

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

OHIO

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

OHIO

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OHIO

**SIXTH EDITION
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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

Public records have a long history in Ohio. The Ordinance of 1787, which Congress passed in 1787, governed Ohio before it became a state. The Ordinance required Congress to appoint a secretary for the Northwest Territory, which included Ohio. The secretary's duties included keeping and preserving "the public records" of the territory.

Long before 1963, when Ohio's General Assembly enacted the public records statute, Ohio courts recognized a common law right of the public to inspect and copy governmental records. At about the turn of the century, an Ohio court in Cincinnati recognized that unrestricted public access to governmental records was one of the elements distinguishing American government from the government of England. The court stated:

In England the fountainhead of justice is the king. . . . The courts are his courts, and the government is his government. Whatever power the people have he has granted to them; and if no grant has been made to them to examine the public records, it may well have been in England that they have no such power.

But in this country . . . the people are the fountainhead of justice. The courts are their courts, and the government is their government. Whatever power they have not granted to their officials remains with them. . . .

As public records are but the people's records, it would seem necessarily to follow that unless forbidden by a constitution or statute, the right of the people to examine their own records must remain.

Wells v. Lewis, 12 Ohio N.P. 170 (Superior Ct. of Cincinnati 1901).

The *Wells* case evidences a colorful history of the public right of access to records, and shows that times have not changed as much in the passing century as one might think. Two men, Mr. Wells and Mr. Schroeder, sought to inspect and make copies of the Hamilton County "fair books" for a particular ward within the county. The "fair books" listed the name and address of each owner of real estate, and the assessed value of each real estate parcel as made by the county. The Hamilton County Auditor, Mr. Lewis, maintained the "fair books" as one of the duties of his office. Lewis was in the midst of running for reelection, and Wells was a democrat running against Lewis. Wells lived in Hamilton County, and was a taxpayer. Schroeder, also a democrat, was a resident of Hamilton County, but not a taxpayer.

Wells and Schroeder alleged that public statements about a reduction in the property tax rate had created a misimpression among the citizenry that property taxes would in fact go down. Wells and Schroeder wanted to see the "fair books" to try to show that the county had increased the valuation of real estate and, thus, a reduction in the tax rate would not mean an actual reduction in taxes.

When Wells and Schroeder went to Lewis' office to inspect the "fair books," the books were absent from their customary shelves. Lewis said that one of his clerks was in the process of duplicating the books, and they would not be available to Wells or Schroeder. In the subsequent suit by Wells and Schroeder against Lewis, the court rejected Lewis' argument that the English rule of public access should apply. The English rule asserted that no one had a right to inspect the records of a public officeholder unless the person seeking inspection had an interest in seeing the records that was peculiar to that person and

distinct from the community at large. Lewis argued that Wells and Schroeder could inspect records about their own properties, but not about any other properties.

In rejecting the English rule, the court stated that all citizens "have a right to as full knowledge of all the official acts of their officers as the officers themselves have, so as to enable them to ascertain whether their officers have performed their duty in such manner as is acceptable to them with a view to determine whether they will continue them in office or not." The court added:

[T]he records in the auditor's office are the public records of the people of Hamilton county, bought with their money, kept in a public place built with their money, and in the charge of public officials paid by their money and selected by them. The officials in charge of these books, therefore, can be no other than trustees in possession of property belonging to the people of Hamilton county.

If then the auditor holds these books in trust for the people of Hamilton county, it is but an elementary proposition of law that the beneficiaries of the trust may inspect such property, subject only to the limitation that such inspection does not endanger the safety of the books or interfere with the discharge by the auditor of his official duties.

Wells, Ohio N.P. at 176.

Today's public records statute codifies Ohio's common law, and incorporates the common law philosophy that "public records are the people's records, and officials in whose custody they happen to be are merely trustees for the people." *E.g.*, *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994).

The history of open meetings in Ohio lacks the color and legal precedent of the history of open records in Ohio. Although it cited no authoritative history, the Ohio Supreme Court has opined that there was no common law right of public access to governmental meetings in Ohio. *Beacon Journal Publishing Co. v. City of Akron*, 3 Ohio St. 2d 191, 209 N.E.2d 399 (1965).

The Ohio Supreme Court is probably mistaken. Ohio has a long history of open meetings of public bodies. In 1795, the legislature of the Northwest Territory, which included Ohio, held its first recorded session. The Territory's only newspaper at that time, *The Centinel of the Northwest Territory*, announced the time and place of the meeting. The territorial legislative sessions were open to the public. C.B. Galbreath, "Legislature of The Northwestern Territory, 1795," Ohio Archaeological and Historical Society Publications 14, 18 (1921).

In 1802, Ohioians held a constitutional convention to adopt a state constitution. All citizens had a right to address that body "openly or in writing." C.B. Galbreath, "Legislature of The Northwestern Territory, 1795," Ohio Archaeological and Historical Society Publications 203 (1921).

The product of the constitutional convention was the Ohio Constitution of 1802, which provided that "[t]he doors of each house, and of committees of the whole, shall be kept open." Ohio Const. of 1802, Art. I, § 15.

The primary organ of local governmental authority in the Northwest Territory was the court of Quarter Sessions, the forerunner of the board of county commissioners. The courts of Quarter Sessions operated in a combination of legislative, executive, and judicial capacities. The proceedings of the courts of Quarter Sessions were open community affairs. R. Ireland, "Politics of County Government," *Kentucky: Its History and Heritage* 75 (1978).

At the municipal level, open town meetings were the norm. W. Rose, *Cleveland: The Making Of A City* 115-116 (1950).

Ohio's open meetings statute was first passed in 1954.

Open Records

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

“Any person” is entitled to inspect or receive a copy of a public record; the right is not limited to U.S., state, or community citizens. Ohio Rev. Code § 149.43(B).

The term “any person” is “broad and permits *anyone*, including any recognized business entity (defendants, newspapers, researchers, designees and/or nondesignees) to obtain records.” *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994). However, Ohio Rev. Code § 149.43(B)(8) requires an inmate to obtain a judge’s consent to obtain access to records of a criminal investigation or prosecution. *State ex rel. Sevayega v. Reis*, 88 Ohio St. 3d 458, 727 N.E.2d 910 (2000).

2. Purpose of request.

The requester’s purpose cannot affect his right to receive public records. *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994). However, Ohio Rev. Code § 149.43(B)(8) creates an exception where the purpose of an incarcerated person is dispositive. *State ex rel. Barb v. Cuyaboga Cty. Jury Comm’r*, 124 Ohio St.3d 238, 921 N.E.2d 236 (2010).

Where the requester is seeking access to records of the Bureau of Motor Vehicles, a commercial purpose other than newsgathering may increase the cost. Ohio Rev. Code § 149.43(F).

3. Use of records.

The statute places no restrictions on subsequent use of the records provided.

Where the requester is seeking access to records of the Bureau of Motor Vehicles, a commercial purpose other than newsgathering may increase the cost. A commercial purpose includes those who themselves may not intend a commercial use, but who intend to forward the records to someone else who will put them to a commercial use. Ohio Rev. Code § 149.43(F).

B. Whose records are and are not subject to the act?

1. Executive branch.

a. Records of the executives themselves.

The statute’s language is broad enough to literally apply to the executives themselves, such as a governor or other chief executive officer. However, the Ohio Supreme Court has recognized that the constitutional doctrine of separation of powers may inhibit the statute’s application to the Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, and Attorney General. That doctrine does not inhibit the law’s application to mayors or other chief executives of political subdivisions. *State ex rel. Plain Dealer Publishing Co. v. City of Cleveland*, 75 Ohio St.3d 31, 661 N.E.2d 187 (1996). The separation of powers limitation creates a qualified privilege that may be overcome where a requester demonstrates a particularized need to review the communications which outweighs the benefits of according confidentiality to communications. *State ex. Re. Dann v. Taft*, 109 Ohio St.3d 364, 848 N.E.2d 472 (2006).

b. Records of certain but not all functions.

The statute does not distinguish among the functions of an executive officer, or any other official, in determining whether the public has a right of access to records.

2. Legislative bodies.

The language of the statute is broad enough to encompass all legislative bodies. The Ohio Supreme Court has not yet applied the statute

to Ohio’s General Assembly. The court’s recognition that the constitutional doctrine of separation of powers may inhibit the statute’s application could mean that separation of powers bars the statute from applying to certain internal records of state legislators. *See State ex rel. Plain Dealer Publishing Co. v. City of Cleveland*, 75 Ohio St.3d 31, 661 N.E.2d 187 (1996).

In the meantime, the General Assembly has immunized certain classes of its internal legislative records from the Public Records Act, specifically records that arise out of the relationship between legislative staff and a member of the General Assembly but are not filed with the clerk of the General Assembly, presented at a committee hearing or floor session (for amendments to bills or resolution or a substitute bill or resolution), or released/authorized to be released to the public by the member of the general assembly. Ohio Rev. Code § 101.30.

3. Courts.

The Ohio Supreme Court has applied the statute to court records. *State ex rel. Scripps Howard Broad. Co. v. Cuyaboga County Court of Common Pleas, Juv. Div.*, 73 Ohio St. 3d 19, 652 N.E.2d 179 (1995); *State ex rel. MADD v. Gosser*, 20 Ohio St. 3d 30, 485 N.E.2d 706 (1985); *State ex rel. Harmon v. Bender*, 25 Ohio St. 3d 15, 494 N.E.2d 1135 (1986).

“[A]ny record used by a court to render a decision is a record subject to R.C. 149.43.” *State ex rel. WBNS TV Inc. v. Dues*, 101 Ohio St. 3d 406, 805 N.E.2d 1116 (2004).

When a party to an action requests a transcript from that action, the party must pay the fees designated by Ohio Rev. Code § 2301.24, and cannot take advantage of the lower “at cost” fees imposed under the Public Records Act. *State ex rel. Slagle v. Rogers*, 103 Ohio St. 3d 89, 814 N.E.2d 55 (2004).

However, the court has ruled that the statute does not require trial judges to release personal notes taken about cases over which they are presiding, and recognized that the constitutional doctrine of separation of powers probably would inhibit the statute’s application to at least those judicial notes. *State ex rel. Steffen v. Kraft*, 67 Ohio St. 3d 439, 619 N.E.2d 688 (1993).

The court relied on *Kraft* to adopt a “judicial mental process” privilege to exempt from disclosure an attorney-examiner’s report to a county Board of Tax Appeals (BTA). The court reasoned that the BTA is a quasi-judicial body when discharging its adjudication duties and, therefore, requires the privacy to deliberate granted the courts. *TBC Westlake Inc. v. Hamilton County Board of Revision*, 81 Ohio St.3d 58, 689 N.E.2d 32 (1998).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

The Ohio Supreme Court has applied the statute to require public disclosure of records possessed, received, or created by private entities to which public offices had delegated the performance of public functions. *State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Ass’n*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988) (minutes of meetings of board of trustees of a nonprofit corporation operating a municipal hospital pursuant to a rent-free lease); *State ex rel. Plain Dealer Publishing Co. v. City of Cleveland*, 75 Ohio St. 3d 31, 661 N.E.2d 187 (1996) (resumes received by private executive search firm hired by city to find candidates for post of city police chief); *State ex rel. Toledo Blade Co. v. Univ. of Toledo Foundation*, 65 Ohio St. 3d 258, 602 N.E.2d 1159 (1992) (records of donors to private corporation that functioned as alter-ego of state university); *State ex rel. Mazza v. Ferguson*, 49 Ohio St. 3d 37, 550 N.E.2d 464 (1990) (workpapers of a private accounting firm generated in the course of auditing the finances of a municipality); *State ex rel. Findlay Publishing Company v. Hancock County Board of Commissioners*, 80 Ohio St. 3d 134, 684 N.E.2d 1222 (1997) (settlement agreement prepared by the attorney for the county’s insurer); *State ex rel. Freedom Communications Inc. v. Elida Community Fire Company*, 82 Ohio St. 3d 578, 697 N.E.2d 210 (1998) (investigative report prepared

by private, nonprofit corporation that contracted with townships to provide fire-fighting services). But see *State ex rel. Farely v. McIntosh*, 134 Ohio App. 3d 531, 731 N.E.2d 726 (Montgomery App. 1998) (records compiled by court-appointed psychologist are personal, not public, records), *State ex rel. Civ. Liberties Union of Ohio, Inc. v. Cuyaboga Cty. Bd. Of Comm's*, 128 Ohio St.3d 256, 943 N.E.2d 553 (2011) (a relator must demonstrate by clear and convincing evidence that an entity is the functional equivalent of a public office).

"In determining whether a private entity is a public institution under R.C. 149.011(A) and thus a public office for purposes of the Public Records Act, R.C. 149.43, a court shall apply the functional-equivalency test. Under this test, the court must analyze all pertinent factors, including (1) whether the entity performs a governmental function, (2) the level of government funding, (3) the extent of government involvement or regulation, and (4) whether the entity was created by the government or to avoid the requirements of the Public Records Act." *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 854 N.E.2d 193 (2006).

Ohio Rev. Code § 149.431 requires nonprofit corporations receiving public funds to make available to the public financial statements and the contracts pursuant to which the corporations receive the public funds.

Ohio Rev. Code § 9.92 exempts from the public records statute private organizations receiving public funds and named as official county organs to reward citizens who provide tips leading to the solving of crimes (citizen reward programs).

b. Bodies whose members include governmental officials.

The statute does not expressly address such groups, but if such a group possesses records generated in the course of performing a duty delegated by a public office and such records may be subject to some degree of control by the office, it is likely that the records would be available to the public under the public records statute. See *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St. 3d 37, 550 N.E.2d 464 (1990). But see *State ex rel. Civ. Liberties Union of Ohio, Inc. v. Cuyaboga Cty. Bd. Of Comm's*, 128 Ohio St.3d 256, 943 N.E.2d 553 (2011) (workgroups which included "county employees" did not have to disclose minutes and other records as the workgroups were not the functional equivalent of a public office).

A hospital run by an eighteen-member board of trustees is not a "public office," notwithstanding that sixteen of the members were direct appointees of six different mayors. *State ex rel. Stys v. Parma Cmty. Gen. Hosp.*, 93 Ohio St. 3d 438, 755 N.E.2d 874 (2001).

5. Multi-state or regional bodies.

The statute does not expressly address such bodies, but to the extent that the membership of such bodies includes a majority of the members of a public body of Ohio or a political subdivision, it is likely that records generated by the multistate or regional board that pertain to the business of the Ohio body would be available to the public. *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

6. Advisory boards and commissions, quasi-governmental entities.

The statute does not address such bodies, but if such a board or commission possesses records generated in the course of performing a duty delegated by a public office and such records may be subject to some degree of control by the office, it is likely that the records would be available to the public under the public records statute. See *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St. 3d 37, 550 N.E.2d 464 (1990). But see *State ex rel. Civ. Liberties Union of Ohio, Inc. v. Cuyaboga Cty. Bd. Of Comm's*, 128 Ohio St.3d 256 (where an entity only produces recommendations for a public office, the records used to produce those recommendations are not public records).

7. Others.

Records kept by any "public office" are public records and subject to mandatory disclosure. Ohio Rev. Code § 149.43(A)(1). "Public office" is defined as including "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." Ohio Rev. Code § 149.011(A).

Where an organization or entity is not obviously a "public office," the key to determining whether any of its records must be released is whether it performs an obvious governmental function, the level of public funding it receives, the extent of government involvement or regulation, and whether it was created to circumvent the requirements of the Public Records Act. *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 854 N.E.2d 193.

C. What records are and are not subject to the act?

1. What kind of records are covered?

All "public records" are available for public inspection and copying. A "public record" is any record that is "kept by any public office." Ohio Rev. Code § 149.43(A),(B). A "record" is "any document, device, or item . . . which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." Ohio Rev. Code § 149.011(G).

The statute used to define "public record" as those records required by law to be kept by a public office, but the Ohio General Assembly amended the statute to delete that language. The statute now defines "public record" as simply "records kept by any public office," which broadens the scope of what kinds of records qualify as public records.

Notwithstanding that legislative amendment, the Ohio Supreme Court has ruled that a variety of recorded information kept by a public office fails to qualify as a "record" under Ohio Rev. Code § 149.011 (G), and therefore cannot be a "public record." The court ruled that unsolicited letters received and read by a judge in which the authors advocated leniency in the sentencing of a convicted rapist did not count as "records" because the judge testified that she did not base her subsequent sentencing decision on anything in the letters. *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St. 3d 61 (1998). See also *State ex rel. Sensel v. Leone*, 85 Ohio St. 3d 152, 707 N.E.2d 496 (1999) (reinstating trial court's judgment that unsolicited letters from parents received and read by public school superintendent and high school principal, which criticized and praised controversial high school basketball coach, were not "records" and could be thrown away at the sole discretion of the public school officials).

A city employee's personal handwritten notes were not "records" because they were taken for his own convenience, were not kept as part of the city's official records, and no other city officials had access to or used the notes. *State ex rel. Cranford v. Cleveland*, 103 Ohio St. 3d 196, 814 N.E.2d 1218 (2004).

Jury questionnaire questions are "records," but the responses are not "records" because the court does not use the answers "in rendering its decision, but rather collect[s] the questionnaires for the benefit of litigants." *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 98 Ohio St. 3d 146, 781 N.E.2d 180 (2002) (ordering disclosure of the questionnaire responses, juror names, and juror addresses on constitutional grounds).

State employee home addresses are not "records" because they do not "document the organization, functions, policies, decisions, procedures, operations, or other activities" of the state agencies and are kept by the state only as an administrative convenience. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St. 3d 160, 833 N.E.2d 274 (2005).

The court also ruled that a roster of names and addresses of minors who signed up for a municipal recreation department's voluntary identification-badge program was not a "record." *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (2000). But see *State*

ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth., 190 Ohio App.3d 218, 941 N.E.2d 807 (questionnaires and releases which identify children suspected of having been exposed to lead are public records, as they “do not contain the comprehensive personal, family, and medical information described in the records at issues in *McCleary*.”)

Internal e-mails generated by county employees on county time using county computer systems, which allegedly contained racist epithets, did not qualify as “records” because the e-mails did not document the activities of that county agency. *State ex rel. Wilson-Simmons v. Lake County Sheriff's Dept.*, 82 Ohio St. 3d 37, 693, N.E.2d 789 (1998).

The court has not adopted a clear doctrinal interpretation of the threshold statutory term, “record.” To qualify as a “record,” the court seems to require that the recorded information be clearly linked to functions of a public office that state or local law requires the office to undertake.

A “record” does not lose its status as a “public record” though its possession is transferred to a private party. The statute allows a mandamus action against either the public office or the person responsible for a public record. Ohio Rev. Code § 149.43(C). “[T]he disjunctive used in R.C. 149.43(C) manifests an intent to afford access to public records, even when a private entity is responsible for the records.” *State ex rel. Mazzaro v. Ferguson*, 49 Ohio St. 3d 37, 550 N.E.2d 464 (1990); *State ex rel. The Cincinnati Enquirer v. Krings*, 2000 Ohio App. LEXIS 5854 (Hamilton App. Dec. 15, 2000) (No. C-000408) (“The respondents in this case cannot play a shell game with public records. The public has a right of access to the records, regardless of where they are physically located, or in whose possession they may be.”); *State ex rel. Findlay Publ'g Co. v. Hancock Cty. Bd. of Comm'rs*, 80 Ohio St. 3d 134, 684 N.E.2d 1222 (1997) (ordering disclosure of settlement agreement when county's attorney possessed the agreement).

2. What physical form of records are covered?

A “record” includes “any document, device, or item, regardless of physical form or characteristic.” Ohio Rev. Code § 149.011(G).

A public record includes a video or audio tape. *State ex rel. Harmon v. Bender*, 25 Ohio St. 3d 15, 494 N.E.2d 1135 (1986); *State ex rel. Multimedia Inc. v. Whalen*, 48 Ohio St. 3d 41, 549 N.E.2d 167 (1990); *State ex rel. Slagle v. Rogers*, 103 Ohio St. 3d 89, 814 N.E.2d 55 (2004) (Ohio's Public Record Act entitles public to audiotapes of a suppression hearing).

A public record includes microfilm. *Lorain County Title Co. v. Essex*, 53 Ohio App. 2d 274, 373 N.E.2d 1261 (1976).

Where a public record is recorded electronically or on some medium other than paper, a requester has a right to choose to receive a copy of the record on paper, upon the same medium on which it is kept by the public office, or on some other medium upon which the public office can reasonably duplicate the record. Ohio Rev. Code § 149.43(B)(6); *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St. 3d 172, 824 N.E.2d 64 (2005) (public entitled to 911 audiotape, not just a transcript).

