

**ATHENS COUNTY  
PUBLIC RECORDS  
POLICY**

Adopted: October 9, 2007

# ***Public Records Policy***

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## **Introduction:**

This Public Records Policy is adopted by the Athens County Commissioners in accordance with the applicable provisions of House Bill 9 (126<sup>th</sup> 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<sup>1</sup> liberally in favor of disclosure.<sup>2</sup> Additionally, the exemptions to the Public Records Act, which are discussed more fully later, should be narrowly construed.<sup>3</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>1</sup> *State ex rel. Warren Newspapers v. Huston* (1994), 70 Ohio St.3d 619.

<sup>2</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>3</sup> *Huston*, 70 Ohio St. 3d 619.

## **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.”<sup>4</sup>

### **Section 1.1 Public Record Definition**

In accordance with the Ohio Revised Code and court rulings, a record is defined as any item kept<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

### **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.<sup>8</sup>

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<sup>4</sup> ORC §149.40

<sup>5</sup> *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).

<sup>6</sup> ORC §149.011(G)

<sup>7</sup> *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

<sup>8</sup> *Henneman v. Toledo* (1988), 35 Ohio St. 3d 241.

## *Athens County Public Records Policy*

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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>9</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>10</sup>

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<sup>9</sup> ORC §149.43(B)(2)

<sup>10</sup> ORC §149.43(B)(5)

### **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>11</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>12</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>13</sup>
- Whether legal evaluation of the responsive records is required before release.<sup>14</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>15</sup> This measure is to protect the integrity of the original document.

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<sup>11</sup> ORC §149.43(B)(2); *State ex rel. Dispatch Printing Co. v. Morrow County Prosecutor’s Office*(2005), 105 Ohio St. 3d 172.

<sup>12</sup> ORC §149.43(B)(2)

<sup>13</sup> *State ex rel. Gibbs v. Concord Twp. Trustees* (2003), 152 Ohio App. 3d 387.

<sup>14</sup> *State ex rel. Taxpayers Coalition v. City of Lakewood* (1999), 86 Ohio St.3d 385.

<sup>15</sup> ORC §149.43(B)(6)

**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>16</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>17</sup>

Courts have denied the public records requests of inmates because this procedure was not followed.<sup>18</sup>

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<sup>16</sup> ORC §149.43(B)(7)

<sup>17</sup> ORC §149.43(B)(4)

<sup>18</sup> *State ex rel. Breedon 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>19</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>20</sup>

#### **Section 3.2 Denial of a Public Record Not Maintained by Athens County Commissioners**

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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<sup>19</sup> ORC §149.43(B)(3)

<sup>20</sup> ORC §149.43(B)(2)

**Section 3.3 Denial of a Public Record Maintained by the Athens County Commissioners**

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>21</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>21</sup> ORC §149.43(A)(11)

## **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>22</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>23</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>24</sup>

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<sup>22</sup> *Huston*, 70 Ohio St. 3d 619.

<sup>23</sup> *State ex rel. Gibbs*, 152 Ohio App .3d. 387.

<sup>24</sup> ORC §149.43(B)(7)

## **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>25</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>26</sup>
- Such emails from private account should be treated as records of 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>25</sup> *State ex rel. Wislon- Simmons v. Lake County Sheriff's Dept.* (1998), 82 Ohio St. 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>26</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**

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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.

## **APPENDIX A**

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### **The Express Exemption**

*In accordance with Ohio Revised Code §149.43, “Public record” does not mean any of the following:*

**(a) Medical records;**

“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.

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

**© Records pertaining to actions under section 2151.85 and division © 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;**

“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.

**(h) Confidential law enforcement investigatory records;**

“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: 1) 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; 2) 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; 3) Specific confidential investigatory techniques or procedures or specific investigatory work product; or 4) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

**(i) Records containing 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;**

“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.

**(n) Donor profile records;**

“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.

**(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;**

**(p) Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information;**

“Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information” (hereto after referred to the protected class employee) means any information that discloses any of the following about such a protected class employee:

- (1) The address of the actual personal residence of a protected class employee, except for the state or political subdivision in which the protected class employee 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 protected class employee;
- (d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a protected class employee’s employer;
- (e) The identity and amount of any charitable or employment benefit deduction made by the protected class employee’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 protected class employee;
- (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.

**\*\* Please Note\*\*** The applicability of this exemption is being reviewed by the Attorney General’s office.

Further, there is a journalist mechanism by which a journalist can request such information. 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.

