

PUBLIC RECORDS
QUICK REFERENCE GUIDE

By

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INTRODUCTION

INTRODUCTION

This Reference Guide contains an overview of the Ohio Public Records Law, along with the applicable Ohio Revised Code provisions. Contained in the Table of Contents is an alphabetic annotation of public records cases. A good starting point, when dealing with public records questions, may be to check this annotated list to determine whether the document you are interested in has been judicially determined to be a "public record" and, thus, must be made available to the public in accordance with the requirements of Section 149.43 of the Ohio Revised Code (Ohio's public records "Sunshine Law").

Please note that this Reference Guide is intended to supply only a general overview of the law pertaining to public records and public records access. Although extensive, this Reference Guide does not provide an all inclusive list of items that might qualify as public records. If any questions arise as to the nature and classification of a document as a public record or the process by which public records release is necessary, appropriate legal advice should be sought.

OVERVIEW OF PUBLIC RECORDS LAW

OVERVIEW OF PUBLIC RECORDS LAW

A. Introduction.

The Ohio law pertaining to Public Records is contained in Ohio Revised Code § 149.43 and is entitled "Availability of Public Records." The law provides procedures by which public records are identified and procedures for obtaining copies of those records which are deemed public. The law also provides remedies if public officials wrongfully withhold such records after proper request has been made. This Ohio law is similar to the federal Freedom of Information Act which allows any citizen or any foreign national resident in the United States to request any records from the executive branch of the federal government. The Federal Act requires disclosure of all records from all cabinet Agencies, independent agencies, regulatory commissions and government-owned corporations, however, does not include Congress or the federal courts or state or local governments.

In Ohio, the general rule is that "all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." This is the fundamental right of access to public records. The Ohio Supreme Court has held that with respect to this allowance of access to public records, the statutory provisions contained within the Ohio Revised Code should be construed to provide the broadest access possible to public records. To substantiate this holding the Court has stated:

The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.

Dayton Newspapers, Inc., v. City of Dayton, 45 Ohio St. 2d 107, 109 (1976). Thus, the Court has resolved doubts regarding access of documents in favor of disclosure, because the law was intended to benefit the public through access to these records. *State, ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d 170 (1988).

Keeping this broad-base analysis in mind, the pertinent question becomes what materials are available to the public under the Public Records Law. "Public Record" is defined in ORC § 149.43(A)(1) as "any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units,...". The Section then goes on to list various exceptions to this public record definition. (See attached ORC § 149.43(A)(1) under Tab 4). Thus, under this definition, a three step analysis can be applied to determine whether or not materials being requested are in fact available to the public. First, the material ***must be a record***. Second, it must be ***held by a public office***. Third, it must ***not fall within one of the enumerated exceptions***.

B. Classification of Public Records.

1. Material Must Be A Record.

When determining whether a document qualifies as a "record" within the Public Records Law, the Ohio Statute is very broad. The Ohio Courts have construed the definition of "record" expansively rather than narrowly. The definition of "records" is contained in ORC § 149.011(G) and states that:

"Records" includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

Thus, while public records are usually regarded as documents, it is clear from the definition that a record includes devices, or items. The Courts have included as "records" video tapes, (*State, ex rel. Harmon v. Bender*, 25 Ohio St. 3d 15 (1986)); computerized records held in government offices, (*State, ex rel. Recodat Co. v. Buchanan*, 46 Ohio St. 3d 163 (1989)); certain drug tests, (*Carelli v. Ginsburg*, 956 F. 2d 598 (6th Cir.)); polygraph tests, (*State, ex rel. Lorain Journal Co. v. Lorain*, 87 O. App. 3d 112 (1993)); and social security numbers of public employees (*State, ex rel. Beacon Journal Publishing Co. v. Akron*, 70 O.S. 3d 605 (1994)).

In addition, certain compilations and analyses created by public employees in public offices have been deemed to be "records". For example, in *State, ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d 170 (1988), the Court was presented with the issue of whether a report compiled by a court administrator from information contained in various public records for the use of judges in sentencing and for consideration of prison population problems was a public record. The Court found that these compilations were indeed public records. The Court reasoned that, although these compilations involved some "work product", which would otherwise be exempt from public record classification, the compilations were created by public employees working in public offices and contained public statistical information.

2. Material Must Be Held By A Public Office.

Again, a broad-base approach is applied when characterizing a "public office." Generally, almost every governmental entity and activity within the State of Ohio is considered to be a "public office." The Ohio Revised Code defines "public office" in two sections. First, ORC § 149.43(A)(1) provides that a public office includes, but is not limited to, "state, county, city, village, township, and school district units, . . .". Second, ORC § 149.011(A) defines "public office" to include:

Any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of the state for the exercise of any function of government.

The definition of "state agency" included in the "public office" definition is very expansive and virtually encompasses every state department, division or subdivision. (See attached ORC § 149.011(B) under Tab 5.)

One method that the Ohio Supreme Court has established to determine if an entity is in fact a "public office" is whether such entity or activity is supported by tax dollars and provides services to the public. *State, ex rel. Fostoria Daily Review v. Fostoria Hospital Association*, 40 Ohio St. 3d 10 (1988). The Court applies this tax support analysis to entities that receive both direct and indirect tax support.

It should also be noted that certain private entities may also be deemed "public offices" if the private entity carries out the duties and responsibilities that otherwise would be conducted by a public office. *State, ex rel. Massaro v. Ferguson*, 49 Ohio St. 3d 37 (1990). This means that certain records located in a private facility may be subject to inspection and copying if the organization that produces and keeps such records provides some public service that a public entity might otherwise provide.

3. Material Must Not Fall Within Any Exception.

"Public records" that are not subject to mandatory disclosure by the Public Records Law include:

- a. medical records, (See attached ORC §149.43(A)(3) under Tab 4);
- b. records pertaining to adoptions, probation, and parole proceedings;
- c. records pertaining to actions involving unmarried unemancipated juveniles seeking abortions without parental consent and to appeals of actions arising thereunder;
- d. records pertaining to release of information identifying the biological parents or siblings of an adoptive child once that child has reached 21 years of age;
- e. trial preparation records which are specifically compiled for trial, (See attached ORC § 149.43(A)(4) under Tab 4);
- f. confidential law enforcement investigatory records, (See attached ORC § 149.43 (A)(2) under Tab 4);
- g. records containing information pertaining to the filing of charges of discrimination and actions arising thereunder;
- h. DNA records stored in DNA databases;
- i. Department of Rehabilitation inmate records;
- j. Department of Youth Services records;
- k. intellectual property records;
- l. donor profile records;
- m. Department Job and Family Services records regarding child support obligors;

- n. peace officer residential and familial information;
- o. county hospital trade secrets;
- p. child fatality review board records, except for the annual report submitted to Ohio Department of Health;
- q. records and statements of executive director of a public childrens' services agency or prosecutory attorney concerning deceased child;
- r. nursing home licensure test, examination or evaluation tools administered by the Board of Examiners of Nursing Home Administrators (or private entities contracted therewith);
- s. Recreational activities records of a person under 18; and
- t. records prohibited to be released by state or federal law.