Recorded public information is supposed to be disclosed even if not organized in the format requested. *State ex rel. Cater v. City of N. Olmsted*, 69 Ohio St. 3d 315, 631 N.E.2d 1048 (1994).

3. Are certain records available for inspection but not copying?

The statute provides that every record available for public inspection is also available for copying. Ohio Rev. Code § 149.43(B).

D. Fee provisions or practices.

1. Levels or limitations on fees.

The statute provides that copies are available “at cost.” Ohio Rev. Code § 149.43(B).

The statute does not define “cost,” but the Ohio Supreme Court has ruled that “cost” does not include any labor expenses for public employee time. In effect, “cost” is limited to the “actual cost” of depleted supplies, such as toner and paper, used in making copies. *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994). See *S/O, ex rel. Strothers v. Murphy*, 132 Ohio App. 3d 645, 725 N.E.2d 1185 (Cuyahoga App. 1999) (police department required to charge no more than five cents per page for copying public records).

The right to inspect, rather than copy, records cannot be conditioned on the payment of any fee, even if officials have to redact information exempt from disclosure before allowing the inspection. *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994).

The Ohio Supreme Court held that a county had to pay for the cost of retrieving improperly deleted e-mails where the relator asked to inspect, not to copy, the records. *State ex rel. Toledo Blade Co. v. Seneca County Bd. of Comm'rs*, 120 Ohio St. 3d 372, 382, 899 N.E.2d 961 (2008).

For computer-stored records, the cost charged should generally be the cost of copying the electronic records. *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 584 N.E.2d 665 (1992) (holding that copying computer tapes creates an “increased financial burden” on the public office so the cost can be passed on to the requester). Generally speaking, though, the cost cannot exceed the amount charged for copying paper records. *State ex rel. Recodat v. Buchanan*, 46 Ohio St. 3d 163, 546 N.E.2d 203 (1989).

Public offices may arrange with outside contractors to copy computer tapes, and pass the cost of that service directly to the requester. *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 584 N.E.2d 665 (1992).

The statute authorizes the Bureau of Motor Vehicles to charge additional fees, including a net profit, for responding to a special kind of request. That special kind of request has the following elements: (1) it seeks copies of a record or information in a format other than the format already available, or information that cannot be extracted without examining all items in a database or class of records and (2) the requester intends to use or forward the copies for surveys, marketing, solicitation or resale for commercial purposes. Ohio Rev. Code § 149.43(F).

Under the special provision for Bureau of Motor Vehicles records, commercial purposes does not include newsgathering, nonprofit educational research, and gathering information to assist citizen oversight or understanding of the activities of government. For responding to those bulk commercial requests, the bureau may charge its actual costs (depleted supplies, mailing costs, and the like) plus labor plus 10 percent. The bureau also may charge for redacting information the release of which is prohibited by law. A requester need not specify his intended purpose. If the requester has a noncommercial purpose, he need only assure the bureau that he “does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.” Ohio Rev. Code § 149.43(F).

2. Particular fee specifications or provisions.

a. Search.

The statute does not authorize charging the requester for employee time to search for requested records. The Ohio Supreme Court has ruled that the right to inspect records cannot be conditioned on the payment of any fee, even if officials have to redact information exempt from disclosure before allowing the inspection. Also, even where “cost” can be charged for the making of copies, no fee for public employee time can be charged. *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994). Consequently, public offices cannot charge fees based on public employee labor to search for requested records.

A provision of the statute allows the Bureau of Motor Vehicles to include labor charges under limited circumstances related to requests

for commercial purposes. The statute excepts news reporting and gathering as a commercial purpose. Although unclear, the statute may allow the bureau to charge commercial requesters for search time. Ohio Rev. Code § 149.43(F).

b. Duplication.

The statute provides that copies are available “at cost.” Ohio Rev. Code § 149.43(B).

The statute does not define “cost,” but the Ohio Supreme Court has ruled that “cost” does not include any labor expenses for public employee time. In effect, “cost” is limited to the “actual cost” of depleted supplies, such as toner and paper, used in making copies. *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994). See *S/O, ex rel. Strothers v. Murphy*, 132 Ohio App. 3d 645, 725 N.E.2d 1185 (Cuyahoga App. 1999) (police department required to charge no more than five cents per page for copying public records).

For computer-stored records, the cost charged should generally be the cost of copying the electronic records. *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 584 N.E.2d 665 (1992) (holding that copying computer tapes creates an “increased financial burden” on the public office so the cost can be passed on to the requester). Generally speaking, though, the cost cannot exceed the amount charged for copying paper records. *State ex rel. Recodat v. Buchanan*, 46 Ohio St. 3d 163, 546 N.E.2d 203 (1989).

Public offices may arrange with outside contractors to copy computer tapes, and pass the cost of that service directly to the requester. *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 584 N.E.2d 665 (1992).

The only exception is the Bureau of Motor Vehicles, which may charge the following: (1) actual cost (depleted supplies, storage costs, delivery costs, direct equipment operating and maintenance costs, (2) the cost of the time spent by the lowest paid employee competent to perform the task of responding to the request and/or to create a computer program to respond to the request, (3) plus 10 percent. This exception does not apply to requesters who give assurance that they do not “intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.” “Surveys, marketing, solicitation, or resale for commercial purposes” 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.” Ohio Rev. Code § 149.43(E).

c. Other.

Copies of public records through the mail: public offices must comply with a request that copies of records be transmitted to a requester by mail; but may charge a fee in advance before transmitting copies of public records by mail. The fee is limited to the cost of postage and related depleted supplies. Ohio Rev. Code § 149.43(B)(7).

An indigent criminal defendant is only entitled to one free copy of his criminal trial transcript. Additional requests, under the Public Records Act, require him to pay “cost” for additional copies and for postage and mailing supplies. *State ex rel. Call v. Fragale*, 104 Ohio St. 3d 276, 819 N.E.2d 294 (2004).

3. Provisions for fee waivers.

The statute contains no provision for fee waivers, and no case law addresses the matter. As a practical matter, on an ad hoc basis related to convenience and the small number of pages copied, public offices occasionally charge no fees for copying public records.

The exception is special requests for records of the Bureau of Motor Vehicles, which is allowed to charge the cost of depleted supplies and similar operating costs, labor, plus 10 percent when providing bulk volumes of information in formats not already available and for commercial marketing purposes. Commercial marketing purposes 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.” A requester who gives written assurance that he “does not intend to use or forward the requested records, or the information contained in them, for commercial purposes” is treated as having a noncommercial purpose. Ohio Rev. Code § 149.43(F).

4. Requirements or prohibitions regarding advance payment.

The statute allows the public office or person responsible for the public record to require advance payment for the cost involved in producing and mailing or transmitting the copy. Ohio Rev. Code § 149.43(B)(6),(7); *State ex rel. Debler v. Spatny*, 127 Ohio St.3d 312, 939 N.E.2d 831 (2010). As a practical matter, public offices usually do not require advance payment.

5. Have agencies imposed prohibitive fees to discourage requesters?

Yes. Since the Ohio Supreme Court ruled in 1994 that labor charges could not be included as “cost” and that no fees can be charged for inspection, the imposition of prohibitive fees has diminished somewhat, but not vanished. See *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994).

E. Who enforces the act?

The Public Records Act can only be enforced by a person aggrieved by the public office’s failure to disclose the records. The appropriate mechanism for compelling compliance with the act is a mandamus action. Ohio Rev. Code § 149.43(C).

1. Attorney General’s role.

There is no statutory or case law addressing this issue.

2. Availability of an ombudsman.

There is no statutory or case law addressing this issue.

3. Commission or agency enforcement.

There is no statutory or case law addressing this issue.

F. Are there sanctions for noncompliance?

Awards of attorneys’ fees are allowed where there is a violation of the Act, and are mandatory in certain instances. Ohio Rev. Code § 149.43(C)(2)(b).

Attorneys’ fees are mandatory where the public office ignores a request without responding to it or where the office breaks a promise to comply within a specified period of time. Ohio Rev. Code § 149.43(C)(2)(b).

In addition, the act sanctions statutory damages of one hundred dollars per business day. Ohio Rev. Code § 149.43(C). However, “stacking” of statutory damages for “essentially the same records request” is not allowed, as “no windfall is conferred by the statute.” *State ex rel. Debler v. Kelly*, 127 Ohio St.3d 309, 939 N.E.2d 828 (2010).

The Ohio Supreme Court has held that a successful litigant is not entitled to attorney fees when the work is done by in-house counsel who did not receive any compensation beyond counsel’s regular salary. *State ex rel. Beacon Journal Publ’g Co. v. Akron*, 104 Ohio St. 3d 399, 819 N.E.2d 1087 (2004).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

Exemptions are specific. Absent an express statutory exemption, records are open to the public. *State ex rel. MADD Gosser*, 20 Ohio St. 3d 30, 485 N.E.2d 706 (1985). However, even where no statutory

exemption exists, recorded information kept by a public office may be unavailable to a requester because (1) the information fails to qualify as a “record” under the definition of “record” in Ohio Rev. Code § 149.011(G), or (2) the information is within the scope of the constitutional right to privacy under the 14th Amendment. *E.g.*, *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (2000). A public office cannot enter into enforceable promises of confidentiality with respect to public records. *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St. 3d 580, 669 N.E.2d 835 (1996); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985). See also *State ex rel. Findlay Publishing Company v. Hancock County Board of Commissioners*, 80 Ohio St. 3d. 134, 684 N.E.2d 1222 (1997) (confidentiality provision in settlement agreement between a citizen and a public entity is unenforceable).

Not all statutory exemptions are contained within the statute itself. The Ohio Revised Code contains more than 400 separate statutory provisions addressing public records, many of them setting forth exemptions.

b. Mandatory or discretionary?

The exemptions set forth in the statute itself are discretionary with the public office because excepted records are those which are not required to be made available for inspection. The statute does not forbid release of records that are excepted from disclosure, it merely does not require public offices to disclose them. The courts have neither adopted nor rejected that analysis of the statute.

c. Patterned after federal Freedom of Information Act?

The exemptions in Ohio’s statute are not patterned after the federal Freedom of Information Act. The Ohio Supreme Court specifically has rejected the federal FOIA as an interpretive model for exemptions related to the Ohio statute. *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St. 3d 580, 669 N.E.2d 835 (1996); *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St. 3d 245, 643 N.E.2d 126 (1994); *State ex rel. Toledo Blade Co. v. Univ. of Toledo Foundation*, 65 Ohio St. 3d 258, 602 N.E.2d 1159 (1992).

2. Discussion of each exemption.

a. Medical records: “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.” Ohio Rev. Code § 149.43(A)(3); see § 149.43(A)(1)(a).

To be exempt, a “medical record” must be maintained or generated in the process of medical treatment. A patient care report generated by an emergency medical service squad did not qualify where the squad found the victim dead when it arrived, and thus provided no medical treatment. *State ex rel. Ware v. City of Cleveland*, 55 Ohio App. 3d 75, 562 N.E.2d 946 (1989).

A psychological exam administered to candidates for public employment as part of the hiring process is not a “medical record.” *State ex rel. Multimedia Inc. v. Snowden*, 72 Ohio St. 3d 141, 647 N.E.2d 1374 (1995)

b. Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the Ohio Department of Health. Ohio Rev. Code § 149.43(A)(1)(d); Ohio Rev. Code § 3705.12.

c. Records filed with the Ohio health department containing information identifying the biological relatives of an adopted child. Ohio Rev. Code § 149.43(A)(1)(f); Ohio Rev. Code § § 3107.42(A), 3107.52(A).

d. Records pertaining to probation proceedings. Ohio Rev. Code § 149.43(A)(1)(b).

e. Records pertaining to parole proceedings or proceedings related to the imposition of community control sanctions and post-release control sanctions. Ohio Rev. Code § 149.43(A)(1)(b).

f. Records of a minor female’s action in juvenile court for approval of an abortion without parental notification and to appeals of those actions. Ohio Rev. Code § 149.43(A)(1)(c); Ohio Rev. Code § 2151.85, Ohio Rev. Code § 2919(C). *But see State ex rel. Cincinnati Post v. Second Dist. Court of Appeals*, 65 Ohio St. 3d 378, 604 N.E.2d 153 (1992) (ruling that statute mandating confidentiality for appeals of those actions violates Ohio Constitution).

g. Records generated by the Ohio Civil Rights Commission during a preliminary investigation of alleged unlawful discriminatory practices. Ohio Rev. Code § 149.43(A)(1)(i); Ohio Rev. Code § 4112.05.

h. Records pertaining to mediation communications. Ohio Rev. Code § 149.43(A)(1)(i); Ohio Rev. Code § 2710.03.

i. DNA records of the Ohio Bureau of Criminal Identification and Investigation, which is part of the office of the Ohio Attorney General. Ohio Rev. Code § 149.43(A)(1)(j); Ohio Rev. Code § 109.573.

j. Putative father registry, maintained by the Ohio Department of Human Services. It contains the name and address of a father at which he wishes to receive notice of a petition to adopt the minor he claims as his child. Ohio Rev. Code § 149.43(A)(1)(e); Ohio Rev. Code § 3107.062.

k. Inmate records regarding youths released by the Ohio Department of Rehabilitation and Corrections to the Ohio Department of Youth Services or a court of record. Ohio Rev. Code § 149.43(A)(1)(k); Ohio Rev. Code § 5120.21(E).

l. Records of the Ohio Department of Youth Services related to children in its custody that are released to the Ohio Department of Rehabilitation and Correction. Ohio Rev. Code §§ 149.43(A)(1)(l), 5139.05.

m. “Intellectual property records,” which are the work of researchers at state colleges or universities that has not yet been patented, published or publicly released. Ohio Rev. Code §§ 149.43(A)(1)(m); 149.43(A)(5).

n. “Donor profile records,” which are records “about” donors or potential donors to a state college or university. However, the names, reported addresses of actual donors, the amount donated, the dates of donations, and the conditions of donations are not exempted. Ohio Rev. Code §§ 149.43(A)(1)(n), 149.43(A)(6).

o. Information maintained by the Ohio Department of Job and Family Services in its new hires directory. Ohio Rev. Code §§ 149.43(A)(1)(o), 3121.894.

p. Trade secrets of a county or municipal hospital. Ohio Rev. Code § 149.43(A)(1)(q); see Ohio Revised Code § 1333.61.

q. The address, telephone number, birth date, Social Security number, medical information and photographic image of a minor as that information pertains to the recreational activities of the minor or the obtaining of privileges to use public recreational facilities, as well as the address and phone number of the minor’s parent, guardian, or emergency contact. Ohio Rev. Code §§ 149.43(A)(1)(r), 149.43(A)(8).

r. Various records of a child fatality review board. Ohio Rev. Code § 149.43(A)(1)(s).

s. Test materials, examinations, evaluation tools used in an examination to license a person as a nursing home administrator. Ohio Rev. Code § 149.43(A)(1)(u).

t. Certain statements provided to or by the executive director of a public children services agency or a prosecutor related to the death of a minor likely to have been caused by abuse, neglect, or other criminal conduct. Ohio Rev. Code §§ 149.43(A)(1)(t), 5153.171.

u. The residential and familial information of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation, as well as the home telephone numbers and street address of their family members and administrative information used to facilitate employment benefits.

However, a journalist making a signed written request asserting that information would be in the public interest may obtain the street address of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, investigator of the Bureau of Criminal Identification and Investigation, or EMT's residence and certain information about their family members. Ohio Rev. Code §§ 149.43(A)(1)(p), (A)(7), (B)(9).

Photographs of police officers taken for identification cards are exempted from the Public Records Act because they are considered "residential and familial information." *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St. 3d 70, 831 N.E.2d 987 (2005)

v. Trial preparation records: "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." Ohio Rev. Code §§ 149.43(A)(1)(g), (A)(4).

Information, not subject to discovery by a criminal defendant under the Ohio Rules of Criminal Procedure, contained in the file of a prosecutor who is prosecuting a criminal matter, likely is a trial preparation record. *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994).

Trial preparation records subject to discovery by a criminal defendant do not lose their exempt status merely because they may be, or were, discovered by a criminal defendant through the Ohio Rules of Criminal Procedure. *State ex rel. WHIO v. Lowe*, 77 Ohio St.3d 350, 673 N.E.2d 1360 (1997).

Where the record was a public record at its inception, and later became part of the prosecutor's file, the record may not be exempt as a trial preparation record. Thus, a tape of a 911 call containing a homicide confession was not a trial preparation record even though an important part of the prosecutor's file. *State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St. 3d 374, 662 N.E.2d 334 (1996).

Once a record becomes exempt as a "trial preparation record," the record retains its exempt status only until the completion of all trial court and appellate court proceedings. *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994).

A record generated in anticipation of internal employee discipline is not a "trial preparation" record. *State ex rel. Police Officers For Equal Rights v. Lasbutka*, 72 Ohio St. 3d 185, 648 N.E.2d 808 (1995); *State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Ass'n*, 44 Ohio St. 3d 111, 541 N.E.2d 587 (1989).

Settlement agreements entered into to terminate a lawsuit are not "trial preparation" records. *State ex rel. Kinsley v. Berea Bd. of Edn*, 64 Ohio App. 3d 659, 582 N.E.2d 653 (1990); *see also State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St. 3d 126, 781 N.E.2d 163 (2002) (finding that the trial preparation exemption is inapplicable to a settlement proposal).

A record is not "specifically compiled" in anticipation of litigation where the investigation on which the record is based was conducted for multiple purposes. *State ex rel. Zuern v. Leis*, 56 Ohio St. 3d 20, 564 N.E.2d 81 (1990).

Investigatory records generated before a determination of probable cause to prosecute may not be "trial preparation" records. *Franklin Co. Sheriff's Dept. v. SERB*, 63 Ohio St. 3d 498, 589 N.E.2d 24 (1992).

w. *Confidential law enforcement investigatory records*. Ohio Rev. Code § 149.43(A)(1) and § 149.43(A)(2). The statute creates a two-prong test to determine whether a record is a confidential law enforcement investigatory record:

First, the record must "pertain[] to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature." Ohio Rev. Code § 149.43(A)(2). The court has held that initial offense incident reports are not confidential law enforcement investigatory records. *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St. 3d 54, 741 N.E.2d 511 (2001).

The exemption does not apply to investigations of prospective employees to determine whether to hire them, or to internal investigations to determine whether to discipline an employee, as neither qualifies as trying to enforce a law. *State ex rel. Multimedia v. Snowden*, 72 Ohio St. 3d 141, 647 N.E.2d 1374 (1995); *State ex rel. Police Officers For Equal Rights v. Lasbutka*, 72 Ohio St. 3d 185, 648 N.E.2d 808 (1995); *State ex rel. Freedom Communications v. Elida Community Fire Company*, 82 Ohio St. 3d 578, 697 N.E.2d 210 (1998) (investigation of alleged sexual assault conducted internally as personnel matter is not law enforcement matter); *State ex rel. Lorain Journal Co. v. City of Lorain*, 87 Ohio App. 3d 112, 621 N.E.2d 894 (1993) (results of polygraph tests given to prospective employee).

Records of a law enforcement nature do not qualify as exempt when in the custody of a public office that does not have the authority to conduct law enforcement investigations. *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 684 N.E.2d (1997) (records of alleged child abuse do not pertain to a law enforcement matter when the records are in the custody of county ombudsman office that has no law enforcement authority).

Second, such records are exempt "only to the extent that the release of the record would create a high probability of disclosure of any of the following":

(1) *The identity of a suspect who has not been charged with the offense to which the record pertains*. Ohio Rev. Code § 49.43(A)(2)(a). The Ohio Supreme Court has interpreted "charged" to include arrested, thus ensuring that arrest records are available to the public even though the arrestee has not been arraigned or otherwise formally charged with unlawful conduct. *State ex rel. Outlet Communications Inc. v. Lancaster Police Dept.*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988); *State ex rel. Moreland v. City of Dayton*, 67 Ohio St. 3d 129, 616 N.E.2d 234 (1993).

That the police have labeled an investigation "inactive" so that the person in question is not currently a suspect is irrelevant; the exemption still applies. *State ex rel. Moreland v. City of Dayton*, 67 Ohio St. 3d 129, 616 N.E.2d 234 (1993); *see State ex rel. Ohio Patrolmen's Benevolent Association v. City of Mentor*, 89 Ohio St. 3d 440, 732 N.E.2d 969 (2000) ("[T]he absence of pending or highly probable criminal charges is not fatal to the applicability of the uncharged-suspect exemption"); *State ex rel. Musial v. North Olmsted*, 106 Ohio St. 3d 459, 835 N.E.2d 1243 (2005) (rejecting argument that exemption does not apply when a grand jury declines to indict and charges are unlikely).