**(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;**

“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:

- (1) 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;
- (2) The social security number, birth date, or photographic image of a person under the age of eighteen;
- (3) Any medical record, history, or information pertaining to a person under the age of eighteen;
- (4) 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.

**(s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, other than the report prepared pursuant to section 307.626 of the Revised Code;**

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

**(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;**

**(v) Records the release of which is prohibited by state or federal law;**

**(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;**

**(x) Information reported and evaluations conducted pursuant to section 3701.072 of the Revised Code;**

**(y) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency.**

## APPENDIX B

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### The “Catch-All” Exemption

If any provision of Ohio or federal law prohibits public disclosure of a certain type of record, a public office must not release it in response to a public records request. A state statute or rule, or a federal statute or regulation may designate the records of certain government offices or particular types of records confidential. Such a designation means those records are not subject to the provisions of the Public Records Act.

Here is a list of some common “catch-all” exemptions:

- a. **Attorney-client privileged information.**<sup>27</sup>
- b. **Medical board investigative records.**<sup>28</sup>
- c. **Child abuse reports.**<sup>29</sup>
- d. **Student education records** (maintained by public schools, colleges, universities and at private institutions receiving public funding.<sup>30</sup> However, student “directory information”<sup>31</sup> is public information unless the student’s parent, guardian or custodian of a minor has requested the information not be released without the parent’s prior consent.)
- e. **Records of a Certified Public Accountant or public accountant** in the performance of an audit of a public office or private entity.<sup>32</sup>

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<sup>27</sup> State ex rel. Nix v. Cleveland (1998), 83 Ohio St.3d 379, 1998 Ohio 290, 700 N.E.2d 1; Allright Parking of Cleveland, Inc. v. Cleveland (1992), 63 Ohio St.3d 772, 591 N.E.2d 708; etc.

<sup>28</sup> Ohio Rev. Code Ann. §4731.22(F)(5). State ex rel. Wallace v. State Medical Board of Ohio (2000), 89 Ohio St.3d 431, 732 N.E.2d 960 (Medical Board’s investigative records are not public records).

<sup>29</sup> Ohio Rev. Code Ann. §2151.421(H). But, see, State ex rel. Strothers v. Wertheim (1997), 80 Ohio St.3d 155, 1997 Ohio 349, 684 N.E.2d 1239 (Ohio Rev. Code Ann. §2151.421(H) is directed to the children services boards or the departments of human services, not to a county ombudsman office); State ex rel. Munici v. Kovacic (June 15, 1994), Cuyahoga App. No. 64818, 1994 Ohio App. LEXIS 2612 (police investigatory reports are not governed by Ohio Rev. Code Ann. §2151.421).

<sup>30</sup> The Family Educational Right to Privacy Act (“FERPA” or “Buckley Amendment”), 20 U.S.C. §1232g; Ohio Rev. Code Ann. §3319.321; United States v. Miami University (2000), 91 F.Supp.2d 1132, 2000 U.S. Dist. LEXIS 3345 (student disciplinary records are exempt under FERPA). But, cf., State ex rel. The Miami Student v. Miami University (1997), 79 Ohio St.3d 168, 1997 Ohio 386, 680 N.E.2d 956 (student disciplinary records are not student “education records” that are exempt from disclosure but, see, Phillips v. Village of Carey (Aug. 3, 2000), Wyandot App. No. 16-99-11, 2000 Ohio 1733, 2000 Ohio App. LEXIS 3675 (release of high school graduate’s transcript to his employer to verify GPA and class rank did not violate graduate’s constitutional rights. However, parent can request any or all information not be disclosed without parent’s prior consent).

<sup>31</sup> FERPA, 20 U.S.C. §1232g; Ohio Rev. Code Ann. §3319.321(B) (regarding Ohio public schools, K-12).

<sup>32</sup> Ohio Rev. Code Ann. §4701.19(B).

