Section XV

media access to courts, meetings and public records

Access to Courts

The Ohio Constitution requires that all courts shall be open. With few exceptions, Ohio judges follow this edict. There are times, though, when judges are allowed to hedge on this requirement to protect the rights of litigants or criminal defendants.

"Gag" orders

The Supreme Court of Ohio has ruled that trial court judges have several options available to insure that a defendant receives a fair trial. Those options include changing the venue, delaying the trial (if the defendant agrees), closely questioning prospective jurors, sequestering jurors and controlling comments by court personnel, lawyers and law enforcement officials involved in the case. An order limiting, or even forbidding, comment by those involved in the case is usually referred to as a "gag" order by the news media.

It is not unusual in a trial that has drawn intense media attention for the trial judge to issue orders governing the conduct of the trial. Often that includes a "gag" on participants, including witnesses. While information regarding jurors is normally a matter of public record, as concerns over privacy have continued to escalate, it is not uncommon now for courts to select jurors without using their names. The selection process is open, but the jurors remain anonymous. In 2002, the Supreme Court of Ohio found that juror names, addresses and questionnaire responses are not public record, but the blank questionnaires to be used to solicit information from potential jurors in a case are public. Also, if the defendant failed to object to the use of an anonymous jury at trial, the Supreme Court of Ohio found that there was no unqualified constitutional right to know the identity of jurors.

Occasionally, judges have extended their orders to the news media, barring coverage in some form. The Supreme Court of Ohio has ruled such a move should be taken only after all other attempts at insuring a fair trial have failed. The U.S. Supreme Court requires that a trial judge hold a hearing first, before taking such action, to determine whether it is the only avenue left and whether it will be effective. Consequently, such orders limiting what can be reported are extremely rare.

Nevertheless, the Supreme Court of Ohio accords trial judges wide latitude in governing trials. Orders that limit attendance, including entering and leaving while court is in session, and orders that limit seating for the news media and otherwise set rules for conduct are likely to be upheld unless obviously unreasonable.

Closed courtrooms

Closed courtrooms are a rare occurrence in Ohio. The U.S. Supreme Court has made it clear that such actions are likely to violate the First Amendment, Sixth Amendment and Fourteenth Amendment except in the most extreme circumstances. Either party in a case may request that the court be closed, but the nation's highest court has held that third parties, like the news media, have the right to be heard before the order is granted. In practical terms, this means that a reporter present when such a request is made should promptly, and politely, stand up and object. The objection will be noted in the record even though the reporter is not a participant. If the judge will allow it, the reporter should request a delay in granting a request to close the proceedings until the reporter can get the company lawyer to court. Even if the delay isn't granted, getting the request on record is the important part. It will help preserve an appeal of

a court closing. However, in the last decade—other than in juvenile court cases—closed hearings have been rare.

Pre-trial hearings

The right to attend a pre-trial hearing is the same as attending a trial. While it is not absolute, the prevailing court rulings make it very difficult to exclude anyone. **Note:** Conferences between a defense lawyer and a prosecutor to discuss plea bargains are not open, even though they are sometimes referred to as "pre-trial hearings." They are not "hearings" in the legal sense. Any bargain struck in such a conference, however, must be revealed in open court to be effective. Civil "pre-trial" hearings, usually held in the judge's chambers, are also closed. Often these sessions give the judge a chance to see if the two sides can agree to settle the case. The amount of pressure applied by the judge to encourage settlement varies, but some jurists have been known to be somewhat heavy-handed in urging parties to reach an agreement and avoid trial. Judges win awards for keeping their dockets current, without a backlog of cases, and the best way to do that is to have cases settled rather than tried.

Cameras

Supreme Court of Ohio rules mandate that judges allow still and video cameras in courtrooms during hearings and trials that are open to the public, as provided by Ohio law. The rules limit who may be photographed—no jurors at all and no witnesses who object. The defendant may be photographed while in the courtroom. There is, however, a divided opinion over whether the defendant may assert an objection to being photographed if he or she takes the witness stand. The more logical position seems to be that the defendant does not have the right to object, but the issue has not been ruled upon by a court.

Rules for the use of cameras vary from county to county and, sometimes, from judge to judge. However, since cameras in courtrooms have been allowed since June 1, 1979, rules for their use have become fairly stable. *[See "Texts of Ohio Supreme Court Rules Regarding Media Access to Courts" at the end of this section.]*

Advance permission must be sought and often the court has a standard form that it uses in such cases. The clerk of courts should have copies if the individual judge does not. If there are multiple requests, the judge may require pooling and the burden is on the news media to work out the pool. The judge may appoint one member of the news media to act as coordinator. Pooling applies to both still and video cameras.

Juvenile Court

Typically, hearings involving abused or neglected children are closed to the public. But cases where juveniles are charged with serious offenses—crimes that would be considered felonies if the defendant were an adult—juvenile judges have been more willing to open their courtrooms, spurred by some U.S. Supreme Court and Supreme Court of Ohio decisions allowing public access. This move coincides with legislative changes that have made ever-younger juveniles eligible for trial as adults. The person seeking closure of a juvenile court proceeding bears the burden of establishing through evidence that there exists a reasonable and substantial basis for believing that public access could harm a child or endanger the fairness of the hearing; that the potential for harm outweighs the benefit of public access; and that there is no reasonable alternative to closure. Although law enforcement and juvenile court personnel are often reluctant to release names of juveniles charged with crimes, there is no law prohibiting the publication of such names once they have been obtained. While some juvenile court records are exempt from the Public Records Act, police reports involving juvenile arrests are not.

