



# Ohio's Public Records Act In a Nutshell

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# Ohio Public Records Act

## *Definitions*

## *Public Records Exceptions*

## *Rights & Responsibilities of Public Offices & Requesters*

## *Liabilities*



# Definitions

## **Record:**

- 1) Fixed medium
- 2) Created, received by, or coming under the jurisdiction of the public office
- 3) Documents organization, functions, policies, decisions, procedures, operations or other activities

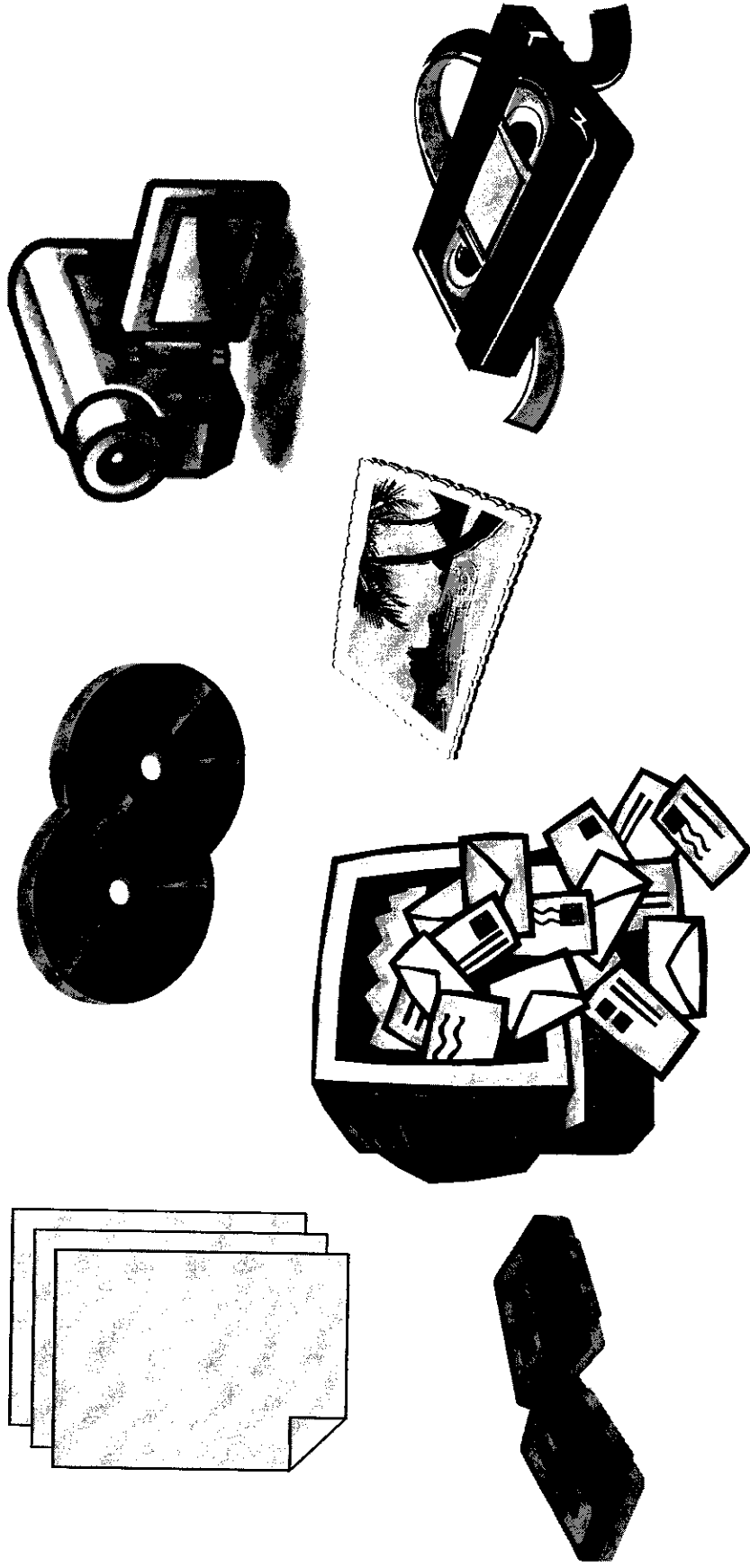
## **Non-record:**

- Fails 3-part “record” test