4. Remedies For Failure To Release Public Records.

If a governmental unit fails to comply with the Public Records Law, the person aggrieved may commence a mandamus action to compel the release of the requested records. A mandamus action is an action by which a court directs a public official or public entity to perform his or their public, official, or ministerial duties, which in this case, would be to direct the release of any public records. The mandamus action may be commenced in any one of three places:

- a. the Court of Common Pleas of the county in which the alleged noncompliance occurred;
- b. in the Ohio Supreme Court; or
- c. the Court of Appeals for the appellate district in which the alleged noncompliance occurred.

PUBLIC RECORD CASE ANNOTATIONS

Arrest Records

- (1991) Municipal arrest records must generally be disclosed under RC § 149.43: *State ex rel. Lippitt v. Kovacic*, 70 Ohio App. 3d 525, 591 N.E.2d 422.

Auditor Inspection Records

- (1990) A record of investigation which qualifies as a confidential law enforcement investigatory record under RC § 149.43(A)(2) does not forfeit its statutory protection merely because *State ex rel. Polovischak v. Mayfield* there has been passage of time with no forthcoming enforcement action. (*State ex rel. Thompson Newspaper, Inv. v. Martin* (1989), 47 O.S.3d 28, 546 N.E.2d 939, followed.): , 50 O.S.3d 51, 552 N.E.2d 635.

Autopsy Reports

- (1984) Autopsy reports are exempt as specific investigatory work product from disclosure under RC § 149.43: *State ex rel. Dayton Newspapers, Inc. v. Rauch*, 12 O.S.3d 100, 12 OBR 87, 465 N.E.2d 458.

Birth And Death Records

- (1982) Birth and death records kept by a probate court pursuant to RC § 2101.12 are public records which must be made available to any member of the general public as required by RC § 149.43, regardless of the motive which such member of the public has for inspecting such records. (1974 OAG No. 74-097, approved and followed in part): OAG No. 82-104.

Blue Prints

- (1993) Blueprints submitted to the Wood County Building Inspection Department for approval under RC § 3791.04 are, while in the possession of the Department, public records within the meaning of RC § 149.43, which requires the department to make such blueprints "available for inspection to any person at all reasonable times during regular business hours" and, upon request, to "make copies available at cost, within a reasonable period of time": OAG 93-010.

Bureau of criminal information data

- (1994) Bureau of criminal information data are not public records: *State v. Lebron*, 97 Ohio App. 3d 155, 646 N.E.2d 481.

Child Abuse Investigation

- (1990) Child abuse investigation reports are confidential and not subject to inspection: *State ex rel. Renfro v. Cuyahoga Cty. Dept. of Human Serv.*, 54 O.S.3d 25, 560 N.E.2d 230.
- (1991) The trial court lacked in jurisdiction under RC § 2953.21 to compel the nonparty Hamilton Co. Dept. of Human Services to provide the names and addresses of informants, foster parents and unrelated parent used in the state's investigation; such a request should have been made in a mandamus action brought pursuant to RC § 149.43: *State v. Poindexter*, No. C-890734 (1st Dist.), 1991 Ohio App. Lexis 888.
- (1991) Child abuse and neglect investigation records maintained by public children services agencies do not constitute "public records" within the meaning of RC § 149.43 to which the right of public access attaches. Records of child abuse or neglect investigations under RC § 2151.42.1(11)(1) and RC § 5153.17 are "records the release of which is prohibited by state law" under RC § 149.43(A)(1): OAG No. 91-003.
- (1991) Pursuant to RC § 2151.14.1, when a complaint alleging abuse, neglect, or dependency of a child is filed under RC § 2151.27, a request directed to a public children services agency or the prosecuting attorney for "any records related to the child" must be granted or denied by following the procedures set forth in RC § 2151.14.1: OAG No. 91-003.
- (1991) Pursuant to RC § 5153.17 to RC § 5153.17, a public children services agency executive secretary may grant written permission for access to child abuse or neglect investigation records for good cause: OAG No. 91-003.
- (1991) "Good cause," for purposes of RC § 5153.17, may be shown to exist where the best interests of the child require the release of information contained in a public children services agency's child abuse or neglect investigation records or where denial of due process of law to one accused of child abuse or neglect would result from a refusal to grant access to such records: OAG No. 91-003.
- (1991) Pursuant to RC § 5153.17, the county prosecuting attorney may release information contained in a public children services agency's child abuse or neglect investigation file only with the written permission of the public children services agency executive secretary: OAG No. 91-003.

Civil Rights Commission

Personnel files.

- (1981) With the exception of confidential law enforcement investigatory records, trial preparation records, records pertaining to adoption, probation and parole proceedings, medical records and records the release of which is prohibited by state or federal law, records which normally would be maintained by the civil rights commission in employee personnel files constitute public records as defined by RC § 149.43, and as such must be disclosed to members of the general public upon request: OAG No. 81-038.
- (1981) In responding to a request made by a member of the general public, pursuant to RC § 149.43, to inspect and copy information maintained in the civil rights commission employee personnel files, the commission may refuse to disclose confidential law enforcement investigatory records, trial preparation records, records pertaining to adoption, probation and parole proceedings, medical records and records the release of which is prohibited by state or federal law: OAG No. 81-038.

Terms of conciliation

- (1975) Pursuant to RC § 4112.05(B), the Ohio civil rights commission may not reveal the final terms of conciliation, written or unwritten, to members of the general public who are not parties to the matters conciliated: OAG No. 77-075.

Civil Service Records

- (1985) Civil service personnel records of a police officer-witness are public records: *State v. Bundy*, 20 O.S.3d 51, 20 OBR 351, 485 N.E.2d 1039.
- (1985) To protect against the unfettered disclosure of civil service personnel records which do not fall within the purview of RC § 149.43, determination of an application for disclosure must be made on an *ad hoc* basis with the court being the final arbiter as to whether the information is subject to public disclosure. Only if the information in question does not fall within the scope of RC § 149.43 must a determination be made as to whether its release would constitute an invasion of personal privacy as prohibited by RC Chapter 1374.: *State ex rel. Dispatch Printing Co. v. Wells*, 18 O.S.3d 382, 18 OBR 437, 481 N.E.2d 632.
- (1981) A county employee's name, classification or job title, salary rate and gross salary are not excepted from the disclosure requirements of RC § 149.43, as the release of such information does not violate the employee's right to privacy: *State ex rel. Petty v. Wurst*, 49 Ohio App. 3d 59, 550 N.E.2d 214.