Thanks largely to aggressive actions by the news media in recent years, more access is available to juvenile court proceedings than in the past. For example, hearings to decide whether a juvenile should be tried as an adult are often accessible. As is usually the case with any change in procedure, it is helpful to educate the judge in advance. Ground rules are much

easier to work out when there is no controversial case pending.

Grand juries

As mentioned earlier, these bodies require special handling. They meet in secret to decide whether the evidence against someone warrants having a trial. Testimony is secret and so are grand jury transcripts. The grand jurors themselves take an oath of secrecy. The purpose is to protect those whose cases are being heard by the grand jury, regardless of the outcome. An indictment is not evidence of guilt. There is no prohibition, however, against talking to witnesses who have testified before the grand jury. They are not bound by secrecy rules and oaths, but there is a risk in speaking to the jurors themselves. They are not supposed to talk about the case. While they risk criminal charges if they violate that oath, there is also the chance that criminal charges could be brought against a reporter for inducing someone to violate the oath of secrecy.

Appeals

Appeals courts are typically open to the public, though little activity is available to the public eye. Most of the work of the appeals court is done in judicial offices where legal arguments are read, weighed and then voted upon. Only the oral argument portion of an appeal is open to coverage. The bailiff of the court, or the clerk, will have a schedule of all cases to be argued. Filings in each case are public record and open to inspection. While judges may, and frequently do, interrupt the lawyers' presentations, the questions they ask do not necessarily indicate how they will vote. It is extremely risky to report that a judge favors one side based solely upon questions or comments made during oral argument. Sometimes, a judge on the winning side will write a concurring opinion in order to distinguish his or her views from that of the majority opinion. To the extent that a concurring opinion varies from the majority, it weakens the force of the majority opinion as a precedent for future cases. A similar process is followed at the Supreme Court of Ohio level. Not all cases are scheduled for oral argument. The clerk's office has a schedule of cases for several weeks in advance.

The Court usually hears cases on Tuesdays and Wednesdays. At the conclusion of each case, the justices retire to vote in secret. Reporters covering the Supreme Court of Ohio should know that the entire record from the trial court is sent to the Supreme Court while the case is pending there. Although the case file is kept secure and handled with care, it remains a public record and should be available for inspection.

Access to Records

Ohio, like every other state, has a law guaranteeing public access to records kept by the government. Like every other state, Ohio's Public Records Act contains exceptions. Further, a staggering body of case law has been developed over the years as individuals and governments have wrangled over the meaning of the terms used in the statute. There isn't enough space in this document to review all those cases or cover every possible contingency. What follows is an overview of the statute and its exceptions, along with some advice on how to gain access without having to resort to a lawsuit. The Ohio General Assembly passed some sweeping changes in the Ohio's public records statutes effective in September 2007. A cautious reporter should always double-check the current statute and, when in doubt about a provision, consult with an attorney for an interpretation.

The statute

Ohio Revised Code Section 149.011 provides definitions for terms used throughout the different sections of the public records laws. Although Section 149.43 is commonly thought of as the Public Records Law, it actually is just the section that concerns *access* to public records. Other sections of law govern the creation, maintenance and destruction of public records—all worth a public affairs reporter knowing. Ohio law creates three categories of public records: (1) *those that are public and*

must be released upon request; (2) *those whose release is discretionary with the record-keeper*; and (3) *those that are confidential and may not be released*.

Provisions

The accessibility statute is mercifully short and fairly easy to read and interpret, as statutes go. The complete text can be found at the end of this Section. Caution: Despite the apparently clear language, it always is best to find a lawyer if an authoritative interpretation is needed, e.g., someone to quote in a story. For example, the statute appears to call for an award of attorney fees for the person who successfully sues to obtain a record that has been withheld. The language appears clear-cut, but the Supreme Court of Ohio somehow found an exception that permits denial of attorney fees to the successful plaintiff if the record was withheld in "good faith." A reporter, unaware of that decision, might read the statute and report that attorney fees are mandatory if a government office loses a suit over access to records.

On the plus side, the Supreme Court of Ohio has ruled that the statute is to be interpreted "broadly" by public officials and lower courts to make public access easy and public records readily available. The court also repeatedly has held that exceptions to the statute should be given very narrow readings. Throughout this section, advice on access problems is predicated on whether it will be necessary to sue and how likely that suit is to succeed. Problems with access come in two sizes: delay and denial. With denial, the resolution is clearer. Either the record is subject to an exception or it isn't, and the news organization must decide which way a court is going to lean on just that issue. Delay is more troublesome. Courts generally are unwilling to substitute their judgment for that of another public official on matters of discretion, especially in the running of an office. If the delay appears reasonable—as judged from the perspective of another public official, not the news media—then the officeholder is likely to win. There are a few judges around who appreciate the need for promptness in news-gathering, but not many. The potential plaintiff also needs to decide if suing is worth the risk of having the delaying tactics of one officeholder spread to other offices if the suit is lost.