A "suspect" is a person who is a subject of investigation, but who has not been arrested, has not received a citation, and has not been indicted or named as a defendant in a criminal complaint. *State ex rel. Polovischak v. Mayfield*, 50 Ohio St. 3d 51, 552 N.E.2d 635 (1990).

A suspect's identity may be "confidential" and thus redacted even though press coverage has previously identified the individual as a suspect. *State ex rel. WLWT v. Leis*, 77 Ohio St.3d 357, 673 N.E.2d 1365 (1997); *State ex rel. Master v. City of Cleveland*, 76 Ohio St. 3d 340, 667 N.E.2d 974 (1996).

Because initial offense incident reports are public records, a narrative attached to an incident report must be disclosed without redaction even though it contains the name of an uncharged suspect. *State ex rel.*

Beacon Journal Publishing Co. v. Maurer, 91 Ohio St.3d 54, 741 N.E.2d 511 (2001).

(2) *The identity of an information source or witness to whom confidentiality has been reasonably promised.* Ohio Rev. Code § 149.43(A)(2)(a).

The exemption applies even where police did not put a promise of confidentiality in writing. *State ex rel. Martin v. City of Cleveland*, 67 Ohio St. 3d 155, 616 N.E.2d 886 (1993).

Before a promise of confidentiality can be reasonable, it must be made on the basis of an individualized determination by the official that the promise is necessary to obtain the information. *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 552 N.E.2d 243 (1990).

The exemption does not apply to employees to whom officials promised confidentiality to obtain information for use in deciding whether to promote or give tenure to another employee. *State ex rel. James v. Ohio State Univ.*, 70 Ohio St. 3d 168, 637 N.E.2d 911 (1994). *But see State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 859 N.E.2d 948 (2006) (names, ranks, addresses, and telephone numbers of firefighters who acted as assessors of the oral portion of a promotional exam were exempt as residential and familial information under Ohio Rev. Code § 149.43 (A)(1)(p), (A)(7)).

The exemption does apply to employees promised confidentiality during the course of an internal investigation of sexual harassment by another employee. *State ex rel. Yant v. Conrad*, 74 Ohio St. 3d 681, 660 N.E.2d 1211 (1996).

(3) *Information provided by an information source or witness to whom confidentiality has been reasonably promised whereby the information, if disclosed would lead to the identity of the source or witness.* Ohio Rev. Code § 149.43(A)(2)(b).

(4) *Specific investigatory techniques or procedures.* Ohio Rev. Code § 149.43 (A)(2)(c).

Routine investigatory procedures do not qualify under this exemption. *State ex rel. Beacon Journal Pub. Co. v. Univ. of Akron*, 64 Ohio St. 2d 392, 415 N.E.2d 310 (1980).

(5) *Specific investigatory work product.* Ohio Rev. Code § 149.43(A)(2)(c).

Information assembled by law enforcement officials in the course of investigating an actual or probable crime. *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994).

A crime is “probable” at least where it is clear that a crime has been committed, even though police have not yet identified a suspect. *State ex rel. Leonard v. White*, 75 Ohio St. 3d 516, 664 N.E.2d 527 (1996). Information gathered during an investigation does not constitute work product when it is not clear that a crime has occurred, because the records are then compiled by law enforcement officials in part to determine if any crime has occurred. *State ex rel. Ohio Patrolmen’s Benevolent Association v. City of Mentor*, 89 Ohio St. 3d 440, 732 N.E.2d 969 (2000).

The exemption applies regardless of whether the police investigation is open or closed, or whether authorities have decided not to file charges. *State ex rel. Thompson Newspapers Inc. v. Martin*, 47 Ohio St. 3d 28, 546 N.E.2d 939 (1989); *State ex rel. Polovischak v. Mayfield*, 50 Ohio St. 3d 51, 552 N.E.2d 635 (1990); *State ex rel. Ohio Patrolmen’s Benevolent Association v. City of Mentor*, 89 Ohio St. 3d 440, 732 N.E.2d 969 (2000) (finding that Ohio Rev. Code § 149.43 does not contain an “ongoing investigation” exemption for public records).

The exemption does not apply to “ongoing routine offense and incident reports, including, but not limited to, records relating to a charge of driving while under the influence and records containing the results of intoxilyzer tests.” *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994).

Records that are public records upon receipt or creation by a public office are not transformed into confidential investigatory work prod-

uct solely by virtue of the fact that they contain evidence of a crime. *State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St.3d 374, 662 N.E.2d 334 (1996) (911 tape with confession of homicide is public record).

Records that are unquestionably nonexempt, e.g., newspaper articles, contracts and campaign contributions, do not become exempt simply because they are the subject of grand jury subpoenas. *State ex rel. Gannett Satellite Network Inc. v. Petro*, 80 Ohio St. 3d 261, 685 N.E.2d 1223 (1997).

(6) *Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness or a confidential information source.* Ohio Rev. Code § 149.43(A)(2)(d).

The proponent of this exemption must show that “disclosure of the records will really pose a risk.” *State ex rel. Lippitt v. Kovacic*, 70 Ohio App. 3d 525, 591 N.E.2d 422 (Cuya. App. 1991)

Although the Ohio Supreme Court has not found that this exemption covers the home addresses of police officers, the court has ruled that the federal constitutional right of privacy bars disclosure of that information because of the potential safety threat that such information poses if the addresses are available to criminals. The federal court of appeals for the Sixth Circuit has ruled likewise. *Compare State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 707 N.E.2d 931 (1999) *with Kallstrom v. City of Columbus*, 136 F.3d 1055 (1998).

x. Records the release of which is prohibited by state law. Ohio Rev. Code § 149.43(A)(1)(v). The Ohio Revised Code contains hundreds of separate provisions excluding classes of records as “public records.”

It is possible that a protective order, issued by a judge, may qualify a confidential settlement for the state law exemption, thus maintaining the secrecy of the settlement terms. *See State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St. 3d 126, 781 N.E.2d 163 (2002).

y. Records the release of which is prohibited by federal law. Ohio Rev. Code § 149.43(A)(1)(v).

The U.S. Court of Appeals for the Sixth Circuit and the Ohio Supreme Court have interpreted the federal constitutional right of privacy as barring release of certain kinds of information to at least specific classes of requesters. *Kallstrom v. City of Columbus*, 136 F.3d 1055 (1998) (names, addresses, drivers licenses of undercover police officers contained in police personnel files when requested by attorney for dangerous criminal defendants); *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 707 N.E.2d 931 (1999) (same); *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 725 N.E.2d 1144 (2000) (home addresses and telephone numbers for minors who applied for identification badges to facilitate use of municipal recreation facilities to requester who posed no threat of harm); *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St.3d 605, 640 N.E.2d 164 (1994) (Social Security numbers to requester who posed no threat of harm).

z. Records containing confidential mediation communications. Ohio Rev. Code §§ 149.43(A)(1)(i), 2710.03.

aa. Financial statements and other data submitted to the Ohio housing finance agency or the controlling board related to financial assistance provided by the agency. Ohio Rev. Code § 149.43(A)(1)(y).

bb. Records containing a trauma center’s description of its ability to respond to disasters, mass casualties, and bioterrorism. Ohio Rev. Code §§ 149.43(A)(1)(x), 3701.072.

cc. Proprietary information related to Ohio’s Venture Capital Program. Ohio Rev. Code §§ 149.43(A)(1)(w), 150.01.

B. Other statutory exclusions.

The Ohio Revised Code contains more than 400 separate statutory provisions addressing public records. Many of them make specific kinds of records exempt from the mandatory public access requirements of the public records statute. Many of those exemptions are listed below.

1. Citizen reward programs. Private organizations receiving public funds and named as official county programs to reward citizens who provide tips leading to the solving of crimes. Ohio Rev. Code § 9.92.

2. Securities. Records of the ownership, registration, transfer, and exchange of securities are not public records, nor are the records of the financial institution or person who issued the securities. Ohio Rev. Code § 9.96. Information obtained by the division of securities is not available except to those having a direct economic interest in the information. Ohio Rev. Code § 1707.12; *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network Inc. v. Joyce*, 97 Ohio St. 3d 192, 777 N.E.2d 253 (2002) (complaints lodged with the Ohio Division of Securities are not public records).

3. Ohio ethics commission complaints, investigations. All papers relating the proceedings of the Ohio ethics commission are private and confidential, except where the accused person also requests that the evidence and record of a hearing before the commission be made public. Ohio Rev. Code § 102.06

4. Ohio Bureau of Criminal Identification and Investigation (“BCI”) records. Information and material furnished to or procured by the superintendent of BCI concerning persons convicted of crimes, and known and habitual criminals. Information acquired by the superintendent as part of the Ohio Law Enforcement Gateway which is a data processing system for the storage and retrieval of information, data, and statistics regarding criminals. Information acquired by the superintendent of BCI in investigation of potential employees of other governmental agencies is confidential. Ohio Rev. Code § 109.57(D).

5. Investigatory records of the Ohio Attorney General generated in the course of investigations to enforce consumer protection laws or investigations of charitable foundations. Ohio Rev. Code §§ 1345.05(A) (7); 109.28.

6. Preliminary audits by the Auditor of the State. Until the state auditor files an audit report with certain officials of other state agencies, the audit reports produced by the auditor are not public records. Ohio Rev. Code §§ 117.14, 117.15, 117.26.

7. Attorney-client privilege. All statements covered by the attorney-client privilege held by a public defender are not public records. All information obtained by the public defender in determining if a person is indigent is not public record. Ohio Rev. Code § 120.38. The attorney-client privilege applies to records containing communications between members of a public office and its counsel about the legal advice given. *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St. 3d 245, 643 N.E.2d 126 (1994). Preliminary drafts of public documents reflecting information provided by an attorney and the legal advice flowing from that information are protected. *State ex rel. Benesch Friedlander, Coplan & Arnoff LLP v. City of Rossford*, 140 Ohio App. 3d 149, 746 N.E.2d 1139 (Wood App. 2000). The attorney-client privilege applies to in-house counsel at state agencies, even if they do not serve under the Office of the Attorney General. *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 824 N.E.2d 990 (2005). Further, the privilege does not except the fee charged or time spent by a government attorney. *State ex rel. Beacon Journal Publishing Company v. Bodiker*, 134 Ohio App. 3d 415, 731 N.E.2d 245 (Franklin App. 1999).

8. Minority business loan financial data. Financial statements and data submitted for minority business enterprise loans are not public records. Ohio Rev. Code § 122.74(C)(2).

9. Retirement benefits for individual retirees. The amount of a monthly allowance or benefit paid to a retiree, beneficiary, or survivor from the public employees retirement board is not a public record, along with specified other information related to public employment retirement benefits. Ohio Rev. Code §§ 145.27, 3307.20 (teachers), 3309.22 (school employees), 5505.04 (state highway patrol).

10. Personal history record (name, address, telephone, Social Security number, etc.) of any member of the Ohio Police and Firemen’s Pension Fund. Ohio Rev. Code § 742.41.

11. Organized crime task force records. Information gathered by the organized crime task force is a confidential law enforcement investigatory record for purposes of the public records statute. Ohio Rev. Code § 177.03.

12. Income, estate, and property tax returns. Except pursuant to judicial order, tax returns are confidential. Ohio Rev. Code §§ 718.13 (municipal), 5703.21 (audits), 5711.10 (submission of verified federal income tax return in lieu of listing income yielding investments), 5711.101 (financial statement or balance sheet of a business required to be filed), 5731.90 (estate taxes).

13. Geological investigations. The chief of the division of geological survey may treat as confidential the records of his investigation of geological or mineralogical conditions of the state. Ohio Rev. Code § 1505.03.

14. Mining test borings. Results of test boring submitted by applicants to engage in surface mining are confidential, except in legal actions in which the truthfulness of the information is material. Ohio Rev. Code § 1514.02.

15. Credit union proceedings. All conferences and administrative proceedings of the superintendent of credit unions regarding credit unions are confidential. Ohio Rev. Code § 1733.327.

16. Information acquired by an agent of the Public Utilities Commission of Ohio with respect to the “transaction, property, or business” of any public utility. Ohio Rev. Code § 4901.16.

17. Records of employer’s annual report to the Ohio Industrial Commission of the number of employees employed and their aggregate wages. Ohio Rev. Code § 4123.27.

18. Antitrust investigation. Materials provided to the Attorney General pursuant to an investigative demand under Ohio’s antitrust law. Ohio Rev. Code § 1331.16(L).

19. Records pertaining to mentally retarded or other developmentally disabled person for whom the Ohio Department of Mental Retardation is acting as guardian. Ohio Rev. Code § 5123.57.

20. Information that would identify a person who provides to a board of education information about theft of or damage to school property. Ohio Rev. Code § 3313.173.

21. School pupils. Personally identifiable information concerning any pupils attending public school. Ohio Rev. Code § 3319.321.

22. Farmer information. Information furnished annually to the Ohio Director of Agriculture by farmers. Ohio Rev. Code § 917.17.

23. Arrested juveniles. Records of the arrest of juveniles and their photos are not public records unless the act alleged to have been committed by the arrested juvenile would be a felony if committed by an adult. Ohio Rev. Code § 2151.313.

24. Juvenile probation reports. Reports and records of the probation department of juvenile courts are not public. Ohio Rev. Code 2151.14.

25. Juvenile court records. Juv. R. P. 37(B). *But see State ex rel. Scripps Howard Broad. Co. v. Cuyahoga Common Pleas Court, Juv. Div.*, 73 Ohio St. 3d 19, 652 N.E.2d 179 (1995) (Juv. R. 37(B) violates state and federal constitutions by allowing juvenile court to withhold transcript of proceeding that was open to the public).

26. Victim impact statements. Statements filed with the court about the impact of a crime are not available to the public. Ohio Rev. Code §§ 2947.051.

27. Child abuse records. Records of complaints and investigations of child abuse and neglect are confidential. Ohio Rev. Code § 2151.421(H).

28. Hospital quality assurance and peer review records. Information made available to a quality assurance committee or utilization com-

mittee of a hospital is confidential, as are records of hospital boards or committees reviewing professional qualifications of present or prospective members of the hospital medical staff. Ohio Rev. Code §§ 2305.24, 2305.252; *State ex rel. Fostoria Daily Review Co. v. Fostoria Hosp. Ass'n*, 44 Ohio St. 3d 111, 541 N.E.2d 587 (1989).

29. Search warrant hearing. Any transcript or recording of a hearing over whether the statutory precondition for nonconsensual entry by a law enforcement officer may be waived is not public until the search warrant is returned. Ohio Rev. Code § 2933.231.

30. Tuition credits. Records identifying the purchaser or beneficiary of tuition credits or college savings bonds are not public records. Ohio Rev. Code § 3334.11.

31. HIV test results. Identities of those being tested for HIV and results of an HIV test are not available to the public. Ohio Rev. Code §§ 3701.243, 3701.241.

32. Donor for artificial insemination. Records related to the non-spousal donor for artificial insemination are available only to the recipient and the recipient's husband. Ohio Rev. Code § 3111.94.

33. Trade secrets. Air pollution control processes and water pollution control processes for which confidentiality has been maintained are trade secrets. Ohio Rev. Code §§ 3704.08, 3706.20, 6111.05, 6123.20.

The Ohio Uniform Trade Secrets Act, Ohio Rev. Code §§ 1333.61 - 1333.69, defines a "person" who can have trade secrets to include "governmental entities." Ohio Rev. Code § 1333.61(C). Accordingly, the court has held that governmental entities can have their own trade secrets, such as financial information generated by a government-owned medical system. *State ex rel. Besser v. Ohio State Univ.*, 87 Ohio St. 3d 535, 721 N.E.2d 1044 (2000).

34. Birth records. Where a birth record is changed and a new birth record issued, the original birth record is not available for inspection except by court order. Following adoption, a new birth record is issued and the original birth record ceases to be a public record. Ohio Rev. Code §§ 3705.09, 3705.12.

35. Foundling [child whose parents are unknown] records. A record of a foundling child ceases to be a public record if the foundling is later identified. Ohio Rev. Code § 3705.11.

36. Prescriptions, orders, and records of dangerous drugs. Prescriptions, orders, and records of dangerous drugs and controlled substances are open only to specific officials who have duties to enforce laws relating to those drugs. Ohio Rev. Code § 3719.13.

37. Nursing home records. Personal and medical records of nursing home, adult care resident patients, and residents of community alternative homes are confidential except as provided by contract or law. Ohio Rev. Code §§ 3721.13, 3722.12.

38. Nursing home/long term care facilities/nursing facilities — violations of law. Identity of person reporting a violation of law at a nursing home/long term care/nursing facility is not available to the public. Ohio Rev. Code §§ 3721.25, 5111.61.

39. Exams, tests used by Ohio Health Director. Test material, exams, evaluative tools used in a competency evaluation program by the director of health is not a public record. Ohio Rev. Code § 3721.31.

40. Radon test results. Any information required to be reported to the director of a public health council regarding radon test results are not public records. Ohio Rev. Code § 3723.09.

41. Social Security numbers of public employees or others. The federal constitutional right to privacy bars the public records statute from requiring public offices to permit inspection or copying of the Social Security numbers of public employees or other individuals. *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St. 3d 605, 640 N.E.2d 164 (1994).

42. State lottery commission meetings. Records of the meetings of the state lottery commission are available only on a showing of good cause. Ohio Rev. Code § 3770.02.

43. Drug treatment programs. Records, except judicial records, pertaining to the identity, diagnosis, or treatment of any patient maintained in connection with the performance of any drug treatment program are confidential, and the names of any pregnant women and their children in drug or alcohol treatment programs are not public records. Ohio Rev. Code §§ 3793.12 - 3793.15.

44. Insurance fraud investigations. All records in the possession of the division of insurance fraud of the state insurance department that pertain to an authorized investigation are confidential law enforcement investigatory records under the public records statute until the expiration of the statute of limitations applicable to the particular offense that was investigated. Ohio Rev. Code § 3901.44.

45. Insurance audits. The audit reports of CPAs conducting insurance audits are not public records. Ohio Rev. Code § 3901.48.

46. Work papers of superintendent of insurance. The work papers of the superintendent of insurance are not public record. Ohio Rev. Code § 3901.48.

47. Insurance trade association reports. Any reports of the Ohio commercial insurance joint underwriting association in connection with an action taken are not public record. Ohio Rev. Code § 3930.10.

48. Worker's compensation claims. No employee may divulge information regarding any claim being made to the worker's compensation board except to members of the worker's compensation commission or to the employee's superior except with the authorization of the administrator of the worker's compensation board or upon authorization of the claimant or employer. Ohio Rev. Code § 4123.88.

49. Information furnished to the Ohio Bureau of Employment Services by employers or employees. Ohio Rev. Code § 4141.21.

50. Accountant work papers. Records and work papers of a CPA or public accountant generated in the course of performing an audit of a public office or private entity, except reports submitted by the accountant to the client, are not public records. Ohio Rev. Code § 4701.19.

51. Patient identities revealed in the course of health care regulatory investigations. Patient identities contained in the records of the state medical board and the board of nursing are confidential. Ohio Rev. Code §§ 4723.28, 4731.22.

52. Applications for motor vehicle salvage licenses. Applications for motor vehicle salvage licenses are not public records. Ohio Rev. Code § 4738.14.

53. Investigations by board regulating physical therapy. Records of complaint investigations made by the board regulating occupational and physical therapists and athletic trainers are confidential. Ohio Rev. Code § 4755.61.

54. Child daycare centers. Records of enrollment, health, and attendance of children at child daycare centers is not available for public inspection and copying, but may be furnished to parents, guardians, and for administration purposes. Ohio Rev. Code § 5104.011.

55. Mental health care facilities — job applicants. The investigatory crime reports of potential employees is not a public record. Ohio Rev. Code § 5119.072.

56. Mental hospital, residents of institutions/ patients. Except in specified circumstances, the identities of patients of mental hospitals and residents of institutions for the mentally retarded are confidential. Ohio Rev. Code §§ 5122.31, 5123.89, 5123.62.

57. Reports of abuse or neglect of mentally retarded. Reports of abuse or neglect in mental retardation homes, and reports of abuse and neglect prepared by the mental retardation and disabilities board

are not public records, and are available only to specified persons in specified circumstances. Ohio Rev. Code §§ 5123.61, 5126.31.