- (1986) Pursuant to RC § 149.43, a personnel file maintained by an exempted village school district is public records, and shall be made available for inspection to any member of the general public at all reasonable times during regular business hours, except to the extent such file may include records which are excepted from the definition of the term "public record," set forth in RC § 149.43: OAG No. 86-089.

Collective bargaining agreement

- (1990) A collective bargaining agreement cannot supersede state law by requiring that records be kept confidential, when those records are public records under the public records law: *State ex rel. Toledo Blade Co. v. Telb*, 50 1, 552 N.E.2d 243.

Community development projects

- (1986) A municipality concerned with attracting the best possible candidates for its community development project must be able to promise confidentiality for financial information and business plans, disclosure of which could be harmful to the applicant: *State ex rel. Jacobs v. Prudoff*, 30 Ohio App. 3d 89, 30 OBR 187, 506 N.E.2d 927.

Cosmetology

- (1977) Revised Code § 4713.02 requires that State Board of Cosmetology to keep records of the names and addresses of all licensed cosmetologists. Thus these records are "public records" within the meaning of RC § 149.43 and must be available for public inspection and copying: *State ex rel. Milo's Beauty Supply Co. v. State Board of Cosmetology* 49 O.S.2d 245, 3 O.O.3d 374, 361 N.E.2d 444.

County park board records

- (1970) A county park board is a governmental unit and is subject to provisions of RC §§ 121.22, 149.40, 149.43 and 1545.07 relating to public records: *Curran v. Board of Park Commrs.*, 22 Ohio Misc. 197, 51 O.O.2d 321, 259 N.E.2d 757 (CP).

County veterans service commission

- Any member of the public may inspect and copy each item of information in a public record unless one of the specific exceptions or RC § 149.43 applies. Absent a prohibition against release in a federal or state law, information supplied by the applicant to a county veterans service commission on an application for assistance or on the statement required by RC § 5901.09, consisting of the amount, nature and source of public assistance received, is available for public inspection: OAG No. 88-103.

Court records

- (2001) There is no clear, unqualified right to inspect pretrial discovery materials, even when filed with the trial court under Civ. R. 5(C), either under First Amendment, common law, the "open courts" provision of the Ohio Constitution or the Public Records Act: *Adams v. Metallica, Inc.*, 143 Ohio App. 3d 482, 758 N.E.2d 286
- (2001) Criminal pretrial discovery documents, which usually are exempted from public records requests, change character -- from discovery materials to court documents -- when introduced in court as exhibits on a motion hearing: *State ex rel. Cincinnati Enquirer v. Dinkerlacker*, 144 Ohio App. 3d 725, 761 N.E.2d 656.
- (1988) A report prepared by a court administrator from factual information contained in public records is a public record subject to disclosure under the public Records Law, even though such compilations are made for the use of judges in sentencing: *State ex rel. Cincinnati Post v. Schweikert*, 38 O.S.3d 170, 527 N.E.2d 1230.
- (1985) Any document appertaining to, or recording of, the proceedings of a court, or any record necessary to the execution of the responsibilities of a governmental unit is a "public record" and "required to be kept" within the meaning of RC § 149.43. Absent any specific statutory exclusion, such record must be made available for public inspection: *State, ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 O.S.3d 30, 20 OBR 279, 485 N.E.2d 706.
- (1991) The clerk of courts, not the judge who presided at the trial, is the proper person from whom to obtain the court record under RC § 149.43. A judge's personal notes are not subject to disclosure: *State ex rel. Martinelli v. Corrigan*, 71 Ohio App. 3d 243, 593 N.E.2d 364.

- (1974) With the exception of physical and psychiatric examinations, adoption, probation, and parole proceedings, and records of the release of which is prohibited by state or federal law, RC § 149.43 requires all court records to be kept open for inspection at all reasonable times. The public's right to inspect court records pursuant to RC § 149.43 may not be restricted by a court because of the intended purpose of such inspection: OAG No. 74-097.

Criminal appeals

- (1990) A criminal defendant who has exhausted the direct appeals of his conviction may avail himself of RC § 149.43 to support his petition for post-conviction relief: *State ex rel. Clark v. Toledo*, 54 O.S.3d 55, 560 N.E.2d 1313.

Criminal investigations

- (1994) Records which contain the names of suspects in a criminal investigation who were neither charged with nor arrested for an offense are specifically exempted from release under RC § 149.43(A)(2)(a): *State ex rel. Sweeney v. Parma Hts.*, 93 Ohio App. 3d 349, 638 N.E.2d 614.
- (1994) Ohio Admin. Code 4501:2-10-06(B) restricts all information contained in or processed through the Law Enforcement Automated Data System (LEADS) to the use of law enforcement agencies and criminal justice agencies for the administration of criminal justice. Accordingly, records of information contained in or processed through LEADS, including data entered directly into a LEADS data base or from other data bases accessed through leads, are not public records subject to disclosure pursuant to RC § 149.43(B): OAG No. 94-046.

Criminal trial records

- (1993) The court of appeals did not abuse its discretion by finding that the criminal trial records sought by the media were exempt under RC § 149.43(A)(2) and (4): *State ex rel. Vindicator Printing Co. v. Watkins*, 66 O.S.3d 129, 609 N.E.2d 551.
- (1994) A murder victim's family does not have standing to bring an action to prevent the release of photographs and other records by the prosecutor to the media: *State ex rel. Jefferys v. Watkins*, 92 Ohio App. 3d 809, 637 N.E.2d 345.

Department of Commerce, records of unclaimed funds

- (1980) With the exception of trial preparation records, records compiled by the Department of Commerce pursuant to RC Chapter 169 are public records (as defined by RC § 149.43), to which the general public is entitled to access: OAG No. 80-103.
- (1980) Revised Code § 169.06(C) which requires that an alphabetical listing of owners of unclaimed funds and beneficiaries of life insurance policies be made available to the general public, does not restrict access of the general public to records compiled by the Department of Commerce which are public records as defined by RC § 149.43: OAG No. 80-103.

Department of mental retardation and developmental disabilities, placement records

- (1980) Records maintained by the director of the department of mental retardation and developmental disabilities with respect to the responsibilities conferred upon him by RC § 5123.18 are public records under RC § 149.43 and, therefore, must, upon request, be disclosed to any member of the public without regard to any privacy interest which any individual may be deemed to have in such records: OAG No. 80-096.

Division of real estate, complaints filed with

- (1981) Complaints filed with the Division of Real Estate concerning violations of RC Chapter 4735., except those complaints which qualify as "confidential law enforcement investigatory records: as defined by RC § 149.43(A)(2), are public records within the meaning of RC § 149.43 and must be made available for public inspection: OAG No. 81-014.

