outcome results for specific grant programs. There are few common indicators across programs, or even across grantees within programs. The result is a jumble of program evaluation results that reflect the siloed nature of grant funding and do not allow for "apples to apples" comparisons of LHD effectiveness.
- ODH staff conduct on-site surveys for some programs, with an emphasis on mandated environmental health programs. Some LHD stakeholders have questioned the utility of these surveys and it is not clear how they are or can be used to assess the overall quality of the local public health system. In the past, peer review systems were used to conduct these types of assessments at the local level.

Data sources, such as the Robert Wood Johnson-funded County Health Rankings, the Ohio Family Health Survey, and the Behavioral Risk Factor Surveillance System are useful sources for regional and county-level health outcomes. It is difficult, however, to link these outcomes to LHD activities given the broad range of factors that impact health.

Ohio is not alone in struggling to measure public health quality and outcomes. Nationally, public health lags behind medical care and other industries in the development of continuous quality improvement systems (Honore, et. al., 2011; Institute of Medicine, 2010). The drive toward accreditation is designed to accelerate LHD's capacity building in quality improvement and bring attention to the need for

Vision for the Future of Local Public Health in Ohio

The Association of Ohio Health Commissioners (AOHC) envisions a future where all Ohioans are assured basic public health protections, regardless of where they live, and where local public health continues to be a vital leader in improving Ohio's health outcomes. We envision a network of local health departments that:

- Are rooted in strong engagement with local communities;
- Are supported by adequate resources and capabilities that align with community need and public health science; and
- Deliver high quality services, demonstrate accountability and outcomes, and maximize efficiency.



an infrastructure to support public health quality measurement. The following online resources may be helpful to LHDs as they continue with this work:

- *Consensus Statement on Quality in the Public Health System*, Public Health Quality Forum, US Department of Health and Human Services Office of Public Health Science, August 2008
- *For the Public's Health: The Role of Measurement in Action and Accountability*, Institute of Medicine, December 2010
- *Priority areas for improvement of quality in public health*, Public Health Quality Forum, US Department of Health and Human Services Office of Public Health Science, November 2010
- National Network of Public Health Institutes, Accreditation and Performance Improvement programs <http://nnphi.org/program-areas/accreditation-and-performance-improvement>
- NACCHO Quality Improvement Toolkit http://www.naccho.org/toolbox/program.cfm?id=25&display_name=Quality%20Improvement%20Toolkit
- North Carolina Center for Public Health Quality <http://www.ncpublichealthquality.org/ctr/>

Recommendations: Local public health capacity, services, and quality

1. All Ohioans, regardless of where they live, should have access to the Core Public Health Services described in the Ohio Minimum Package of Local Public Health Services. (see attached Minimum Package diagram)
2. All local health departments (LHDs) should have access to the skills and resources that make up the Foundational Capabilities in order to effectively support the core services.
3. The Ohio Minimum Package of Local Public Health Services should be used to guide any future changes in funding, governance, capacity building, and quality improvement. (see Structure Analysis diagram)
4. All LHDs should become eligible for accreditation through the Public Health Accreditation Board (PHAB).
5. LHDs that meet Minimum Public Health Package standards should be prioritized for grant funding in their jurisdiction.
6. The biennial LHD Health Improvement Standards reported to the Ohio Department of Health via the Ohio Profile Performance Database should serve as the platform for assessing LHD provision of the Minimum Package. The Profile Performance Database may need to be updated periodically to capture the Core Public Health Services and Foundational Capabilities.
7. The Association of Ohio Health Commissioners (AOHC) supports a review of current laws and regulations to determine where mandates may need to be revised or eliminated and should advocate for elimination of mandates that do not align with the Minimum Package of Public Health Services.



3.3 Structure needed to support the vision

The Public Health Futures Steering Committee agreed that the structure of local public health should be designed to support and sustain the Minimum Package of Public Health Services. The committee's recommendations related to the structure of local public health aim to address two overarching challenges and opportunities. First, the recommendations attempt to strike a balance between local control and statewide standardization. They aim to support continued local community engagement and preserve the amount of funding generated from local sources, while at the same time improving the consistency of performance, quality, and outcomes for all LHDs. Home rule and the heavy reliance on local funding (76% of all LHD revenue) help LHDs to be strongly rooted in their local communities, although this local structure also presents potential barriers to formal cross-jurisdictional sharing (CJS) and consolidation (e.g., city/county officials' concerns about resource allocation, lack of parity in fee structures, wide variability in LHD per-capita expenditures and services provided, etc.). Second, the recommendations use CJS and consolidation as tools for building LHD capacity and improving performance. Transitions to CJS and consolidation must balance local choice with a shift toward more formal and efficient models of collaboration, and must critically assess the feasibility of sustaining 125 LHDs, more than half of which serve fewer than 50,000 residents.

Figure 23 illustrates the committee's recommendations and guidance for how LHDs should make decisions about jurisdictional structure in the future. As depicted in this model, capacity to efficiently provide the Ohio Minimum Package of Public Health Services should be the primary consideration for the future jurisdictional status of a LHD. "Capacity" refers to staff and resources. **LHDs that are not able to provide the Minimum Package should look to consolidation and/or CJS to obtain Foundational Capabilities and provide Core Services.**

The number of jurisdictions in a county and the population size served by the LHD should be the primary considerations for whether or not consolidation should be explored. Research indicates that LHDs serving populations of less than 100,000 are less likely to have the capacity needed to provide essential services (Bhandari, et. al., 2010; Cook, 2012; Mays, et. al, 2006; Minnesota Public Health Research to Action Network, 2011; Santerre, 2009; Suen and Magruder, 2004). It is important to note that public health systems and services research (e.g., research about how to best structure public health systems) is an emerging field. The Steering Committee found that it is difficult to make evidence-informed decisions when the depth and breadth of the available evidence is limited. The positive relationship between population size and LHD performance is one of the only clear research findings that has emerged thus far. Population size should therefore be considered as one factor, but not the only factor, when making decisions about jurisdictional structure.

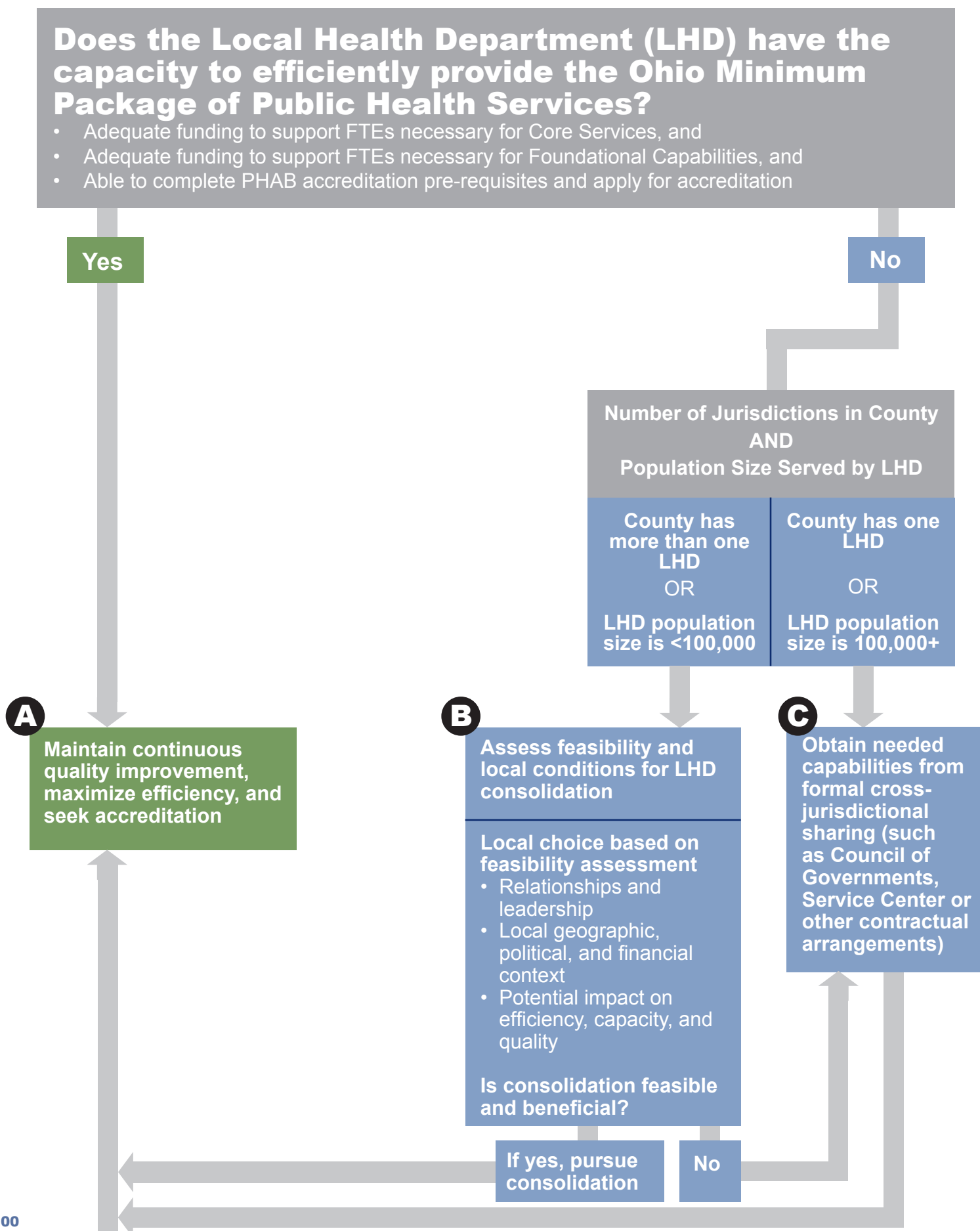
In the regional meetings, stakeholders expressed minimal interest in multi-county consolidations, and some felt that multi-county consolidations should be "off the table." Voluntary consolidation should therefore be considered by LHDs in counties with more than one LHD and/or by LHDs serving a population of less than 100,000 residents. Ohio has a total of 23 counties with more than one LHD. These 23 counties are home to 37 city health departments, 34 of which serve fewer than 100,000 residents (see Part 1 of the report and Appendix B).