58. Prison records. Most prison records are not available to the public, including records about inmates, architectural or construction drawings of a prison, hostage negotiation plans, statements by inmate informants, records of individuals under the supervision of the adult parole authority. Ohio Rev. Code § 5120.21; *State ex rel. Harris v. Rhodes*, 54 Ohio St. 2d 41, 374 N.E.2d 641 (1978).

59. Children in custody of department of youth services. Records pertaining to children in the custody of the state department of youth services are not public record. Ohio Rev. Code § 5139.05.

60. Investigations of foster homes. Records of investigations of foster homes by county boards or departments for human services are confidential. Ohio Rev. Code § 5153.17.

61. Grand jury records. Transcripts of grand jury proceedings. Ohio R. Crim. P. 6(E); *State ex rel. Collins v. O'Farrell*, 61 Ohio St. 3d 142, 573 N.E.2d 113 (1991).

62. Grand jury subpoenas. Ohio R. Crim. P. 6(E); *State ex rel. Beacon Journal Publishing Co. v. Waters*, 67 Ohio St. 3d 321, 617 N.E.2d 1110 (1993).

63. Applications to Veterans Service Commission and related financial records. Financial statements and applications for financial assistance submitted to the Veterans Service Commission, and documents used to affect whether to grant or change financial assistance. Ohio Rev. Code § 5901.09.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

With one clear and one possible exception, the Ohio Supreme Court has refused to recognize judicially created exemptions based on common law notions of public policy, and has recognized only statutory exemptions or exemptions derived from either the federal constitutional right of privacy or the state constitutional doctrine of separation of powers. *State ex rel. James v. Ohio State Univ.*, 70 Ohio St. 3d 168, 637 N.E.2d 911 (1994); *State ex rel. Toledo Blade Co. v. Univ. of Toledo Foundation*, 65 Ohio St. 3d 258, 602 N.E.2d 1159 (1992); *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 707 N.E.2d 931 (1999) (constitutional right of privacy barred access to police personnel records); *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439, 619 N.E.2d 688 (1993) (judge's notes).

The clear exception is a “judicial mental process” privilege, which the Ohio Supreme Court applied to bar access to records of the adjudicatory deliberations of a local board of tax appeals. *TBC Westlake Inc. v. Hamilton County Bd. of Revisions*, 81 Ohio St. 3d 58, 689 N.E.2d 32 (1998). That privilege may have constitutional underpinnings because the court relied on its decision in *Kraft*, which stated that the constitutional doctrine of separation of powers barred access to a judge's notes taken during a hearing.

The possible exception is a “good sense” rule, suggested in dicta in several cases. *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 707 N.E.2d 931 (1999) (personal information regarding undercover officers should not be turned over to criminal defendants who could use it for nefarious ends), *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (personal information regarding children should not be revealed because it could be posted on the internet where predators could access it). However, this “rule” was very intertwined in the facts and law of those cases, that it may have no general applicability. *State ex rel. Cincinnati Enquirer v. Jones-Kelly*, 118 Ohio St.3d 81, 886 N.E.2d 206 (2008).

Constitutional Right of Privacy

The U.S. Court of Appeals for the Sixth Circuit has recognized a constitutional right of privacy within the Due Process Clause of the Fourteenth Amendment. The court found that the disclosure of police officers' personnel file to counsel for a criminal defendant

“implicate[d] a fundamental liberty interest, specifically their interest in preserving their lives and the lives of their family members, as well as preserving their personal security and bodily integrity.” *Kallstrom v. Columbus*, 136 F.3d 1055 (1998). Relying on *Kallstrom*, the Ohio Supreme Court held that the right of privacy prevents disclosure to a criminal defendant of police officers' files that contain the names of the officers' children, spouses, parents, home addresses, telephone numbers, beneficiaries, medical information, and the like. *State ex rel. Keller v. Cox*, 85 Ohio St. 3d 279, 707 N.E.2d 931 (1999). The Ohio Supreme Court also has interpreted the federal constitutional right of privacy to bar access by even “a benevolent organization posing no threat” of harm to the home addresses and telephone numbers of minors in the context of those who used recreational facilities, and public employees' Social Security numbers. *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (citing *Kallstrom v. Columbus*, 136 F.3d at 1064). *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St. 3d 605, 640 N.E.2d 164 (1994).

Waiver of exemptions

Exemptions are usually fully applicable absent evidence that the public office having custody of the records disclosed the records to the public. *State ex rel. Gannett Satellite Info. Network v. Petro*, 80 Ohio St. 3d 261, 685 N.E.2d 1223 (1997). *But see State ex rel. Master v. City of Cleveland*, 76 Ohio St. 3d 340, 667 N.E.2d 974 (1996) (press publicity revealing identity of “uncharged suspect” does not defeat exemption).

Audits of state offices and related papers are generally subject to disclosure. Where grand jury records are included in the audit, any exemption is waived. *State ex rel. Gannett Satellite Network v. Petro*, 80 Ohio St. 3d 261, 685 N.E.2d 1223 (1997).

Several parties may have a privilege of confidentiality in certain public records. In such a situation, the government's disclosure of such records does not constitute a waiver of others' privileges of confidentiality. “Hence, when someone who is not authorized to waive the privilege discloses privileged information, the information remains privileged.” *State ex rel. Wallace v. State Medical Board of Ohio*, 89 Ohio St. 3d 431, 732 N.E.2d 960 (2000).

Exemptions are not affirmative defenses that must be raised in an answer to avoid waiver. *State ex rel. Nix v. Cleveland*, 83 Ohio St. 3d 379, 700 N.E.2d 12 (1998).

D. Are segregable portions of records containing exempt material available?

The statute does not expressly address this issue, but the Ohio Supreme Court has ruled that information that falls within an exception may be redacted and the remainder must be disclosed. *State ex rel. Outlet Commc'ns Inc. v. Lancaster Police Dept.*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988). A public office is supposed to note specifically those documents that may contain privileged information. *State ex rel. Beacon Journal Publishing Company v. Bodiker*, 134 Ohio App. 3d 415, 731 N.E. 2d 245 (Franklin Cty. 1999).

Where the exempt information is so intertwined with nonexempt information that redaction is impracticable, redaction is not required and that portion is exempt from disclosure. *State ex rel. Beacon Journal Publishing Co. v. Kent State Univ.*, 68 Ohio St. 3d 40, 623 N.E.2d 51 (1993); *State ex rel. Thompson Newspapers Inc. v. Martin*, 47 Ohio St.3d 28, 546 N.E.2d 939 (1989); *State ex rel. Polovischak v. Mayfield*, 50 Ohio St. 3d 51, 552 N.E.2d 635 (1990).

In *State ex rel. Beacon Journal Publishing Co. v. Andrews*, 48 Ohio St. 2d 283, 358 N.E.2d 565 (1976), the Ohio Supreme Court ruled that the commingling of nonpublic information with public information in a computer database did not preclude release of the public information.

E. Homeland Security Measures.

Security and infrastructure records are not public records. Ohio Rev. Code § 149.433(B). An “infrastructure record” is defined as any record that discloses the configuration of a critical system; including

communication, computer, electrical, mechanical, ventilation, water, and plumbing systems; security codes; or the infrastructure or structural configuration of a public building. Ohio Rev. Code § 149.433(A)(2). However, simple floor plans showing spatial arrangements of a building are not considered “infrastructure records.” Ohio Rev. Code § 149.433(A)(2).

Records containing a trauma center’s description of its ability to respond to disasters, mass casualties, and bioterrorism are not public records. Ohio Rev. Code §§ 149.43(A)(1)(x), 3701.072.

III. STATE LAW ON ELECTRONIC RECORDS

The public records statute itself does not explicitly address computer-stored records. Another statute, Ohio Rev. Code § 9.01, authorizes public offices to store information electronically as well as by other means, such as microfilm. Section 9.01 requires all public offices using non-paper media for records storage to “keep and make readily available to the general public the machines and equipment necessary to reproduce the records and information in a readable form.” *State ex rel. Recodot Co. v. Buchanan*, 46 Ohio St. 3d 163, 546 N.E.2d 203 (1989) (applying § 9.01 to computer-stored data).

A. Can the requester choose a format for receiving records?

The requester can choose a format for receiving records so long as the computer is already programmed to produce the information in that format, but there is no duty to compile information in a way not already permitted by the existing computer program. *State ex rel. Scanlon v. Deters*, 45 Ohio St. 3d 376, 379, 544 N.E.2d 680 (1989), *overruled on other grounds by State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83.

The requester can choose the medium upon which public records will be copied. Thus, where public records are stored electronically, the requester has the right to choose a paper printout or a computer disk or computer tape. Ohio Rev. Code § 149.43(B)(6).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

The requester should be able to conduct that search himself under Ohio Rev. Code § 9.01. Although the issue has not been addressed directly, presumably a database search would be no more burdensome than a search for paper records, and there are no limitations on a paper records search.

C. Does the existence of information in electronic format affect its openness?

No. *State ex rel. Athens County Property Owners Ass’n, Inc. v. City of Athens*, 85 Ohio App. 3d 129, 619 N.E.2d 437 (Ohio Ct. App. 1992); *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 584 N.E.2d 665 (1992).

D. How is e-mail treated?

Neither the public records statute nor Ohio Rev. Code 9.01 address electronic mail. The test of whether the public may inspect or copy e-mail is identical to the test applied to any paper document: (1) is it a record under Ohio Rev. Code § 149.011(A) and (2) is it a public record (“kept by a public office”) under Ohio Rev. Code § 149.43(A). See also *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. Of Commrs.*, 120 Ohio St.3d 372, 899 N.E.2d 961 (2008) (particular deleted e-mails were public records). However, internal e-mail by county employees using county equipment during county time supposedly communicating racial epithets were not “records” because they did not document the activities of the county. *State ex rel. Wilson-Simmons v. Lake County Sheriff’s Department*, 82 Ohio St. 3d 37, 693 N.E.2d 789 (1998) (rejecting the assertion that e-mail can never be public records).

1. Does e-mail constitute a record?

E-mail messages constitute a public record as long as they are “(1) documents, devices, or items, (2) created or received by or coming un-

der the jurisdiction of the state agencies, (3) which serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 894 N.E.2d 686 (2008), quoting *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 833 N.E.2d 274 (2005); Ohio Rev. Code § 149.011(G).

2. Public matter on government e-mail or government hardware

As long as it meets the definition of public record then e-mails utilizing government accounts and hardware are public records. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 894 N.E.2d 686 (2008).

3. Private matter on government e-mail or government hardware

E-mail communication between county employees that apparently slurred another employee were not public records despite the fact that the e-mails were circulated using the county’s computer system and while the employees were on the job. *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff’s Dept.*, 82 Ohio St.3d 37, 693 N.E.2d 789 (1998).

4. Public matter on private e-mail

The Ohio Supreme Court has not determined whether an e-mail documenting public business that only appears on an administrator’s private account is a public record. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 894 N.E.2d 686 (2008).

5. Private matter on private e-mail

Private matters on private e-mail are not records. Ohio Rev. Code § 149.011(G).

E. How are text messages and instant messages treated?

The Ohio Supreme Court has not determined whether text messages and instant messages are public records, but nothing in the act would appear to categorically preclude them.

1. Do text messages and/or instant messages constitute a record?

There is no statutory or case law addressing this issue.

2. Public matter message on government hardware.

There is no statutory or case law addressing this issue.

3. Private matter message on government hardware.

There is no statutory or case law addressing this issue.

4. Public matter message on private hardware.

There is no statutory or case law addressing this issue.

5. Private matter message on private hardware.

There is no statutory or case law addressing this issue.

F. How are social media postings and messages treated?

There is no statutory or case law addressing this issue.

G. How are online discussion board posts treated?

There is no statutory or case law addressing this issue.

H. Computer software

Proprietary software is not a public record, even if needed to access public records. *State ex rel. Recodot Co. v. Buchanan*, 46 Ohio St. 3d 163, 546 N.E.2d 203 (1989).

1. Is software public?

There is no statutory or case law addressing this issue (beyond the above).

2. Is software and/or file metadata public?

There is no statutory or case law addressing this issue (beyond the above).

I. How are fees for electronic records assessed?

For computer-stored records, the cost charged should generally be the cost of copying the electronic records. *State ex rel. Margolius v. City of Cleveland*, 62 Ohio St. 3d 456, 584 N.E.2d 665 (1992) (holding that copying computer tapes creates an “increased financial burden” on the public office so the cost can be passed on to the requester). Generally speaking, though, the cost cannot exceed the amount charged for copying paper records. *State ex rel. Recodat v. Buchanan*, 46 Ohio St. 3d 163, 546 N.E.2d 203 (1989).

J. Money-making schemes.

1. Revenues.

There is no statutory or case law addressing this issue (beyond the above).

2. Geographic Information Systems.

There is no statutory or case law addressing this issue (beyond the above).

K. On-line dissemination.

Public records may be made available on-line. See *In re Estate of Engelhardt*, 127 Ohio Misc.2d 12, 804 N.E.2d 1052 (Prob. Ct. 2004) (noting an Ohio Attorney General Opinion allowing a recorder to post public records on the Internet based on the Ohio Supreme Court’s consistent holding that the fundamental policy of the Public Records Act is to promote open government).

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

Exempt as confidential law enforcement record, specific investigatory work product. Ohio Rev. Code § 149.43(A)(2)(c); *State ex rel. Dayton Newspapers Inc. v. Rauch*, 12 Ohio St. 3d 100, 465 N.E.2d 458 (1984).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

Motor vehicle accident reports are public records. *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St.3d 50, 689 N.E.2d 25 (1998).

1. Rules for active investigations.

Records related to alleged violation of Blue Sky laws were exempt from disclosure during an active investigation, even if the records were not solicited by investigators. *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Joyce*, 97 Ohio St.3d 192, 777 N.E.2d 253 (2002), Ohio Rev. Code § 1707.12.

2. Rules for closed investigations.

There is no statutory or case law addressing this issue.

C. Bank records.

Bank records are public records when possessed by a public office. *State ex rel. Plain Dealer Publishing Co. v. Lesak*, 9 Ohio St. 3d 1, 457 N.E.2d 821 (1984). However, the bank or public office may claim that bank records contain business or financial “trade secrets” that are exempt from mandatory disclosure. See *State ex rel. Allright Parking Co. v. City of Cleveland*, 63 Ohio St. 3d 772, 591 N.E.2d 708 (1992).

D. Budgets.

Budgets of public offices are public records. See *State ex rel. Keating v. Skelton*, 2009 WL 1167848 (Ohio Ct. App. 2009) (holding that the dog warden’s budget must be turned over where no argument was made for preventing the release).

E. Business records, financial data, trade secrets.

The Ohio Supreme Court has applied Ohio’s general law prohibiting disclosure of trade secrets to the financial records of a private business submitted to a public office under assurance that confidentiality would be maintained. *State ex rel. Allright Parking Co. v. City of Cleveland*, 63 Ohio St. 3d 772, 591 N.E.2d 708 (1992). The court has also held that governmental entities can create their own trade secrets that are excepted from disclosure. *State ex rel. Besser v. Ohio State University*, 87 Ohio St. 3d 535, 721 N.E.2d 1044 (2000) (state university hospitals financial data).

The costs to acquire investment property are not trade secrets, even if their disclosure adversely affects the government’s ability to recoup its investment. *State ex rel. Toledo Blade Co. v. Ohio Bureau of Workers’ Comp.*, 106 Ohio St. 3d 113 (2005).

F. Contracts, proposals and bids.

Competitive bids are open for public inspection and copying when unsealed in accordance with the notice given to the bidders. Ohio Rev. Code § 735.06; *State ex rel. Seballos v. School Employees Retirement Sys.*, No. 93AP-809, unreported (Franklin App. 1994).

G. Collective bargaining records.

Collective bargaining agreements are public record, even if not yet approved by the legislative authority of the political entity which is a party to the agreement. *Beacon Journal Publishing Co. v. City of Stow*, No. 12058, unreported (Summit App. 1985); *State ex rel. Calvary v. City of Upper Arlington*, 89 Ohio St. 3d 229, 729 N.E.2d 1182 (2000) (draft collective bargaining agreement).

H. Coroners reports.

Coroner reports of suicides are public records, but autopsy reports by a coroner in connection with a homicide are exempt as specific investigatory work product. *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St. 3d 580, 669 N.E.2d 835 (1996); *State ex rel. Dayton Newspapers Inc., v. Rauch*, 12 Ohio St. 3d 100, 465 N.E.2d 458 (1984).

I. Economic development records.

Economic development records are public records, but are subject to the trade secrets exception. *State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland*, 63 Ohio St.3d 773, 591 N.E.2d 708 (1992).

J. Election records.

Election records are public records when possessed by a public office. There is no statutory exemption.

1. Voter registration records.

Voter registration records are public records. See *State ex rel. Dispatch Printion Co. v. Johnson*, 106 Ohio St.3d 160, 833 N.E.2d 274 (2005) (noting that the fact that home addresses were available in certain public records, including voter registration records, does not extinguish state employees’ privacy interests in that information).

2. Voting results.

There is no statutory or case law addressing this issue (beyond the above).

K. Gun permits.

Records related to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun are not public records. Ohio Rev. Code § 2923.129(B)(1). However, journalists may inspect, but not copy, information from these records. Ohio Rev. Code § 2923.129(B)(2)(a).

L. Hospital reports.

There is no statutory exemption for hospital reports. But, any record, except births, deaths, and the fact of admission or discharge from

a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient that is generated and maintained in the process of medical treatment is exempt. Ohio Rev. Code § 149.43(A)(1)(a).

Also, records of hospital quality assurance committees and hospital boards or committees reviewing professional qualifications of present or prospective members of the hospital medical staff are exempt from mandatory disclosure. Ohio Rev. Code §§ 2305.251, 2305.25; *State ex rel. Fostoria Daily Review Co. v. Fostoria Hosp. Ass'n*, 44 Ohio St. 3d 111, 541 N.E.2d 587 (1989).

Records containing a trauma center's description of its ability to respond to disasters, mass casualties, and bioterrorism are not public records. Ohio Rev. Code §§ 149.43(A)(1)(x), 3701.072.

M. Personnel records.

Personnel records are generally public records. *State ex rel. Multimedia Inc. v. Snowden*, 72 Ohio St. 3d 141, 647 N.E.2d 1374 (1995); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985).

1. Salary.

Salary rate and gross salary of public employees are public records. *State ex rel. Petty v. Wurst*, 49 Ohio App.3d 59, 550 N.E.2d 214 (Ohio Ct. App. 1989).

2. Disciplinary records.

Disciplinary records are public records. *See State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 734 N.E.2d 797 (2000) (holding that police disciplinary reports, including use of force reports and citizen complaints, were public records).

3. Applications.

The Supreme Court of Ohio has held that job application materials are public records. *State ex rel. Beacon Journal Pub. Co. v. Akron Metro. Housing Auth.*, 42 Ohio St.3d 1, 535 N.E.2d 1366 (1989). *See also State ex. Rel. The Plain Dealer Publishing Co. v. Cleveland*, 75 Ohio St.3d 31, 661 N.E.2d 187 (1996) (holding that resumes of applicants for police chief were public records). *But see State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Educ.*, 99 Ohio St. 3d 6, 788 N.E.2d 629 (2003) (holding that resumes that were returned to candidates immediately after interviews were not "kept" by the office and thus not public records).

4. Personally identifying information.

The U.S. Court of Appeals for the Sixth Circuit and the Ohio Supreme Court have interpreted the federal constitutional right of privacy as barring release of certain kinds of information to at least specific classes of requesters. *Kallstrom v. City of Columbus*, 136 F.3d 1055 (1998) (names, addresses, drivers licenses of undercover police officers contained in police personnel files when requested by attorney for dangerous criminal defendants); *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 707 N.E.2d 931 (1999) (same); *State ex rel. McCleary v. Roberts*, 88 Ohio St.3d 365, 725 N.E.2d 1144 (2000) (home addresses and telephone numbers for minors who applied for identification badges to facilitate use of municipal recreation facilities to requester who posed no threat of harm); *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St.3d 605, 640 N.E.2d 164 (1994) (Social Security numbers to requester who posed no threat of harm).

5. Expense reports.

There is no statutory or case law addressing this issue.

6. Other.

There is no statutory or case law addressing this issue.

N. Police records.

Police records that are confidential law enforcement investigatory records are exempt from disclosure. Ohio Rev. Code §§ 149.43(A)(1), 149.43(A)(2).

1. Accident reports.

Public offices must provide access to accident reports. *See State ex rel. Wadd v. City of Cleveland*, 81 Ohio St.3d 50, 689 N.E.2d 25 (1998) (holding that the city and police department must provide motor vehicle accident reports).

2. Police blotter.

There is no statutory or case law addressing this issue.