Key provisions of Title 149 require that public agencies must:

- *Maintain their records to make access possible within a reasonable amount of time*. What is "reasonable" is going to be defined by non-news people, which means 15 minutes' notice because of deadline pressures probably won't be acceptable. Generally, records that are on hand should be available for inspection upon request and kept in a manner that easily allows for that inspection. If a search is required—the records sought are not current and are not maintained in the immediate vicinity of the record-keeper—some delay can be expected and probably would be permitted by a court.
- *Promptly prepare records (like minutes of a meeting or copies of a police report) and make them available for inspection during regular business hours*. "Regular" business hours may vary depending on the nature of the office. Most government offices are open from 8 a.m. to 5 p.m., and their records must be available during that time. But some part-time governments (villages and townships, for example) might not operate on 40-hour weeks. In those cases, the records should be available during the times when the office is open normally. If there is no evidence of a deliberate attempt to conceal records, such a part-time government office probably would not be ordered by a court to open just to provide access to records. However, if a township police department is open seven days a week, then its records should be available at least during daytime hours when clerical staff is present, even if the rest of the township offices are only open every other Thursday morning. For agencies of government that are open 24 hours per day, access to public records must only be provided during times when clerical staff is present. An agency, however, may establish procedures to obtain

records during non-clerical staff hours. The new statute also mandates that the public office have available its current records retentions schedule. If the public records requester makes an ambiguous or overly broad request, the public office may deny the request but must provide the requester with the opportunity to revise the request by informing the requester about how records are maintained by that particular public office.

- *Follow requirements regarding redaction and denial.* The new statute indicates, that if a public record contains information that is exempted from disclosure by law, the remainder of the record that is not exempt must be shown or copied. The requester must be notified by the public officer or person responsible for the record of any redaction, or the redaction must be plainly visible. The statute states that a redaction shall be considered a denial of the public record request unless the redaction is required by federal or state law. The new statute mandates that, if a request is denied, in whole or in part, the public office or person responsible for the record must provide the requester with an explanation, including legal authority, stating why the request was denied. If the initial request was in writing, then the denial explanation must also be in writing.
- *Upon request, make copies of public records at cost and within a reasonable amount of time*. This requirement has two potential stumbling blocks: "at cost" and "reasonable amount of time." The "at cost" has been determined by the Attorney General's office (in an official opinion) to be the cost of the copy. That does not include the time it takes to search for the record or the cost of labor to copy the documents. Ohio law, unlike the federal Freedom of Information Act, makes no provision for a search fee. Arguments that the cost of a copy includes the time it takes to find the record have no support in the law because the law states that the records should be readily available. Given that commercial establishments can make a profit charging less than a dime per page, it is difficult to imagine a public office that needs to charge more than 25 cents per page, unless the charge is set by statute. Reporters should be aware, however, that statutory charges often are for "certified" copies. If certification isn't requested, then the charge should be the same as for any other document: at cost. The amount charged for public records has become an increasingly contentious one. The Supreme Court of Ohio has not dealt directly with the issue of what constitutes "at cost." For example, it would seem unreasonable to suggest that the entire cost of a copying machine should be borne by those members of the public who want copies of public records. The machine was not leased or purchased solely for that purpose. Copying machines that can be found everywhere from gas stations to grocery stores rarely charge 25 cents per page and apparently are profitable for the owner. It is clear that some charges have been established by officeholders to discourage copying of public records. Where such policies are encountered, the only choices are to pay the exorbitant bill or to sue.

The "reasonable amount of time" problem seems to be most prevalent among small town police departments, perhaps resulting from a greater sense of kinship between these departments and the communities they serve and an accompanying reluctance to share embarrassing information with outsiders. Such reluctance often takes the form of delayed access, documents with names deleted and excessive costs for copies. Typically, officials in these departments simply ignore the mandates of the Public Records Act. They are unlikely to be persuaded by anything short of suit. For the rest, "reasonable amount of time" probably means overnight at the outside. Ordinarily, a request for a copy should be filled within the day it is made. If the office has a standard procedure for responding to

copy requests and handles a high volume of such requests, the news media probably cannot expect expedited treatment. If the normal turnaround time is 24 hours, that probably would be held to be reasonable."

The new statute states that the public office or person responsible for the public record may require a person to pay in advance for the cost involved in providing the copy or copies requested.

A public office may establish policies and procedures about mailing copies of public records or delivery them by other means. Likewise, a public office may limit the number of records requested by a person who wants them delivered by mail. The limit may be 10 per month unless the requested certifies that he or she is not requiring the records for commercial purposes. Commercial must be narrowly construed and specifically 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.

***Note**: State law permits public offices to store records in a wide variety of media—film, microfilm, magnetic tape, perforated tape and computer. The law also requires that any agency that stores data in such a form must make machines available for the public to reproduce and read that data. The Supreme Court also has ruled that a record seeker is entitled to a copy of an entire government database if that is the only practical way to provide a large amount of information. Further, that copy must be in computer-readable form, not a towering stack of printouts. Also, the agency may not interpose a software copyright defense as an excuse to refuse to provide the information. Software companies that sell database management programs to government agencies typically include an agreement that the agency will not divulge the program to those not licensed to use it. However, that same agency is obligated, under the law, to provide information in a usable form and that includes providing the program that is needed to decipher the data. The only proper recourse for the agency is to inform the software supplier that its program has just been made available to some third party and let the software company enforce its own copyright with the third party. In 2005, the Supreme Court of Ohio determined that tapes of 9-1-1 calls are public record and copies of tapes should be given to a person making a public records request. The cost is just the cost of reproducing the tape. The Court in 2004 also held, however, that if a requesting party asks for a transcript of a taped court hearing, the requestor must pay at the commercial rate for transcripts.*

A 1998 Supreme Court opinion, *State ex. rel. Wadd v. Cleveland,* addressed the timeliness issue, requiring the Cleveland police department to supply copies of accident reports to the plaintiff, who ran an accident-reporting service for lawyers and doctors, within eight days of the request. In the opinion, the Court noted that there was evidence that many departments could produce records overnight. But, because the plaintiff asked for an eight-day limit, that is what was granted. It is the first time the court has defined the terms "promptly" and "within a reasonable time."