Drug tests

- (1992) Publication of positive drug test of a licensed thoroughbred trainer by the Ohio State Racing Commission was not an unconstitutional invasion of trainer's right to privacy where information contained in urine was not private, trainer had lessened expectation of privacy as a member of the racing profession due to its heavy regulation, and publication occurred in connection with the adjudication of trainer's licensing status: *Carelli v. Ginsburg*, 956 F.2d 598 (6th Cir.)

Employees -- Address and payroll records

- (2002) Employees' home addresses have no relevance to the public entity's activities or inner workings, therefore are not "public records:" *Miami Valley Child Development Centers, Inc. v. District 925/Service Employees International Union/AFL-CIOM, CLC*, 2002 Ohio 933, 2002 Ohio App. LEXIS 744.
- (2001) Employee addresses are not public records: *State ex rel. Jones v. Summit County Children Services*, 2001 WESTLAW 96048.
- (1981) The employee address and payroll records maintained by a board of township trustees are public records that must be made available for inspection at all reasonable times pursuant to RC § 149.43. A municipal official charged with enforcing the income tax provisions of a municipality does not, therefore, need a subpoena *duces tecum* in order to gain access to such records: OAG No. 81-006.

Employees -- Compensation records, state university

- (1973) Any citizen or taxpayer of the state of Ohio who requests to view, or have copies made of, salary of compensation records of employees of the university of Toledo at any reasonable time should be permitted to inspect or have copies of such records at cost: OAG No. 73-034.

Ethics commission records

- (1986) A letter requesting an advisory opinion from the Ohio Ethics commission under RC § 102.08 and the documents held by the Commission concerning such advisory opinion are public records for purposes of RC § 149.43: OAG No. 86-069.

Governor's calendars and appointment books

- (1995) Personal calendars and appointment books maintained solely for the governor's personal convenience are not subject to disclosure under RC § 149.43: *Internatl. Union, United Auto., Aerospace & Agricultural Implement Workers of Am. v. Voinovich*, 100 Ohio App. 3d 372, 654 N.E.2d 139.

Grand jury subpoenas

- (1993) Grand jury secrecy is a procedural matter rather than a substantive matter and, as such, properly a subject for court rule. Thus Crim. R. 6(E) would prevail over RC § 149.43 in the case of conflict between the two: *State ex rel. Beacon Journal Publishing Co. v. Waters*, 67 O.S.3d 321, 617 N.E.2d 1110.

- (1984) Grand jury subpoenas, while in the possession of the clerk of courts prior to issuance in accordance with RC § 2939.12 are not public records subject to disclosure under RC § 149.43: OAG No. 84-079.

Hospital quality assurance committee minutes

- (1989) Minutes of hospital trustee and joint advisory and quality assurance committee meetings were not exempt from disclosure under RC § 2305.25.1: *State ex rel. Fostoria Daily Review v. Fostoria Hospital Association*, 44 O.S.3d 111, 541 N.E.2d 587.

Human services record

- (1990) Where state law prohibits the release of information in a record kept by the Department of Human Services, a county department of human services or a children services board, such prohibition remains effective despite the death of the subject of the record: OAG No. 90-007.
- (1990) Where a provision of state or federal law prohibits the release of information in a record kept by the Department of Human Services, a county department of human services or a children services board, the terms of that provision control to whom and under what circumstances the record may be released: OAG No. 90-007.

Income tax information on individual taxpayers

- (1975) A request for information "needed in performing the duties of this office" does not come within the scope of "official purposes" does not come within the scope of "official purposes" as that term is used in RC § 5747.18: OAG No. 75-012.

Industrial Commission -- Records of proceedings, findings, and awards

- (1975) The industrial commission is required pursuant to RC § 4121.10 to keep records showing its proceedings, findings, awards, and each member's vote as cast in all claims for compensation presented for its consideration. Such records together with the transcript at its hearings, if any, are a "public record" as defined in RC § 149.43 and shall be available to the public at all reasonable times for inspection. Such records, transcripts, and evidence, if any, are public even if they are filed within the claim files: OAG No. 75-062.

Industrial Commission -- Remittance advice forms

- (1977) Governmental records should be available to the public unless the custodian of such records can show a legal prohibition of disclosure. Thus the remittance advice forms of the industrial commission must be available for public inspection because they are not records disclosing the results of confidential physical or psychiatric examinations: *State ex rel. Plain Dealer Publishing Co. v. Krouse*, 51 O.S.2d 1,5 O.O.3d 1, 364 N.E.2d 854.

Investigative reports of council

- (1985) An investigative report obtained by city council to assist it in determining whether to demote the city chief of police is a "public record" required to be kept so that it must be made available to any member of the general public at all reasonable times for inspection under RC §§ 149.40 and/or 149.43: *State ex rel. Cincinnati Post v. Marsh*, 26 Ohio Misc. 2d 5, 26 OBR 277, 498 N.E.2d 508 (CP).

Job promotional exam, psychological report

- (1977) The results of a psychologist who conducted a required job promotion examination is in the nature of a public record, having been required by a public body, and, as such, must be available for public inspection: *Ring v. Fox*, 56 Ohio App. 2d 235, 10 O.O.3d 258, 382 N.E.2d 1159.

Judge's financial disclosure statement

- (1978) Judge's financial disclosure statement filed in juvenile court is not a "public record": *State ex rel. Citizens' Bar Assn. v. Gagliardo*, 55 O.S.2d 70, 9 O.O.3d 74, 378 N.E.2d 153.
- (1976) The financial disclosure statement to be filed annually pursuant to Canon 6(c) of the Code of Judicial Conduct and RC § 102.02 is a public record to be made available to the press if requested and may be divulged without the written consent of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio or the Ethics Commission: OAG No. 76-009.

Juvenile cases

- (1992) Juvenile court records are exempt from disclosure pursuant to RC § 2151.313: *State ex rel. Collins v. Corbin*, 73 Ohio App. 3d 410, 597 N.E.2d 544.