3. 911 tapes.

The Ohio Supreme Court has held that cities and counties must provide copies of 911 calls in their custody. *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 662 N.E.2d 334 (1996).

4. Investigatory records.

Investigatory records may be exempt as a confidential law enforcement investigatory record. Ohio Rev. Code §§ 149.43(A)(1) - (2). The statute creates a two-prong test to determine whether a record is a confidential law enforcement investigatory record:

First, the record must "pertain[] to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature." Ohio Rev. Code § 149.43(A)(2). The court has held that initial offense incident reports are not confidential law enforcement investigatory records. *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St. 3d 54, 741 N.E.2d 511 (2001).

The exemption does not apply to investigations of prospective employees to determine whether to hire them, or to internal investigations to determine whether to discipline an employee, as neither qualifies as trying to enforce a law. *State ex rel. Multimedia v. Snowden*, 72 Ohio St. 3d 141, 647 N.E.2d 1374 (1995); *State ex rel. Police Officers For Equal Rights v. Lashutka*, 72 Ohio St. 3d 185, 648 N.E.2d 808 (1995); *State ex rel. Freedom Communications v. Elida Community Fire Company*, 82 Ohio St. 3d 578, 697 N.E.2d 210 (1998) (investigation of alleged sexual assault conducted internally as personnel matter is not law enforcement matter); *State ex rel. Lorain Journal Co. v. City of Lorain*, 87 Ohio App. 3d 112, 621 N.E.2d 894 (1993) (results of polygraph tests given to prospective employee).

Records of a law enforcement nature do not qualify as exempt when in the custody of a public office that does not have the authority to conduct law enforcement investigations. *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 684 N.E.2d (1997) (records of alleged child abuse do not pertain to a law enforcement matter when the records are in the custody of county ombudsman office that has no law enforcement authority).

Second, such records are exempt "only to the extent that the release of the record would create a high probability of disclosure of any of the following":

(1) *The identity of a suspect who has not been charged with the offense to which the record pertains.* Ohio Rev. Code § 149.43(A)(2)(a). The Ohio Supreme Court has interpreted "charged" to include arrested, thus ensuring that arrest records are available to the public even though the arrestee has not been arraigned or otherwise formally charged with unlawful conduct. *State ex rel. Outlet Communications Inc. v. Lancaster Police Dept.*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988); *State ex rel. Moreland v. City of Dayton*, 67 Ohio St. 3d 129, 616 N.E.2d 234 (1993).

That the police have labeled an investigation "inactive" so that the person in question is not currently a suspect is irrelevant; the exemption still applies. *State ex rel. Moreland v. City of Dayton*, 67 Ohio St. 3d 129, 616 N.E.2d 234 (1993); *see State ex rel. Ohio Patrolmen's Benevolent Association v. City of Mentor*, 89 Ohio St. 3d 440, 732 N.E.2d 969 (2000) ("[T]he absence of pending or highly probable criminal charges is not fatal to the applicability of the uncharged-suspect exemption"); *State ex rel. Musial v. North Olmsted*, 106 Ohio St. 3d 459, 835 N.E.2d 1243 (2005) (rejecting argument that exemption does not apply when a grand jury declines to indict and charges are unlikely).

A “suspect” is a person who is a subject of investigation, but who has not been arrested, has not received a citation, and has not been indicted or named as a defendant in a criminal complaint. *State ex rel. Polovischak v. Mayfield*, 50 Ohio St. 3d 51, 552 N.E.2d 635 (1990).

A suspect’s identity may be “confidential” and thus redacted even though press coverage has previously identified the individual as a suspect. *State ex rel. WLWT v. Leis*, 77 Ohio St.3d 357, 673 N.E.2d 1365 (1997); *State ex rel. Master v. City of Cleveland*, 76 Ohio St. 3d 340, 667 N.E.2d 974 (1996).

Because initial offense incident reports are public records, a narrative attached to an incident report must be disclosed without redaction even though it contains the name of an uncharged suspect. *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St.3d 54, 741 N.E.2d 511 (2001).

(2) *The identity of an information source or witness to whom confidentiality has been reasonably promised.* Ohio Rev. Code § 149.43(A)(2)(a).

The exemption applies even where police did not put a promise of confidentiality in writing. *State ex rel. Martin v. City of Cleveland*, 67 Ohio St. 3d 155, 616 N.E.2d 886 (1993).

Before a promise of confidentiality can be reasonable, it must be made on the basis of an individualized determination by the official that the promise is necessary to obtain the information. *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 552 N.E.2d 243 (1990).

The exemption does not apply to employees to whom officials promised confidentiality to obtain information for use in deciding whether to promote or give tenure to another employee. *State ex rel. James v. Ohio State Univ.*, 70 Ohio St. 3d 168, 637 N.E.2d 911 (1994). But see *State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 859 N.E.2d 948 (2006) (names, ranks, addresses, and telephone numbers of firefighters who acted as assessors of the oral portion of a promotional exam were exempt as residential and familial information under Ohio Rev. Code §§ 149.43 (A)(1)(p), (A)(7)).

The exemption does apply to employees promised confidentiality during the course of an internal investigation of sexual harassment by another employee. *State ex rel. Yant v. Conrad*, 74 Ohio St. 3d 681, 660 N.E.2d 1211 (1996).

(3) *Information provided by an information source or witness to whom confidentiality has been reasonably promised whereby the information, if disclosed would lead to the identity of the source or witness.* Ohio Rev. Code § 149.43(A)(2)(b).

(4) *Specific investigatory techniques or procedures.* Ohio Rev. Code § 149.43 (A)(2)(c).

Routine investigatory procedures do not qualify under this exemption. *State ex rel. Beacon Journal Pub. Co. v. Univ. of Akron*, 64 Ohio St. 2d 392, 415 N.E.2d 310 (1980).

(5) *Specific investigatory work product.* Ohio Rev. Code § 149.43(A)(2)(c).

Information assembled by law enforcement officials in the course of investigating an actual or probable crime. *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994).

A crime is “probable” at least where it is clear that a crime has been committed, even though police have not yet identified a suspect. *State ex rel. Leonard v. White*, 75 Ohio St. 3d 516, 664 N.E.2d 527 (1996). Information gathered during an investigation does not constitute work product when it is not clear that a crime has occurred, because the records are then compiled by law enforcement officials in part to determine if any crime has occurred. *State ex rel. Ohio Patrolmen’s Benevolent Association v. City of Mentor*, 89 Ohio St. 3d 440, 732 N.E.2d 969 (2000).

The exemption applies regardless of whether the police investigation is open or closed, or whether authorities have decided not to file

charges. *State ex rel. Thompson Newspapers Inc. v. Martin*, 47 Ohio St. 3d 28, 546 N.E.2d 939 (1989); *State ex rel. Polovischak v. Mayfield*, 50 Ohio St. 3d 51, 552 N.E.2d 635 (1990); *State ex rel. Ohio Patrolmen’s Benevolent Association v. City of Mentor*, 89 Ohio St. 3d 440, 732 N.E.2d 969 (2000) (finding that Ohio Rev. Code § 149.43 does not contain an “ongoing investigation” exemption for public records).

The exemption does not apply to “ongoing routine offense and incident reports, including, but not limited to, records relating to a charge of driving while under the influence and records containing the results of intoxilyzer tests.” *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994).

Records that are public records upon receipt or creation by a public office are not transformed into confidential investigatory work product solely by virtue of the fact that they contain evidence of a crime. *State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St.3d 374, 662 N.E.2d 334 (1996) (911 tape with confession of homicide is public record).

Records that are unquestionably nonexempt, e.g., newspaper articles, contracts and campaign contributions, do not become exempt simply because they are the subject of grand jury subpoenas. *State ex rel. Gannett Satellite Network Inc. v. Petro*, 80 Ohio St. 3d 261, 685 N.E.2d 1223 (1997).

(6) *Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness or a confidential information source.* Ohio Rev. Code § 149.43(A)(2)(d).

The proponent of this exemption must show that “disclosure of the records will really pose a risk.” *State ex rel. Lippitt v. Kovacic*, 70 Ohio App. 3d 525, 591 N.E.2d 422 (Cuya. App. 1991)

Although the Ohio Supreme Court has not found that this exemption covers the home addresses of police officers, the court has ruled that the federal constitutional right of privacy bars disclosure of that information because of the potential safety threat that such information poses if the addresses are available to criminals. The federal court of appeals for the Sixth Circuit has ruled likewise. *Compare State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 707 N.E.2d 931 (1999) with *Kallstrom v. City of Columbus*, 136 F.3d 1055 (1998).

a. Rules for active investigations.

There is no statutory or case law addressing this issue (this is detailed in the general discussion above).

b. Rules for closed investigations.

There is no statutory or case law addressing this issue (this is detailed in the general discussion above).

5. Arrest records.

Arrest records are public records and are not exempt as confidential law enforcement investigatory records as an arrested suspect is considered to be “charged.” *State ex rel. Outlet Communications Inc. v. Lancaster Police Dept.*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988); *State ex rel. Moreland v. City of Dayton*, 67 Ohio St. 3d 129, 616 N.E.2d 234 (1993).

6. Compilations of criminal histories.

There is no statutory or case law addressing this issue.

7. Victims.

A victim’s statement reporting an offense to a law enforcement officer is a public record which must be disclosed where the relator is not a defendant in the course of a criminal trial. *Pinkava v. Corrigan*, 64 Ohio App.3d 499, 581 N.W.2d 1181 (Ohio Ct. App. 1990). But see *State v. Daniel*, 97 Ohio App.3d 548, 647 N.W.2d 174 (Ohio Ct. App. 1994) (holding that victim’s statements that were compiled solely for initiating prosecution of defendant were exempt as trial preparation records).

If the safety of a victim would be endangered then the record is exempt as a confidential law enforcement investigatory record. Ohio Rev. Code §§ 149.43(A)(1)(h), 149.43(A)(2)(d).

8. Confessions.

Where a confession is part of a specific investigatory work product it is exempt from disclosure. Ohio Rev. Code §§ 149.43(A)(1)(h), 149.43(A)(2)(c).

9. Confidential informants.

If the safety of a confidential informant would be endangered then the record is exempt as a confidential law enforcement investigatory record. Ohio Rev. Code §§ 149.43(A)(1)(h), 149.43(A)(2)(d).

10. Police techniques.

Specific confidential investigatory techniques or procedures are explicitly exempted from disclosure. Ohio Rev. Code §§ 149.43(A)(1)(h), 149.43(A)(2)(c).

11. Mug shots.

There is no exemption for mug shots.

12. Sex offender records.

Written notice that is provided to neighbors regarding tier III offenders are public records. However, the electronic database that allows law enforcement representatives to electronically search the state registry of such offenders is not a public record. Ohio Rev. Code §§ 2950.11(E), 2950.13(A)(13).

13. Emergency medical services records.

Emergency medical services records may be exempt as medical records. Ohio Rev. Code § 149.43(A)(3); see § 149.43(A)(1)(a). However, to be exempt, the record must be maintained or generated in the process of medical treatment. Therefore, a patient care report generated by an emergency medical service squad did not qualify where the squad found the victim dead when it arrived, and thus provided no medical treatment. *State ex rel. Ware v. City of Cleveland*, 55 Ohio App. 3d 75, 562 N.E.2d 946 (1989).

O. Prison, parole and probation reports.

Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release sanctions are exempt from public disclosure. Ohio Rev. Code § 149.43(A)(1)(b).

P. Public utility records.

All proceedings of the public utilities commission and all documents and records in its possession are public records. Ohio Rev. Code § 4901.12.

Q. Real estate appraisals, negotiations.

1. Appraisals.

Records pertaining to appraisals used to determine property tax assessments are likely public records. See *State ex re. Botwell v. Montgomery County Sanitary Engineering Dept.*, 1999 WL 959179 (Ohio Ct. App. 1999). See also 1985 Ohio Atty.Gen.Ops. No. 85-087 (determining that the county was obligated to release information contained on appraisal cards).

2. Negotiations.

There is no statutory or case law addressing this issue.

3. Transactions.

Real estate transaction records, such as licensing agreements and contracts, are public records. *State ex rel. Railroad Ventures, Inc. v. Columbiana Cnty. Port Auth.*, 2004 WL 187415 (Ohio Ct. App. 2004).

4. Deeds, liens, foreclosures, title history.

Recorded instruments such as deeds and mortgages appear to be public records. See *Lorain County Title Co. v. Essex*, 53 Ohio App.2d 274, 373 N.E.2d 1261 (Ohio Ct. App. 1976) (holding that microfilm

copies of such records were public records because “the information contained on [the] film is from public records.”).

5. Zoning records.

Zoning records are public records. See *Barna v. Paris*, 2000 WL 1459867 (Ohio Ct. App. 2000) (noting that zoning records are public records that were equally available to all parties in the case).

R. School and university records.

1. Athletic records.

There is no statutory or case law addressing this issue.

2. Trustee records.

There is no statutory or case law addressing this issue.

3. Student records.

The Family Educational Rights and Privacy Act (FERPA) prohibits schools from releasing student records. *U.S. v. Miami University*, 91 F.Supp.2d 1132 (S.D. Ohio 2000). But see *State ex rel. The Miami Student v. Miami Univ.*, 79 Ohio St.3d 168, 680 N.W.2d 956 (1997) (holding that disciplinary records were not academic in nature and therefore not exempt under FERPA).

4. Other.

There is no statutory or case law addressing this issue.

S. Vital statistics.

1. Birth certificates.

Ordinarily birth certificates are public records. However, where a birth record is changed and a new birth record issued, the original birth record is no longer available for inspection except by court order. Following adoption, a new birth record is issued and the original birth record ceases to be a public record. Ohio Rev. Code §§ 3705.09, 3705.12.

2. Marriage & divorce.

While records pertaining to the issuance of marriage licenses must be made available to the public, the social security numbers of the parties must generally be deleted or removed before inspection. Ohio Rev. Code § 3101.051.

Divorce records are used by a court to render a decision and are thus a record subject to the Public Records act. For divorce records, the Public Records Act will trump the sealing of the records by a court. *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 816 N.E.2d 213 (2004).

3. Death certificates.

Death certificates are public records. See *State ex rel. Fenley v. Ohio Historical Soc.*, 64 Ohio St.3d 509, 597 N.E.2d 120 (1992) (noting, without comment, that both sides agreed that death certificates were public records).

4. Infectious disease and health epidemics.

There is no statutory or case law addressing this issue.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

Ohio law does not require that requesters direct their requests to any particular public agency, department, or employee. It is enough that the request go to the public office or official with custody of the records.

A request for court records is properly submitted to either the clerk or presiding judge since either one is a “person responsible” for the records. *State ex rel. Highlander v. Rudduck*, 103 Ohio St. 3d 370, 816 N.E.2d 213 (2004).

2. Does the law cover oral requests?

Yes. The statute contains no authority for public offices to demand written requests as a condition for public access. *See State ex rel. Zauderer v. Joseph*, 62 Ohio App. 3d 752, 577 N.E.2d 444 (1989).

a. Arrangements to inspect & copy.

Whether a requester must make arrangements in advance to inspect or copy records depends on the public office. Some public offices are accustomed to public access to records as a matter of daily routine, such as a county recorder's office. Many public offices are not set up for routine public access to records, and may need advance notice that the requester is coming. Other than to require public offices to allow "prompt" inspection, and to provide copies within a "reasonable period of time," the statute does not address whether a requester must provide advance notice of an inspection or copying.

b. If an oral request is denied:

(1). How does the requester memorialize the refusal?

A requester can memorialize a refusal of an oral request in any manner, including sending a letter to the public office confirming the oral request and the denial. The statute does not impose any limitations.

(2). Do subsequent steps need to be in writing?

The statute does not require anything to be in writing. As a practical matter, putting a request in writing, and putting follow-up requests in writing, helps ensure that the public office will not have a feigned or real misunderstanding of which records are being requested.

3. Contents of a written request.

a. Description of the records.

The statute does not require that requests be in writing, and does not authorize public offices to require that requests be in writing. However, the Ohio Supreme Court has required that requests identify the records "with reasonable clarity." *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St. 3d 33, 857 N.E.2d 1208 (2006). Furthermore, because putting requests in writing can assist the requester, the requester should describe the records requested with specificity. Public offices may be justified in denying requests that are so broad that it requires public officials to research to locate selected information contained within portions of a large volume of records. *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St. 3d 245, 643 N.E.2d 126 (1994); *State ex rel. Zauderer v. Joseph*, 62 Ohio App. 3d 752, 577 N.E.2d 444 (1989); *State ex rel. Fant v. Greater Cleveland Regional Transit Auth.*, No. 63737, unreported (Cuya. App. 1993) (no authority for requiring public body to do research for requester when requester could inspect the records himself). A public office has no duty to create a document by searching for and compiling information from its existing records.

The request should be specific and avoid "overly broad" requests or it may be narrowed by the court. *State ex rel. Glasgow v. Jones*, 119 Ohio St. 3d 391, 894 N.E.2d 686 (2008) (limiting a request for "all" a legislator's e-mail during her tenure to those e-mails that dealt with a specific bill). But see *State ex rel. Toledo Blade Co. v. Seneca County Bd. of Comm'rs*, 120 Ohio St. 3d 372, 899 N.E.2d 961 (2008) (allowing a request to inspect all e-mails to and from three county commissioners for an entire year).

The statute requires public offices to organize records so as to facilitate public access. Ohio Rev. Code § 149.43(B). *State ex rel. Dillery v. Icsman*, 92 Ohio St.3d 312, 750 N.E.2d 156 (2001) (request was too broad that sought "any and all records generated in the possession of your department containing any reference whatsoever to Kelly Dillery"); *State ex rel. Kerner v. State Teachers Retirement Board*, 82 Ohio St. 3d 273, 695 N.E.2d 256 (1998).

b. Need to address fee issues.

A written request need not address fee issues, unless the request is to the Bureau of Motor Vehicles for copies. To avoid the highest level of

fees authorized by law, a request to the bureau should state (honestly) that the requester does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes. Ohio Rev. Code § 149.43(F).

c. Plea for quick response.

A plea for a quick response, notifying the public office when the requester is coming, or setting a reasonable deadline for compliance is a good idea.

d. Can the request be for future records?

The statute does not address whether a request can seek access to records that will exist, but which do not exist yet. The Ohio Supreme Court has held that a relator may not compel an agency to comply with requests that have yet to be made. *State ex rel. Toledo Blade Co. v. Seneca County Bd. of Comm'rs*, 120 Ohio St. 3d 372, 899 N.E.2d 961 (2008). However, if the court determines that a continuing "pattern of nonresponsiveness" exists, a writ of mandamus may be appropriate. *State ex rel. Toledo Blade Co. v. Seneca County Bd. of Comm'rs*, 120 Ohio St. 3d 372, 382, 899 N.E.2d 961 (2008).

To the extent that the public officer perceives the request as asking it to create a nonexistent record, the request will be denied. *State ex rel. Scanlon v. Deters*, 45 Ohio St. 3d 376, 379, 544 N.E.2d 680 (1989).

e. Other.

The public office is not required to provide written reasons for denying a request. *State ex rel. Leonard v. White*, 75 Ohio St. 3d 516, 664 N.E.2d 527 (1996). But, a requester should ask the public office to state the reasons, citing legal authority, for denying part or all of a request.

Also, the request should refer to the Public Records Act by name and by citation ("R.C. 149.43").

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

The statute provides different generalized time frames, depending on whether the requester seeks inspection or copying. The statute requires public offices to "promptly" prepare public records for public inspection and that inspection be permitted "at all reasonable times during regular business hours." The statute requires public offices to make copies of public records available "within a reasonable period of time." Ohio Rev. Code § 149.43(B)(1).

For a public office operating 24 hours a day, "regular business hours" does not require the public records be made available at all times. The office may establish periods of time for public inspection and copying of records that approximate ordinary administrative business hours of ordinary public agencies. *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994).

The court found that a city's delays of up to 24 days to prepare and provide access to requested accident reports were not "prompt" and, thus, justified a writ of mandamus. The court granted the writ of mandamus to compel the city to prepare and provide access to motor vehicle accident reports within eight days after accidents occur, the time frame sought by the requester. *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St. 3d 50, 689 N.E.2d 25 (1998); *see also State ex rel. Consumer News Servs. Inc. v. Worthington City Bd. of Educ.*, 97 Ohio St. 3d 58, 776 N.E.2d 82 (2002) (finding that a six-day delay was not prompt, defining "prompt" as without delay and with reasonable speed), *State ex rel. Office of Montgomery County Public Defender v. Siroki*, 108 Ohio St. 3d 207, 842 N.E.2d 508 (2006) (holding that if an office could produce records in two days, then it should do so).