- f. **Ohio Ethics Commission proceedings** on a complaint or charge and certain information provided to the commission are not public record,<sup>33</sup> (but letters requesting an opinion of the commission are public record.)<sup>34</sup>
- g. **Taxpayer records** (maintained by the Ohio Department of Taxation<sup>35</sup> as well as those maintained by municipal corporations).<sup>36</sup>
- h. **Estate tax returns** (held by the probate court, the Department of Taxation, a county auditor, a county treasurer, the attorney general, or others listed in Ohio Rev. Code Chapter 5731).<sup>37</sup>
- i. **Federal tax returns** and return information filed under the jurisdiction of the Internal Revenue Service.<sup>38</sup>
- j. **Criminal background information and other law enforcement information on the LEADS/CCH/NCIC computer database.**<sup>39</sup>
- k. **Records that have been sealed pursuant to statutorily authorized court order.**<sup>40</sup>
- l. **A trade secret** deriving independent value from the fact that it is not generally known and has been the subject of reasonable efforts to maintain its confidentiality.<sup>41</sup> (A detailed analysis is needed.)<sup>42</sup>

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<sup>33</sup> Ohio Rev. Code Ann. §102.06(F).

<sup>34</sup> 1986 Ohio Atty. Gen. Ops. No. 86 069.

<sup>35</sup> Ohio Rev. Code Ann. §5703.21.

<sup>36</sup> Ohio Rev. Code Ann. §718.13. But, see, 1992 Ohio Atty. Gen. Ops. No. 92 005 (W-2 forms prepared and made by a township as an employer are subject to inspection as a public record).

<sup>37</sup> Ohio Rev. Code Ann. §5731.90; 1992 Ohio Atty. Gen. Ops. No. 92-076.

<sup>38</sup> 26 U.S.C. §6103

<sup>39</sup> 42 U.S.C. §3789g; 28 C.F.R. §20.21, §20.33(a)(3); State ex rel. Multimedia, Inc. v. Snowden (1995), 72 Ohio St.3d 141, 1995 Ohio 248, 647 N.E.2d 1374; also, Ohio Rev. Code Ann. §109.57(D) and (E); Ohio Admin. Code §109:05 1 01; Ohio Admin. Code §4501:2-10-06; 1989 Ohio Atty. Gen. Ops. No. 89 005; State ex rel. Lippett v. Kovacic (1991), 70 Ohio App.3d 525, Cuyahoga App. No. 58243, 591 N.E.2d 422; State ex rel. National Broadcasting Co. v. Cleveland (1992), 82 Ohio App.3d 202, Cuyahoga App. No. 52337, 611 N.E.2d 838. St.3d 382, 2004 Ohio 1581, 805 N.E.2d 1094; c.f. State ex rel. Highlander v. Rudduck (2004), 103 Ohio St.3d 370, 2004 Ohio 4952, 816 N.E.2d 213 (sealing must be made pursuant to lawful authority);

<sup>40</sup> E.g. Ohio Rev. Code Ann. §2953.52 constitutionality of which was discussed in State ex rel. Cincinnati Enquirer v. Winkler (2004), 101 Ohio St.3d 382, 2004 Ohio 1581, 805 N.E.2d 1094; c.f. State ex rel. Highlander v. Rudduck (2004), 103 Ohio St.3d 370, 2004 Ohio 4952, 816 N.E.2d 213 (sealing must be made pursuant to lawful authority); State ex rel. WBNS v. Dues (2004), 101 Ohio St.3d 406, 2004 Ohio 1497, 805 N.E.2d 1116 (a court may not create its own exemption to the Public Records Act by sealing its records absent an appropriate grant of authority).

<sup>41</sup> Ohio Rev. Code Ann. §1333.61(D). See, also, State ex rel. Besser v. Ohio State University (2000), 87 Ohio St.3d 535, 2000 Ohio 475, 721 N.E.2d 1044 ("Besser I") (public entity can have its own trade secrets); State ex rel. Lucas County Board of Comm'rs. v. Ohio EPA (2000), 88 Ohio St.3d 166, 2000 Ohio 282, 724 N.E.2d 411; State ex rel. Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St.3d 513, 1997 Ohio 75, 687 N.E.2d 661; compare, State ex rel. Gannett Satellite Info. Network v. Shirey (1997), 76 Ohio St.3d 1224, 669 N.E.2d 1148 (resumes are not trade secrets of private consultant); State ex rel. Rea v. Ohio Dept. of Education (1998),

- m. **“Judicial Mental Process” Privilege created by Ohio case law.**<sup>43</sup>
- n. **Peace officers’ home addresses** (during the pendency of a criminal case in which the officer is a witness or arresting officer).<sup>44</sup>
- o. **Personal and medical records of the mentally retarded and developmentally disabled.**<sup>45</sup>
- p. **Attorney General investigation files relating to consumer protection or charitable trust investigations.**<sup>46</sup>
- q. **Mediation communications.**<sup>47</sup>
- r. **Employees’ and their family members’ records and documents relating to medical certifications, recertifications or medical histories that have been created for purposes of the Family Medical Leave Act (FMLA)** (are confidential medical records and shall be maintained in separate files/records from normal personnel files.<sup>48</sup> Should the Americans with Disabilities Act (ADA) also be applicable, then those records shall be maintained consistent with ADA confidentially requirements.)<sup>49</sup>