- (1990) A decision, at a particular point in time, not to charge, arrest, file a complaint with or refer a juvenile to the juvenile court pursuant to Juv. R. 9 does not require disclosure or terminate the juvenile's status as a "suspect," pursuant to RC § 149.43(A): OAG No. 90-101.
- (1990) Absent an applicable exception in state or federal law, upon the request of any person, local law enforcement agencies and the county prosecutor must release records containing the names of juvenile offenders and other identifying data: OAG No. 90-101.
- (1990) For purposes of the confidential law enforcement investigatory records exception under RC § 149.43(A), a juvenile ceases to be a "suspect" upon arrest, being charged, the filing of a complaint or a referral to the juvenile court pursuant to Juv. R. 9: OAG No. 90-101.
- (1990) For purposes of the confidential law enforcement investigatory records exception under RC § 149.43(A), a juvenile may be considered a "suspect" when no charge, arrest, complaint or referral to the juvenile court pursuant to Juv. R. 9 has been made: OAG No. 90-101.
- (1990) If, pursuant to RC § 2151.31.3, a law enforcement officer or other authorized person takes fingerprints or photographs of a juvenile arrested or taken into custody, the fingerprints, photographs and other records relating to that arrest or custody of the juvenile are not public records: OAG No. 90-101.
- (1990) Pursuant to Juv. R. 32(B), 37(B) and RC § 2151.14 juvenile court records, the records of social, mental and physical examinations pursuant to court order, and records of the juvenile court probation department are not public records under RC § 149.43: OAG No. 90-101.
- (1990) To the extent that a specific exception in RC § 149.43 or an applicable provision of state or federal law prohibits their release, local law enforcement agency records concerning juvenile offenders are not public records under RC § 149.43 and the public does not have a right to inspect and receive copies of such records under the Public Records Act: OAG No. 90-101.
- (1990) When a record of the adjudication or arrest of a juvenile has been ordered sealed or expunged pursuant to RC § 2151.35.8, such record is not a public record: OAG No. 90-101.

Juvenile proceedings

- (1995) Juvenile Rule 37(B) does not prevent release a transcript of a juvenile court proceeding pursuant to RC § 149.43 when there is no evidence that release of the particular transcript will result in any harm to the child involved: *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas, Jur. Div.*, 73 O.S.3d 19, 652 N.E.2d 179.

Law enforcement records

- (1993) The text of the threatening letters should have been disclosed after any names or other identifying information were deleted so as to protect the confidential informant. The uncharged-suspect and investigatory work product exceptions should be narrowly construed: *State ex rel. Beacon Journal Publishing Co. v. Kent State Univ.*, 68 O.S.3d 40, 523 N.E.2d 51.
- (1992) Witness statements taken by police as part of a homicide investigation, but not specifically for trial preparation, are not exempt from disclosure. No test taken by detectives during trial are exempt. Personal information about relatives of a crime victim is not automatically exempt: *State ex rel. Johnson v. Cleveland*, 65 O.S.3d 331, 603 N.E.2d 1011.
- (1992) The convicted criminal defendants were entitled to the records except for trial preparation records and specific investigatory work product records: *State ex rel. Williams v. Cleveland*, 64 O.S.3d 544, 597 N.E.2d 147.
- (1991) Routine internal affairs investigations of the use of deadly force by police officers are "confidential law enforcement investigatory records," and may be exempt from disclosure: *State ex rel. National Broadcasting Co. v. Cleveland* 57 O.S.3d 77, 566 N.E.2d 146.
- (1990) A record of investigation which qualifies as a confidential law enforcement investigatory record under RC § 149.43(A)(2) does not forfeit its statutory protection merely because there has been passage of time with no forthcoming enforcement action. (*State ex rel. Thompson Newspaper, Inv. v. Martin* (1989), 47 O.S.3d 28, 546 N.E.2d 939, followed.): *State ex rel. Polovischak v. Mayfield*, 50 O.S.3d 51, 552 N.E.2d 635.
- (1989) Confidential law enforcement investigatory records do not become public records merely because they are submitted to a trial court to provide the factual basis for obtaining the appoint special prosecutor: *State ex rel. Thompson Newspapers, Inc. v. Martin*, 47 O.S.3d 28, 546 N.E.2d 939.

- (1989) A prosecutor's decision not to file formal charges against a suspect does not take the record of the investigation outside the exception provided for confidential law enforcement investigatory records in RC § 149.43(A)(2). (*State ex rel. Thompson Newspapers, Inc. v. Martin*, 47 O.S.3d 28, 546 N.E.2d 939.
- (1988) Arrest records and intoxilyzer records which contain the names of persons who have been formally charged with an offense, as well as those who have been arrested and/or issued citations but who have not been formally charged, are not confidential law enforcement investigatory records within the exception to the Public Records Law, RC § 149.43(A)(2)(a), and are thus subject to disclosure: *State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept.*, 38 O.S.3d 324, 528 N.E.2d 175.
- (1988) Law enforcement investigatory records must be disclosed unless they are excepted from disclosure by RC § 149.43: *State ex rel. Natl. Broadcasting Co. v. Cleveland*, 38 O.S.3d 79, 526 N.E.2d 786.
- (1988) Records and information compiled by an internal affairs division of a police department are subject to discovery in civil litigation arising out of alleged police misconduct. if, upon an in camera inspection, the trial court determines that the requesting party's need for the material outweighs the public interest in the confidentiality of such information: *Henneman v. Toledo*, 35 O.S.3d 241, 520 N.E.2d 207.
- (1980) Routine factual law enforcement reports compiled prior to the January 18, 1980 amendment to RC § 149.43 are subject to disclosure: *State ex rel. Beacon Journal v. Univ. of Akron*, 64 O.S.3d 392, 18 O.O.3d 534, 415 N.E.2d 310.
- (1978) Police and other law enforcement's investigatory records are not subject to the compulsory disclosure provisions of RC § 149.43: *Wooster Republican Printing Co. v. Wooster*, 56 O.S.2d 126, 10 O.O.3d 312, 383 N.E.2d 124.
- (1993) A defendant's request that the prosecutor produce police records is not directed to the proper agency: *State v. Thompson*, 87 Ohio App. 3d 570, 622 N.E.2d 735.
- (1992) If a defendant seeking law enforcement investigatory records does not articulate a reasonable factual basis for believing that the records are exculpatory, the state is not obligated to assert the rationale for its decision not to disclose the records: *State v. Tinch*, 84 Ohio App. 3d 111, 616 N.E.2d 529.