# Looking Deeper: What is a Record?

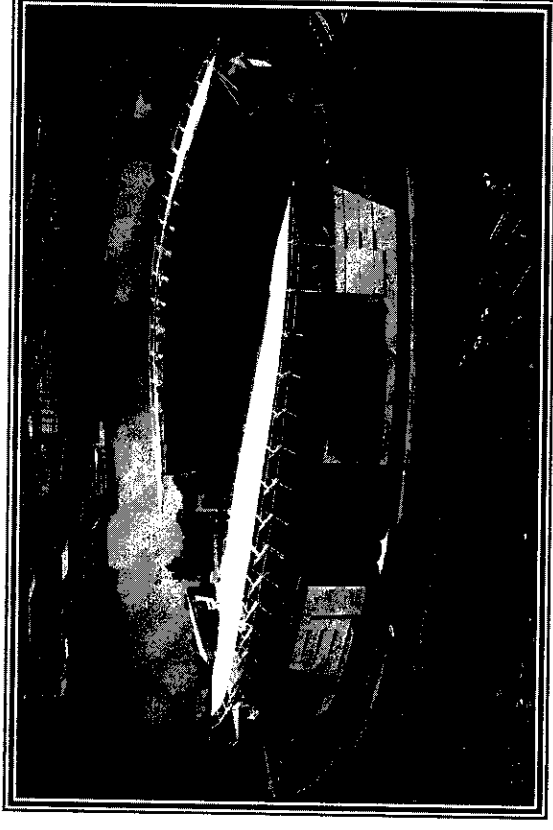
Information stored on a fixed medium:



# Looking Deeper: What is a Record?

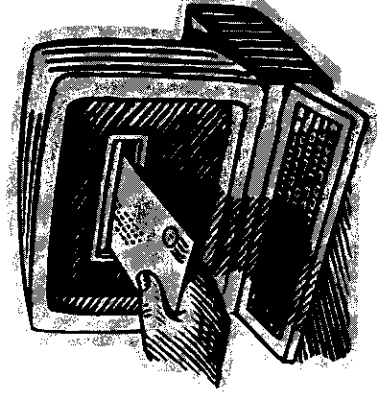
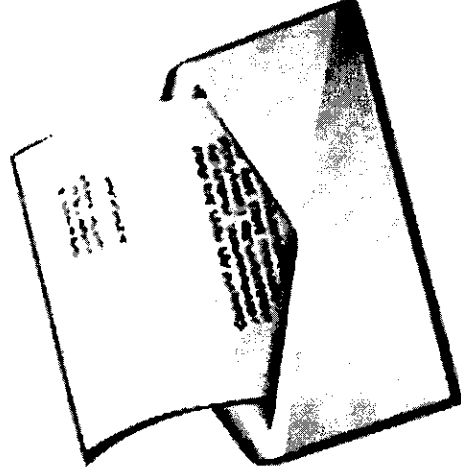
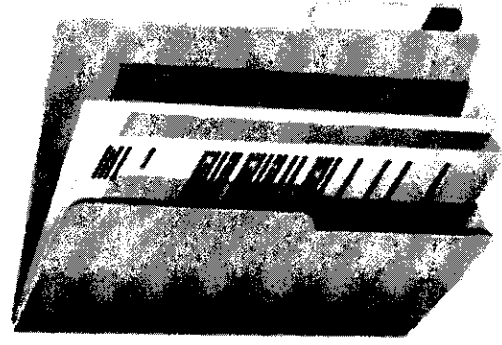
Created, received by, or coming under the public office's jurisdiction:

- Any private entity that is the functional equivalent of a governmental entity
- A person responsible for public records



# Looking Deeper: What is a Record?

Does it document the activities of a public office?