81 Ohio St.3d 527, 1998 Ohio 334, 692 N.E.2d 596 (proficiency tests are public records after they have been administered); State ex rel. Dayton Newspapers v. Dayton Board of Education (2000), 140 Ohio App.3d 243, Montgomery App. No. 18247, 747 N.E.2d 255 (resumes of applicants for superintendent not trade secret).

<sup>42</sup> Ohio Rev. Code Ann. §1333.61(D). State ex rel Toledo Blade Co. v. Ohio Bureau of Workers Compensation (2005), 106 Ohio St.3d 113, 2005 Ohio 3549, 832 N.E.2d 711 (trade secret argument requires allegation of efforts to maintain recovery); State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland (1992), 63 Ohio St.3d 772, 591 N.E.2d 708 (an in camera inspection is necessary to determine whether disputed records contain trade secrets); State ex rel. Lucas County Board of Comm’rs. v. Ohio EPA (2000), 88 Ohio St.3d 166, 2000 Ohio 282, 724 N.E.2d 411; State ex rel. Besser v. Ohio State University (2000), 89 Ohio St.3d 396, 2000 Ohio 207, 732 N.E.2d 373 (“Besser II”) (following in camera inspection, court held documents did not constitute “trade secrets”); State ex rel. Seballos v. School Employees Retirement Sys. (1994), 70 Ohio St.3d 667, 1994 Ohio 80, 640 N.E.2d 829; State ex rel. Dayton Newspapers v. Dayton Board of Education (2000), 140 Ohio App.3d 243, Montgomery App. No. 18247, 747 N.E.2d 255.

<sup>43</sup> TBC Westlake v. Hamilton County Board of Revision (1998), 81 Ohio St.3d 58, 1998 Ohio 445, 689 N.E.2d 32 (hearing examiner’s report to Board of Tax Appeals is not a public record).

<sup>44</sup> Ohio Rev. Code Ann. §2921.24(A); in fact, violation of Ohio Rev. Code Ann. §2921.24(A) is a fourth degree misdemeanor. Ohio Rev. Code Ann. §2921.24(D).

<sup>45</sup> Ohio Rev. Code Ann. §5123.62(T); 1992 Ohio Atty. Gen. Ops. No. 92-071

<sup>46</sup> Ohio Rev. Code Ann. §1345.05(A)(7) and Ohio Rev. Code Ann. §109.28, respectively. But, see, also, Ohio Rev. Code Ann. §109.34 (nonprofit health care entities proposing to transfer ownership or control of assets to persons exempt from taxation shall provide notice of the proposed transaction to the attorney general and obtain written approval of the transaction. The notice and all other documents or materials submitted pursuant to Ohio Rev. Code Ann. §109.34 are public records provided they meet the definition set forth in Ohio Rev. Code Ann. §149.43).

<sup>47</sup> Ohio Rev. Code Ann. §2317.023.

<sup>48</sup> 29 CFR 825.500(g)

<sup>49</sup> 29 CFR 1630.14(c)(1)

# Public Record Request Response Form

(FORM PR-1)

Thank you for your recent public record request. The Athens County Commissioners will respond in accordance to the applicable provisions of the Ohio Public Records Act.

On     (Date)    , you requested the following records/ information:

The record/ information requested:

**Legal Authority Cited**

(if applicable)

- Is not maintained by this office  
*(office will attempt to direct requester to correct office)*
- Is overly ambiguous *(despite efforts to clarify)*.     ORC 149.43 (B)(2)
- Does not exist and/or no obligation to create.     ORC 149.40
- Has been disposed pursuant to One Time Records Disposal or pursuant to Retention Schedule.     RC-2
- Is not subject to release in its entirety (Office needs to cite leg. auth)
- Is subject to release, however the following redactions have been made to protect exempted information (149.43 (B)(1)-(3)):

**Redaction**

**Legal Authority Cited**

Ex.     A    

149.43(A)(7)(a) Peace Officer Info

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

If applicable, Legal Review by: \_\_\_\_\_ Date: \_\_\_\_\_