AOHC is not recommending a population-based requirement for consolidation, but rather is recommending that LHDs that meet the criteria specified in the model should conduct a feasibility assessment that takes into consideration the local conditions and potential impacts of consolidation (as listed in the feasibility checklist, page 21). Due to the complexity of the local political and financial environments, forced consolidations that fail to address local conditions and sustainable funding issues may result in unintended consequences (e.g., net loss of local funding) and are not desirable. AOHC is not recommending a set number of LHDs for Ohio at this time. If the recommendations in this report are implemented, however, it is likely that the current trend toward voluntary consolidation and CJS will be accelerated and the total number of LHDs will be reduced.



Figure 23. Local Public Health Structure Analysis





Recommendations: Jurisdictional Structure

8. Decisions about the jurisdictional structure of local public health in Ohio should be based upon LHD ability to efficiently and effectively provide the Minimum Package of Public Health Services. Additional factors that should be considered are:
 - a. Number of jurisdictions within a county,
 - b. Population size served by the LHD, and
 - c. Local geographic, political, and financial conditions. (see Structure Analysis diagram)
9. All LHDs should assess:
 - a. Their ability to provide the Minimum Package of Public Health Services,
 - b. The potential impact of cross-jurisdictional sharing or consolidation on their ability to provide those services, and,
 - c. The feasibility of and local conditions for cross-jurisdictional sharing or consolidation.
10. Most LHDs, regardless of size, may benefit from cross-jurisdictional sharing. However, LHDs serving populations of <100,000 in particular may benefit from pursuing cross-jurisdictional sharing or consolidation to ensure adequate capacity to provide the Minimum Package.
11. LHDs in counties with multiple LHDs should consider the feasibility of voluntary consolidation.
12. Statutory barriers to voluntary multi-jurisdictional consolidation and cross-jurisdictional sharing should be removed, such as allowing for:
 - a. Multi-county levy authority, and
 - b. Consolidation of non-contiguous cities or counties, and
 - c. Addressing other barriers identified in feasibility analyses.

Resources for pursuing consolidation and CJS

Technical assistance, support for feasibility assessments and transition planning, and incentives will help LHDs to consolidate (when appropriate) and/or move toward more formal and efficient models of CJS. The Public Health Futures project developed two tools to guide LHD decision making in these areas. First, the *Checklist for Assessing Feasibility and Local Conditions for Cross-Jurisdictional Sharing (CJS) or Consolidation* (see page 21) provides a list of issues each local community should consider. This list reflects the success factors and barriers identified in the literature review and key informant interviews described in Part 2 of this report. Second, the *Characteristics and Issues to Consider for Potential CJS and Consolidation Models* matrix (see Appendix F) provides a description of three recommended models: 1) ad hoc contracting with a shared services center (similar to Educational Service Centers), 2) Council of Governments (COGs), and 3) Consolidation. HPIO used this as a discussion guide during the regional Public Health Futures meetings and it can serve as a starting place for LHDs as they begin to develop more formal and standardized approaches to CJS.



Additional technical assistance may be available in consultation with academic public health centers across the state.

In order to transition from the current system of informal arrangements and grant-specific service contracts, LHDs will need to address key decisions such as:

- Which CJS model(s) should be used: Council of Governments (COGs), Public Health Service Center (similar to Educational Service Centers), or some other arrangement?
- What number of LHDs should participate in formal CJS arrangements together? For example, should there be five CJS centers to reflect the five AOHC districts, or some other configuration?
- How will formal CJS arrangements be funded and where will they be housed?
- What range of Foundational Capabilities and other services should be provided by the formal CJS arrangements?

The following grant programs and “nuts and bolts” resources identified during the Public Health Futures process may also be useful as LHDs move forward to implement this report’s recommendations:

- Center for Sharing Public Health Services. Grant program, learning community, and technical assistance center launched in May 2012. Funded by Robert Wood Johnson Foundation and housed at the Kansas Health Institute. <http://www.phsharing.org/>
- Ohio Local Government Innovation Fund. Financial assistance for feasibility studies and demonstration projects designed to improve efficiency of local government. <http://www.development.ohio.gov/Urban/LGIF.htm>
- Attorney General Opinion Number 2012-013, Ohio Attorney General Mike DeWine, May 2012. Legal description of council of governments (COGs). <http://ohioattorneygeneral.gov/getattachment/40bd8d50-ff26-42ce-b046-0918926ae5e9/2012-013.aspx>
- *Summit County Health District and Akron Health Department Consolidation Feasibility Study*, The Center for Community Solutions, 2010, http://www.scphoh.org/PDFS/PDF-Reports/Final_Merger_Report_021210.pdf
- Kansas regional cooperation model, as described in *Proposal for the implementation of a multi-jurisdictional accreditation process*. Prepared by the Kansas Association of Local Health Departments (<http://www.kalhd.org>) and the Kansas Health Institute (www.khi.org).
- *Regionalization of Government Services: Lessons Learned and Application for Public Health Service Delivery*, Nancy J. Kaufman for the Robert Wood Johnson Foundation, 2010. <http://www.rwjf.org/files/research/rwjfphrregionalizationofgovernmentsservices.pdf>
- skinnyohio.org, Ohio Auditor of State, <http://skinnyohio.org/>
- Shared Services Idea Center, Ohio Auditor of State, <http://www.auditor.state.oh.us/sharedservices/default.htm>



Checklist for Assessing Feasibility and Local Conditions for Cross-Jurisdictional Sharing (CJS) or Consolidation

Relationships, leadership, and purpose

- ☐ **History of collaboration.** Do the LHDs have experience collaborating with each other? LHDs with a history of successful collaboration are better positioned to pursue CJS or consolidation.
- ☐ **Trust, personal relationships, and leadership.** Do the leaders of the LHDs have a strong working relationship? Mutual trust and positive personal relationships between LHD leadership and staff help to support successful collaboration. Strong leadership is critical.
- ☐ **Clarity of purpose.** Are the LHDs pursuing CJS or consolidation for the same reasons? LHDs should clarify their reasons for pursuing change early on in the planning process (e.g., increased efficiency, improved quality, maintaining services, etc.).

Local geographic, political, and financial context

- ☐ **Geographic density, dispersion, and size.** What are the potential impacts of CJS or consolidation on the efficiency of transportation logistics for the LHD? What are the potential impacts on the location of services and customer ability to access them?
- ☐ **Customer service and public visibility.** What is the potential impact on LHD ability to maintain a visible presence in affected communities, and capacity to improve or maintain high-quality customer service?
- ☐ **Community identity and engagement.** What is the potential impact on LHD ability to engage with community organizations and the public?
- ☐ **Naturally-occurring regional boundaries.** Do the different communities typically work together or have a regional identity? What are the jurisdictional configurations of related systems in the area? For example, would it be beneficial to align with county-level DJFS agencies or multi-county behavioral health boards, or other regional boundaries used by related systems?
- ☐ **Demographics.** To what extent are the demographic characteristics of the different communities similar or different? How might this impact the ability of consolidated or collaborating LHDs to provide services?
- ☐ **Local funding.** How would CJS or consolidation impact local funding sources, including public health levies if present?
- ☐ **Local political support.** What kind of local political support is there for CJS or consolidation? What factors are most important to local elected officials? How should local officials be included in the process?

Potential impact on efficiency, capacity, and quality

- ☐ **Service provision.** Would CJS or consolidation allow for the provision of additional services, or maintaining services with unsustainable funding or capacity? How would CJS or consolidation impact each LHD's ability to provide the Minimum Package of Public Health Services?
- ☐ **Foundational capabilities.** To what extent would CJS or consolidation impact LHDs capacity for Foundational Capabilities?
- ☐ **Accreditation and quality.** What is the potential impact on LHD ability to prepare for, seek, and obtain PHAB accreditation? What is the potential impact on LHD ability to assess and improve quality? What is the potential impact on LHD ability to carry out its Community Health Improvement Plan?
- ☐ **Efficiency.** What are the economies of scale that could be created by CJS or consolidation? Would improvements in efficiency or performance outweigh the costs of collaboration (transaction costs)?
- ☐ **Personnel.** How would the structure and payment of personnel be impacted by CJS or consolidation? How might labor union participation (if present) impact a consolidation process? Are there any upcoming retirements that may facilitate a leadership transition?
- ☐ **Health care service reimbursement.** What is the potential impact on LHD ability to obtain reimbursement from health insurance providers for health care services and immunizations?
- ☐ **Federal and state funding.** What is the potential impact on ability to obtain state or direct federal grants?



3.4. Financing the vision

The 2012 Institute of Medicine (IOM) report, *For the Public's Health*, declares that “The US public health financing structure is broken.” Ohio’s public health financing system mirrors this national picture and is further challenged by lower per-capita investments in public health compared to most other states (see Part 1 of this report). The fundamental problems with the financing of public health, both nationally and locally, are twofold: “1) insufficient funding for public health, and 2) dysfunction in how the public health infrastructure is funded, organized, and equipped to use its funding” (IOM, 2012, page S-1).

The Public Health Futures Steering Committee recognizes the importance and difficulty of taking on these overarching challenges. The committee’s recommendations address the need to build political support for increasing—or at least maintaining—funding for local public health. Secondly, the recommendations identify some initial steps to address the problems caused by the complex, fragmented, and categorical grant-driven funding environment. These problems include:

- Lack of dedicated funding sources for the Foundational Capabilities needed to support effective services (e.g., quality assurance, information management, policy development)
- Lack of dedicated funding sources for CJS and consolidation
- Inability to make long-term investments to improve efficiency and quality due to revenue instability (e.g., competitive grants, local political conditions, changes in funder priorities, etc.), and
- Misalignment between current funding streams and the services that LHDs are mandated and expected to provide based on current public health science and local community need.

While many funding factors are beyond the control of AOHC, the committee attempted to craft finance recommendations that call attention to specific problems that can be addressed at the local and state level. Modernization and simplification of public health funding streams would help to improve accountability for LHDs and for ODH, and would help LHDs to meet the imperative to maximize efficiency within the context of “leaner government.” Better alignment between funding categories, State Health Improvement Plan priorities, existing local Community Health Improvement Plan priorities, and the Minimum Package, would help to set a foundation for a pay-for-performance system.

