

OHIO'S PUBLIC RECORDS ACT – COMMON QUESTIONS

What is a "public record?"

A public record is a record held by a public office. A record is any item that is:

- stored on a fixed medium (such as paper, computer, film, voicemail, etc.); **and**
- created, received, or sent under the jurisdiction of a public office; **and**
- documenting the organization functions, policies, decisions, procedures, operations, or other activities of the office.

Are items such as photographs, videos, maps, voice mail and computer files "records"?

Yes. A public office has discretion to determine the form in which it will keep its records. But a record doesn't have to be paper -- any item, regardless of its physical form, is a record if it has the characteristics described above. Any material that a public office can or does rely upon in carrying out its duties may be a "record." However, **proprietary computer software is not a public record.**

What are "confidential records?"

In the public record context, the word "confidentiality" has different meanings. In short, public offices generally hold three types of records:

1. Public records that are not subject to any exception, which **must be released**
2. Public records that are subject to an exception, which **may be released** if the public office chooses to waive the exception
3. Highly confidential records the release of which is prohibited by law, **which must not be released**, even if the public office would like to do so. Exceptions to the public records act are to be **narrowly construed**

So, if a record does not clearly fit into one of these exceptions, a public office must disclose the record. There are fifteen expressly stated exceptions to Ohio's public records act and one 'catch-all' exception.

- Some of these exemptions are:
- Medical records;
- Trial preparation records;
- Confidential law enforcement investigatory records;
- Social Security Numbers

How does an exception to the Public Records Act apply?

When faced with a record that contains certain exempt information, a public office may redact the exempt portion of the record; the remainder of the record must be disclosed.

What records must a public office keep?

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." This standard appears to grant a public office a considerable degree of discretion in determining the records it will maintain.

However, this discretion is not absolute. And a public office is not required to create new records to respond to a public record request. For example, if a person asks a public office for a list of cases pending against it, but the office does not keep such a list, the public office is under no duty to create a list to respond to the request.

How does the federal Freedom of Information Act apply in Ohio?

No. The federal FOIA does not apply to state agencies or officers. If you want records from a state agency or officer, your request must be made pursuant to Ohio's public records act, which is codified in the Ohio Revised Code at 149.43. A request made to a federal office located in Ohio would be governed by the federal FOIA.

What are a person's rights and a public office's responsibilities under the public record act?

An individual has two basic rights, and a public office has two primary corresponding duties under the public records act:

1. Prompt inspection of public records; and
2. Upon request, copies of public records within a reasonable amount of time.

When must a public office allow inspection of records?

Inspection may occur at all reasonable times during regular business hours. Regular business hours means: established business hours.

Can a public office charge a person to inspect records?

No. The public records act does not permit a public office to charge the public for inspection of public records.

How much can a public office charge for copies of records?

A public office is limited in the amount it can charge for copies of public records -- it may only charge its actual cost, unless the cost is otherwise set by statute. Employee time may not be calculated into the charge for copying a public record.

Can requestors insist that they be permitted to make their own copies of public records?

No. The public records act does not require the public office to allow a requestor to make the copies.

What if the person requesting copies of records is indigent or refuses to pay for the copies?

A public office has no duty to provide copies of public records free of charge to someone who indicates an inability or unwillingness to pay for them.

Can a public office require a person to pay for copies in advance?

Yes. Many Ohio courts feel that pre-payment of copy charges is appropriate under the public records act.

What if the person requesting the copies insists the records to be mailed?

A public office has no duty to mail copies of public records, no matter what the requestor's circumstances.

What is a proper request for public records? Who can request public records?

Any "person," who includes corporations, individuals, and even other governmental agencies, may request public records. The requestor does not have to be an Ohio resident. And the person seeking the records may designate someone else to inspect or retrieve copies.

Does the request have to be in writing?

No. The law does not have any such requirement.

Is the motive of the requestor relevant?

No. Any person may obtain public records without having to state the reason.

Is undue burden or expense a valid excuse for a public office's non-compliance with a public record request?

No. A request cannot be denied or delayed on grounds that fulfilling it interferes with the operation of the public office. However, where a request unreasonably interferes with the discharge of the public office's duties, the office may not be obligated to comply.

If a public office is not sure whether a record should be released, is it best just to deny the request?

No. In the context of a public record request, automatically saying "no" almost always creates more problems than it solves. In all but the most routine situations, the right response to a public record request is that "we will be happy to allow inspection or provide copies to the extent permissible as soon as our staff legal counsel has had an opportunity to review the documents."

When confidential material in a record is mixed with material that is not confidential, should the public office withhold the entire record?

No. Simply redact the portions of the record that are exempt from disclosure; the remainder of the record must be disclosed. This issue arises most commonly when a request is made to inspect or copy **personnel files** of public employees. But absent an expressly applicable exception, such as the medical record exception, nearly all of the records in a personnel file are public record. **Social security numbers**, however, are protected by the federal Privacy Act (5 U.S.C. ~ 552a) and generally should be redacted.

Additional Information

For further information on the Ohio Open Records Rules go to the Ohio Attorney General's Website for an Adobe PDF copy of the current Ohio Sunshine Laws - The Yellow Book: an Open Government Resource Manual at <http://www.ohioattorneygeneral.gov/YellowBook>