2. Informal telephone inquiry as to status.

The statute does not address making inquiries, or even requests, by telephone. In practice, telephone inquiries are a good idea. *See State ex rel. Consumer News Servs. Inc. v. Worthington City Bd. of Educ.*, 97 Ohio

St. 3d 58, 776 N.E.2d 82 (2002) (considering voice mail messages left by requester in evaluation of government's response). Even requests by telephone will work with some public offices.

3. Is delay recognized as a denial for appeal purposes?

If the delay is long enough, and the public office's excuse for the delay implausible enough, courts may issue a writ of mandamus compelling disclosure, and may award attorneys' fees. The statute does not actually require a public office to outright deny a request as a condition for suit by a requester. It authorizes suit by a person "aggrieved by the failure of a governmental unit to promptly prepare a public record and to make it available for inspection" or to make a copy available within a reasonable period of time. *See* Ohio Rev. Code § 149.43(C); *State ex rel. Collins v. Corbin*, 73 Ohio App. 3d 410, 597 N.E.2d 544 (1992).

4. Any other recourse to encourage a response.

Other practical recourse beyond complaining, but short of suit, is to seek help from the official's supervisor or to seek help from an elected official. Elected officials are often more responsive than appointed officials.

C. Administrative appeal.

Ohio does not have an administrative appeal procedure. Aggrieved requesters may go directly to court.

D. Court action.

1. Who may sue?

Any person "aggrieved" by the failure of a public office or person responsible for public records may sue.

2. Priority.

If the person bringing suit asks for expedited treatment, and the court believes it to be warranted by the circumstances, courts will expedite cases. Courts are not required to expedite suits seeking access to public records.

3. Pro se.

Pro se actions are allowed, and they have been successfully prosecuted. Wrangling with experienced public sector counsel is a big obstacle to *pro se* success, as is lack of knowledge about this kind of specialty litigation, which can only be accomplished by seeking the extraordinary writ of mandamus. No attorney fee award is available to *pro se* litigants. *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St. 3d 245, 643 N.E.2d 126 (1994)

4. Issues the court will address:

a. Denial.

Courts primarily will redress denial of requests.

b. Fees for records.

Courts will address the charging of fees unauthorized by statute. *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994).

c. Delays.

Courts will address excessive delays, but the delays should be substantial in comparison with the apparent logistical difficulty of responding to the request. *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994).

d. Patterns for future access (declaratory judgment).

Suits seeking access to public records may be commenced in the first instance in any appellate level court or in the trial level court. An appellate level court will write opinions. Those opinions have the effect of declaratory judgments making law that guides public offices

and requesters in future situations.

5. Pleading format.

The party bringing suit must seek a writ of mandamus. Doing so requires suing in the name of the state of Ohio, *i.e.*, "State of Ohio, ex rel. John Doe," or "State ex rel. John Doe."

The party bringing suit is called the "relator," and the parties being sued are called "respondents."

Also, in addition to pleading the basic circumstances demonstrating that the party suing is "aggrieved" by the public office's failure to comply with the public records statute, the party bringing suit should plead the following elements: (1) the party made a demand upon the public office for public records, which the public office has actually or effectively denied, (2) the party has a clear legal right to the relief sought from the public office and the public office has a clear legal duty to provide the relief, (3) Ohio Rev. Code § 149.43(C) authorizes the court to issue a writ of mandamus, and (4) there is no adequate alternative remedy in the ordinary course of the law. *But see State ex rel. Lucas County Board of Commissioners v. Ohio Environmental Protection Agency*, 88 Ohio St. 3d 166, 724 N.E.2d 411 (2000) ("Mandamus is the proper remedy to compel compliance with the Public Records Act, and persons requesting records under R.C. 149.43(C) need not establish the lack of an alternative, adequate legal remedy in order to be entitled to the writ"). The complaint should describe the records sought specifically.

6. Time limit for filing suit.

There is no time limit for filing suit. In some circumstances, excessive delay in filing may be subject to the equitable doctrine of laches, and the court will not grant the requested writ of mandamus.

7. What court.

A person aggrieved by the public office's failure to comply with the public records statute may initiate suit in either the common pleas court (trial level), court of appeals (intermediate level appellate court), or the Ohio Supreme Court (highest level appellate court). Ohio Rev. Code § 149.43(C).

8. Judicial remedies available.

The only judicial remedy available is a writ of mandamus. Ohio Rev. Code § 149.43(C).

9. Litigation expenses.

The court has the discretion to award attorneys' fees where the person bringing suit obtains a writ of mandamus. Ohio Rev. Code § 149.43(C). Establishing the legal test for guiding that discretion has been changing. The latest formulation is that a court will award attorneys' fees where the party bringing suit showed a public benefit and where the public office's reasons for failing to comply with the request for records are invalid. *State ex rel. Plain Dealer Publishing Co. v. City of Cleveland*, 75 Ohio St.3d 31, 661 N.E.2d 187 (1996); *State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St. 3d 374, 662 N.E.2d 334 (1996).

The court has the discretion to award attorneys' fees where the public office failed to comply with a sufficiently specific request for public records, then the requester sued, and then the public office complied with the request before the court ordered the public office to comply. *State ex rel. Pennington v. Gundler*, 75 Ohio St.3d 171, 661 N.E.2d 1409 (1996); *State ex rel. Toledo Blade Co. v. Bd. of Hancock County*, 82 Ohio St.3d 34, 693 N.E.2d 787 (1998).

a. Attorney fees.

There is no statutory or case law addressing this issue (detailed just above).

b. Court and litigation costs.

There is no statutory or case law addressing this issue (detailed just above).

10. Fines.

The public records statute authorizes a fine of one hundred dollars per business day up to a maximum of one thousand dollars. This is compensation for the injury, not a penalty. Ohio Rev. Code § 149.43(C)(1).

11. Other penalties.

The public records statute does not authorize courts to impose penalties.

12. Settlement, pros and cons.

The pros and cons of settlement depend on the circumstances of the case and the relative likelihood of success.

E. Appealing initial court decisions.

1. Appeal routes.

Common pleas court judgments may be appealed to the court of appeals for the judicial district in which the common pleas court sits.

Court of appeals judgments may be appealed to the Ohio Supreme Court.

There is no state appellate court level beyond the Ohio Supreme Court.

2. Time limits for filing appeals.

To appeal to the Court of Appeals, the time limit is thirty days from the date of entry of the judgment appealed from. Ohio R. App. P. 4(A). To appeal to the Supreme Court, the time limit is forty five days. Ohio Sup Ct Rule 2.2(A)(1). If the appeal is due to a split among the Ohio Courts of Appeal then the time limit is thirty days. Ohio Sup Ct Rule 2.2(A)(1), 4.1.

3. Contact of interested amici.

Amici briefs are probably most effective in the appellate level courts, not in the common pleas court. The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

No provision of the Public Records Act authorizes a government suit against a requester to attempt to bar disclosure. The Ohio Supreme Court has permitted a newspaper to seek a writ of mandamus to compel access despite the pendency in a lower court of a government suit for declaratory judgment aimed at barring that access. *State ex rel. Long v. Council of the Village of Cardington*, 92 Ohio St. 3d 54, 748 N.E.2d 58 (2001).

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

Any person may attend. Ohio Rev. Code § 121.22(C).

B. What governments are subject to the law?

1. State.

State and local governments. Ohio Rev. Code § 121.22(B)(1) (public bodies subject to the law include “[a]ny board, commission, committee, council, or similar decision-making body of a state agency . . . and any . . . board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision”).

However, where a local government has a home rule charter that does not provide for as much public access as the sunshine law, some lower appellate courts hold that the charter prevails over the sunshine law. *Hills & Dales Inc. v. City of Wooster*, 4 Ohio App. 3d 240, 448 N.E.2d 163 (Wayne 1982); *City Comm’n of Piqua v. Piqua Daily Call*, 64 Ohio App. 2d 222, 412 N.E.2d 1331 (Miami 1979).

The Ohio Supreme Court has not decided that issue, but has applied the sunshine law to local governments with home rule charters where there was no direct conflict between the charter and the sunshine law, such as where the charter provides for greater public access than the sunshine law. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996); *State ex rel. Inskeep v. Staten*, 74 Ohio St. 3d 676, 660 N.E.2d 1207 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St. 3d 164, 648 N.E.2d 493 (1995); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St. 3d 165, 527 N.E.2d 807 (1988).

2. County.

Counties are subject to the law. *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990) (board of county commissioners); Ohio Rev. Code § 121.22(B)(1).

However, where a local government has a home rule charter that does not provide for as much public access as the sunshine law, some lower appellate courts hold that the charter governs over the sunshine law. *Hills & Dales Inc. v. City of Wooster*, 4 Ohio App. 3d 240, 448 N.E.2d 163 (Wayne 1982); *City Comm’n of Piqua v. Piqua Daily Call*, 64 Ohio App. 2d 222, 412 N.E.2d 1331 (Miami 1979).

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3. Local or municipal.

Local and municipal governments are subject to the law. *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990) (township trustees); *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996) (city council where municipal charter adopted state law which did not conflict with charter); Ohio Rev. Code § 121.22(B)(1).

However, where a local government has a home rule charter that does not provide for as much public access as the sunshine law, some lower appellate courts hold that the charter governs over the sunshine law. *Hills & Dales Inc. v. City of Wooster*, 4 Ohio App. 3d 240, 448 N.E.2d 163 (Wayne 1982); *City Comm’n of Piqua v. Piqua Daily Call*,

64 Ohio App. 2d 222, 412 N.E.2d 1331 (Miami 1979).

The Ohio Supreme Court has not decided that issue, but has applied the sunshine law to local governments with home rule charters where there was no direct conflict between the charter and the sunshine law, such as where the charter provides for greater public access than the sunshine law. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996); *State ex rel. Inskip v. Staten*, 74 Ohio St. 3d 676, 660 N.E.2d 1207 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St. 3d 164, 648 N.E.2d 493 (1995); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St. 3d 165, 527 N.E.2d 807 (1988).

C. What bodies are covered by the law?

1. Executive branch agencies.

a. What officials are covered?

Only a “public body” need open meetings in accordance with the law. Public bodies of the executive branch of government are public bodies. Insofar as the law applies to the executive branch of government, a “public body” is:

- “Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority.” Ohio Rev. Code § 121.22(B)(1)(a).
- Any “board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision of local public institution.” Ohio Rev. Code § 121.22(B)(1)(a).
- “Any committee or subcommittee” of any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority. Ohio Rev. Code § 121.22(B)(1)(b).
- “Any committee or subcommittee” of any board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision of local public institution.” Ohio Rev. Code § 121.22(B)(1)(b).

A single public official does not qualify as a “public body.” *Beacon Journal Publishing Co. v. City of Akron*, 3 Ohio St. 2d 191, 209 N.E.2d 399 (1965); *Smith v. City of Cleveland*, 94 Ohio App. 3d 780, 641 N.E.2d 828 (1994).

b. Are certain executive functions covered?

No functions peculiar to the executive branch are excluded or included.

c. Are only certain agencies subject to the act?

Executive branch state agencies exempt from sunshine law requirements are:

- adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon, Ohio Rev. Code § 121.22(D)(3);
- the organized crime investigations commission, Ohio Rev. Code § 121.22(D)(4);
- the state medical board, board of nursing, board of pharmacy, and chiropractic board, when determining whether to suspend a certificate without a prior hearing, Ohio Rev. Code § 121.22(D)(6),(7),(8),(9);
- the executive committee of the emergency response commission when determining whether to issue an enforcement order or request enforcement litigation, Ohio Rev. Code § 121.22(D)(10);
- the following state agencies when meeting to consider granting financial assistance for businesses and when all members of the board vote unanimously to close the meeting during consideration of financial and business information confidentially received by the board from the applicant for assistance:

- state controlling board;
- state development financing advisory council;
- state industrial technology and enterprise advisory council;
- state tax credit authority;
- state minority development financing advisory board.

Ohio Rev. Code § 121.22(E).

2. Legislative bodies.

The state legislature is not subject to the statute. Ohio Rev. Code § 111.15(A)(2). The state legislature is, however, subject to a state constitutional provision requiring that the “proceedings of both Houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy.” Ohio Const. Art. II, § 13.

Also, a separate statute requires prearranged discussions of public business of state legislative committees to be open to the public. The statute does not open the meetings of legislative caucuses, which are all members of either house of the general assembly who are members of the same political party. Ohio Rev. Code § 101.15.

The statute applies to legislative bodies of local governments, specifically “any legislative authority . . . of any county, township, municipal corporation, school district, or other political subdivision or local public institution,” and any committee or subcommittee of any local legislative authority. Ohio Rev. Code § 121.22(B)(1)(a),(b).

3. Courts.

The statute does not apply to the state or local court system. Ohio Rev. Code § 111.15(A)(2). Nor does the statute apply to adjudications of disputes in quasi-judicial proceedings, such as a hearing before the Board of Tax Appeals. *TBC Westlake Inc. v. Hamilton County Board of Revisions*, 81 Ohio St. 3d 58, 689 N.E.2d 32 (1998) (board of tax appeals). However, by statute, some courts function as agencies that administer sanitary districts. When functioning in that capacity, courts are subject to the state open meeting law. Ohio Rev. Code § 121.22(B)(1)(c).

4. Nongovernmental bodies receiving public funds or benefits.

The statute does not expressly address nongovernmental bodies receiving public funds. Where a nongovernmental body acts pursuant to authority delegated by a governmental body and acts for a public purpose, the body may be subject to the sunshine statute, regardless of whether it actually received public funds. *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Ass’n of Greater Toledo*, 61 Ohio Misc. 2d 631, 582 N.E.2d 59 (1990); see *State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Ass’n*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988) (open records statute compels nonprofit corporation’s board of trustees to open minutes of the board’s meetings about managing a municipal hospital leased by the corporation from a city for no rent).

A private, non-profit hospital is not a public institution although it receives public tax funds, where the hospital had complete control of its operations. *State ex rel. Hardin Cty. Publ’g Co. v. Hardin Mem’l Hosp.*, No. 6-02-04, 2002 WL 31323400 (Hardin Oct. 18, 2002) (finding that meetings held by controlling body of hospital were not governed by Sunshine Law).

5. Nongovernmental groups whose members include governmental officials.

The statute does not expressly address nongovernmental bodies whose members are government officials. Where a nongovernmental body acts pursuant to authority delegated by a governmental body and acts for a public purpose, the body may be subject to the sunshine statute, especially where its governing body is comprised of some government officials.

A nonprofit corporation created by a political subdivision to acquire, construct, or rehabilitate housing is a public body for purposes of Ohio Rev. Code § 121.22. Its board of trustees must include government officials. Ohio Rev. Code § 176.011.

A nonprofit corporation under the direct control of a political subdivision and whose members and trustees are selected by the political subdivision and which controls a political subdivision's property for recreational events is subject to the open meetings statute. Ohio Rev. Code § 5709.081.

6. Multi-state or regional bodies.

A gathering of officials from several political subdivisions is subject to the sunshine law where the majority of the members of several public bodies are together. *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990). The statute does not expressly address multistate bodies, nor does case law.

Regional bodies within the state are subject to the statute. *Stegall v. Joint Two Dist. Memorial Hosp.*, 20 Ohio App. 3d 100, 484 N.E.2d 1381 (1985); Ohio Rev. Code § 715.70 (board of directors of joint economic development districts); Ohio Rev. Code § 1710.02 (special improvement districts).

7. Advisory boards and commissions, quasi-governmental entities.

The statute does not expressly address advisory boards, but does apply to "any" committee or subcommittee of a decision-making body of a political subdivision, and "any" committee or subcommittee of a decision-making body of a state agency. Ohio Rev. Code § 121.22(B)(1)(b).

The making of recommendations is a form of decision-making, and thus the delegation of investigatory duties to a committee, which makes recommendations, gives the committee sufficient decision-making authority to be a public body. *Maser v. City of Canton*, 62 Ohio App. 2d 174, 405 N.E.2d 731 (1978); *Thomas v. White*, 85 Ohio App. 3d 410, 620 N.E.2d 85 (1992); see also *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App. 3d 335, 762 N.E.2d 1057 (Hamilton 2001) (finding that an architectural review board that advised and made recommendations was a public body).

8. Other bodies to which governmental or public functions are delegated.

In general, where a nongovernmental body acts pursuant to authority delegated by a governmental body and acts for a public purpose, the body may be subject to the sunshine statute. *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Ass'n of Greater Toledo*, 61 Ohio Misc. 2d 631, 582 N.E.2d 59 (1990); see *State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Ass'n*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988) (open records statute compels nonprofit corporation's board of trustees to open minutes of the board's meetings about managing a municipal hospital leased by the corporation from a city for no rent).

Where a city council delegates authority to several of its members to carry out an investigation and make recommendations, the committee is subject to Ohio Rev. Code § 121.22. *Maser v. City of Canton*, 62 Ohio App. 2d 174, 405 N.E.2d 731 (1978).

9. Appointed as well as elected bodies.

The statute makes no distinction between appointed and elected bodies; it applies to both.

D. What constitutes a meeting subject to the law.

1. Number that must be present.

The statute defines "meeting" as "any prearranged discussion of the public business of the public body by a majority of its members." Ohio Rev. Code § 121.22(B)(2).

a. Must a minimum number be present to constitute a "meeting"?

A majority of the public body's members must be present in person for a "meeting" to exist. Ohio Rev. Code § 121.22(B)(2).

b. What effect does absence of a quorum have?

The absence of a quorum (majority of the members of a public body) ordinarily means that no right of public access attaches. However, where a public body prearranges back-to-back, repetitive sessions of less than a majority at each session, but with a majority present when all sessions are considered together, the repetitive subquorum sessions are treated as a "meeting" and must be open to the public. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996).

2. Nature of business subject to the law.

a. "Information gathering" and "fact-finding" sessions.

All prearranged discussions of public business of a public body by a majority of its members are subject to the statute's requirement of open meetings. Ohio Rev. Code § 121.22(B)(2), (C). The statute does not distinguish between information gathering/fact finding and any other kind of prearranged discussion.

Several courts of appeals have ruled that information gathering/fact finding does not qualify as "discussion," and therefore such prearranged sessions need not be open to the public. *E.g., Springfield Local School Dist. Bd. of Ed'n v. Ohio Ass'n of Public School Employees*, 106 Ohio App. 3d 855, 667 N.E.2d 458 (1995); *Holeski v. Lawrence*, 85 Ohio App. 3d 824, 621 N.E.2d 802 (1993); *Piekutowski v. S. Cent. Ohio Educ. Serv. Ctr. Governing Bd.*, 161 Ohio App. 3d 372, 830 N.E.2d 423 (Adams 2005) (commenting that deliberations involve a "decisional analysis," and ultimately concluding that a school board held unlawful deliberations).

The Ohio Supreme Court has not addressed the issue.

b. Deliberations toward decisions.

All prearranged discussions of public business of a public body by a majority of its members are subject to the statute's requirement of open meetings. Ohio Rev. Code § 121.22(B)(2), (C). This requirement includes "deliberations," and the statute's preamble states that the statute should be liberally construed "to require public officials . . . to conduct all deliberations upon official business only in open meetings." Ohio Rev. Code § 121.22(A).

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

The statute requires a public body's members to be physically present to vote to be considered present, and for the purpose of determining the presence of a quorum. Therefore, a prearranged conference call among a majority of a public body's members would not be effective for conducting voting or conducting official business. The apparent intent of the statute is to prohibit such prearranged conference calls from occurring outside public view or hearing. Ohio Rev. Code § 121.22(C).

Also, seriatim, repetitive telephone calls prearranged among a majority of a public body's members probably would not get around the openness mandate of the statute. See *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996) (prearranged seriatim, repetitive face-to-face meetings of less than a majority of a city council's members had to be open as a "meeting" where a majority of council attended when the sessions were considered together).

b. E-mail.

The statute requires a public body's members to be physically present to vote to be considered present, and for the purpose of determining the presence of a quorum. Therefore, prearranged e-mail discussions among a majority of a public body's members would not be effective for conducting voting or conducting official business. The apparent intent of the statute is to prohibit such prearranged discussions from occurring outside public view or hearing. Ohio Rev. Code § 121.22(C).

Also, seriatim, repetitive e-mails prearranged among a majority of a public body's members probably would not get around the openness mandate of the statute. See *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996) (prearranged seriatim, repetitive face-to-face meetings of less than a majority of a city council's members had to be open as a "meeting" where a majority of council attended when the sessions were considered together).