- *Restrictions:* Unless there is a specific state or federal law requiring it, no public office or person responsible for a public document may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested material. The statute states that "any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request."

The new statute indicates that the public office or person responsible for the public document may ask a requester to make the request in writing, may request the identity of the requester and may inquire as to the intended use of the material, 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 his or her identity and the intended use of the material.

Penalties

- For failure to permit inspection or to provide copies of public records, the law allows a person to sue for access and/or copies and to be awarded attorney fees and court costs if successful. This is called a request for a writ of mandamus—a request for a court order mandating compliance with the law.

Note: The award of attorney fees, while suggested by the statute, has been treated by the Supreme Court of Ohio, in the past, as discretionary, though in recent years such awards have been more frequent. In deciding if attorney fees should be awarded, the Court has considered whether the person responsible for the records failed to respond affirmatively or negatively or the person failed to fulfill a promise to inspect the records within a reasonable time. The fees are remedial and not punitive. If the record-keeper makes requested records available after a suit is filed, attorney fees may still be awarded.

- Additionally, the requestor under the new law may be entitled to statutory damages for failure to provide public records up to $100 a day up to an amount of $1,000. The court, however, may reduce this amount depending on the reasons for the failure to comply.

Training

- All public offices and designated officials must attend training approved by the attorney general. Also, all public offices must adopt a public records policy, make sure employees read the policy and have the policy posted in the office. It should also appear on an office's Web site if the office has one and in policy and procedure handbooks if available.

Definitions:

- A *record* is any document or item generated by, kept in a public office or received by a public office, or coming under the jurisdiction of a public office (as in the case of records kept by an agency working under contract with a public office), regardless of form. While the statutory definition is broad, the Supreme Court has added some limiting language, requiring that records "document a public purpose" to qualify as a "public record." The limitation has been used to deny access to letters written to a judge recommending a tough sentence for a man convicted of rape and to deny access to children's names and addresses kept by a city recreation department. This "documentation" issue may get even more use when it comes to accessing electronic communications. E-mail routed through a server operated by the government technically fits the definition of a public record. But some e-mail may be construed to be personal and not related to government operations. In one such case, involving e-mail of an allegedly derogatory nature about a sheriff's deputy (exchanged by her co-workers) was held not to be public because it did not concern governmental functions. A person who generates this personal e-mail on government-owned computers and through government-owned servers may be subject to discipline for wrongful use. That discipline does not, however, change the public/private nature of the underlying information. Also, it should be noted that the Supreme Court of Ohio in 2005, in *Dispatch Printing Company v. Johnson*, 106 Ohio St. 3d 160, found that state-employee home addresses are not public records as defined in ORC 149.011 (G).
- *Draft* or *preliminary* information is treated differently depending on how it is viewed. If considered to be a work product in preliminary form, not yet complete, then it may fall outside the "public record"

definition. Information in a report or document that is complete, but has not been presented to a final approving body, still is a public record. For example, information compiled by the county auditor was held to be a public record even before it was presented to the county board of revision that was to act upon it. A contract between a city and its police union was held to be a public record even though city council had not yet ratified it. Some statutes specifically exempt preliminary work products, such as state audits, prior to final approval.

- *Public office* covers all governmental agencies at the state, county, municipal and township level. It also includes schools and courts. State-supported colleges and universities meet the definition, as do the foundations authorized to receive donations for a state-supported higher education entity. Mere receipt of public funds is not enough to turn a private agency into a public one. However, agencies created through tax dollars, such as a community hospital, that are later run by a private association have been considered to be public offices. The Supreme Court of Ohio has not allowed public agencies to remove records from public reach by transferring the records, or the record-making function to a private company. For example, a private accounting firm hired to perform a public audit had to permit inspection of the records it created to fulfill its contract with the state auditor. The law since has been changed to exempt such private company records, but the principle still applies in other cases. In 1997, the Supreme Court held that the Cuyahoga County ombudsman's office was a "public office," even though its legal status was that of a private, non-profit agency. The Court noted that the agency received public funds (in addition to funds from private sources) and performed a public function, acting as a mediator between the citizenry and county government. Two decisions by the Ohio Supreme Court in 2006 add clarity to this issue. The court found in the case of *Oriana House, Inc. v. Montgomery,* 110 Ohio St. 3d 456, that a private entity is not subject to the Public Records Act unless there is a showing by clear and convincing evidence that the private entity is the functional equivalent of a public office. The court must analyze pertinent facts including (1) whether the entity performs a governmental function, (2) the level of governmental 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. The Court, in a tight 4-3 decision, also applied these tests and the functional equivalency analysis to deny a public records request of a community mental health agency contracting with a county mental health board. *Repository v. Nova Behavioral Health, Inc.*, 112 Ohio St. 3d 338.
- *Any person* who requests public records need not be a resident of Ohio, an adult, or even an American citizen.
- The *request* for records may be oral or written. Following a Supreme Court decision that a person may require that the material be supplied on computer media if that is the most reasonable way to provide it, the legislature amended the statute to require that a copy may be requested on any medium that the office is able to provide. In other words, the office uses must be used for the copy if so requested. Governmental units may not "require" that public record requests be made in writing.