The Steering Committee began the process of developing a cost estimate for the Minimum Package and an AOHC workgroup will continue this important and challenging work. The committee recognizes the critical importance of quantifying the cost of providing the Core Public Health Services supported by adequate Foundational Capacities before proceeding with requests for additional funding to support the Minimum Package.



Recommendations: Financing

13. All LHDs should have adequate funding to maintain the Minimum Package of Public Health Services. AOHC should continue the work of the Public Health Futures Financing Workgroup to identify cost estimates for the Minimum Package (Core Services and Foundational Capabilities) by November 2012.
14. The Ohio Department of Health and LHDs should work together to shift the focus from managing fragmented program silos and funding streams toward improving and coordinating state and local organizational capacity to effectively deliver the Minimum Package.
15. AOHC should advocate for block grants or direct contracts when possible so that communities can implement programs based on Community Health Assessment and Improvement Plan priorities.
16. AOHC should work to assure that local health departments are able to obtain fair reimbursement from public and private payers for eligible services (includes efforts to streamline insurance credentialing).
17. AOHC should explore new mechanisms for improving the stability and sustainability of federal, state, and local funding, such as:
 - a. Dedicated percentage of inside millage in lieu of local levies,
 - b. Standardized cost methodology to establish fees for programs where no explicit fee-setting authority currently exists,
 - c. Increasing Local Health Department Support (“state subsidy”) to LHDs to support Foundational Capabilities,
 - d. Excise taxes (e.g., tobacco, sugar-sweetened beverages, medical transactions), and
 - e. Integrated health care delivery reimbursement.



3.5 Next steps

The transition to the new model of local public health should occur in an organized, resourced, and transparent manner. AOHC should work with ODH leadership and other state policymakers to develop strategies to implement the Public Health Futures recommendations. Health Commissioners will need to communicate the recommendations to their local boards of health and other local decision makers, and seek their input regarding how to move forward to enact changes. Further exploration of the potential costs and benefits of formal CJS models, as well as local consolidation/ CJS feasibility assessments, will help AOHC's membership to move forward with building an infrastructure to support the new vision of local public health in Ohio.

Recommendations: Implementation Strategy

18. AOHC should seek funds to support feasibility assessments, transition planning, and incentives necessary for LHDs to implement the new framework (such as submitting a proposal to the RWJF Center for Sharing Public Health Services grant program).
19. AOHC should convene a meeting with state health policy leaders to formally present and discuss the recommendations of the Public Health Futures final report and to collaboratively plan strategies and action steps to advance forward progress toward the vision for the future.

Endnotes

- ⁱ For more detail regarding requirements of private plan to cover preventive services, see "Focus on Health Reform: Preventive Services Covered by Private Health Plans under the Affordable Care Act," September 2011. The Henry J. Kaiser Family Foundation. <http://www.kff.org/healthreform/8219.cfm>
- ⁱⁱ Initial guidance on essential benefits was issued by HHS in December 2011 and indicate that states will have some flexibility in defining essential benefits. Final rules are expected in Spring/Summer 2012. Once essential benefits are defined in Ohio, stakeholders will need to assess the extent of immunization coverage.
- ⁱⁱⁱ In addition to the coverage gains described above, Title IV, Section 4204, provides authority to states to purchase adult vaccine from manufacturers at the price negotiated by HHS Secretary in federal contracts. (Previously, states could only purchase childhood vaccines on federal contracts.)
- ^{iv} For an overview of the Navigator program, see "Navigators: Guiding People Through the Exchange", June 2011. Community Catalyst. Downloaded at http://www.communitycatalyst.org/doc_store/publications/Navigators_June_2011.pdf
- ^v HealthBridge is one of the oldest and largest regional health information exchanges (HIE) in the nation.



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Appendix A. Glossary

Collaboration. In this report, “collaboration” refers to the process of working jointly with others or together, in cooperation, toward a particular end or endeavor.

Consolidation. In this report, “consolidation” refers to Kauffman’s definition: “the act of combining into one government body or entity, also known as merger. It can occur through annexation, dissolution, referendum or formal written agreement. State laws govern consolidation of local governments.” Kaufman, N. J. *Regionalization of Government Services: Lessons Learned*, July 21, 2010. In Ohio, key statute includes R.C. 3709.07 (“Union”).

Cross-jurisdictional Arrangements. In this report, the term “cross-jurisdictional arrangements” means the same as “shared service arrangements.” Kauffman refers to Informal Arrangements, Service Contracts, and Inter-local Agreements, as forms of shared service on the continuum. They allow local jurisdictions to share information, equipment, and facilities, and to provide services, or receive them from another local jurisdiction. Kauffman states that “Functional Consolidation - where separate entities are retained but one or more duties normally performed are assigned to employees of another entity by inter-local agreement, is an incomplete form of consolidation.” Inter-local agreements are contracts that precisely specify the services, activities, terms and conditions of collaboration. They are based on the principles and concepts of contract law. State laws govern the processes by which local governments form inter-local agreements. In Ohio, key statutes include R.C. 307.15, 307.153, 167.01, 167.08, 305.23, and 9.432.

Government Shared Services Continuum. “Shared services take place under a broad variety of arrangements from informal verbal or ‘handshake’ arrangements to inter-local joint powers agreements to formal consolidation (merger)” (Kauffman, 2010). This is a useful concept and categorization of the range of activities related to sharing services. This report uses the term in a general sense.

Local Health Districts. Established by ORC Chapter 3709, powers and duties of Boards of Health and Health Commissioners are outlined in ORC Chapter 3707. Each health district is a separate political subdivision, similar to a school district, with an appointed Board of Health. Each district has a Health Commissioner who reports to the Board of Health. There are general health districts (county), city health districts, and combined health districts (county and city). In this report, we refer to “city” and “county” (signifying both general and combined health districts) districts.

Regionalism/Regionalization. In this report, “regionalism/regionalization” refers to shared service or cross-jurisdictional arrangements across county lines. Kauffman’s continuum defines regionalization more narrowly, referring only to mergers across county/state lines.



Shared Service Arrangements. Kauffman (2010) cites the following: “governments coming together to deliver services in a combined or collaborative operation (PricewaterhouseCoopers, 2005).” In this report, “shared service arrangements” is a term used to refer to a variety of forms of shared services, but not including “consolidation” and “regionalization” (which Kauffman includes as “shared services” within the continuum).



Appendix B. Ohio Local Health Departments by Population Size Category, 2010 Census

Source: Ohio Department of Health, LHD Census 2010

Health Department	Type	Total Population for Health Jurisdiction
City Health Departments: Small (<50,000)		
Belpre	City	6,441
Oakwood	City	9,202
Shelby	City	9,317
Girard	City	9,958
Galion	City	10,512
Ironton	City	11,129
East Liverpool	City	11,195
Coshocton	City	11,216
Springdale	City	11,223
Ravenna	City	11,724
Salem	City	12,303
Conneaut	City	12,841
Sharonville	City	13,560
Marietta	City	14,085
New Philadelphia	City	17,288
Steubenville	City	18,659
Ashtabula	City	19,124
Norwood	City	19,207
Niles	City	19,266
Portsmouth	City	20,226
Ashland	City	20,362
Piqua	City	20,522
Alliance	City	22,322
Shaker Heights	City	28,448
Kent	City	28,904
Massillon	City	32,149
Findlay	City	41,202
Warren	City	41,557
Middletown	City	48,694
	Count	29

**City Health Departments: Medium (50,000-99,999)**

Elyria	City	54,533
Hamilton	City	62,477
Youngstown	City	66,982
Canton	City	73,007
Lorain	City	86,678
	Count	5

City Health Departments: Large (100,000-499,000)

Cincinnati	City	296,943
Cleveland	City	396,815
	Count	2

City Health Departments: Very Large(500,000+)

Columbus	City	800,608
	Count	1

County Health Departments: Small (<50,000)

Vinton	Co	13,435
Noble	Co	14,645
Monroe	Co	14,679
Morgan	Co	15,054
Harrison	Co	15,741
Paulding	Co	19,495
Wyandot	Co	22,615
Meigs	Co	23,770
Coshocton	Co	25,675
Van Wert	Co	25,700
Carroll	Co	26,794
Henry	Co	28,215
Adams	Co	28,550
Pike	Co	28,709
Fayette	Co	28,919
Hocking	Co	29,365
Hancock	Co	30,475
Gallia	Co	30,934
Hardin	Co	32,170
Ashland	Co	32,831
Jackson	Co	33,225
Crawford	Co	33,290
Putnam	Co	34,499
Morrow	Co	34,827



Perry	Co	36,813
Williams	Co	37,642
Defiance	Co	39,037
Guernsey	Co	40,087
Champaign	Co	40,097
Mercer	Co	40,888
Washington	Co	41,252
Ottawa	Co	41,428
Clinton	Co	42,038
Holmes	Co	42,168
Preble	Co	42,540
Fulton	Co	42,808
Highland	Co	43,591
Madison	Co	44,263
Brown	Co	44,846
Logan	Co	45,746
Auglaize	Co	45,949
Union	Co	49,106
Shelby	Co	49,423
	Count	43

County Health Departments: Medium (50,000-99,999)

Lawrence	Co	51,321
Jefferson	Co	51,637
Darke	Co	52,120
Sandusky	Co	55,679
Pickaway	Co	55,809
Scioto	Co	59,273
Knox	Co	60,905
Seneca	Co	61,453
Huron	Co	62,883
Athens	Co	64,772
Marion	Co	66,501
Ashtabula	Co	69,532
Belmont	Co	69,899
Tuscarawas	Co	75,448
Ross	Co	78,064
Miami	Co	81,766
Erie	Co	83,292
Muskingum	Co	85,231
Columbiana	Co	85,359
Geauga	Co	93,273
	Count	20



County Health Departments: Large (100,000-499,999)

Allen	Co	109,667
Wayne	Co	114,730
Richland	Co	116,049
Fairfield	Co	116,577
Portage	Co	119,504
Wood	Co	124,450
Clark	Co	138,285
Trumbull	Co	139,520
Lorain	Co	154,293
Delaware	Co	155,159
Licking	Co	157,762
Greene	Co	161,152
Mahoning	Co	170,794
Medina	Co	172,118
Clermont	Co	195,451
Warren	Co	210,504
Lake	Co	230,041
Stark	Co	250,192
Butler	Co	257,225
Franklin	Co	422,640
Lucas	Co	441,705
Hamilton	Co	466,508
	Count	22