- (1992) Revised Code N.E.2d 149.43 confers a substantive right, broader than Crim. R. 16, which may not be abridged by the Criminal Rules: *Chillicothe v. Knight*, 75 Ohio App. 3d 544, 599 N.E.2d 871.
- (1991) Unless excepted from disclosure, law enforcement investigatory records must be disclosed under RC § 149.43. Interview notes related to a specific, pending homicide investigation and prosecution are nondiscoverable pursuant to the exception at RC N.E.2d 149.43(A)(2)(c) for "specific" investigatory work product: *State v. Monroe*, 74 Ohio App. 3d 334, 598 N.E.2d 1224.
- (1991) Discovery proceedings in original criminal actions are governed by the provisions of Crim. R. 16. Invocation of the Public Records Law, RC § 149.43, in the criminal proceeding requires independent compliance with its unique procedural prerequisites to access. The common pleas court exercising jurisdiction in the criminal proceeding is invested with mandamus-like jurisdiction to hear and resolved a claim of denial of rights granted by RC § 149.43: *State v. Forehope*, 71 Ohio App. 3d 435, 594 N.E.2d 83.
- (1991) A sheriff's records of arresting a defendant after his bond had been revoked or of transferring him to prison do not qualify as confidential law enforcement records: *State ex rel. Martinelli v. Corrigan*, 71 Ohio App. 3d 243, 593 N.E.2d 324.
- (1989) When the death of a prisoner in a city jail is treated as a suicide from the outset of a routine investigation of the suicide and not the result of a "specific suspicion of criminal wrongdoing," the records resulting from that investigation are not confidential law enforcement investigatory records and are subject to disclosure under RC § 149.43: *State ex rel. Ware v. Cleveland*, 55 Ohio App. 3d 75, 562 N.E.2d 946.
- (1992) Investigatory reports in criminal proceedings are specific investigatory work product under RC § 149.43(A)(2)(c): *State v. Jones*, No. CA-8525 (5th Dist.) 1992 Ohio App. LEXIS 2996.
- (1990) Routine, factual law enforcement reports were not exempt as investigatory work product or a trial preparation records: *State ex rel. Coleman v. Dayton*, No. 11383 (2nd Dist.), 1990 Ohio App. Lexis 522.
- (1990) The exceptions to the public records law provided by RC § 149.43(A)(2)(a) and (b) exist to protect the identity of an information source, not the information the source provides: *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 552 N.E.2d 243 (CP).

- (1990) General or routing promises of confidentiality cannot constitute "reasonable promises of confidentiality" within the meaning of RC § 149.43(A)(2)(a) and (b). Accordingly, public offices must limit their use of promises of confidentiality to individual cases where such promises are required to further the purpose of the specific investigation: *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 552 N.E.2d 243 (CP).
- (1981) A "News Hook" maintained by a city police department is not a public record under the terms of RC § 149.43, and need not, therefore, be disclosed to all members of the public for any reason whatsoever: OAG No. 81-043.
- (1981) Complaints filed with the Division of Real Estate concerning violations of RC Chapter 4735., except those complaints which qualify as "confidential law enforcement investigatory records: as defined by RC § 149.43(A)(2), are public records within the meaning of RC § 149.43 and must be made available for public inspection: OAG No. 81-014.
- (1981) Whether a particular complaint comes within the definition of "confidential law enforcement investigatory records" is a question of fact to be determined on a case-by-case basis: OAG No. 81-014.
- (1971) The case files of specific investigations made by the state highway patrol are not "public records" within the meaning of RC § 149.43: OAG No. 71-053.

Medicaid providers -- Cost reports filed by nursing homes

- (1976) Cost reports filed by nursing homes with the Ohio Department of Public Welfare for reimbursement under the Medicaid program are records required to be kept and are public records within the meaning of RC § 149.43, open to public inspection without prior express authorization by the nursing homes: OAG No. 76-011.

Medicaid providers -- Records of amounts paid to

- (1981) Neither federal law nor RC § 149.43 exempts from disclosure records concerning amounts paid to individual providers by the State of Ohio in connection with the Medicaid program: OAG No. 81-051.

Medical records

- (1992) Where a person is transported to a hospital emergency room for gunshot wounds, the emergency room and ambulance records are medical records under RC § 149.43(A)(3): *State ex rel. Richard v. Cleveland Metro Health Ctr.*, 84 Ohio App. 3d 142, 616 N.E.2d 549.
- (1990) In order to fall within the "medical record" exception to the public records law (RC § 149.43[A][3]), the record must pertain to a medical diagnosis and be generated and maintained in the process of medical treatment. Where a public office obtains the report of a psychologist in order to assist it in the decision-making process concerning an employee's future employment, the report was not "maintained in the process of medical treatment" and must be disclosed: *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 552 N.E.2d 243 (CP).

Mental retardation department records

- (1991) Revised Code § 5123.89 exempts certain records from disclosure under RC § 149.43: *State v. Curry*, 76 Ohio App. 3d 175, 601 N.E.2d 176.

Motor vehicle identification information

- (1992) A deputy clerk of a municipal court cannot be prosecuted for theft in office for disclosing motor vehicle identification information obtained from an office computer to a member of the general public, since such information is a public record: *State v. Sanchez*, 79 Ohio App. 3d 133, 606 N.E.2d 1058.

Nursing homes -- Complaints regarding

- (1977) Letters of complaint received by the Ohio Department of Health in regard to a particular nursing home are not records required to be kept and are thus not subject to inspection under RC § 149.43. Additionally, there is a need to preserve the confidentiality of complaints and the identity of the complainants against nursing home operation both to encourage the giving of such information to the Director of Health and to protect the complainants against possible retaliation: *Wayside Farms, Inc. v. State of Ohio*, 50 Ohio Misc. 13, 4 O.O.3d 364, 364 N.E.2d 297 (CP).

Nursing Homes -- Cost reports filed by

- (1976) Cost reports filed by nursing homes with the Ohio Department of Public Welfare for reimbursement under the Medicaid program are records required to be kept and are public records within the meaning of RC § 149.43, open to public inspection without prior express authorization by the nursing homes: OAG No. 76-011.

Nursing Homes -- Fiscal reviews by state welfare department

- (1976) Fiscal review of nursing home facilities by the Ohio Department of Public Welfare's Bureau of Fiscal Review are records required by law to be kept and are open for inspection pursuant to RC § 149.43, subject, when applicable, to federal requirements that names of Medicaid recipients not be publicly released: OAG No. 76-011.

Nursing Homes -- Medical reviews of services rendered to patients

- (1976) Periodic medical reviews of services rendered to nursing home patients under the Medicaid program are records required by law to be kept, however, the release of these records is prohibited by federal law. The periodic medical review, therefore, is not available for public inspection, and the alteration of these records or summary reports of them containing information, the release of which is prohibited by 45 CFR 205.50, is not required. RC § 149.43 creates a public right of inspection only as to records the release of which is not prohibited by state or federal law: OAG No. 76-011.

Ohio Board of Regents faculty inventory and service report

- (1981) The academic and nonacademic personnel inventory maintained by the Ohio Board of Regents is a public record under the terms of RC § 149.43. This inventory must, therefore, be open to public inspection and copies must be made available at cost: OAG No. 81-019.
- (1981) The faculty inventory and the report of faculty service maintained by the Ohio Board of Regents on computer tapes are not public records within the meaning of RC § 149.43 and, therefore, need not be made available for public inspection. The public release of the reports is restricted by 20 USC § 1232 g(b)I, which provides for a potential loss of federal funds: OAG No. 81-019.