Exceptions

Note: this list has grown substantially in recent years. In addition, separate exception provisions are contained in other statutes. A database search of the *Ohio Revised Code* looking for "public records" and "closed" or "exempt" is likely to produce scores of hits. Those seeking to remove records from public examination rarely take the frontal approach of seeking an

exception in this statute. It is much easier to simply tack an exemption directly into the affected statute. So, while this list has grown, it is by no means exhaustive. A reporter should always check the most recent statutory language or seek legal counsel.

- *Medical records* - Information about a person's medical history, condition, diagnosis or prognosis is exempt, provided the information was generated and maintained as part of the person's treatment. Generally, release of this kind of information is discretionary with the record-keeper. However, medical information contained in a personnel file, for example, would not be exempt because it is not being maintained there for treatment purposes. This exception does not include birth or death records or admission and discharge records of a public hospital.
- *Adoption records* - cannot be released. A statute specifically forbids it.
- *Probation and parole records* are exempt, though release is discretionary, not forbidden.
- *Juvenile records related to requests for an abortion* cannot be released. However, the court has ruled that statistical data about such cases is public record. The Court must protect the identity of minors seeking permission for an abortion but also must release information about the number of such requests and their disposition.
- *Trial preparation records* - These also fall into the discretionary release category. The Court has construed this exception narrowly. For example, it rejected an attempt by one police department to treat all of its arrest records as trial preparation records because the arrests, at least initially, could result in a trial. Also, the Court has held that this exception does not cover routine factual reports, such as police offense and incident reports. In 2002, the Supreme Court of Ohio even found that certain correspondence and documentation concerning a potential court settlement of a matter involving the state were not exempt from the public records laws as trial preparation documents.
- *Intellectual property records* - This exception was inserted at the request of the state universities to protect research projects that produce revenue for the universities. It does not include, however, matters that are "administrative" in nature; nor does it include matters that have been publicly disclosed or published.
- *Donor profile records* - This exception resulted from a newspaper's successful suit to open the records of Toledo State University's foundation. All state universities use charitable foundations to raise funds and create discretionary accounts for expenses that the university itself does not wish—or cannot legally—spend tax dollars for. Included in the foundation records are reports from fundraising personnel about their contacts with donors, including some frank discussions of their personal situations. Once the Supreme Court of Ohio opened access to foundation records, the universities moved to exempt this portion of the files on the grounds of protecting donor privacy. It should be noted, however, that this exemption does not protect the names or addresses of actual donors; neither does it keep the "date, amount, and conditions of the actual donation" from being revealed.
- *Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information* - This legislation followed decisions by a federal appeals court and the Supreme Court of Ohio limiting access to personal information about law enforcement officers working under cover. The courts balanced their rights of privacy against the need for the information being sought by defense counsel and sided with the police. While the decisions were limited to officers

working under cover, the legislature followed with this much broader exemption. In 2005, the Supreme Court of Ohio in the case of *Plain Dealer v. City of Cleveland*, and *Vindicator Printing Company v. City of Youngstown,* 106 Ohio St. 70 found that photographs of police officers are not subject to disclosure under this exception.

- *Confidential law enforcement records* - These are records related to a criminal or civil law enforcement matter where the release would:
    - create a high probability of identifying a suspect who has not been charged with a crime;
    - create a high probability of identifying a confidential informant;
    - likely endanger law enforcement personnel, crime victims, witnesses or informants;
    - reveal confidential investigatory techniques; or
    - reveal specific investigatory work product.

Note: These exceptions for confidential law enforcement records generally mean police reports of ongoing cases, beyond routine factual matters, may be withheld. Courts are likely to defer to police judgment if there is a dispute. More success in obtaining records is probable after a case has been concluded and there appear to be other reasons for keeping records locked up, such as avoiding embarrassment. However, the Supreme Court has ruled that records in this category may be withheld as long as there is the possibility of litigation. The decision has been interpreted very liberally by many police departments, despite language in several subsequent decisions narrowing the original opinion. This section can be subject to abuse by over-zealous protectors of records. If in doubt, please contact legal counsel for an up-to-date interpretation of this exemption.

- *Information pertaining to the recreational activities of a person under the age of 18* - This is information that is kept by a public office and would disclose the address or telephone number of the child or the child's parent, custodian, or guardian. It also protects Social Security numbers, birth dates and photographic images of the children, as well as child-ren's medical information that might be held in the file.

- *Records the release of which is prohibited by state or federal law* - This exception is much broader than it might appear to be because it incorporates all the other sections of Ohio and federal law that except records from public view. Most of the exceptions to disclosure are not contained in O.R.C. 149.43. There are dozens of exceptions scattered throughout the statutes. Examples: educational information on students in public schools and at any college or university receiving public funds; taxpayer records maintained by cities, villages and the state; records sealed by court order; records involving juvenile arrests if fingerprints or photographs have been taken, Social Security numbers and federal and state income tax returns.

