

Adopted March 28, 2008  
Champaign County Auditor's Public Records Policy

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## Champaign County Auditor's Public Records Policy

### Introduction:

This Public Records Policy is adopted by the Auditor's office in accordance with the applicable provisions of House Bill 9 (126th General Assembly), primary authority being Ohio Revised Code Chapter 149. This policy is not intended to be legal advice. It is the policy of this public office to strictly adhere to the state's Public Records Act as well as other state and federal laws.

The Public Records Act imposes two primary obligations upon public offices:

- Provide prompt inspection of public records; and
- Provide copies of public records within a reasonable period of time.

These obligations, in turn, provide the public with two primary rights:

- The right to prompt inspection of public records; and
- The right to copies within a reasonable period of time.

The Public Records Act evolved from the principle that Ohio's citizens are entitled to access the records of their government. To advance that principle, the Public Records Act is to be interpreted liberally<sup>6</sup> in favor of disclosure.<sup>7</sup> Additionally, the exemptions to the Public Records Act, which are discussed more fully later, should be narrowly construed.<sup>8</sup> In summary, whenever possible, the Public Records Act and its exemptions should be construed liberally in favor of giving the public utmost access to their records.

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<sup>6</sup> State ex rel. Warren Newspapers v. Huston (1994), 70 Ohio St.3d 619.

<sup>7</sup> White v. Clinton Cty. Bd. Of Cmsrs.(1996), 76 Ohio St. 3d 416; State ex rel. Patterson v. Ayers (1960)., 171 Ohio St. 369.

<sup>8</sup> Huston, 70 Ohio St. 3d 619.

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Section 1 PUBLIC RECORDS

Under Ohio law, a public office may only create records that are "necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities." 9

Section 1.1 Public Record Definition

In accordance with the Ohio Revised Code and court rulings, a record is defined as any item kept 10 by a public office that meets all of the following:

- Is stored on a fixed medium, (such as paper, electronic - including but not limited to e-mail, and other formats);
- Is created or received by, or sent under the jurisdiction of a public office;
- Documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. 11

If any of these three requirements is absent, the item is not a "record" and therefore not a public record.

Furthermore, a public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records. 12

Section 1.2 Exemptions to Public Records Law

Generally, the confidential nature of certain types of information or records precludes their release. Federal and state law provides numerous exceptions to the general rule that disclosure of public records is mandatory. However, most of the exceptions do not, by themselves, prohibit the release of the prescribed records. Rather, these records merely are excluded from the general rule of mandatory disclosure. 13

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9 ORC §149.40

10 State ex rel. Cincinnati Enquirer v. Cincinnati Bd. Of Educ'n. (2003), 99 Ohio St. 3d 6, 2003 (materials related to superintendent search were not "public records" where neither board nor search agency kept such materials).

11 ORC §149.011(G)

12 State ex rel. White v. Goldsberry (1999), 85 Ohio St. 3d 153; State ex rel. Warren v. Warner (1999), 84 Ohio St.3d 43.2

13 Henneman v. Toledo (1988),35 Ohio St. 3d 241.

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In the event a request is made to inspect or obtain a copy of a record maintained by this public office whose release may be prohibited or exempted by either state or federal law, the request shall be forwarded to the County Prosecutor for research and/or review. The requester shall be advised that their request is being reviewed by the County Prosecutor to ensure that protected exempted information is not improperly released.

Records, whose release is found to be prohibited or exempted by either state or federal law, or not considered public records as defined by ORC §149.43(A)(1), shall NOT be subject to public inspection.

Please see Appendix A for a list of records that may not be subject to release per ORC §149.43 (A)(1), Appendix B for a list of the most common express exemptions in Ohio law, and finally, Appendix C for a non-exhaustive list of express exemptions found throughout the Ohio Revised Code.