Ohio Bureau of Employment Services

- (1992) Ohio Revised Code § 4141.21 exempts the disclosure of information provided to the Ohio bureau of employment services from disclosure under RC § 149.43: *Wiggins v. Ohio Bur. of Emp. Serv.*, 80 Ohio App. 3d 829, 610 N.E.2d 1150.

Parole proceedings

- (1983) Records of parole proceedings are not required to be made available as public records: *State ex rel. Gaines v. Adult Parole Authority*, 5 O.S.3d 104, 449 N.E.2d 762.

Payroll records

- (1991) County payroll records are public records with the exception of information which is protected by an employee's right to privacy: *State ex rel. Jones v. Myers*, 61 Ohio Misc. 2d 617, 581 N.E.2d 629 (CP).

Personnel records

- (2001) Personnel records are "public records," however excluded from this definition: employee addresses, any criminal background check derived from a computerized criminal database or done pursuant to RC § 5153.111, and confidential medical records. However, if medical information is not a confidential medical record (defined as "generated and maintained in the process of medical treatment") it is a public record: *State ex rel. Jones v. Summit County Children Services Board*, 2001 WL 96048.
- (1993) A person may inspect and copy a "public record" irrespective of his or her purpose for doing so. Not all items in a personnel file are public records. To the extent an item is not a public record and is "personal information," under RC § 1347.01, a public office has an affirmative duty to prevent its disclosure: *State ex rel. Fant v. Enright*, 66 O.S.3d 186, 610 N.E.2d 997.

Pleadings, removal of

- (1994) No provision within the Ohio Rules of Civil Procedure, the Ohio Rules of Criminal Procedure, or RC § 149.43, the public records law, authorized the removal of a pleading from a court file: OAG No. 94-089.

Police officers

- (1994) The police officers' contractual duty to cooperate in internal affairs investigations was not abrogated by the fact that the confidentiality provision was subsequently found to be contrary to RC § 149.43: *Toledo Police Patrolmen's Assn., Local 10, IUPA v. Toledo*, 94 Ohio App. 3d 734, 641 N.E.2d 799.
- (1995) Police personnel and internal affairs records are not exempt from disclosure. An award of attorney fees is justified where records are unreasonably denied: *State ex rel. Police Officers for Equal Rights v. Lashutka*, 72 O.S.3d 185, 648 N.E.2d 808.
- (1995) Investigatory and psychological reports compiled on members of a police recruit class are not exempt from disclosure under RC § 149.43: *State ex rel. Multimedia, Inc. v. Snowden*, 72 O.S.3d 141, 647 N.E.2d 1374.

Polygraph tests

- (1993) Polygraph tests given to candidates for a municipal police force are subject to disclosure as public records: *State ex rel. Lorain Journal Co. v. Lorain*, 87 Ohio App. 3d 112, 621 N.E.2d 894.

Presentence investigation

- (1993) After conviction, a defendant is not entitled to a copy of the presentence report under RC § 149.43 or 2951.03 or Crim. R. 32.2. However, a defendant is entitled to access to it prior to sentencing: *State v. Diet.*, 89 Ohio App. 3d 69, 623 N.E.2d 613.
- (1991) Presentence investigation reports are exempt from disclosure under RC § 149.43: *State ex rel. Hadlock v. Polito*, 74 Ohio App. 3d 764, 600 N.E.2d 709.
- (1994) A presentence investigation report is not a public record under RC § 149.43. It is a violation of Crim. R. 6(E) for the state to disclose grand jury information filed in connection with the report: *In re Special Grand Jury Investigation Concerning Organic Technologies*, No. 93-CA-00077 (5th Dist.), 1994 Ohio App. LEXIS 2180.
- (1995) A presentence investigation report is not a public record under RC 149.43. Thus the state violates Crim. R. 6(E) by disclosing grand jury information contained in the report: *In re Special Grand Jury Investigation Concerning Organic Technologies*, 74 O.S.3d 30, 656 N.E.2d 329.

Prisoners, records on

- (1978) Revised Code § 5120.21 provides that records on prisoners kept by the department of rehabilitation and correction shall be accessible only to its employees. Thus records and files on prisoners are not public records subject to public inspection: *State ex rel. Harris v. Rhodes*, 54 O.S.2d 41, 8 O.O.3d 36, 374 N.E.2d 641.

Private corrections facility

- (1992) Records of the investigation of a private corrections facility operator ordered disclosed: *State ex rel. Community Corrections Assn., Inc. v. Ohio Dept. of Rehab & Corr.*, 84 Ohio App. 3d 821, 619 N.E.2d 20.

Private entity

- (2001) A private entity is subject to RC § 149.43 if: (1) it must prepare the records in order to carry out a public office's responsibilities; (2) the public office must be able to monitor the private entity's performance, and (3) the public office must have access to the records for this purpose. Government entities cannot conceal information concerning public duties by delegating these duties to private entities: *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St. 3d 654, 758 N.E.2d 1135

Probate court -- Birth and death records

- (1982) Birth and death records kept by a probate court pursuant to RC § 2101.12 are public records which must be made available to any member of the general public as required by RC § 149.43, regardless of the motive which such member of the public has for inspecting such records. (1974 OAG No. 74-097, approved and followed in part): OAG No. 82-104.

Probate court -- Mental illness matters, indices of,

- (1977) It is not a violation of RC § 5122.31 to permit unrestricted access to the general and separate indices of mental illness matters filed in the probate court by the public. They are "public records" under RC § 149.43, and therefore they shall be open at all reasonable times for inspection: OAG No. 77-043. *See also, State v. Hall* (2001), 141 Ohio App. 3d 561, 752 N.E.2d 318

Promotion and tenure records

- (1994) Promotion and tenure records maintained by a state-supported institution of higher education are "public records" pursuant to RC § 149.43(A)(1), are not subject to any exception, and are, therefore, subject to the public records disclosure requirements of RC § 149.43(B): *State ex rel. James v. Ohio State Univ.*, 70 O.S.3d 168, 637 N.E.2d 911.

Prosecutor records

- (1989) In connection with the trial of a criminal case, statements of potential witnesses in the possession of the prosecuting attorney are discoverable pursuant to RC § 149.43 the Public Records Act, if the trial court determines that the records in question are not specific investigatory work product under RC § 149.43(A)(2)(c), or otherwise excepted from disclosure under RC § 149.43(A)(2), or that the records were specifically compiled in reasonable anticipation of a criminal action or proceeding under RC § 149.43(A)(4). The court must redact that which is not discoverable in the records and then must, under seal, make the redacted portions a part of the record for appeal. Under RC § 149.43, the trial court has a greater responsibility than that which it has under Crim. R. 16: *Sanford v. Kelly*, 44 Ohio App. 3d 30, 541 N.E.2d 124.