Electronic mail transmittals are likely to be subject to the public inspection and copying under the open records statute. Ohio Rev. Code § 149.43.

c. Text messages.

There is no statutory or case law addressing this issue.

d. Instant messaging.

There is no statutory or case law addressing this issue.

e. Social media and online discussion boards.

There is no statutory or case law addressing this issue.

E. Categories of meetings subject to the law.**1. Regular meetings.****a. Definition.**

The statute does not define the term "regular meetings." A common sense reading of the statute indicates that regular meetings are those that are scheduled in advance at regular intervals as set forth or authorized in statutes or other legal authorities that govern the particular public body that is holding the meeting. See 1988 Op. Att'y Gen. No. 88-029 (a regular meeting is one held at prescheduled intervals).

b. Notice.**(1). Time limit for giving notice.**

There is no time limit in the statute for giving notice of regular meetings. Usually, an ordinance, rule, regulation, or statute governing the public body will set forth the schedule for regular meetings, e.g., the first Monday of each month.

(2). To whom notice is given.

Every public body must establish, by rule, a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings. Ohio Rev. Code § 121.22(F).

(3). Where posted.

Every public body may establish by rule the manner of notice. Ohio Rev. Code § 121.11(F). Posting the notice on the door of the meeting place or publishing the notice in a local newspaper both satisfy the notice requirement. *Swickrath & Sons Inc. v. Village of Elida*, No. 1-03-46, 2003 Ohio App. LEXIS 5620 (Allen Nov. 24, 2003); see also *Doran v. Northmont Bd. of Educ.*, 147 Ohio App. 3d 268, 770 N.E.2d 92 (Montgomery 2002) ("The general notification required in R.C. 121.22(F) could be as simple as posting a notice on the door where the school board meets.")

(4). Public agenda items required.

A public body is not required to include in its notice the agenda items to be discussed at a regular meeting. However, the public body must comply with requests to give "reasonable advance notification" of all meetings "at which any specific type of public business is to be discussed," provided the requester paid a reasonable fee. The advance notification may be satisfied by mailing copies of the agenda to requesters. Ohio Rev. Code § 121.22(F).

(5). Other information required in notice.

Notice of regular meetings need only state the time and place of the meetings. Ohio Rev. Code § 121.22(F).

(6). Penalties and remedies for failure to give adequate notice.

Failure to provide notice of regular meetings as provided by law could invalidate official action taken at the meeting or as a result of the meeting. Ohio Rev. Code § 121.22(H).

Although subsection (H) of section 121.22 requires an invalidation of official action when the public body had not established a "rule" for giving notice, several appellate courts have refused to invalidate the act, finding the lack of a rule a mere technical and inconsequential error. E.g., *Doran v. Northmont Bd. of Educ.*, 147 Ohio App. 3d 268, 770 N.E.2d 92 (Montgomery 2002); *Barbeck v. Twinsburg Twp.*, 73 Ohio App. 3d 587, 597 N.E.2d 1204 (Summit 1992).

The remedies available to enforce the notice requirements are injunction, and probably an extraordinary writ of mandamus or mandatory injunction. Ohio Rev. Code § 121.22(I) (injunction); see *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676, 660 N.E.2d 1207 (1996) (mandamus to enforce open meeting requirement of city charter); *White v. Clinton Cty. Bd. of Comm'rs*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996) (mandamus to compel the keeping of minutes).

The statute also provides for a civil forfeiture of \$500 and a discretionary award of court costs and attorneys' fees. Ohio Rev. Code § 121.22(I)(2). The statute also provides that "[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 closed session was held in accordance with the statute's requirements. Ohio Rev. Code § 121.22(H).

c. Minutes.**(1). Information required.**

The statute contains no requirements for minutes, except that they need only reflect the general subject matter of discussions in executive sessions. Ohio Rev. Code § 121.22(C).

Minutes must be created for meetings at which a public body discussed public business even though no votes were taken. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996); *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

Limiting the contents of minutes of regular meetings to a recital of formal rollcall votes without at least summarizing matters discussed violates the statute. Minutes must contain "sufficient facts and information to permit the public to understand and appreciate the rationale behind the relevant public body's decision." *White v. Clinton Cty. Bd. of Comm'rs*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996) (mandamus); *State ex rel. Long v. Council of Cardington*, 92 Ohio St. 3d 54, 748 N.E.2d 58 (2001) (city council minutes were not sufficiently detailed and the audio tapes of the proceedings were incomplete and were never intended to serve as the minutes).

(2). Are minutes public record?

Minutes are public record. "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.” Ohio Rev. Code § 121.22(C); see Ohio Rev. Code § 149.43; *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

2. Special or emergency meetings.

a. Definition.

Special meetings are not defined in the statute, but a common sense reading of the statute indicates that special meetings are those authorized by law that are not scheduled at regular intervals and are called to discuss or vote upon a particular subject.

Emergency meetings are a kind of special meeting called to consider an emergency that requires “immediate official action.” Ohio Rev. Code § 121.22(F).

b. Notice requirements.

(1). Time limit for giving notice.

A public body shall not hold a special meeting unless it gives at least 24 hours’ notice in advance to the news media that have requested notification. Ohio Rev. Code § 121.22(F). However, a rule requiring only twenty-four hours’ advance notice of special meetings and only to the news media that have requested notification fails, as a matter of law, to establish a “reasonable method of notice” as required by Ohio Rev. Code § 121.22(F). Such notice is necessary, but not sufficient. *Kattenrich v. Federal Hocking Local Sch. Dist.*, 121 Ohio App.3d 579, 700 N.E.2d 626. (Athens App. 1997).

For emergency meetings, the member or members of the public body calling the meeting “shall notify the news media that have requested notification immediately.” Ohio Rev. Code § 121.22(F).

(2). To whom notice is given.

Notice of special and emergency meetings must be given to those news media that have requested notification. Ohio Rev. Code § 121.22(F).

(3). Where posted.

Every public body must establish by rule “a reasonable method” of providing notice of special and emergency meetings. Ohio Rev. Code § 121.22(F).

(4). Public agenda items required.

Notice of special meetings must include the “purpose” of the meeting. The public body must comply with requests to give “reasonable advance notification” of all meetings “at which any specific type of public business is to be discussed,” provided the requester paid a reasonable fee. The advance notification may be satisfied by mailing copies of the agenda to requesters. Ohio Rev. Code § 121.22(F).

(5). Other information required in notice.

The notice must include the time, purpose, and place of all special and emergency meetings. Ohio Rev. Code § 121.22(F).

(6). Penalties and remedies for failure to give adequate notice.

Failure to provide notice of special or emergency meetings as provided by law could invalidate official action taken at the meeting or as a result of the meeting. Ohio Rev. Code § 121.22(H).

The remedies available to enforce the notice requirements are injunction, and probably an extraordinary writ of mandamus or mandatory injunction. Ohio Rev. Code § 121.22(I) (injunction); see *White v. Clinton Cty. Bd. of Comm’rs*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996) (mandamus).

The statute also provides for a civil forfeiture of \$500 and a discretionary award of court costs and attorneys’ fees. Ohio Rev. Code

§ 121.22(I)(2). The statute also provides that “[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 closed session was held in accordance with the statute’s requirements. Ohio Rev. Code § 121.22(H).

c. Minutes.

(1). Information required.

The statute contains no requirements for minutes, except that they need only reflect the general subject matter of discussions in executive sessions. Ohio Rev. Code § 121.22(C).

Minutes must be created for meetings at which a public body discussed public business even though no votes were taken. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996); *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

Limiting the contents of minutes of regular meetings to a recital of formal rollcall votes without at least summarizing matters discussed violates the statute. Minutes must contain “sufficient facts and information to permit the public to understand and appreciate the rationale behind a public body’s decision. *White v. Clinton Cty. Bd. of Comm’rs*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996) (mandamus).

(2). Are minutes a public record?

Minutes are public record. “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.” Ohio Rev. Code § 121.22(C); see Ohio Rev. Code § 149.43; *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

3. Closed meetings or executive sessions.

a. Definition.

The statute does not define “executive session,” but the definition in Black’s Law Dictionary is “a session closed to the public.” Ordinarily, a public body does not waive its right to call an executive session if it invites certain persons other than its members to attend for purposes related to the subject matter of the session. See *Dayton Newspapers Inc. v. City of Dayton*, 28 Ohio App. 2d 95, 274 N.E.2d 766 (1971).

Where a city charter commands that all meetings shall be open, and does not provide for executive sessions, no executive sessions are allowed. *State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164, 648 N.E.2d 493 (1995).

b. Notice requirements.

(1). Time limit for giving notice.

Executive sessions can occur only during the course of open regular or special sessions. Ohio Rev. Code § 121.22(G). Accordingly, the same notice provisions that apply to regular and special meetings apply to executive sessions, although the notice need not state an intention to hold or call for an executive session.

To convene an executive session, the public body must first hold a roll call vote, and a majority of the body’s quorum must vote affirmatively for the executive session. Immediately upon such a vote, the body may convene the executive session. Ohio Rev. Code § 121.22(G).

Anyone who has paid a reasonable fee and requested advance notice of the body’s discussion of certain subject matter is entitled to advance notice of that discussion, with no distinction between open and closed discussion. See Ohio Rev. Code § 121.22(F).

(2). To whom notice is given.

Generally, a public body need provide notice of executive sessions only to those present at the regular or special meeting at which the executive session is being convened. Ohio Rev. Code § 121.22(G).

(3). Where posted.

Notice of executive sessions per se need not be posted; it is primarily given by oral motion and roll call vote. Ohio Rev. Code § 121.22(F), (G).

(4). Public agenda items required.

Anyone who has paid a reasonable fee and requested advance notice of the body's discussion of certain subject matter is entitled to advance notice of that discussion, with no distinction between open and closed discussion. See Ohio Rev. Code § 121.22(F).

(5). Other information required in notice.

Information required in notice of executive session is: a roll call vote, specifying the purpose or purposes of the executive session, such as to discuss negotiation strategy for a collective bargaining contract. Ohio Rev. Code § 121.22(G).

If a public body holds an executive session for personnel matters, the motion and vote to hold that executive session must state the specific kind of personnel matter to be discussed, e.g., discipline of a public employee. The notice need not name the person being considered. Ohio Rev. Code § 121.22(G)(1).

(6). Penalties and remedies for failure to give adequate notice.

Failure to provide notice of executive sessions as provided by law could invalidate official action taken as a result of the executive session. Ohio Rev. Code § 121.22(H).

The remedies available to enforce the notice requirements are injunction, and probably an extraordinary writ of mandamus or mandatory injunction. Ohio Rev. Code § 121.22(I) (injunction); see *White v. Clinton Cty. Bd. of Comm'rs*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996) (mandamus).

The statute also provides for a civil forfeiture of \$500 and a discretionary award of court costs and attorneys' fees. Ohio Rev. Code § 121.22(I)(2). The statute also provides that "[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 closed session was held in accordance with the statute's requirements. Ohio Rev. Code § 121.22(H).

c. Minutes.**(1). Information required.**

Only the general subject matter of discussion need be reflected in the minutes. Ohio Rev. Code § 121.22(C).

However, where the executive session was unlawful, any member of the public may sue to compel the creation of minutes containing more detail than would be required for lawful executive sessions. *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

A public body may hold an executive session only after a majority of a quorum of the public body determines, by roll call vote during an open session, to hold such a session. Ohio Rev. Code § 121.22(G).

(2). Are minutes a public record?

The minutes are public record. Ohio Rev. Code § 121.22(C).

d. Requirement to meet in public before closing meeting.

A public body may hold an executive session only after a majority of a quorum of the public body determines, by roll call vote during an open session, to hold such a session. Ohio Rev. Code § 121.22(G). An executive session must begin and adjourn in open session. *Specht v. Finnegan*, 149 Ohio App. 3d 201, 776 N.E.2d 564 (Lucas 2002).

e. Requirement to state statutory authority for closing meetings before closure.

Before convening executive session, the public body must specify the purpose or purposes of the executive session, such as to discuss negotiation strategy for a collective bargaining contract. Ohio Rev. Code § 121.22(G).

If a public body holds an executive session for personnel matters, the motion and vote to hold that executive session must state the specific kind of personnel matter to be discussed, e.g., discipline of a public employee. The notice need not name the person being considered. Ohio Rev. Code § 121.22(G)(1).

f. Tape recording requirements.

The statute contains no provisions authorizing or prohibiting the tape recording of executive sessions.

An Ohio Attorney General's Opinion states that audio or video recording of meetings is permissible. 1988 Op. Att'y Gen. No. 88-087.

F. Recording/broadcast of meetings.**1. Sound recordings allowed.**

The statute contains no provisions authorizing or prohibiting the tape recording of meetings.

An Ohio Attorney General's Opinion states that audio or video recording of meetings is permissible if it does not unduly interfere with the meeting. 1988 Op. Att'y Gen. No. 88-087.

Audio and video taping of meetings by news organizations is fairly common.

2. Photographic recordings allowed.

The statute does not address photography of meetings; the Ohio Attorney General has opined that videotaping is permissible; as a matter of custom, photography and video taping of meetings by news organizations is fairly common. 1988 Op. Att'y Gen. No. 88-087.

"Audio- or videotape recordings . . . are all legitimate means of satisfying the requirements of R.C. 121.22." *White v. Clinton Cty. Bd. of Comm'rs*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996).

G. Are there sanctions for noncompliance?

A public body will be required to pay a \$500 civil forfeiture for each violation of the Sunshine Law, court costs, and attorney fees. Ohio Rev. Code § 121.22(I)(2). The court, in its discretion, may reduce the amount of attorney fees. *Id.* A \$500 fee will be assessed for each instance of an unlawfully secret meeting. *Specht v. Finnegan*, 149 Ohio App. 3d 201, 776 N.E.2d 564 (Lucas 2002).

Any "resolution, rule, or formal action" adopted in contravention of the Sunshine Law or any "resolution, rule, or formal action" resulting from deliberations conducted in violation of the Sunshine Law is invalid. Ohio Rev. Code § 121.22(H).

A member of a public body who knowingly violates an injunction issued under the Sunshine Law can be removed from office. Ohio Rev. Code § 121.22(I)(4).

A court, in its discretion, may assess a plaintiff who brings a frivolous action under the Sunshine Law court costs and reasonable attorney fees. Ohio Rev. Code § 121.22(I)(2).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS**A. Exemptions in the open meetings statute.****1. Character of exemptions.****a. General or specific.**

Public bodies exempt in whole or in part from the statute are specifically enumerated in the statute or in other parts of the Revised Code of Ohio.

b. Mandatory or discretionary closure.

Executive sessions are discretionary, except for veterans service commissions, which are required to hold executive sessions when interviewing or considering applicants for financial assistance. Ohio Rev. Code § 121.22(J) (veterans service commission).

2. Description of each exemption.

Grand juries are exempt from all parts of the statute and at all times. Ohio Rev. Code § 121.22(D)(1).

Audit conferences conducted by the state auditor or an independent CPA with officials of the public office that is the subject of the audit are exempt from the statute. Ohio Rev. Code § 121.22(D)(2).

The adult parole authority is exempt from the statute when its hearings are conducted at a penal institution for the sole purpose of interviewing inmates to determine parole or pardon. Ohio Rev. Code § 121.22(D)(3).

The Ohio organized crime investigations commission is exempt from the statute. Ohio Rev. Code § 121.22(D)(4).

Meetings held by a child fatality review board. Ohio Rev. Code § 121.22(D)(5).

The state medical board, board of nursing, board of pharmacy, and chiropractic board are exempt from the statute when determining whether to suspend a certificate without a prior hearing. Ohio Rev. Code § 121.22(D)(6) - (9).

The executive committee of the emergency response commission is exempt from the statute when determining whether to issue an enforcement order or request enforcement litigation. Ohio Rev. Code § 121.22(D)(10).

The board of directors or any committee of the nonprofit corporation JobsOhio or any of its subsidiaries are exempt. Ohio Rev. Code §§ 121.22(D)(11), 187.01.

The following state agencies are exempt from the statute when meeting to consider granting financial assistance for businesses when all members of the board vote unanimously to close the meeting during consideration of financial and business information confidentially received by the board from the applicant for assistance:

- state controlling board;
- state development financing advisory council;
- state industrial technology and enterprise advisory council;
- state tax credit authority;
- state minority development financing advisory board.

Ohio Rev. Code § 121.22(E).

Municipalities which have adopted home rule charters may be exempt from the statute, at least where the charter conflicts directly with the statute. *Hills & Dales, Inc. v. City of Wooster*, 4 Ohio App. 3d 240, 448 N.E.2d 163 (1982); *City Comm'n of Piqua v. Piqua Daily Call*, 64 Ohio App. 2d 222, 412 N.E.2d 1331 (1979). But, many home rule cities have charter provisions or ordinances providing for open meetings or adopting the provisions of Ohio Rev. Code § 121.22. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996); *State ex rel. Inskip v. Staten*, 74 Ohio St. 3d 676, 660 N.E.2d 1207 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St. 3d 164, 648 N.E.2d 493 (1995); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St. 3d 165, 527 N.E.2d 807 (1988).

B. Any other statutory requirements for closed or open meetings.

• The provisions of Ohio Rev. Code Chapter 1347 (known as the Privacy Act) shall not be construed to authorize a public body to hold an executive session for the discussion of personal information other

than as authorized by Ohio Rev. Code § 121.22. Ohio Rev. Code § 1347.04.

• Meetings of the board of trustees of the Ohio police and firemen's pension fund may be closed to discuss medical records. Ohio Rev. Code § 742.07.

• Meetings of the state teachers retirement board, school employees retirement board, and state highway patrol retirement board may be conducted in executive session to discuss medical records. Ohio Rev. Code §§ 3307.09, 3309.09, 5505.04.

• Parole board hearings are not subject to the open meetings statute. Ohio Rev. Code § 5149.101(C).

• The state dental board's proceedings related to the investigation of a complaint or the determination of whether there are reasonable grounds to believe that a violation of law governing the practice of dentistry has occurred is confidential. Ohio Rev. Code § 4715.03.

• The Ohio cemetery dispute resolution committee may conduct confidential meetings to consider the merits of a complaint before it. Ohio Rev. Code § 4767.06.

• A hearing by the Ohio department of health on a nursing home administrator's attempt to transfer or discharge a resident is not subject to the open meetings statute. Ohio Rev. Code § 3721.162(B).

• All proceedings of the board of county commissioners shall be public. Ohio Rev. Code § 305.09.

• The meetings of a legislative authority of a municipality shall, at all times, be open to the public. Ohio Rev. Code § 731.46.

C. Court mandated opening, closing.

No reported Ohio decision required a public body to close a meeting that it was going to open.

Ohio courts have stated that the following should have been open to the public:

• back-to-back repetitive sessions of groups of a municipal council numbering fewer than a majority at each session, *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996);

• meetings of a full city council where a municipal charter required all meetings to be open, e.g., *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St. 3d 165, 527 N.E.2d 807 (1988);

• a "retreat" or "workshop" at which a majority of the members of a county board of commissioners and a township board of trustees discussed public business with a majority of the council of a municipality, *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990);

• a school board session to discuss anticipated budget cuts that would affect the number of people employed by the school district, *Gannett Satellite Info. Network v. Chillicothe City School Dist.*, 41 Ohio App. 3d 218, 534 N.E.2d 1239 (1988);

• a committee appointed by a municipal council to make recommendations, *Maser v. City of Canton*, 62 Ohio App. 2d 174, 405 N.E.2d 731 (1978).

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Quasi-judicial administrative adjudicative hearings are governed by Ohio Rev. Code chapter 119. Adjudicative agency hearings subject to chapter 119 are not meetings under the open meetings statute. *TBC Westlake Inc. v. Hamilton County Bd. of Revision*, 81 Ohio St.3d 58, 689 N.E.2d 32 (1998).

1. Deliberations closed, but not fact-finding.

There is no statutory or case law addressing this issue (not applicable).

2. Only certain adjudications closed, i.e. under certain statutes.

There is no statutory or case law addressing this issue (not applicable).

B. Budget sessions.

Open sessions. Ohio Rev. Code § 121.22(B)(2).

C. Business and industry relations.

Open sessions, except that the industrial technology and enterprise advisory board, the tax credit authority, the minority development financing commission, the development financing advisory board, and the controlling board may close discussions of financial and business data, and marketing plans, with a unanimous vote of all members. Ohio Rev. Code § 121.22(B)(2),(E).

D. Federal programs.

Open sessions. Ohio Rev. Code § 121.22(B)(2).

E. Financial data of public bodies.

Open sessions unless an audit conference. Ohio Rev. Code § 121.22(B)(2),(D)(2).