Other provisions of Ohio's "Open Records" Law

- The burden is on the record-keeper to show why a public record should not be released.
- There are no "privacy" considerations to be balanced against the release of public records (unlike the Federal Freedom of Information Act, which does provide for such a requirement). One possible exception to this general statement is a 1994 decision by the Supreme Court of Ohio recognizing a federal constitutional right of privacy that had the effect of exempting the release of Social Security numbers of public employees found in their personnel files. A federal appeals court in Cincinnati ruled in 1997 that undercover police officers had the right to be notified in

advance of any request for access to their personnel files. The three-judge panel found a federal right of privacy to be balanced against Ohio's open records laws. The implication seemed to be that police—at least those working undercover—might be able to get an injunction when confronted with a demand for access.

- Personnel files of public employees are public record in Ohio with the limitations noted above. Some personal data such as Social Security numbers and home addresses and photographs may be redacted, but the files are otherwise subject to review.
- If confidential information is mixed with public information, the burden is on the public agency to remove the confidential material before releasing the public portion. Release may not be denied because of the mixed nature of the record.
- There is no provision in Ohio law for requiring that any forms be filled out before records will be released. An agency may request that such a form be filled out but cannot insist upon it before releasing a record.
- Where one party to a lawsuit is a public agency, that agency cannot be bound by an agreement to keep the terms of a settlement secret.
- A public agency cannot enforce an agreement to protect the copyright of software purchased or leased by the agency to operate its computerized records systems where access to the software is integral to a records request. For example, if a newspaper requests all the information in a public records database, and the only way that information is readable is through copying the software information management system, the agency may not refuse to release such information, even if it means violating the purchase or lease agreement. It is the software company's obligation to protect its own copyright.
- There is nothing in the Personal Information Systems Act, *Ohio Revised Code* Chapter 1347 that supersedes the Public Records Act. Nor is it a "privacy" act. The act was designed to protect individuals from excessive government record keeping.

Note: Despite the length of the preceding discussion, it is not an exhaustive explanation of the provisions of this statute. Reporters should consult the text of the statute (as of September 2007), which is included at the end of this section of the Handbook. Also check on the Web site maintained by the Attorney General's Office for changes in the law and recent court opinions.

Access to Meetings

The Open Meetings Act, also known as the Sunshine Law, was adopted in Ohio in the mid-70s in the wake of the Watergate disclosures as part of a national movement to make government more accessible and accountable. Journalists have encountered two problems associated with the current Act: (1) charter cities may alter the provisions through a charter amendment; and (2) the penalty provisions for violations are cumbersome and thus rarely used.

The law created confusion among public officials at first because it seemed to cover every gathering of a majority of the members of the public body, even if they happened to be in a restroom at the same time. It was an overly broad reading of the statute, which defines a "meeting" as any "prearranged discussion of the public business of the public body by a majority of its members." Casual, social or chance gatherings are not covered by the statute. However, that characterization might change if public business is discussed.

Definitions

- *Meeting* - As noted above, a meeting is a specific event. However, the law does not

require a specific topic to be discussed for the session to be considered a *meeting*. A retreat where members of several public bodies gathered to talk about a range of public issues was ruled a "meeting." If a majority of a public body attends an event where they engage in discussions of public business, it is a "meeting," even if those engaging in the discussions did not call the session. The statute requires the meeting to be "prearranged," so that a casual gathering of officials not called to discuss public business probably would not qualify. However, it is not permissible to hold a series of gatherings with less than a majority of the public body to discuss the same topic. Such "round-robin" sessions violate the law. Conference telephone calls with a majority of members also are prohibited. (Note: Only members who are physically present at a meeting may vote.)

- *Discussion/deliberation* - These terms rarely are cause for much concern, but there have been a few court cases on the subject. A discussion is an exchange of comments by members of the public body and deliberations means consideration, through discussion, of an issue. Presentations to a public body, or conversations by employees of a public body, may not reach the level of discussion/deliberation.

- *Public body* - The law defines this term broadly. It has been held to include committees of a public body and even subcommittees. The statute exempts certain bodies. *[See Ohio's open meeting laws, Ohio Revised Code Sec.121.22 (D) and (E), at the end of this section.]* Often, search committees for public employees also constitute a public body and are subject to Ohio's open meetings laws.

Provisions

Notice - Anyone may request notice of all regular, special meetings, and emergency meetings including time and place and, in some cases, the purpose of the meeting. For a "reasonable fee," a person also may request that agendas be mailed in advance of the meeting.

Regular meetings - The law requires that the public body establish a method that would allow anyone to determine when regular meetings are held. Courts have said, for example, that county commissioners cannot designate their meeting times as 9 a.m. to 5 p.m. during one or more days of the week and then actually gather whenever they please. The "regular" meeting requirement means that meetings must be scheduled with a reasonable degree of precision.

Special meetings - The same rule about establishing a method for the public to find out when and where such meetings occur applies, as well as a requirement that the purpose be revealed. Further, the body must give 24 hours advance notice to all news media that have requested it.

Emergency meetings - No advance notice is required where immediate action is necessary, but the body must provide immediate notice to news media members who have previously requested that they be notified.

Minutes - These must be prepared promptly for all public meetings, including those held in executive session. The executive session meetings do not have to detail matters that legally may be discussed in private, but must reflect the general subject matter. The Supreme Court HAS ruled that meetings of public bodies must reflect the substance of the discussion and NOT merely record any votes taken. The Court leans to having minutes be more inclusive instead of less inclusive. The Court has indicated the more detail in minutes the better.

Votes - All votes must be taken in open meetings. Evidence of a vote taken in executive session may be used to invalidate the public action.