County Health Departments: Very Large (500,000+)

Montgomery	Co	525,901
Summit	Co	543,072
Cuyahoga	Co	854,975
	Count	3



Appendix C. List of key informants and interview guide

Key Informants Interviewed

Local Public Health Group

James M. Adams	Canton City Health Department (Stark County)
Terry Allan	Cuyahoga County Health District
Kathryn C. Boylan	Elyria City Health Department (Lorain County)
Wally Burden	Pike County General Health District
Angela DeRolph	Perry County General Health District
Anne Goon	Henry County General Health District
Timothy Ingram	Hamilton County General Health District
Teresa C. Long	Columbus Public Health (Franklin County)
Kathleen L. Meckstroth	Washington County Health Department
Gene A. Nixon	Summit County Health
Jason Orcena	Union County Health Department
Nancy C. Osborn	Ottawa County Health Department
Dennis R. Propes	Sharonville City Health Department (Hamilton County)
Chris Smith	Portsmouth City Health Department (Scioto County)
Susan A. Tilgner	Franklin County Public Health
Wesley J. Vins	Columbiana County General Health District
Krista Wasowski	Morrow County Health Department
Beth Bickford (Staff)	Executive Director, Association of Ohio Health Commissioners

Statewide Policy Group

Greg Moody	Director, Governor's Office of Health Transformation
Randy Cole	President, Controlling Board and Policy Advisor
Steven R. Wermuth	Chief Operating Officer, Ohio Department of Health
Joe Mazzola	Office of Local Health Department Support, Ohio Department of Health
John Hoornbeek, PhD	Associate Professor, College of Public Health, Director, Center for Public Administration and Public Policy Kent State University
Rex Plouck	Governor's Office of Health Transformation
Bart Anderson	Superintendent, Educational Service Center of Central Ohio



KEY INFORMANT INTERVIEW QUESTIONS

Questions asked of both groups

- Please comment on what you see as the value and role of public health in the future.
- What is your experience and receptiveness toward regional collaboration/shared services issues and comment on the landscape?
- If the Project produced a blueprint that had statewide, regional, and localized elements, what would stop your board from pursuing the solution(s)?

Questions asked of local public health group

- Please share your history/background in public health.
- Please describe some challenges encountered along the way: highlights/lowlights.
- Please comment on local public health delivery system stability issues: direct patient services, funding, politics etc.
- What is your view on accreditation and how would it be useful?
- Describe the level of current activity around local collaboration/consolidation issues/landscape.
- What is your experience and receptiveness toward regional collaboration/shared services issues and comment on the landscape?
- This Project's Results: what coming out of this would be most helpful to you and the communities you serve?
- Policy Development: What does this mean and what would make sense to you in terms of the focus of this project?
- Access to specialized expertise: What does this mean, and what would make sense to you?
- Electronic Health Records: comment on relevance, capacity vis a vis your organization.
- Name some key partners locally; any sharing discussions occurring?
- Comment on the state level environment and its impact locally.
- If Project produced a blueprint that had statewide, regional, and localized elements, what would stop your board from pursuing the solution(s)?
- Please comment on what you see as the value and role of public health in the future.

Questions asked of statewide policy group only

- Opportunities and barriers to sharing/consolidating - how can you help?
- Discuss information technology, performance measurement, focus of locally delivered services



Appendix D. Mandated and Permitted Services and Governance/Administrative Provisions in the Ohio Revised Code (ORC) and Ohio Administrative Code (OAC)

Appendix D Table 1. Mandated Services and Governance/Administrative Provisions

Ohio Revised Code (ORC)	
Department of Health	Summary
3701.02	Department of Health (DOH) consists of a director of health and a public health council
3701.021	Public health council shall adopt rules as are necessary to carry out required functions/duties not limited to but including: Standards for the provision of service coordination by the department of health and city and general health districts
3701.023	DOH shall review applications for eligibility for the program for medically handicapped children that are submitted to the department by city and general health districts and shall evaluate applications for authorization to provide treatment services, service coordination, and related goods to children deemed eligible for the medically handicapped children program.
3701.024	DOH shall determine the amount each county shall provide annually for the program for medically handicapped children and may allow each county to retain up to ten per cent of the amount determined to provide funds to city or general health districts of the county with which the districts shall provide service coordination, public health nursing, or transportation services for medically handicapped children. City or general health districts shall use the amounts retained to conduct outreach activities to increase participation in the program for medically handicapped children.
3701.13	Whenever possible, the DOH shall work in cooperation with the health commissioner of a general or city health district. The DOH may make and enforce orders in local matters when an emergency exists, or when the board of health of a general or city health district has neglected or refused to act with sufficient promptness or efficiency, or when such board has not been established. In such cases the necessary expense incurred shall be paid by the general health district or city for which the services are rendered.
3701.14	When called upon by the state or local governments, or the board of health of a general or city health district, the director of health shall promptly investigate and report upon the water supply, sewerage, disposal of excreta of any locality, and the heating, plumbing, and ventilation of a public building.
3701.24	In each county the director shall designate the health commissioner of a health district in the county to receive reports regarding every case of AIDS, every AIDS-related condition, and every confirmed positive HIV test reported to the DOH.
3701.29	DOH shall make provision for annual conferences of district health commissioners for the consideration of the cause and prevention of dangerous communicable diseases and other measures to protect and improve the public health.
3701.342	After consultation with the public health standards task force, the public health council shall adopt rules establishing minimum standards and optimum achievable standards for boards of health and local health departments. The minimum standards shall assure that boards of health and local health departments provide for: Analysis and prevention of communicable disease; Analysis of the causes of, and appropriate treatment for, the leading causes of morbidity and mortality; The administration and management of the local health department; Access to primary health care by medically underserved individuals; Environmental health management programs; Health promotion services designed to encourage individual and community wellness.
	The public health council shall adopt rules establishing a formula for distribution of state health district subsidy funds to boards of health and local health departments. The formula shall provide no subsidy funds to a board or department unless it meets minimum standards and shall provide higher funding levels for boards and districts that meet optimum achievable standards.
3701.344	Unless otherwise provided, boards of health of city or general health districts shall be given the exclusive power to establish fees for administering and enforcing rules regarding private water systems. If the director of health determines that a board of health of a city or general health district is unable to administer and enforce a private water system program in the district, the director shall administer and enforce such a program in the district and establish fees for such administration and enforcement.



	Boards of health of city or general health districts shall be given the exclusive power to determine the number of inspections necessary for determining the safe drinking characteristics of a private water system. Boards of health of city or general health districts shall have the option of determining whether bacteriological examinations shall be performed at approved laboratories of the state or at approved private laboratories.
3701.35	Every rule the public health council adopts shall state the date on which it takes effect, and a copy thereof, signed by the secretary of the council, shall be filed in the office of the secretary of state, and a copy thereof shall be sent by the director of health to each board of health of a general or a city health district, health officer, or person performing the duties of health officer, within the state.
3701.50	The health commissioner of the city or general health district, wherein any person required to be tested for syphilis and gonorrhea resides, may waive the requirements of such sections if the commissioner is satisfied by written affidavit or other written proof that the tests required are contrary to the tenets or practices of the religious creed of which the person is an adherent, and that the public health and welfare would not be injuriously affected by such waiver.
3701.53 "Duties of Health Commissioner"	The health commissioner of a city or general health district shall: Investigate each case of inflammation of eyes of the newborn or gonorrheal ophthalmia as filed with him and any other such case that comes to his attention; Report all cases of inflammation of the eyes of the newborn or gonorrheal ophthalmia, and the result of all such investigation, as the department of health directs; Conform to such other rules and regulations as the department promulgates for his further guidance; Determine the nature of the inflammation of the eyes in any case reported to him, and refer immediately to the Ohio commission for the blind, any inflammation of the eyes, for such treatment as the commission deems necessary.
3701.56; 3701.57	Boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts. The director of health, the board of health of a general or city health district, or any person charged with enforcing the rules of the department of health, may petition the court of common pleas for injunctive or other appropriate relief requiring any person violating a rule adopted by the public health council or any order issued by the director of health to comply with such rule or order.
County Health Department or Agency	
301.24	Electors of any county may establish, by charter provision, a county department or agency for the administration of public health services. The authorities provided in accordance with the county charter shall exercise all the powers and perform all the duties which are vested in or imposed upon the authorities of city or general health districts. All health districts shall be abolished within the county, and the county shall succeed to the property, rights, and obligations of such districts. DOH shall have the same powers with respect to a county health department or agency as it possesses with reference to a general health district. A county health department or agency may participate in any state grants for the expenses of local health administration on the same basis and degree as a general health district.
307.621	A board of county commissioners shall appoint a health commissioner of the board of health of a city or general health district that is entirely or partially located in the county in which the board of county commissioners is located to establish a child fatality review board to review the deaths of children under eighteen years of age.
Boards of Health	
3707.01 "abatement of nuisances"	The board of health of a city or general health district shall abate and remove all nuisances within its jurisdiction. The board may regulate the location, construction, and repair of water closets, privies, cesspools, sinks, plumbing, and drains. The board may regulate the location, construction, and repair of yards, pens, and stables, and the use, emptying, and cleaning of such yards, pens, and stables and of water closets, privies, cesspools, sinks, plumbing, drains, or other places where offensive or dangerous substances or liquids are or may accumulate.
3707.26	Semiannually, and more often, if judged necessary, the board of health of a city or general health district shall inspect the sanitary condition of all schools and school buildings within its jurisdiction, and may disinfect any school building.
3707.30	Hospital buildings shall be under the care and control of the board of health of the city or general health district in which such buildings are located.
3734.042	Upon receiving a written complaint of the presence of vectors at a scrap tire collection, storage, monorecell, or recovery facility, the board of health of the health district having jurisdiction promptly shall conduct an inspection of the facility named in the complaint.
3734.05	Except as provided in divisions (A)(4), (8), and (9) of this section, no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code.