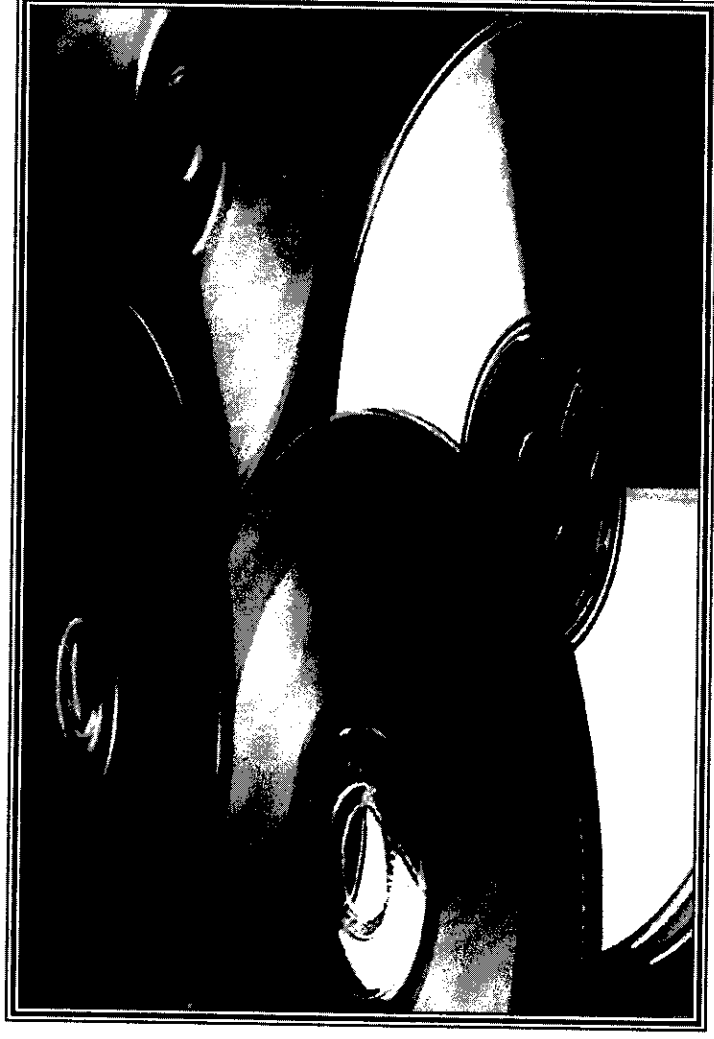


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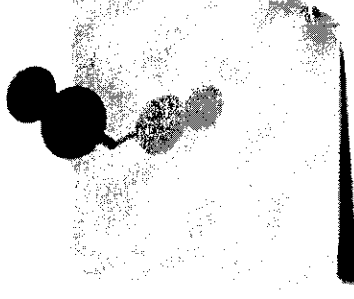
# Electronic Records

## Email

- Handle electronic records just like any other tangible record
- Analyze based on **content**, rather than storage medium



# Personal Notes

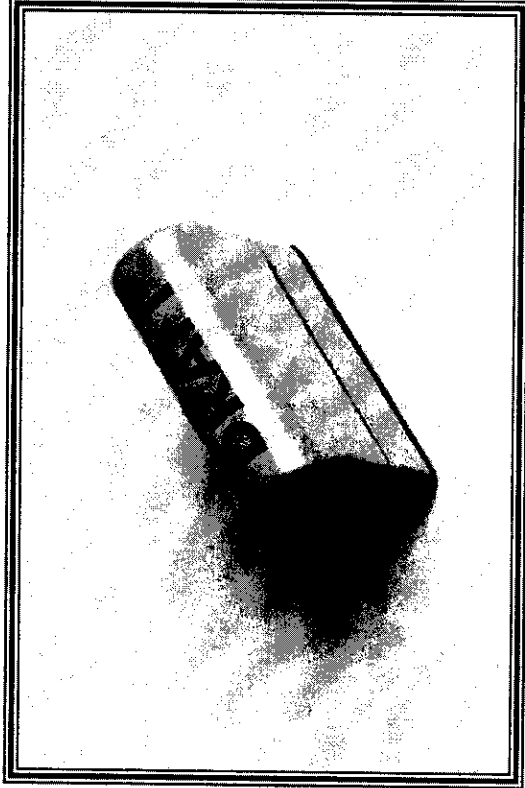


- Can be “records” but if so, are usually transient
- Generally not records if :
  - 1) Kept as personal papers, not official records
  - 2) Kept for personal convenience; e.g., to recall events
  - 3) Other employees do not use or access them



# Drafts

If a draft meets the definition of a record, it is subject to both the Public Records Act and records



A public office can address the length of time that drafts must be kept in its records retention schedules.

# Information in a Database

- Computer program can be used to perform the search
- V.
- Reprogramming the computer system

# Non-records: more examples

- Public employees' personal contact information kept by their employers only for administrative convenience (*Dispatch v. Johnson*)
- Personal information about customers of a public office (*McCleary v. Roberts*)
- Information in personnel files that doesn't document what the office does (*Fant v. Enright*)

# Definitions

## Public Record:

### R.C. 149.43

“Public Record’ means records kept by any public office. . . . “Public Record’ does not mean any of the following:”

# Looking Deeper: What is a Public Record?

“Public record” does not mean any of the following:

**RC 149.43(A)(1)(a) – (bb)!**

Every item that meets the “record” test that is kept by a public office is a “public record” **UNLESS** it fits within one of these exceptions.