Executive sessions - The law sets out six specific exceptions that permit sessions to be held in private, with only the members of the public body and those they invited allowed to be present. (The exceptions are discussed below.) Such sessions may only be held after an open meeting is held first. Typically, where a body intends to hold an executive session, it will call a

regular meeting and then adjourn to executive session. The specific purpose of the session must be announced, and a roll call vote taken to adjourn to the private session. After the executive session, the public body must return to open session before an adjournment. Sometimes, a body will return to open session to vote upon what was discussed in executive session.

Exceptions

Personnel - Hiring, firing, promoting, demoting or compensating public employees may be *discussed* in private. Also, considering charges against a public official/employee may be held in private unless the person requests a public hearing. This exception applies only to specific personnel matters, not just any matter that might affect personnel. One court overturned a school board's attempt to discuss the budget in private, rejecting the argument that budgetary issues affected personnel. This is the most commonly used exception to an open meeting and probably the most commonly abused. The exceptions are narrowly construed by courts and the open meetings laws are liberally construed in favor of openness.

Property - Discussions about buying property (real and personal) or discussions about selling property by competitive bid may be held in private, if public discussion would give someone an unfair advantage.

Legal - Private conferences with a public body's attorney concerning *pending or imminent litigation* are permitted. Conferences with an attorney for a potential litigant are not covered by this exception. Also, it is not appropriate, in this form of executive session, to ask general questions of the body's attorney.

Bargaining - Getting ready for union negotiations, reviewing current talks or actually negotiating may be carried on in private.

Miscellaneous - Topics that other state or federal laws require to be kept confidential may be discussed in private.

Security - Details of security arrangements may be discussed in private if public disclosure might result in a violation of the law.

Remedies

Injunction - The law provides that a public body can be ordered to stop violating Sunshine Law provisions. This applies even if the public body only threatens (for example) to hold a private meeting in violation of the law. The law further provides that if the injunction is granted, the court also may order payment of attorney fees, court costs and a $500 fine. (**Note:** If the court finds that the suit was frivolous, it may award court costs and attorney fees to the public body.)

Civil suit - The law holds that any action, resolution or rule adopted in violation of the statute is invalid. Practically speaking, however, this provision can be enforced only by filing a suit and proving that the public body voted on an issue contrary to the notice, meeting or openness requirements of the statute. Often, requests for injunctive relief and for voiding previous "illegal" actions are combined in one lawsuit.

Removal - Any member of a public body who knowingly violates an injunction may be removed from office through a suit brought by the county prosecutor or the attorney general.

Practical suggestions:

- If a public body fails to follow the steps outlined above before going into a private session, publicly object and ask that your objection be made part of the minutes.
- Advise the public officials that an executive session held illegally could result in any subsequent decision being ruled invalid retroactively to the illegal activity date, along the payment of attorney fees, court costs and a civil fine if the case goes to court and the public body loses.
- If you believe an executive session has been called improperly, don't leave until you are asked. Leaving voluntarily might be viewed by a court as waiving your objection.

- After the private meeting, request a copy of the minutes. Although the request may be oral, it is a better idea to put it in writing. Always wait for the body to come back into regular session before leaving; otherwise you might miss some action items.

The material in this section of the Handbook, including statements of opinion and commentary on legal issues, was originally prepared and updated by Thomas S. Hodson, Esq., of Athens, director of the E.W. Scripps School of Journalism at Ohio University, and Professor Timothy D. Smith of Kent State University's School of Journalism and Mass Communication. Opinions expressed do not necessarily reflect the policies or opinions of the Ohio State Bar Association.

Ohio Revised Code Sections* & Supreme Court Rules* of Special Interest to News

[Following is the full text of Ohio's state laws governing public and media access to public records and meetings of public bodies; and the Supreme Court of Ohio's rules regulating media access to state courts and court proceedings.]

** (This information current as of September 1, 2007)*

Text of Ohio's Open Meetings Law

121.22 Public meetings - exceptions.

(Effective Date: 05-15-2002; 04-27-2005)

(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 or retardation, 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.

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 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.

(E) The controlling board, the development financing advisory council, the industrial technology and enterprise advisory council, 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, council, or authority members present, may close the meeting during consideration of the following information confidentially received by the authority, council, 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, council, or board to accept or reject the application, as well as all proceedings of the authority, council, 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 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 division (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, or for the sale of property at competitive bidding, 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;

(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 or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.61 of the Revised Code.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (7) 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.

(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.

(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.

Effective Date: 05-15-2002; 04-27-2005

Texts of Ohio's Open Records Laws

149.43 Availability of public records for inspection and copying.

This version is in effect until 09-29-2007

(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 educational services by an alternative school in Ohio kept by a nonprofit or for profit entity operating such 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 section 3705.12 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 listed in division (A) of section 3107.42 of the Revised Code or 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;

(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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT 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) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, other than the report prepared pursuant to 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 examiners of nursing home administrators 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) Information reported and evaluations conducted pursuant to section 3701.072 of the Revised Code;

(y) 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.

(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;

(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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information" means any information that discloses any of the following about a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT:

(a) The address of the actual personal residence of a peace officer, parole officer, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT, except for the state or political subdivision in which the peace officer, parole officer, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT resides;

(b) Information compiled from referral to or participation in an employee assistance program;

(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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's employer from the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT'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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT;

(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)(5) 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, 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)(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.

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.