## SECTION 2 PUBLIC RECORD REQUESTS

All public records maintained by this office shall be promptly prepared and made available for inspection to any person during regular business hours as well as a copy of the current record retention schedule of this public office. Each request for public records should be evaluated for a response using the following guidelines:

### Section 2.1 Identification of Public Record

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow this public office to identify, retrieve, and review the records. If a requester makes an ambiguous or overly broad request for public records such that this office cannot reasonably identify the exact public records being requested, then this office may deny the request. In such case, this office will provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by this office and accessed in the ordinary course of this office's duties.<sup>14</sup>

### Section 2.2 Format of Request

This public office or the 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 only after all of the following occur:

- Disclosure to the requester that a written request is not mandatory;
- Disclosure to the requester that the requester may decline to reveal the requester's identity or intended use;
- Determination by this public office that a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability to identify, locate, or deliver the public records sought by the requester.<sup>15</sup>

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<sup>14</sup> ORC §149.43(B)(2)

<sup>15</sup> ORC §149.43(B)(5)

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### Section 2.3 Choice of Medium

The public records law allows a person to choose the medium upon which they would like a record to be duplicated.<sup>16</sup> The requester can choose to have the record (1) on paper, (2) in the same form as this public office keeps it (e.g., on computer disk), or (3) on any medium upon which this public office determines the record can "reasonably be duplicated as an integral part of the normal operations of the public office."<sup>17</sup>

### Section 2.4 Response Time to Request

Public records must be available for inspection during regular business hours and made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. However, under current Ohio law, there is no defined period of time by which a public records request must be completed. Instead, appropriate (prompt and reasonable) response times will vary depending on different factors, including, but not limited to all of the following:

- The circumstances of this public office at the time of the request;
- The breadth of the request;<sup>18</sup>
- Whether legal evaluation of the responsive records is required before release.<sup>19</sup>

### Section 2.5 Prohibition Against Requesters Right to Make Copies Themselves

A requester seeking copies of public records is not permitted to make their own copies of the requested records by any means.<sup>20</sup> This measure is to protect the integrity of the original document.

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<sup>16</sup> ORC §149.43(B)(2); State ex rei. Dispatch Printing Co. v. Morrow County Prosecutor's Office(2005), 105 Ohio St. 3d 172.

<sup>17</sup> ORC §149.43(B)(2) <sup>18</sup> State ex rei. Gibbs v. Concord Twp. Trustees (2003), 152 Ohio App. 3d 387.

<sup>19</sup> State ex rei. Taxpayers Coalition v. City of Lakewood (1999),86 Ohio St.3d 385.

<sup>20</sup> ORC §149.43(B)(6)

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### Section 2.6 Limit to Number of Requests by Mail

This 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. (The scope of the word "commercial" is to 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 education research.)<sup>21</sup>

### Section 2.7 Requests by Incarcerated Persons

Under Ohio law, an incarcerated person may receive public records, but only if the records concern a criminal investigation. The incarcerated person must also follow very strict guidelines.

- The records must be "public records" which are not subject to an exemption from disclosure.
- The incarcerated person must have secured a finding from the judge who imposed the sentence of incarceration (or that judge's successor) that the information sought in the public record is necessary to support a justifiable claim of the person.<sup>22</sup> Courts have denied the public records requests of inmates because this procedure was not followed.<sup>23</sup>

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<sup>21</sup> ORC §149.43(B)(7)

<sup>22</sup> ORC §149.43(B)(4)

<sup>23</sup> State ex rel. Breeden V. Judge Paul Mitrovich (2005), 2002 Ohio 7168.

Section 3 DENIAL OF PUBLIC RECORD REQUESTS

If a request is ultimately denied, in part or in whole, this public office shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. Further, if the initial request was provided in writing, the explanation shall be provided to the requester in writing.<sup>24</sup>

Section 3.1 Denial of an Ambiguous or Overly Broad Request for Public Record

If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that this public office cannot reasonably identify what public records are being requested:

- This public office may deny the request.
- However, this public office shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained in the ordinary course of business.<sup>25</sup>

Section 3.2 Denial of a Public Record Not Maintained by the Champaign County Auditor’s

If this public office receives a request for a record that it does not maintain or the request is for a record which is no longer maintained, the requester shall be so notified in writing utilizing Form PR-1 that one of the following applies:

- The request involves records that have never been maintained by this office (if possible this office will direct you to the proper office);
- The request involves records that are no longer maintained or have been disposed of or transferred pursuant to applicable Schedules of Record Retention and Disposition (RC-2);
- The request involves a record that has been disposed of pursuant to an Application of the One-Time Records Disposal (RC-1);
- If the record that is requested is not a record used or maintained this public office, the requester shall be notified that this office is under no obligation to create records to meet public record requests (however, if applicable this office will inform you of how the information requested is organized).

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24 ORC §149.43(B)(3)

25 ORC §149.43(B)(2)



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### Section 3.3 Denial of a Public Record Maintained by the Champaign County Auditor

This public office may deny a request for a record maintained by the office if the record that is requested is prohibited from release due to applicable state or federal law.