# Exceptions: Examples

- **Medical records** that pertain to a patient's medical history, diagnosis, prognosis, or medical condition **AND** that were generated in the course of medical treatment
- **Certain records relating to probation and parole proceedings**
- **Certain adoption records**

# Exceptions: Examples

- Intellectual property records
- Donor profile records
- Trade Secrets

# Example: Confidential Law Enforcement Investigatory Records

## Step 1

Must pertain to a “law enforcement matter” involving:



- Specific suspicion of misconduct
- Conduct violates law (criminal, civil or administrative)
  - Not internal personnel discipline
- Agency has authority to enforce law

## Step 2

Release of record would disclose any of the following:



- Uncharged Suspect
- Confidential Source or Witness
- Physical Safety
- Investigatory techniques/procedures
- Investigatory Work Product



# Safety Officer Exceptions

Peace Officer

Parole Officer

Prosecuting Attorney

Assistant Prosecuting Attorney

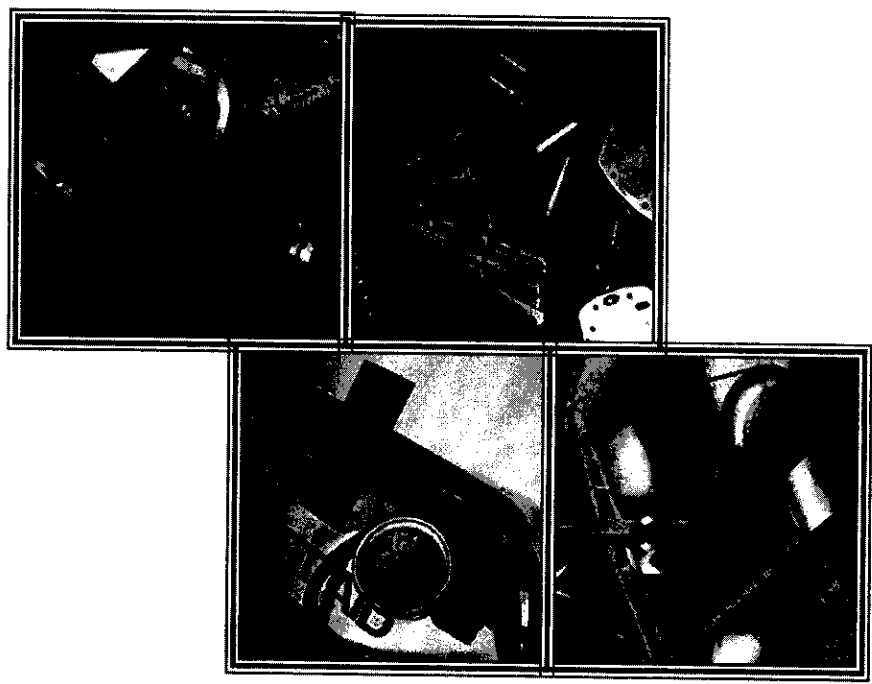
Correctional Employee

Youth Services Employee

Firefighter

EMT

BCI&I Investigators



# Mandatory / Catch-all Exception

- Any state or federal law that **prohibits** the release of specified records – RC 149.43(A)(1)(v)
- Such records are prohibited from disclosure in response to a public records request, even if the public office would like to disclose it
- If any state statutes, rules, federal statutes or regulations prohibit public disclosure, then a public office **MUST NOT** release that record in response to a Public Records Request

**CONFIDENTIAL**  
*For Authorized  
Personnel Only*

# Example: Student Records

## Family Educational Rights and Privacy Act of 1974 (FERPA)

School officials may not disclose personally identifiable information about students without the written consent of the students or their parents, unless permitted to do so by the Act

## **More examples:**

- Infrastructure and Security records
- Copyrighted records
- Employment records...sometimes

# Records Management & Retention

- Applies to **all** records, not just public records
- Records can **only** be destroyed in accordance with records retention schedules
- **Transient retention schedule** permits immediate disposal of records with limited administrative value
- Office need only retain **“record”** copy in accordance with retention schedule; duplicates & courtesy copies may be destroyed

# Records Management & Retention

- Office shall organize and maintain public records in a manner that they can be made available for inspection or copying

**AND**

- Shall have available a copy of its **current records retention schedule** at a location readily available to the public – R.C. 149.43(B)(2)
- Records that are properly disposed of are no longer subject to public records requests