3734.06	Creates a special fund in health districts used solely to administer and enforce the solid waste provisions of ORC chapter 3734. Creates a special infectious waste fund in each health district used solely to administer and enforce the infectious waste provisions of ORC chapter 3734.
Health Districts	
3709.01	<p>State is divided into health districts:</p> <ul style="list-style-type: none"> - City constitutes a "city health district" <ul style="list-style-type: none"> o Two or more contiguous city health districts may unite to form a single city health district (affirmed by majority vote of legislative authority of each city or by electorate petition/election) - Townships and villages in each county are combined into a "general health district" <ul style="list-style-type: none"> o Two or more contiguous general health districts, not to exceed five may unite to form a single general health district (affirmed by majority vote of the district advisory council) - Combined health district is a union of a general health district and one or more city health districts
Authority	
3709.03-.04 "general health district"	<p>A district advisory council is created in each general health district. Council members include: president of the board of county commissioners, chief executive of each municipal corporation not constituting a city health district, president of the board of township trustees of each township or a selected representative from each of these entities. Reference to a larger number of council members but not sure how they are appointed.</p> <p>Council shall:</p> <ol style="list-style-type: none"> 1. appoint four members of the BOH 2. receive and consider annual reports from the BOH 3. make recommendations to the BOH or DOH in re: matters for the betterment of health and sanitation w/in the district or for needed legislation <p>If a district advisory council fails to select a BOH, the director of health with the consent of the public health council may appoint a board of health.</p>
3709.02-.03; 3709.11 "general health district and Board of Health"	<p>General health districts shall have a board of health (BOH) consisting of five members. Four members are appointed by the district advisory council and one is appointed by the health district licensing council. One member must be a physician; BOH shall appoint a health commissioner (term not to exceed five years). Commissioner shall be the executive officer of the board and carry out all orders of the board and the DOH (enforcement of sanitary laws and regulations in the district). If commissioner is not a physician, then BOH shall appoint a licensed physician as medical director to provide medical direction.</p>
3709.05-06 "city health district"	<p>Legislative authority of each city constituting a city health district shall establish a BOH. BOH shall have four members appointed by the mayor and confirmed by the legislative authority and one member appointed by the health district licensing council.</p> <p>If city fails to establish a BOH, the director of health, with approval of the public health council, may appoint a health commissioner for the city.</p>
3709.14 "city health district and Board of Health"	<p>In any city health district, BOH shall appoint a health commissioner.</p>
3709.07 "combined city and general health district"	<p>Chair of the district advisory council and the chief executive of each city shall enter into a contract for the administration of health affairs in the combined district. Contract may provide that the administration of the combined district shall be taken over by either the board of health or health department of one of the cities, by the board of health of the general health district, or by a combined board of health and agreed upon entity shall have all powers and duties required of the board of health of a general health district.</p> <p>The district advisory council of the combined general health district shall consist of:</p> <ul style="list-style-type: none"> - the members of the district advisory council of the original general health district and - the chief executive of each city constituting a city health district, each member having one vote.
3709.41 "Health District Licensing"	<p>A health district licensing council is created in each general and city health district. Council is to be appointed by the entity that has responsibility for appointing the board of health in the health district. The members of the council shall consist of one representative of each business activity for which the board of health operates a licensing program.</p>



Council"	Each board of county commissioners shall establish a county family and children first council which includes the health commissioner, or commissioner's designee, of the board of health of each city and general health district in the county.
121.37	
Regional Council of Governments	
167.02 "membership"	Membership in the regional council shall be the counties, municipal corporations, townships, special districts, school districts, and other political subdivisions entering into the agreement establishing the council or admitted to membership subsequently pursuant to the agreement establishing the council or the bylaws of the council. Representation on the council may be in the manner as provided in the agreement establishing the council.
Duties of BOH	
3709.14	Shall appoint a health commissioner
3709.16	Shall determine duties and fix salaries of its employees
3709.19	Shall keep a complete and accurate record of diseases reported to the health commissioner
3709.22	Shall study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases.
3709.25	Shall provide for the free distribution of antitoxin for the treatment of cases of diphtheria and shall establish sufficient distributing stations to render such antitoxin readily available in all parts of the district.
	Shall annually adopt an itemized appropriation measure.
3709.36	Shall exercise all the powers and perform all the duties formerly conferred and imposed by law upon the board of health of a municipal corporation.
121.36	City and general health districts must comply with ORC 121.26 when entering into a contract for the provision of home care services to home care dependent adults that are paid for in whole or in part by federal, state, or local funds.
"home care services"	
Ohio Administrative Code (OAC)	
3701-36-03 "minimum standards for health district"	Each health district must meet the following minimum standards to receive any state subsidy funds: (1) Submission of a state health district subsidy fund application to the department due March first of each year; (2) Completion and submission of the department's on-line report which incorporates the PHAB standards on March first of every even numbered year; (3) Completion and submission of the United States centers for disease control and prevention public health performance standards report and submission of a copy to the department at least once, on a rolling basis, every five years, or on an interval of greater than five years as determined by the director; (4) Submission of a completed annual financial report to the department by March first of each year; (5) Be represented by the health commissioner or the health commissioner's designee at each conference provided by the Ohio DOH; (6) Provide administrative leadership by: Employing a health commissioner; Employing a registered nurse as nursing director; Employing a registered sanitarian as environmental health director; and employing a medical director; (7) provision of services for health education; and (8) expenditure of a minimum of three dollars per capita in local funds for public health services per year.
3701-36-01 "Definition of optimal achievable standards"	Optimal achievable standards is a concept for distributing subsidy funds beyond those awarded for achieving minimum standards. These standards will be defined by the director on an annual basis when sufficient funds are allocated by the legislature.
3701-36-04	Each local health department shall provide programs in such a manner as to protect and promote the public's health for the communities each board of health serves. Each local health department shall complete and submit a report to show compliance thereof.
3701-36-10 "payment of health district"	No health district shall be eligible for or be paid a state subsidy unless: (1) The health district has been provided local funds for public health services, as determined by the health commissioner and board of health, totaling at least three dollars per capita, according to the most recent federal decennial census or the United States census bureau's most recent population estimate, however, the director may grant an exception to the requirements of this paragraph when it is shown



subsidies"	<p>to his satisfaction that unusually severe economic conditions prevent the health district from receiving adequate tax revenues. (2) The certification of funds expended by the health district is endorsed by the director. (3) The health district has submitted, by the time requested, all data, reports, and other information concerning services and costs associated with state subsidy distribution required by the director of health. (4) The health district has not decreased local funds in the local health department budget in anticipation of using state subsidy funds to provide services normally supported by local revenues. (5) The local health department is in compliance with the minimum standards set out in the OAC.</p> <p>Each health district meeting the improvement minimum standards and which is otherwise eligible for a state subsidy shall be paid the subsidy to be computed as follows:</p> <p>(1) Health districts that are in compliance with the minimum standards may be paid a pro rata amount not to total more than fifty cents on a per capita basis according to the most recent federal decennial census or the United States census bureau's most recent population estimate.</p> <p>(2) If the amount appropriated by the general assembly in any fiscal year for state health district subsidy exceeds fifty cents per capita for health districts that qualify for any subsidy under this rule, health districts that are in compliance with one or more of the optimal achievable standards (see 3701.342) contained in this chapter of the Administrative Code may be paid an additional subsidy amount for each optimal achievable standard met, on a per capita basis according to the most recent United States census bureau's population figures, as determined by the director. In addition to compliance with one or more of the optimal achievable standards, a health district must comply with all minimum standards to qualify for an additional subsidy.</p>
3701-36-11 "Certification of compliance and financial disclosure"	<p>To apply for state subsidy payments, the president of each board of health and the health commissioner of each local health department shall submit to the director on forms provided by the director and shall be submitted no later than the first day of March of each year, the following:</p> <p>(1) An annual application for state subsidy. The application shall include a certification of the extent of the local health department's compliance with the improvement standards established by rules 3701-36-03 and 3701-36-04 of the Administrative Code; (2) An annual subsidy compliance statement; and (3) Submission of the department's on-line report on improvement standards and the centers for disease control and prevention national performance standards survey.</p> <p>(B) The president of each board of health providing health services in one or more health districts and the chief executive officer of each local health department providing services in one or more health districts shall, on or before the first day of March of each year, submit to the director on forms provided by the director an annual financial report for the preceding calendar year, describing amounts expended which qualify for state health district subsidy funds. This report shall be certified by the health commissioner and the auditor of the health district.</p>
3701-36-12 "assessing compliance"	<p>The director may evaluate the extent to which local health departments comply with the minimum and optimal achievable standards established by Chapter 3701-36 of the Administrative Code by means of the review process provided in this rule. Each local health department which has certified that it is in compliance with minimum or optimal achievable standards may be evaluated as frequently as the director deems necessary.</p>



Appendix D Table 2. Permitted Services and Governance/Administrative Provisions

Ohio Revised Code (ORC)	
Department of Health	Summary
3701.03; 3701.04	Director of Health shall perform duties incident to the position as CEO of the DOH. Director shall administer the laws relating to health and sanitation and the rules of the DOH. Director may enter into agreements to sell services offered by the department of health to boards of health of city and general health districts and to other departments, agencies, and institutions of this state, other states, or the United States.
3701.10	Director of health may require any district health commissioner to attend, immediately after his appointment, a school of instruction to be conducted by the department of health at Columbus.
3701.13	Whenever possible, the DOH shall work in cooperation with the health commissioner of a general or city health district. The DOH may make and enforce orders in local matters when an emergency exists, or when the board of health of a general or city health district has neglected or refused to act with sufficient promptness or efficiency, or when such board has not been established. In such cases the necessary expense incurred shall be paid by the general health district or city for which the services are rendered.
3701.35	Every rule the public health council adopts shall state the date on which it takes effect, and a copy thereof, signed by the secretary of the council, shall be filed in the office of the secretary of state, and a copy thereof shall be sent by the director of health to each board of health of a general or a city health district, health officer, or person performing the duties of health officer, within the state.
3701.56; 3701.57	Boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts. The director of health, the board of health of a general or city health district, or any person charged with enforcing the rules of the department of health, may petition the court of common pleas for injunctive or other appropriate relief requiring any person violating a rule adopted by the public health council or any order issued by the director of health to comply with such rule or order.
County Health Department or Agency	
301.24	Elector of any county may establish, by charter provision, a county department or agency for the administration of public health services. The authorities provided in accordance with the county charter shall exercise all the powers and perform all the duties which are vested in or imposed upon the authorities of city or general health districts. All health districts shall be abolished within the county, and the county shall succeed to the property, rights, and obligations of such districts. DOH shall have the same powers with respect to a county health department or agency as it possesses with reference to a general health district. A county health department or agency may participate in any state grants for the expenses of local health administration on the same basis and degree as a general health district.
307.806 "County microfilming board"	The county microfilming board may enter into a contract with the legislative authorities of any municipal corporation, township, port authority, water or sewer district, school district, library district, county law library association, health district, park district, soil and water conservation district, conservancy district, other taxing regional council, county land reutilization corporation, or with the board of county commissioners or the microfilming board of any other county, or with any other federal or state governmental agency, and such authorities may enter into contracts with the county microfilming board, to provide microfilming or image processing services to any of them.
307.846 "County automatic data processing board"	The county automatic data processing board may enter into a contract with the legislative authorities of any municipal corporation, township, port authority, water or sewer district, school district, library district, county law library association, health district, park district, soil and water conservation district, conservancy district, other taxing district, regional council, county land reutilization corporation, or with the board of county commissioners or the automatic data processing board of any other county, or with any other federal or state governmental agency, and such authorities or entities may enter into contracts with the county automatic data processing board, to provide automatic or electronic data processing or record-keeping services to any of them.
311.29 "Sheriff"	Sheriff may enter into contracts with any municipal corporation, township, township police district, joint police district, metropolitan housing authority, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, water conservancy district, or other taxing district or with the board of county commissioners of any contiguous county with the concurrence of the sheriff of the other county, and such subdivisions, authorities,