- If the record request is denied in its entirety:
  - This office may check the appropriate box on Form PR-1 if the employee is simply applying the statutory exclusion.
  - This office shall consult the County Prosecutor if the employee is unsure if the record requested is exempt from disclosure.
  
- If only part of the record is not subject to release, this office will redact such information and release the non-exempted information:
  - "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."<sup>26</sup>
  - This office will check the appropriate box on Form PR-1 and cite the exemption from Appendix A, B, or C with the corresponding redaction.
  - This office shall consult the County Prosecutor if the employee is unsure if a part of the record requested is exempt from disclosure.

As custodians of public records, this public office has a responsibility to maintain the integrity of the record. As such, any request that includes redactions should be made on a copy of the original record to preserve the authenticity and accuracy of the original document.

The explanation cited shall not preclude this public office from relying upon additional reasons or legal authority in defending an action commenced pursuant to ORC §149.43.

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<sup>26</sup> ORC §149.43(A)(11)

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### Section 4 COSTS FOR PUBLIC RECORDS

Generally, a requester is only required to pay this public office for the actual cost of reproduction. Employee time will not be calculated into the "actual cost" charge. However, in some circumstances, it is permissible for this public office to have an outside contractor make copies and recover the cost of the service directly from the requester.<sup>27</sup> This public office may employ the services of a private contractor to produce copies as long as the decision to do so is reasonable.<sup>28</sup>

#### Section 4.1 Payment in Advance

This public office may require a requester to pay in advance the cost involved in providing the copy of the public record, as requested. For photocopies of either letter or legal sized documents, the fee shall be (actual cost) per photocopy. If video tapes, cassette tape or any other type of media is requested, the fee shall be the replacement cost or reproduction cost (copying costs if outside vendor is necessary).

#### Section 4.2 Delivery Costs to be paid in Advance

Requesters may ask that documents be mailed or transmitted to them within a reasonable period of time after this office receives the request for a copy. This public office may require the person making the request to pay in advance the cost of postage if the copy is transmitted by U.S. mail or the cost of delivery if the copy is transmitted other than by U.S. mail, and to pay in advance the costs incurred for other supplies (envelope, etc) used in the mailing, delivery, or transmission.<sup>29</sup>

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<sup>27</sup> Huston, 70 Ohio St. 3d 619.

<sup>28</sup> State ex rel. Gibbs, 152 Ohio App .3d. 387.

<sup>29</sup> ORC §149.43(B)(7)

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Section 5 Email

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. Email must be treated in the same fashion as records in other formats and should follow the same retention schedules.

Section 5.1 Public Email Accounts

- Records in public email accounts used to conduct public business are subject to disclosure, and all officials, employees, or other representatives of this office are instructed to retain such e-mails that relate to public business in accordance with this public office's record retention schedule.
- Records in public email accounts used while on county computers not used to conduct public business, while strongly prohibited by this public office's policies and procedures are not subject to disclosure.<sup>30</sup>

Section 5.2 Private Email Accounts

- Records in private email accounts used to conduct public business on public property (i.e. county computers) may be subject to disclosure, and all officials, employees, or other representatives of this office are instructed to retain such private emails should they relate to public business. <sup>31</sup>
- Such emails from private accounts should be treated as records if this public office, retaining them per established schedules, and making them available for inspection and copying in accordance with the Public Records Act.

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<sup>30</sup> State ex rel. Wislon- Simmons v. Lake County Sheriff's Dept. (1998), 82 Ohio 81. 3d 37. (Court holds that the requested e-mail consisting of racist slurs, although reprehensible, does not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the sheriff's department).

<sup>31</sup> Case law is undecided as to private email use on county property. Therefore county employees are cautioned against using private email accounts for public business, particularly when such email is created from county computer usage.

Section 6 FAILURE TO RESPOND TO A PUBLIC RECORDS REQUEST

This public office recognizes that the failure to properly respond to a public records request not only causes distrust in government but may also lead to legal consequences.

If a requester feels they have been improperly denied public records due to the inability to inspect or to receive a copy of a record, the requester shall be advised that they may:

- Contact this public office's senior representative.
- Request a meeting be called with the County Prosecutor.

If the requester is still not satisfied, they shall be advised the Ohio Revised Code provides a legal means for addressing their complaint.