# **Liabilities for Violating Records Retention Laws – R.C. 149.351**

**An “aggrieved person” may file either or both of the following, in common pleas court:**

- A civil action for injunctive relief to compel compliance with this section, and/or**
- A civil action to recover a forfeiture of \$1,000 for each violation,**
- Forfeiture for multiple violations capped at \$10,000; attorney fees are also capped at \$10,000**

# Rights and Obligations

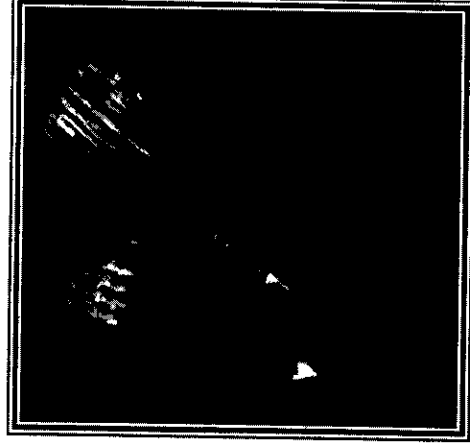
- Any “person” can make a public records request, including corporations and other governmental agencies
- No special format or special language required
- A request may be written or verbal
- The requester’s motive is not relevant. However, the request must at least be specific and describe in detail the records being sought
- A public office cannot require the requester to put it in writing or reveal his/her identity



# Rights and Obligations

## No obligation to:

- Create new records – including electronic records
- Store records on particular media



- Provide complete duplication of the voluminous files of a public office
- Provide internet access to electronic public records

# Office Public Records Policy

## R.C. 149.43(E)

- All public offices must prepare, distribute, and post a public records policy
- The Attorney General's model public records policy is available at: [www.ohioattorneygeneral.gov/sunshine](http://www.ohioattorneygeneral.gov/sunshine)
- The model public records policy is for guidance, it is **not** a substitute for an individualized policy suited to each public office

### MODEL PUBLIC RECORDS POLICY

#### MISSION STATEMENT

Openness leads to a better informed citizenry, which leads to better government and better public policy. Consistent with the premise that government at all levels exists first and foremost to serve the interests of the people, it is the mission and intent of [public office] to at all times fully comply with and abide by both the spirit and the letter of Ohio's Public Records Act.

#### DEFINING PUBLIC RECORDS

All records kept by [public office] are public unless they are exempt from disclosure under Ohio law. All public records must be organized and maintained in such a way that they can be made available for inspection and copying.

A record is defined to include the following: A document in any format – paper, electronic (including, but not limited to, business e-mail) – that is created, received by, or comes under the jurisdiction of [public office] that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

#### RESPONSE TIMEFRAME

Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested, the proximity of the location where the records are stored, and the necessity for any legal review and redaction of the records requested.

It is the goal of [public office] that all requests for public records should be acknowledged in writing or, if possible, satisfied within [X] business days following the office's receipt of the request.

#### HANDLING REQUESTS

No specific language is required to make a request for public records. However, the requester must at least identify the records requested with sufficient clarity to allow the office to identify, preserve, and review the records. If it is not clear what records are being sought, the office must contact the requester for clarification, and should assist the requester in revising the request by informing the requester of the manner in which the office keeps its public records.

The requester does not have to put a records request in writing and does not have to provide his or her identity or the intended use of the requested public record. It is this

# Rights and Obligations

- **Prompt/reasonable period of time**
- **Regular business hours**
- **Copies at “cost”**
- **Payment in advance (optional)**
- **Methods of delivery**



# Withholding or Redacting

- Public office must provide explanation, **including legal authority**, if request is denied in part (redactions within a document), or in whole (entire document)
- Redactions **must be plainly visible**, or the office must advise the requester of the redactions it has made

# Liabilities for Violating the Public Records Act

- **Mandamus Action** by “person aggrieved” by violation of Division 149.43(B) of the Public Records Act

A legal action in common pleas, appellate court, or the Ohio Supreme Court to enforce the Act

- **Civil Damages** (only if violation caused actual lost use of records)
- **Attorney’s fees** and court costs
- **Possible reduction** of damages and fees

# Questions & Answers

Sunshine Laws Web Page:

[www.ohioattorneygeneral.gov/Sunshine](http://www.ohioattorneygeneral.gov/Sunshine)

Yellow Book Online:

[www.ohioattorneygeneral.gov/YellowBook](http://www.ohioattorneygeneral.gov/YellowBook)

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