As used in divisions (A)(7) and (B)(5) 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)(5) 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.

(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 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.

(B)(1) Subject to division (B)(4) of this section, all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(4) of this section, upon request, a public office or person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

(2) If any person chooses to obtain a copy of a public record in accordance with division (B)(1) of this section, the public office or 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.

(3) Upon a request made in accordance with division (B)(1) 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 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 and other supplies used in the mailing.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail 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. For purposes of this division, "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.

(4) 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.

(5) 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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT and, if the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT'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, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT'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.

As used in division (B)(5) 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) If a person allegedly is aggrieved by the failure of a public office 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 if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a public office or the person responsible for the public record to make a copy available to the person allegedly aggrieved in accordance with division (B) of this section, the person allegedly aggrieved may 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 and that awards reasonable attorney's fees to the person that instituted the mandamus action. 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.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(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 for redacting information, the release of which is prohibited by law.

(2) As used in divisions (B)(3) and (E)(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 data base 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 (E)(1) and (2) of this section, "commercial surveys, marketing, solicitation, or resale" 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.

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(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 educational services by an alternative school in Ohio kept by a nonprofit or for profit entity operating such 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 section 3705.12 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 listed in division (A) of section 3107.42 of the Revised Code or 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;

(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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT 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) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, other than the report prepared pursuant to 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 examiners of nursing home administrators 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) Information reported and evaluations conducted pursuant to section 3701.072 of the Revised Code;

(y) 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.

(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;

(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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information" means any information that discloses any of the following about a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT:

(a) The address of the actual personal residence of a peace officer, parole officer, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT, except for the state or political subdivision in which the peace officer, parole officer, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT resides;

(b) Information compiled from referral to or participation in an employee assistance program;

(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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT's employer from the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT'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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT;

(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, 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)(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.

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.

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.

(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 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 public 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, includeing 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 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 requestor'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) 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.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail 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. For purposes of this division, "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 con-

viction 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) 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, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT and, if the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT'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, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, or EMT'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.

As used in this division, "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 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)(1) 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.

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 requestor 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 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.

(2)(a) If the court issues a writ of mandamus that orders the public office or the person responsible for the public record to comply with division (B) of this section and determines that the circumstances described in division (C)(1) of this section exist, the court shall determine and award to the relator all court costs.

(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, the court may award reasonable attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section when either of the following applies:

(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.

(c) Court costs and reasonable attorney's fees awarded under this section shall be construed as remedial and not punitive. 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. The court may reduce an award of attorney's fees to the relator or 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 as described in division (C)(2)(c)(i) of this section would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(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.

(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 for 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 data base 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.

Effective Date: 02-12-2004; 04-27-2005; 07-01-2005; 10-29-2005; 03-30-2007; 09-29-2007

149.431 Records of governmental or nonprofit organizations receiving governmental funds.

(A) 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 his diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, treatment for mental retardation or 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.

Effective Date: 07-01-1991

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 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.

Effective Date: 10-05-2000; 11-05-2004

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.

Effective Date: 07-01-1985

Texts of Ohio Supreme Court Rules Regarding Media Access To Courts

Rule XVII. Conditions for Broadcasting and Photographing Supreme Court Proceedings

(From Rules of Practice and Procedure)

Section 1. Written Request.

Supreme Court proceedings may be broadcast, televised, recorded, or photographed only with Supreme Court approval. A request for permission to broadcast, televise, record, or photograph any proceedings shall be made in writing on a form provided by the Clerk of the Supreme Court and shall be filed with the Clerk not later than 24 hours prior to the session of the Supreme Court to which the request pertains.

Section 2. Review of Request.

Consistent with the general standards contained in Sup. R. 12, the Chief Justice will review and rule on all written requests filed pursuant to Section 1 of this rule.

Section 3. Permissible Equipment and Operators.

(A) Generally, the Chief Justice will permit no more than one portable camera with one operator, one still camera with one photographer, and one audio system for radio broadcast in the courtroom. If suitable, any existing audio pickup system in the court facility shall be used by the media. In the event no audio pickup system is available, microphones and other electronic equipment necessary for an audio pickup shall be visible, but as inconspicuous as possible. 8

(B) Arrangements between or among media for "pooling" of equipment shall be the responsibility of the media representatives authorized to cover the proceeding and shall be made outside the courtroom and without imposing on the Supreme Court or its personnel. If disputes arise over arrangements between or among media representatives, the Chief Justice will exclude all contesting representatives from the proceeding.

Section 4. Prohibitions and Limitations.

(A) Media representatives shall be permitted to transmit or record only the proceedings in the courtroom while the Supreme Court is in session. There shall be no transmission or recording of conferences conducted at the bench or conferences conducted in a court facility between attorneys and clients or co-counsel.

(B) The use of electronic or photographic equipment that produces distracting sound or light shall be prohibited. Generally, no artificial lighting other than that normally used in the courtroom shall be employed. The Chief Justice may permit modification of the normal lighting in the courtroom if it can be improved without becoming obtrusive.

(C) The changing of film or recording tape in the courtroom during Supreme Court proceedings is prohibited.

(D) This rule shall not be construed to grant media representatives greater rights than permitted by any law in which public or media access or publication is prohibited or limited.

Section 5. Revocation of Permission.

Upon the failure of any media representative to comply with the conditions prescribed by the Chief Justice or this rule, the Chief Justice may revoke the permission to broadcast, televise, record, or photograph Supreme Court proceedings.