	and counties may enter into agreements with the sheriff pursuant to which the sheriff undertakes and is authorized by the contracting subdivision, authority, or county to perform any police function, exercise any police power, or render any police service in behalf of the contracting subdivision, authority, or county, or its legislative authority, that the subdivision, authority, or county, or its legislative authority, may perform, exercise, or render.
307.15 "Board of County Commissioners"	The board of county commissioners may enter into an agreement with the legislative authority of a health district or with the board of health, and such legislative authorities may enter into agreements with the board of county commissioners, whereby the board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, on behalf of the contracting subdivision or its legislative authority, that such subdivision or legislative authority may exercise, perform, or render.
307.153 "Agreements with board of health"	A board of health of a city or general health district may enter into an agreement with the board of county commissioners of the county in which the health district is totally or partially located, and the board of county commissioners may enter into an agreement with the board of health, whereby the board of health undertakes to exercise any power, perform any function, or render any service, in behalf of the county commissioners, which the board of county commissioners may exercise, perform, or render.
3707.01 "abatement of nuisances"	The board of health of a city or general health district shall abate and remove all nuisances within its jurisdiction. The board may regulate the location, construction, and repair of water closets, privies, cesspools, sinks, plumbing, and drains. The board may regulate the location, construction, and repair of yards, pens, and stables, and the use, emptying, and cleaning of such yards, pens, and stables and of water closets, privies, cesspools, sinks, plumbing, drains, or other places where offensive or dangerous substances or liquids are or may accumulate.
3707.02; 3707.021	When an order of the board of health of a city or general health district is neglected or disregarded, the board may elect to cause the arrest and prosecution of all persons offending, petition the court for an injunction, or perform, by its officers and employees, what the offending parties should have done.
3707.04	In response to an epidemic or threat thereof, the BOH may impose a quarantine on vessels, railroads, or other public or private vehicles conveying persons, baggage, or freight, or used for such purpose.
3707.12	The board of health of a city or general health district may destroy any infected clothing, bedding, or other article that cannot be made safe by disinfection, and shall furnish to the owner of the articles a receipt.
3707.27	The board of health of a city or general health district may take measures, supply agents, and afford inducements and facilities for gratuitous vaccination, or may make reasonable charges for such vaccination.
3707.55	A board of health of a general health district may acquire, convey, lease, or enter into a contract to purchase, lease, or sell real property for the district's purposes, and may enter into loan agreements, including mortgages, for the acquisition of such property.
Health Districts	
3709.01	State is divided into health districts: <ul style="list-style-type: none"> - City constitutes a "city health district" <ul style="list-style-type: none"> o Two or more contiguous city health districts may unite to form a single city health district (affirmed by majority vote of legislative authority of each city or by electorate petition/election) - Townships and villages in each county are combined into a "general health district" <ul style="list-style-type: none"> o Two or more contiguous general health districts, not to exceed five may unite to form a single general health district (affirmed by majority vote of the district advisory council) - Combined health district is a union of a general health district and one or more city health districts
Authority	
3709.03-.04 "general health district"	A district advisory council is created in each general health district. Council members include: president of the board of county commissioners, chief executive of each municipal corporation not constituting a city health district, president of the board of township trustees of each township or a selected representative from each of these entities. Reference to a larger number of council members but not sure how they are appointed. Council shall: <ol style="list-style-type: none"> 4. appoint four members of the BOH 5. receive and consider annual reports from the BOH 6. make recommendations to the BOH or DOH in re: matters for the betterment of health and sanitation w/in the district or for needed legislation If a district advisory council fails to select a BOH, the director of health with the consent of the public health council may appoint a board of health.



3709.05-06 “city health district”	Legislative authority of each city constituting a city health district shall establish a BOH. BOH shall have four members appointed by the mayor and confirmed by the legislative authority and one member appointed by the health district licensing council. If city fails to establish a BOH, the director of health, with approval of the public health council, may appoint a health commissioner for the city.
3709.07 “combined city and general health district”	Chair of the district advisory council and the chief executive of each city shall enter into a contract for the administration of health affairs in the combined district. Contract may provide that the administration of the combined district shall be taken over by either the board of health or health department of one of the cities, by the board of health of the general health district, or by a combined board of health and agreed upon entity shall have all powers and duties required of the board of health of a general health district. The district advisory council of the combined general health district shall consist of: - the members of the district advisory council of the original general health district and - the chief executive of each city constituting a city health district, each member having one vote.
Regional Council of Governments	
167.01 “formation”	Governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions.
167.03 “powers”	<p>The council has power to:</p> <p>(1) Study such area governmental problems common to two or more members of the council as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions, and regional development; (2) Promote cooperative arrangements and coordinate action among its members, and between its members and other agencies of local or state governments, whether or not within Ohio, and the federal government; (3) Make recommendations for review and action to the members and other public agencies that perform functions within the region; (4) Promote cooperative agreements and contracts among its members or other governmental agencies and private persons, corporations, or agencies; (5) Perform planning directly by personnel of the council, or under contracts between the council and other public or private planning agencies.</p> <p>The council may:</p> <p>(1) Review, evaluate, comment upon, and make recommendations, relative to the planning and programming, and the location, financing, and scheduling of public facility projects within the region and affecting the development of the area; (2) Act as an areawide agency to perform comprehensive planning for the programming, locating, financing, and scheduling of public facility projects within the region and affecting the development of the area and for other proposed land development or uses, which projects or uses have public metropolitan wide or interjurisdictional significance; (3) Act as an agency for coordinating, based on metropolitan wide comprehensive planning and programming, local public policies, and activities affecting the development of the region or area.</p> <p>The council may, by appropriate action of the governing bodies of the members, perform such other functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern.</p> <p>The authority granted to the council by this section or in any agreement by the members thereof shall not displace any existing municipal, county, regional, or other planning commission or planning agency in the exercise of its statutory powers.</p>
167.08 “contracts for service”	Appropriate officials, authorities, boards, or bodies of counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may contract with any council to receive any service from such council or to provide any service to such council. Such contracts may also authorize the council to perform any function or render any service in behalf of such counties, municipal corporations, townships, special districts, school districts, or other political



Powers of BOH	subdivisions, which such counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may perform or render.
3709.14-15	May appoint public medical health staff (including physicians) and persons for sanitary duty.
3709.09	May, by rule, establish a uniform system of fees to pay the costs of any services provided by the board.
3709.15	May provide nursing care and other therapeutic and supportive care services to maintain an ill or infirm person in a place of residence used as such person's home or elsewhere OR contract with any individual or a public or private agency to furnish services.
3709.16	May procure and pay all or any part of the cost of group life, hospitalization, surgical, major medical, sickness and accident insurance, or a combination of any of the foregoing types of insurance or coverage, for the health commissioner, the employees of the health district, and their immediate dependents.
3709.161	May procure a policy or policies of insurance insuring the members of the board, the health commissioner, and the employees of the board against liability.
3709.18	May provide infant welfare stations, prenatal clinics, and other measures for the protection of children as are necessary. May also provide for the prevention and treatment of trachoma and establish clinics or detention hospitals and provide the necessary medical and nursing services.
3709.20-21	May make orders and regulations necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances.
3709.22	May also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and county homes, and other charitable, benevolent, and correctional institutions. May also provide for the inspection of dairies, stores, restaurants, hotels, and other places where food is manufactured, handled, stored, sold, or offered for sale, and for the medical inspection of persons employed therein. May also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease.
3709.23	May provide for laboratory work.
3709.24	May provide for the free treatment and quarantine of carriers of cases of gonorrhea, syphilis, and chancroid. May establish and maintain one or more clinics for such purpose and may provide for the necessary medical and nursing service.
3709.26	May make frequent inspection of all county homes, children's homes, workhouses, jails, or other charitable, benevolent, or correctional institutions in the district, including physical examination of the inmates whenever necessary, and may make laboratory examinations of inmates as requested by authorized jurisdiction.
3709.27	May establish detention hospitals for cases of communicable diseases and provide for the support and maintenance thereof
3709.281	May enter into an agreement with the legislative authority of a municipality of the locus of the health district
3709.282	May participate in, receive or give financial and other assistance, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted prior to or after November 6, 1969.
Ohio Administrative Code (OAC)	
3701-36-01 "Definition of optimal achievable standards"	Optimal achievable standards is a concept for distributing subsidy funds beyond those awarded for achieving minimum standards. These standards will be defined by the director on an annual basis when sufficient funds are allocated by the legislature.

Note: Some statutes include both mandated and permitted provisions and are therefore included in both tables.



Appendix E. Crosswalk between PHAB standards and the Ohio Minimum Package of Local Public Health Services

There are many overlaps between PHAB domains and the Minimum Package categories. This crosswalk displays the primary areas of alignment.