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Open sessions, except that county hospitals may hold closed sessions to consider trade secrets. Ohio Rev. Code § 121.22(G)(7). Also, veterans service commissions shall hold executive sessions when reviewing applications for financial assistance and interviewing applicants. Ohio Rev. Code § 121.22(J).

However, in light of the Ohio Supreme Court's ruling in *State ex rel. Allright Parking Co. v. City of Cleveland*, 63 Ohio St. 3d 772, 591 N.E.2d 708 (1992), that public offices cannot be compelled to release otherwise public records containing the trade secrets of private businesses, the same rationale may apply to meetings of public bodies.

G. Gifts, trusts and honorary degrees.

Open sessions. Ohio Rev. Code § 121.22(B)(2).

H. Grand jury testimony by public employees.

Grand juries are exempt from the open meetings statute. Ohio Rev. Code § 121.22(D)(1); Ohio R. Crim. P. 6(E).

I. Licensing examinations.

There is no authority for closing licensing examinations as such, where they otherwise qualify as prearranged discussions of public business by a majority of the members of a public body. In limited circumstances, the state medical board, state nursing board, state pharmacy board, state chiropractic board, and state dental board may close sessions related to determining whether to suspend licenses without hearing. Ohio Rev. Code § 121.22(D); Ohio Rev. Code § 4715.03.

J. Litigation; pending litigation or other attorney-client privileges.

A public body's conferences with its attorney are open except that a public body may convene an executive session to confer with its attorney concerning disputes involving the public body that are the subject of pending or imminent court action. Ohio Rev. Code § 121.22(G)(3); see *Cincinnati Enquirer v. Hamilton Cty. Comm'rs*, No. C-010605, 2002 WL 727023 (Hamilton Apr. 26, 2002) (finding it was proper for county to conduct executive session to discuss the hiring of legal counsel for imminent litigation).

K. Negotiations and collective bargaining of public employees.

A public body may convene an executive session to prepare for, conduct, or review negotiations or bargaining sessions with public em-

ployees concerning their compensation or other terms and conditions of their employment. Ohio Rev. Code § 121.22(G)(4).

1. Any sessions regarding collective bargaining.

There is no statutory or case law addressing this issue (beyond the above).

2. Only those between the public employees and the public body.

There is no statutory or case law addressing this issue (beyond the above).

L. Parole board meetings, or meetings involving parole board decisions.

Parole board meetings are exempt from the open meetings statute. Ohio Rev. Code § 5149.101. There is no authority for exempting meetings about parole board decisions held by other bodies.

M. Patients; discussions on individual patients.

The statute contains no authority for executive sessions to discuss patients.

N. Personnel matters.

The statute permits executive sessions "to consider" the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official. Ohio Rev. Code § 121.22(G)(1); *Doran v. Northmont Bd. of Educ.*, 147 Ohio App. 3d 268, 770 N.E.2d 92 (Montgomery 2002) (school board complied with Sunshine Law when it held executive sessions to discuss the hiring of a superintendent).

The statute also permits executive sessions for the investigation of charges or complaints against a public employee or official, although the public body must comply with the employee's request for an open hearing where the employee otherwise has a right to a hearing. Ohio Rev. Code § 121.22(G)(1); *Matheny v. Frontier Local School Bd.*, 62 Ohio St. 2d 362, 405 N.E.2d 1041 (1980).

The statute prohibits public bodies from holding executive sessions for the discipline or removal from office of an elected official for conduct related to the official's performance of that official's duties. Ohio Rev. Code § 121.22(G)(1).

1. Interviews for public employment.

The statute does not explicitly address interviews, but since it does permit executive sessions "to consider" the "appointment" or "employment" of a public employee or official, public bodies can make a strong argument that their interviews of candidates for public employment can be conducted in closed session. Ohio Rev. Code § 121.22(G)(1). Conversely, a purpose of the executive sessions is to discuss the relative merits of candidates candidly without the inhibiting presence of that or other candidates. Closing the interview process does not seem to foster that purpose.

2. Disciplinary matters, performance or ethics of public employees.

The statute permits executive sessions to discipline public employees or officials who are not elected, but bars executive sessions for the discipline or removal from office of elected officials. Ohio Rev. Code § 121.22(G)(1).

The statute does not explicitly address executive sessions to consider the "performance" or "ethics" of public employees. The statute does permit executive sessions to "consider" the "promotion, demotion, or compensation," or the "employment, dismissal," or "discipline" of public employees. Ohio Rev. Code § 121.22(G)(1). To the extent that considering promotion, demotion, employment, compensation, dismissal, or discipline includes evaluating an employee's ethics or performance, the statute permits executive sessions. Whether the

authority for executive sessions extends to routine consideration of employee performance reviews is less clear, although it may fall within the scope of considering an employee's "employment."

3. Dismissal; considering dismissal of public employees.

The statute permits executive sessions to consider the dismissal of public employees or officials. However, the statute bars executive sessions for the discipline or removal from office of elected officials for conduct related to that official's performance of official duties. Ohio Rev. Code § 121.22(G)(1).

O. Real estate negotiations.

All discussion about real estate must be in open session, except:

- The purchase of property for public purposes 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. Ohio Rev. Code § 121.22(G)(2).
- 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. Ohio Rev. Code § 121.22(G)(2).

P. Security, national and/or state, of buildings, personnel or other.

All discussions of security matters must be held in open session, except details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of matters discussed could reasonably be expected to jeopardize the security of the public body or public office. Ohio Rev. Code § 121.22(G)(6).

Q. Students; discussions on individual students.

All discussions about students must be held in open session, except discussion of a charge or complaint against a student in a public educational institution. Ohio Rev. Code §§ 121.22(G)(1) and (B)(3)(a).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

The statute does not provide for expedited procedure. However, the remedies of injunction and mandamus often receive expedited treatment by the courts where it is apparent that fast action is needed to provide relief. *See* Ohio Rev. Code § 2501.09.

2. When barred from attending.

When a public body threatens to bar public attendance from a future meeting, the person seeking to attend may commence an injunction action in common pleas court. Ohio Rev. Code § 121.22(I)(1).

3. To set aside decision.

When a public body has already decided to close a meeting which has yet to occur, the person seeking to attend may commence an injunction action in common pleas court. Ohio Rev. Code § 121.22(I)(1).

In that circumstance, the person seeking to attend may be allowed to commence a mandamus action in an appellate level court to require the public body to vacate its decision. The statute does not address the remedy of mandamus, but the Ohio Supreme Court has permitted that remedy in the context of compelling public bodies to produce or include certain kinds of information in their minutes. *White v. Clinton Cty. Bd. of Comm'rs*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996); *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

4. For ruling on future meetings.

When a public body has already decided to close a future meeting, or threatens to close a future meeting, the person seeking to attend may commence an injunction action in common pleas court. Generally, an injunction action in common pleas court will be treated expeditiously. Ohio Rev. Code § 121.22(I)(1).

If mandamus is appropriate, it is likely to be appropriate only to order the body to vacate a decision already made to close the meeting.

5. Other.

The statute requires that an injunction action authorized by the statute must be brought within two years after the date of the alleged violation or threatened violation. Ohio Rev. Code § 121.22(I)(1).

Mandamus is an appropriate remedy to compel the creation of minutes of meetings, whether open or closed, and if closed, regardless of whether the meeting was closed lawfully. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996); *White v. Clinton Cty. Bd. of Comm'rs*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996); *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

Where a public body unlawfully closed a meeting before the person seeking to attend could bring suit, a procedurally sound way to challenge the closure after the meeting is to sue the public body to compel the creation of minutes of the meeting. Otherwise, the person seeking attendance could seek a declaratory judgment, injunction, or mandamus, arguing that the matter is capable of repetition, yet evading review and is not moot. *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St. 3d 165, 527 N.E.2d 807 (1988).

Another remedy for challenging the closure of a meeting after it is over is to sue to invalidate whatever action the public body took as a result of the closed meeting (or during it). Ohio Rev. Code § 121.22(H). The virtue of that remedy, like the virtue of seeking the creation of minutes after the conclusion of closed meetings, is that the court necessarily will rule on the lawfulness of closing the meeting and thus create a principle of law guiding future meetings. However, the remedy of seeking invalidation is not recommended because courts try hard to avoid invalidating action already taken, and construe the duty to open meetings narrowly.

B. How to start.

1. Where to ask for ruling.

a. Administrative forum.

(1). Agency procedure for challenge.

There is no requirement that a person seek any kind of decision from any administrative agency about the propriety or lawfulness of closing a meeting.

(2). Commission or independent agency.

There is no administrative agency or commission with the duty to arbitrate disputes over closing meetings.

b. State attorney general.

The state attorney general's office has no authority to decide disputes between a person seeking access to a meeting and a public body. However, as counsel for state agencies, the Attorney General will advise those agencies about the open meetings statute. As a courtesy, the attorney general's office often has answered questions from persons seeking access.

c. Court.

The enforcement of the duties imposed upon public bodies by the statute is through judicial remedies. Those remedies are:

- Injunction. Ohio Rev. Code § 121.22(I)(1).

- *Mandamus. State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676, 660 N.E.2d 1207 (1996). *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

- Invalidation of action taken in or resulting from a session closed in violation of the statute. Ohio Rev. Code § 121.22(H).

- A member of a public body who knowingly violates an injunction to obey the statute may be removed from office by an action brought by a prosecuting authority or the attorney general. Ohio Rev. Code § 121.22(I)(4).

2. Applicable time limits.

The statute requires that an injunction action authorized by the statute must be brought within two years after the date of the alleged violation or threatened violation. Ohio Rev. Code § 121.22(I)(1).

The statute does not address mandamus actions or any time limit for bringing them.

Otherwise, the statute imposes no time limits.

3. Contents of request for ruling.

The person suing for injunctive relief must refer to the statute, specifically § 121.22(I), and should state that the statute provides that irreparable harm is “conclusively and irrebuttably presumed,” as is prejudice to the person seeking injunctive relief.

Otherwise, the statute does not address how to ask a public body to open a meeting, create minutes, or otherwise comply with the duties imposed by the statute. A request for compliance can be in writing or orally.

4. How long should you wait for a response?

The statute does not prescribe any waiting period for a response to a request to comply with the statute. As a practical matter, the person seeking access should wait long enough before suing that a neutral judge is likely to believe was fair and reasonable under the circumstances.

5. Are subsequent or concurrent measures (formal or informal) available?

The best subsequent measure available is to sue in mandamus for the creation of minutes of meetings that were unlawfully closed. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996); *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).

C. Court review of administrative decision.

1. Who may sue?

“Any person” may sue to enforce the duties imposed by the statute, and the elements of irreparable harm or prejudice to that person are conclusively and irrebuttably presumed. Ohio Rev. Code §§ 121.22(I)(1),(3).

2. Will the court give priority to the pleading?

The statute does not provide for expedited procedure, however, the remedies of injunction and mandamus often receive expedited treatment by the courts where it is apparent that fast action is needed to provide relief. *See* Ohio Rev. Code § 2501.09.

3. Pro se possibility, advisability.

The statute does not bar *pro se* actions, but litigation in this area is highly specialized with the public sector having experienced counsel and generally an advantage because the public body knows more about what it did or what it is going to do than does the person seeking to enforce the statute.

Also, *pro se* litigants are unlikely to be awarded attorneys’ fees. *See Fant v. Bd. of Trustees, Regional Transit Auth.*, 50 Ohio St.3d 72, 552

N.E.2d 639, *cert. denied*, 498 U.S. 967 (1990).

4. What issues will the court address?

a. Open the meeting.

The court will order the meeting at issue to be open. Ohio Rev. Code § 121.22(I)(1).

b. Invalidate the decision.

The court has the authority to invalidate a public body’s decision reached in a closed session, or reached as a result of deliberation during an unlawfully closed session. Ohio Rev. Code § 121.22(H).

c. Order future meetings open.

The court has the authority to order the opening of future meetings. Ohio Rev. Code § 121.22(I)(1); *see State ex rel. Inskeep v. Staten*, 74 Ohio St. 3d 676, 660 N.E.2d 1207 (1996).

5. Pleading format.

There is no special pleading format for enforcing the duties of the statute. The appendix includes a sample format.

6. Time limit for filing suit.

The statute requires that an injunction action authorized by the statute must be brought within two years after the date of the alleged violation or threatened violation. Ohio Rev. Code § 121.22(I)(1).

The statute does not address mandamus actions or any time limit for bringing them.

7. What court.

Injunction actions must be brought in common pleas court, and should be brought in the county where the public body is located.

For mandamus relief, where that remedy is appropriate, sue in common pleas court, or a court of appeals, or the Ohio Supreme Court. Art. IV, § 2, Ohio Constitution.

8. Judicial remedies available.

The available judicial remedies are:

- Injunction. Ohio Rev. Code § 121.22(I)(1).
- Award enjoined public body to pay civil forfeiture of \$500 to the person who successfully obtained injunction. Ohio Rev. Code § 121.22(I)(2).
- *Mandamus. State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676, 660 N.E.2d 1207 (1996), *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990).
- Invalidation of action taken in or resulting from a session closed in violation of the statute. Ohio Rev. Code § 121.22(H).
- A member of a public body who knowingly violates an injunction to obey the statute may be removed from office by an action brought by a prosecuting authority or the attorney general. Ohio Rev. Code § 121.22(I)(4).

9. Availability of court costs and attorneys’ fees.

A court granting an injunction under the statute “shall” award to the party that sought the injunction “all court costs” and “reasonable attorney’s fees.” Ohio Rev. Code § 121.22(I)(2); *see Mansfield City Council v. Richland Cty. Council AFL-CIO*, No. 03 CA 55, 2003 WL 23652878 (Richland Dec. 24, 2003) (awarding \$7,500 in attorney fees while stating that \$150 per hour is a reasonable rate).

The court has the discretion to reduce an award of attorneys’ fees, or to award no attorneys’ fees, where the court determines both of the following:

- That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation, a well-

informed public body reasonably would believe that the public body was not violating the open meetings statute; and

- That a well-informed public body reasonably would believe that its conduct would serve the public policy that underlies the authority asserted by the public body for not acceding to the demands of the person who successfully sought the injunction.

Ohio Rev. Code §§ 121.22(I)(2)(i), (ii).

The court may award attorneys’ fees to a prevailing public body only where the court finds that the suit was frivolous. Ohio Rev. Code § 121.22(I)(2)(b).

10. Fines.

Where the court issues an injunction under the statute, the court “shall” order the enjoined public body to pay \$500 to the person who successfully sought the injunction. Ohio Rev. Code § 121.22(I)(2); *Specht v. Finnegan*, 149 Ohio App. 3d 201, 776 N.E.2d 564 (Lucas 2002) (assessing a \$500 fee for each unlawful meeting).

11. Other penalties.

Invalidation of action taken in or resulting from a session closed in violation of the statute. Ohio Rev. Code § 121.22(H). *But see Doran v. Northmont Bd. of Educ.*, 147 Ohio App. 3d 268, 770 N.E.2d 92 (Montgomery 2002) (refusing to invalidate action, viewing a board’s failure to establish a notice rule as a mere technical violation).

A member of a public body who knowingly violates an injunction to obey the statute may be removed from office by an action brought by a prosecuting authority or the attorney general. Ohio Rev. Code § 121.22(I)(4).

D. Appealing initial court decisions.

1. Appeal routes.

Final judgments of a common pleas court are appealable to the court of appeals for the judicial district in which the common pleas court sits. Ohio R. App. P. 4. Appeals of mandamus actions originating in the court of appeals may be appealed as of right to the Ohio Supreme Court. Art. IV, § 2(B)(2)(a)(i), Ohio Constitution.

2. Time limits for filing appeals.

Thirty days from the date of the common pleas court judgment appealed from. Ohio R. App. P. 4.

Forty-five days from the date of the court of appeals judgment appealed from. Ohio Supreme Court Rules of Practice, Rule II, § 2(A)(1).

3. Contact of interested amici.

Amici briefs are not favored in common pleas court. *Amici* briefs are often filed in the court of appeals and in the Ohio Supreme Court. Usually, *amici* briefs are due on the same day that the brief for the party being supported is due.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

V. ASSERTING A RIGHT TO COMMENT.

Nothing in the open meetings statute obligates public bodies to permit citizens to speak or to present petitions.

Appendix

Sample pleading format:

IN THE COURT OF COMMON PLEAS
 CUYAHOGA COUNTY, OHIO

DAVID MARBURGER,)
)
 CASE NO.)
 Plaintiff,) JUDGE
)
 vs.)
)
 CITY OF CLEVELAND,) COMPLAINT
)
 Defendant.)

1. Plaintiff is a freelance journalist who writes and causes to be published news and information of public interest to the general public of northeast Ohio.

2. Defendant is a municipality of Ohio.

3. On January 3, 2001, plaintiff transmitted a letter to the Director of the Planning Commission of the City of Cleveland, an agent and official of the defendant, asking to inspect certain public records of the City. A copy of that request is attached as Exhibit 1.

4. On January 5, 2001, the Director of the Planning Commission notified plaintiff that the Director would not comply with the request.

5. Pursuant to R.C. 149.43 [Ohio’s Public Records Act], plaintiff has a clear legal right to inspect the requested records, and defendant has a clear legal duty to make the requested records available for inspection by plaintiff and any other interested citizen. Defendant’s refusal to allow the requested inspection violated plaintiff’s clear legal right and defendant’s clear legal duty.

6. Defendant has no valid justification or excuse for refusing the requested inspection.

7. Plaintiff is entitled to a writ of mandamus compelling defendant to permit the requested inspection; plaintiff has no adequate alternative remedy in the ordinary course of the law.

Respectfully submitted,
 David L. Marburger
 1900 E. 9th St.
 Cleveland, Ohio 44114
 (216) 621-0200

Statute

Open Records

149.43 Availability of public records; mandamus action; bulk commercial special extraction requests

(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 this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under 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, EMT, or investigator of the bureau of criminal identification and investigation 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, and child fatality review data submitted by the child fatality review board to the department of health or a national child death review database, other than the report prepared

pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of 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;

(z) Records listed in section 5101.29 of the Revised Code.

(aa) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section.

(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, EMT, or investigator of the bureau of criminal identification and investigation 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, EMT, or investigator of the bureau of criminal identification and investigation:

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

(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, EMT, or investigator of the bureau of criminal identification and investigation by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation'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, EMT's, or investigator of the bureau of criminal identification and investigation'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, EMT's, or investigator of the bureau of criminal identification and investigation'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, EMT, or investigator of the bureau of criminal identification and investigation;

(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.

As used in divisions (A)(7) and (B)(9) of this section, "investigator of the bureau of criminal identification and investigation" has the meaning defined in

section 2903.11 of the Revised Code.

(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, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not 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 conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9) 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, EMT, or investigator of the bureau of criminal identification and investigation 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, EMT, or investigator of the bureau of criminal identification and investigation 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, EMT's, or investigator of the bureau of criminal identification and investigation'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, EMT's, or investigator of the bureau of criminal identification and investigation'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.

149.431 Organizations with service contracts to keep complete financial records; disclosure; exceptions; executive compensation

(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.

149.433 Definitions

(A) As used in this section:

(1) “Act of terrorism” has the same meaning as in section 2909.21 of the Revised Code.

(2) “Infrastructure record” means any record that discloses the configuration of a public office’s or chartered nonpublic school’s critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office or chartered nonpublic school is located. “Infrastructure record” does not mean a simple floor plan that discloses only the spatial relationship of components of a public office or chartered nonpublic school or the building in which a public office or chartered nonpublic school is located.

(3) “Security record” means any of the following:

(a) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;

(b) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:

(i) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;

(ii) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;

(iii) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

(c) A school safety plan adopted pursuant to section 3313.536 of the Revised Code.

(B) A record kept by a public office that is a security record or an infrastructure record is not a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section.

(C) Notwithstanding any other section of the Revised Code, disclosure by a public office, public employee, chartered nonpublic school, or chartered nonpublic school employee of a security record or infrastructure record that is necessary for construction, renovation, or remodeling work on any public building or project or chartered nonpublic school does not constitute public disclosure for purposes of waiving division (B) of this section and does not result in that record becoming a public record for purposes of section 149.43 of the Revised Code.

149.44 Availability of records; rules

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.

Open Meetings

121.22 Meetings of public bodies to be open; exceptions; notice

(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:

149.432 Confidentiality of library records

(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.

(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;

(11) The board of directors of the nonprofit corporation formed under

section 187.01 of the Revised Code or any committee thereof, and the board of directors of any subsidiary of that corporation or a committee thereof.

(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, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.61 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.