PHAB Domain	Core Public Health Services	Other Public Health Services	Foundational Capabilities
1. Assess	<ul style="list-style-type: none"> Epidemiology Access to birth and death records 		<ul style="list-style-type: none"> Information management and analysis Community health assessment (Support and expertise for LHD community engagement strategies)
2. Investigate	<ul style="list-style-type: none"> Environmental health services Communicable disease control Emergency preparedness 	Non-mandated environmental health services	Laboratory capacity (environmental)
3. Inform and Educate	<ul style="list-style-type: none"> Health promotion and prevention Community engagement 	Specific maternal and child health programs	
4. Community Engagement	<ul style="list-style-type: none"> Community engagement Health promotion and prevention 		Support and expertise for community engagement strategies
5. Policies and Plans	<ul style="list-style-type: none"> Health promotion and prevention Emergency preparedness 		<ul style="list-style-type: none"> Policy development Community health improvement planning (Support and expertise for LHD community engagement strategies)
6. Public Health Laws	Environmental health services		Legal support
7. Access to Care	Linking people to health services	<ul style="list-style-type: none"> Clinical preventive and primary care services Specific maternal and child health programs 	Laboratory capacity (clinical)
8. Workforce			Resource development
9. Quality Improvement			<ul style="list-style-type: none"> Quality assurance Information management and analysis
10. Evidence Based Practice			<ul style="list-style-type: none"> Quality assurance Information management and analysis
11. Administration & Management			Resource development
12. Governance			Governance



Appendix F. Characteristics and Issues to Consider for Potential Cross-Jurisdictional Sharing and Consolidation Models

Discussion guide prepared for Public Health Futures regional district meetings, April 2012

Appendix F Table 1: Basic description, structure, and authority

	Model 1		Model 2	Model 3
	Ad Hoc contracting with a shared services center		Council of Governments (COGs)	Consolidation
Potential variations	1A. Build on existing Educational Service Centers (ESCs) 1B. Develop Public Health Service Centers (PHSCs)		2A. Geographic 2B. Service-specific 2C. Hybrid	3A. Based on county boundaries 3B. Based on population size criteria
1. Example	Educational Service Centers (ESCs) – both backroom (traditional shared services) and OCALI model (specialized expertise services)		DD Regional Council of Governments (COGs); Three C Recovery and Health Care Network	Summit-Akron health department union
2. Basic description of the structure	This is the model most similar to the current state in that each LHD decides what to contract for and negotiates and administers its own contracts. The difference is that LHDs are contracting with a service center, rather than (or in addition to) each other.		LHDs create and govern (“own”) the COG. Opportunity to agree to standardized business processes and services. COGs could provide back office functions and/or expertise. COGs can serve as a Multi-Jurisdictional Applicant (MJA) for PHAB accreditation.	Union (merger) of city and county LHDs and/or union of multiple county LHDs
3. How is it different from what we are doing now?	Not much – more organized and formalized, possibly more efficient shared service arrangements.		Depends on scope. From mostly an alternative to service contracts and current collaborations to very deliberate re-organization, funding, staffing of activities aligned with PHAB, balanced with truly local needs/funding (See Table 4)	Would lead to fewer LHDs and larger LHDs.
4. Implications for accreditation	Each LHD would need to apply for accreditation separately.		More efficient because COG could serve as Multi-Jurisdictional Applicant (MJA)	Each LHD would need to apply for accreditation separately.
5. How many LHDs would there be?	Could retain 125		Could retain 125 LBOHs – but operations of LHDs would change significantly	88 if based on county boundaries; 28 to 124 if based on population size criteria



Table 1 continued	Model 1	Model 2	Model 3
6. How does it affect current autonomy of LHDs?	It doesn't, to the extent they really have local autonomy vs. "theoretical" autonomy	Could argue it strengthens it by improving capacity to focus on truly local functions; can retain rule-making/enforcement powers at LBOH	Autonomy only in merged entity
7. Which functions would be done by the shared body vs. what is done by the LHD?	See Table 4	See Table 4	NA
8. How much up-front investment would it take to start it?	Need more information	Need more information	Need more information
9. What laws or regulations would need to be changed?	Depends	Depends	Apportionment (governance) and local taxing authority issue must be addressed
10. What details or features would need to be decided?	See Table 4	See Table 4	See Table 4



Appendix F Table 2. Considerations based on “clarity of purpose” reasons for developing a new framework

Questions:

- Does the model address the priority area? If yes, to what extent does the model address this priority area?
- To what extent does the model help to make the priority a reality?

Reasons for developing a new framework (in priority order*)	Ad Hoc contracting with a shared services center	Councils of Government (COGs)		Consolidation
	Model 1	Model 2	Model 3	
1. Improve the stability and sustainability of revenue for LHDs.	Low	Depends	Depends	
2. Improve alignment between funding streams, mandated services, and the essential public health services. (Simplify funding streams, stop “robbing Peter to pay Paul,” and adequately fund mandated and expected services.)	Low	Moderate to high		Moderate to high in some counties
3. Improve the quality of LHD services and improve health outcomes in local communities.	Low	Moderate to high		Moderate to high, depends
4. Clarify the role of local public health in Ohio, including greater clarity on services that should be provided by LHDs versus the broader health care system.	Depends	Depends		Depends
5. Retain local control, authority, and flexibility.	High	Moderate to high – depends on how govern the COG		Lower for some LHDs, unchanged for others?
6. Retain and/or build upon current collaborative arrangements.	High – If current arrangement beneficial	High		Depends on local issues/relationships
7. Specify a minimum standard range of services and ensure that LHDs have the capacity to provide those services.	Depends	Moderate		Depends



Table 2 continued	Model 1	Model 2	Model 3
8. Prevent the state from imposing a new structure on local public health by proactively proposing our own approach. Satisfy pressure from state policymakers to “do something” to become more efficient.	Low	Moderate to high	Moderate to high – depends
9. Reduce costs. Improve the efficiency of LHDs within the context of “leaner government.”	Moderate, depends on scope and willingness to use and consider transaction costs	Moderate to high	Moderate to high – depends
10. Reduce disparities in capacity and funding across LHDs.	Low to moderate on capacity; low on disparities	Moderate to high – depends	Moderate to high – depends

*Priority order based on vote of AOH membership at March 30, 2012 all-member meeting. Number one is top priority.



Appendix F Table 3. Other considerations

	Ad Hoc contracting with a shared services center		Council of Governments (COGs)		Consolidation	
	Model 1		Model 2		Model 3	
1. Ability to achieve Minimum Efficient Scale and Determinants of LHD Performance (approximates that ideal population size to maximize efficiency and effectiveness is 100,000 to 500,000 residents)	N/A		Moderate to high		High, if model sets 100,000 as minimum population size	
2. Ability to meet PHAB standards (accreditation)	Depends		Higher due to ability to apply as MJA (depends on eligibility)		Depends	
3. Ability to provide services toward base of Health Impact Pyramid	Depends		Potentially higher if larger population size		Potentially higher if larger population size	
4. Ability for LHDs to serve “convener and planner” role	Depends		Depends		Depends	
5. Ability to LHDs to provide preparedness and emergency response services	Depends		Depends		Depends	
6. Ability to retain current local funding	Moderate		Moderate		Depends	
7. Ability to improve LHD ability to leverage local funds	Moderate		Moderate		Depends	
8. Ability to improve LHD ability to leverage state funds	Low		Moderate		Moderate	
9. Ability to improve LHD ability to leverage federal funds	Low		Potentially higher if larger population size		Potentially higher if larger population size	



Appendix F Table 4. Potential services that could be provided by a COG, by PHAB domain

PHAB Domain	Services that may be more efficiently provided by the COG	Services that may be more effective if retained by the LHD
Assess	<ul style="list-style-type: none"> Community health assessment technical assistance and data management Surveillance data management IT Data analysis expertise 	<ul style="list-style-type: none"> Community health assessment facilitation, partnership with other organizations and sectors, and use of findings Some surveillance and reporting functions
Investigate	<ul style="list-style-type: none"> Epi expertise Laboratory (24/7 services) 	<ul style="list-style-type: none"> Inspections Health hazard mitigation Partnerships with other sectors and organizations
Inform and Educate	<ul style="list-style-type: none"> Health education and communications technical assistance and expertise Marketing and branding support Website IT Grant writing and grant management support 	<ul style="list-style-type: none"> Health education implementation Feedback from target audiences, program/message modification for local needs and conditions (including cultural and linguistic appropriateness)
Community Engagement	Technical assistance	Leadership and participation in local coalitions and collaborative groups (including Children and Family First Councils)
Policies and Plans	<ul style="list-style-type: none"> Policy development technical assistance Community Health Improvement Plan technical assistance Program evaluation technical assistance 	<ul style="list-style-type: none"> Monitor local issues and policies Educate local policymakers about public health issues Community Health Improvement Plan facilitation and implementation Emergency Operations planning
Public Health Laws	<ul style="list-style-type: none"> Legal expertise Inspection compliance tracking data management IT 	<ul style="list-style-type: none"> Educate local community about public health laws Inspection and enforcement
Access to Care	<ul style="list-style-type: none"> EHR and billing expertise and IT Connections to broader health care system Grant writing and grant management support 	<ul style="list-style-type: none"> Assessment of local access to care issues and identification local resources, gaps, and needs Care coordination services Provision of primary care services, screening/testing, home health, BCMH, HMG, WIC, immunizations, etc.
Workforce	<ul style="list-style-type: none"> Human resources support Training, certification 	LHD staff
Quality Improvement	<ul style="list-style-type: none"> Program evaluation, Performance management, and quality improvement services Performance management IT and evaluation data management Accreditation coordinator 	
Evidence Based Practice	<ul style="list-style-type: none"> Identification of evidence-based practices 	Implementation of evidence-based practices



	<ul style="list-style-type: none">▪ Training or technical assistance on evidence-based practices▪ Research design, data collection, and analysis; human subjects protections	
Administration & Management	<ul style="list-style-type: none">▪ Policy development▪ Contract negotiations and purchasing▪ Human resources support▪ Grants management support▪ IT▪ Insurance▪ Fiscal support	
Governance		LBOH owns and governs the COG

Note: Any of the services listed above could also be provided by a Public Health Shared Service Center on an ad hoc basis (Model 1B).



Appendix G. Additional resources

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“Emerging Issues” Ohio Department of Health (May, 2012) <http://www.odh.ohio.gov/localhealthdistricts/lhdemergingissues.aspx>

“Encourage Patient-Centered Medical Homes,” Governor’s Office of Health Transformation, <http://www.healthtransformation.ohio.gov/CurrentInitiatives/EncouragePatientCenteredMedicalHomes.aspx>

“Ohio Health and Human Services Transformation Framework,” Governor’s Office of Health Transformation, <http://www.healthtransformation.ohio.gov/LinkClick.aspx?fileticket=SslvoxISmu4%3d&tabid=104>

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SUNSHINE LAW IN OHIO

Section (RC) 121.22) requires that all acts and most deliberations of boards and other public bodies, as well as their committees and subcommittees, be conducted in public meetings. Since its enactment in 1975, the Sunshine Law has been a continuing source of inquiry and litigation. This INFORMATION attempts to provide answers to the most commonly asked questions about the Sunshine Law as it applies to public boards.

1. To what entities does the Sunshine Law apply?

A. The Sunshine Law applies to boards and to any committee or subcommittee.

2. What is a committee or a subcommittee to which the Sunshine Law applies?

A. The law does not define the terms “committee” or “subcommittee.” However, a court decision and an opinion of the Ohio attorney general lead to some conclusions. A court has held that a local building leadership team on which no board members serve is a committee to which the Sunshine Law applies. The Ohio Attorney General has issued an opinion that a citizens advisory committee is subject to the law, despite public officials or employees constituting less than a majority of its membership. That opinion states that if the committee is required by a law or rule, or if a political subdivision created the committee, then it is subject to the Sunshine Law.

3. Must our board adopt rules?

A. Yes. Each board, committee and subcommittee must adopt rules by which any person may learn the time and place of all regular meetings and the time, place and purpose of all special meetings. The rules must provide for giving notice of meetings to any person and any news media who request such notice.

4. What constitutes a meeting?

A. A “meeting” is defined as any prearranged discussion of the public business of a board, committee or subcommittee by a majority of its members. “Discussion” suggests an exchange of words, comments or ideas between members of the public body. Regardless of what name is given for a gathering (work session, study group, retreat, etc.), if it meets this definition, it is a meeting. The Ohio Supreme Court has held that a series of meetings, each with a minority of members of a public body, without giving proper notice, can constitute a Sunshine Law violation. It may be possible for a meeting to occur by having a majority of members of a board participate simultaneously in a telephone conference call or an online chat room. The only reported case to date regarding a series of electronic mail messages constituting a possible meeting for purposes of the Sunshine Law held that electronic mail is not subject to the Sunshine Law.

5. Can a majority of the members of our board, committee or subcommittee gather without violating the Sunshine Law?

A. Yes. If there is not a prearranged discussion of the business of the board, committee or subcommittee, it would not be a meeting as defined by the statute. A majority of board members could, for example, get together on social occasions, ride together to an event, or attend a seminar without violating the law, so long as discussions of board business do not take place. The same is true of the members of a committee or subcommittee. Common examples include holiday parties, graduation ceremonies and candidate forums, where there is no prearranged discussion of board business by a majority of its members.

6. Can our board, committee or subcommittee lawfully hold meetings outside the district/county?

A. Yes. There is no prohibition on holding meetings outside the district. However, the provisions of the Sunshine Law are applicable and the public would be entitled to be present. If “out of district/county” meetings were conducted in order to curtail public accessibility, the practice would be in contravention of the spirit of the Sunshine Law and could be enjoined.

7. When can we hold an executive session?

A. An executive session may be held only in conjunction with a regular or special meeting of the board, committee or subcommittee.

8. What can we do in executive session?

A. Executive sessions are for the purpose of deliberations only. No action of any kind can be taken during an executive session.

9. What topics may we discuss in executive session?

A. * The appointment, employment, dismissal, discipline, promotion, demotion or compensation of an employee or official, or the investigation of charges or complaints against an employee, official, licensee or student, unless the employee, official, licensee or student requests a public hearing.

* The purchase of property for public purposes or the sale of property at competitive bidding.

* Conferences with the board’s attorney to discuss matters which are the subject of pending or imminent court action.

* Preparing for, conducting, or reviewing negotiations or bargaining sessions with employees.

* Matters required to be kept confidential by federal law or rules or state statutes.

* Specialized details of security arrangements.

Each executive session discussion must be limited to the purpose or purposes stated. It is unlawful to state only one purpose for an executive session, but to then discuss a second topic (although an executive session may be called for the purpose of discussing several topics

10. Is information obtained during an executive session confidential?

A. OSBA strongly believes that board members, as matter of ethics, should not divulge executive session discussions. Furthermore, it should be noted that some matters discussed in executive session also can be legally confidential. In fact, RC provides that confidentiality of information shared in executive session is legally required when: notice of a subject's confidentiality is given and, when confidentiality is necessary for the proper conduct of government business. This part of RC does not function automatically; it requires action by your board. If violated, it is a misdemeanor of the first degree.

11. Must we follow a particular procedure to go into executive session?

A. Yes. There must be a motion and second to go into executive session followed by a roll call vote. The motion must state which of the purposes listed under subsections (G)(1) through (G)(6) of the law (see response to question 9) is the purpose for the executive session. If the executive session is to discuss a personnel matter under subsection (G)(1), the motion cannot simply state that the executive session is for "personnel matters." The motion must state exactly which type of personnel action is to be discussed, but need not include the name of any person to be considered. A session to discuss a personnel matter must be about an individual or individuals, rather than about a subject in general (e.g. a board may discuss the nonrenewal of one or more specific people, but not nonrenewal procedures in general). Make sure the resolution to adjourn into executive session chooses words from the statutory list. While it is fine to use general topics to help remember the reason(s) the board can properly go into executive session, the actual wording of the resolution should incorporate the words found in the statute. Mistakes may be able to be "cured" by subsequent action taken in public.

12. Who is entitled to attend executive sessions?

A. All of the members of the board, committee or subcommittee are entitled to attend executive sessions. The board, committee or subcommittee may invite any other persons that it wishes into an executive session. This means the board can hold an executive session without the superintendent or treasurer if it so chooses.

13. Must minutes be kept of executive sessions?

A. No. Minutes should not be kept of executive sessions. However, the minutes of the meeting at which the executive session occurs must reflect the general subject matter discussed in the executive session.

14. What notice must be given of special board meetings?

A. The board, committee or subcommittee must comply with its own rules to provide notice to any person who has requested it. The board, committee or subcommittee also must provide at least 24 hours advance notice to the news media that have previously requested notice of the time, place and purpose of any special meeting. Failure to notify local media of an emergency or special

meeting as required by RC 121.22(F) could make action taken invalid (RC 121.22(H)) (see question 22 for consequences of a Sunshine Law violation).

15. Does this mean the two-day notice to board members of special meetings is no longer required?

A. No. The two-day notice to board members is still required by RC 3313.16. The Ohio attorney general has ruled, however, that failure to give two-day written notice to all board members is irrelevant if all board members attend the meeting (1933 Ohio Atty. Gen. Ops. No. 314).

16. Can our board, committee or subcommittee hold emergency meetings?

A. Yes. An emergency meeting can be called upon immediate notification to all news media who have previously requested notice. The two-day notice provision to board members remains in effect, but is satisfied if all members attend the meeting.

17. Must an employee be notified if the employee is to be the subject of an executive session discussion?

A. The Sunshine Law states that investigations of charges or complaints against an employee, official or student can be heard in executive session unless the individual requests a public hearing. The Ohio Supreme Court has held that this language does not prevent a board from discussing in executive session an employee's possible nonrenewal, even if the employee has requested a public hearing. However, laws regarding employee terminations and student suspensions and expulsions have specific requirements. Consult your board's attorney.

18. Does the Sunshine Law grant the public the right to participate in meetings of our board, committee or subcommittee?

A. No. The Sunshine Law contains no such provision. However, most boards provide an opportunity for public participation. The board may adopt reasonable rules as to the time, place and manner of public comments.

19. Can a member of our board, committee or subcommittee participate in meetings when he or she is not physically present?

A. A member of a board, committee or subcommittee may participate in discussions even though the member is not physically present through equipment such as a speaker phone. However, a provision of the Sunshine Law specifically requires an individual to be "present in person" in order to be considered as part of a quorum or to vote.

20. Are there situations in which the Sunshine Law does not apply?

A. Yes. The Sunshine Law does not apply to an audit conference conducted by either the Bureau of Inspection and Supervision of Public Offices or by independent certified public accountants. Collective bargaining meetings between the board and employee organizations also are not subject to the Sunshine Law (RC 4117.21).

21. Can anyone sue our board, committee or subcommittee claiming a Sunshine Law violation?

- A. Yes. Any person may bring an action in the court of common pleas to enforce the Sunshine Law. That person may seek an injunction to halt a violation or threatened violation of the law. Such a suit must be brought within two years of the violation or threatened violation.

22. What happens if we violate the Sunshine Law?

- A. The Sunshine Law makes it clear that any board action is invalid if the board violated any of the notice provisions of the law. A court may issue an injunction compelling members of the board, committee or subcommittee to comply with the Sunshine Law.

23. What penalties may a court assess?

- A. If the court issues an injunction, it is required to assess a civil penalty of \$500 against the board, committee or subcommittee and require that entity to pay all court costs. The court also is to require the public body to pay the reasonable attorneys fees of the party who brought the suit, although such fees can be reduced if the court determines that the public body acted reasonably in believing that it was not violating the Sunshine Law, and that its conduct served a public purpose.

24. Can our board, committee or subcommittee recover costs and attorneys fees if we were subjected to a non meritorious suit?

- A. Yes. However, the court must not only find in favor of the board, committee or subcommittee, but it also must determine that the bringing of the lawsuit by the plaintiff was “frivolous conduct.”

25. Is there any penalty which applies to individual board members?

- A. Yes. A board member who knowingly violates an injunction which has been granted by a court may be removed from office. In two separate cases, board members have been removed from office in part due to repeated violations of the Sunshine Law. In both cases, the boards repeatedly held lengthy executive sessions, then returned to open session to vote on matters after little or no public discussion.