Public Employees Retirement System members

- (1979) List of names and addresses of PERS members is a public record: *State ex rel. Public Employees Retirees v. PERS*, 60 O.S.2d 93, 14 O.O.3d 331, 397 N.E.2d 1191.

Public schools -- School psychologist's records

- (1975) The records of a school psychologist whether licensed under Chapter 4732. or certified pursuant to RC § 3319.22 do not constitute public records within the purview of RC § 149.43. However, authorized board of education personnel do have access to the reports and recommendations of the certificated school psychologist: OAG No. 75-047.

Public schools -- Student records

- (1990) Revised Code § 149.43(B) requires the auditor of the State of Ohio to produce for inspection audit records that he has access to but which he does not actually possess: *State ex rel. Mazzaro v. Ferguson*, 49 O.S.3d 37, 550 N.E.2d 464.

- (1975) Student records of the public schools are public records open to general inspection under RC § 149.43: *State ex rel. Grosser v. Boy*, 42 O.S.2d 498, 71 O.O.2d 499, 330 N.E.2d 442.

Real estate appraisal

- (1985) Appraisal cards which are kept by the office of the county auditor and which contain information used in the valuation and assessment of real property for purposes of taxation are subject to public inspection pursuant to RC §§ 149.43 and 5715.07, and disclosure of such documents does not violate either RC §§ 5715.49 or 5717.50. (1931 OAG: No. 3703, vol. III., p. 1295, approved and followed): OAG No. 85-087.

Registrar of motor vehicles -- Abstracts of records

- (1976) All documents in the possession of the Registrar of Motor Vehicles, including all abstracts of records required to be received by and maintained by the registrar pursuant to the provisions of RC § 4507.40, are public records and shall be kept open at all reasonable times for inspection and, upon request, the registrar shall make copies of such records available at cost within a reasonable period of time: *State ex rel. Beacon Journal Publishing Co. v. Andrews*, 48 O.S.2d 283, 2 O.O.3d 434, 358 N.E.2d 565.

Registrar of motor vehicles -- Records of proceedings

- (1976) The records of all proceedings of the Registrar of Motor Vehicles are required to be open to the public for inspection at all reasonable times: *State ex rel. Beacon Journal publishing Co. v. Andrews*, 48 O.S.2d 238, 2 O.O.3d 434, 358 N.E.2d 565.

Rehabilitation Services Commission

- (1984) Client records held by the Rehabilitation Services Commission in connection with the state vocational rehabilitation services program are not public records for purposes of RC § 149.43, because the general release of such records is prohibited by RC § 3304.21 and 34 C.F.R. § 361.49 (1975) Op. Atty. Gen. No. 76-049, syllabus, paragraph one, approved and followed.): OAG No. 84-084.
- (1976) Records concerning individuals applying for or receiving services from the Rehabilitation Services Commission are not public records within the meaning of RC § 149.43, because the general release of such records is prohibited by RC § 3304.21 and 45 CFR 401.47: OAG No. 76-049.

Search warrant

- (1994) The municipal court did not abuse its discretion by unsealing the affidavit for the search warrant, even though it would lead to disclosure of the identity of an informant: *In re Search Warrant No. 5077191*, 96 Ohio App. 3d 737, 645 N.E.2d 1304.

Securities division

- (1994) Because the general assembly enacted RC § 149.43 subsequent to RC § 1707.12, and never manifested an intent that the two provisions be coextensive in either the original enactment or any successive amendment, RC § 1707.12 is the sole provision governing information collected by the Ohio Division of Securities: *State ex rel. Dublin Securities, Inc. v. Ohio Div. of Securities*, 68 O.S.3d 426, 627 N.E.2d 993.

Separation agreement

- (1988) An employment separation agreement clause purporting to prohibit a school district from disclosing pedophilia on the part of a teacher to a school district that subsequently employs him is void as against public policy and no cause of action will lie for its breach: *Bowman v. Parma Bd. of Edn.*, 44 Ohio App. 3d 169, 542 N.E.2d 663.

SERB records

- (1992) Investigatory files compiled by SERB must be disclosed upon request pursuant to RC §§ 149.43 and 4117.17 unless an in camera inspection shows an exception from disclosure: *State ex rel. Eaton City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 64 O.S.3d 383, 595 N.E.2d 938.
- (1992) Investigatory files compiled by the State Employment Relations Board pursuant to RC § 4117.12 must be disclosed upon request pursuant to RC §§ 4117.17 and 149.43 unless an in camera inspection demonstrates that all or any portions of the files are excepted from disclosure. Excepted information may be redacted prior to disclosure: *Franklin Cty. Sheriff's Dept. V. State Emp. Relations Bd.*, 63 O.S.3d 498, 589 N.E.2d 24.

Settlement agreements

- (1991) Settlement agreements and related attorney fees paid are subject to disclosure and cannot be exempted via a confidentiality agreement. An agency need not create new documents to facilitate disclosure: *State ex rel. Sun Newspapers v. Westlake Bd. of Edn.*, 76 Ohio App. 3d 170, 601 N.E.2d 173. Also, *State ex rel. Findley Publishing Co. V. Hancock Cty. Bd. of Commrs.* (1997), 80 Ohio St. 3d 134.
- (1990) Settlement agreements entered into by a governmental unit are public records and are not exempt as trial preparation records. Individual members of a board of education are amenable to suit, pursuant to RC 149.43, as person responsible for the public records in issue: *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App. 3d 659, 582 N.E.2d 653.

Shorthand notes of testimony

- (1989) Shorthand notes taken pursuant to RC § 2301.20 and transcripts prepared pursuant to RC § 2301.23 are public records under RC § 149.43, unless the notes or transcripts include or comprise a record which is excepted from the definition of "public record" in RC § 149.43(A)(1): OAG No. 89-073.
- (1989) Under RC § 149.43(B), a person seeking to inspect or receive a copy of the shorthand notes taken and filed pursuant to RC § 2301.20 by an official shorthand reporter or assistant shorthand reporter of the court of common pleas may direct the request to inspect or received a copy to the official shorthand reporter of the court of common pleas: OAG No. 89-073.

Social security number

- (1992) A person's social security number is exempt from disclosure. Diagrams or sketches created by police investigators are not exempt as investigatory work produced. There is no blanket prohibition of disclosure of the home addresses and phone numbers of police officers. A notation that a victim was "D.O.A./obvious" is not an exempt medical record: *State ex rel. Natl. Broadcasting Co. v. Cleveland*, 82 Ohio App. 3d 202, 611 N.E.2d 838.
- (1993) The social security numbers of municipal employees are "records" as defined in RC § 149.01.1 and subject to disclosure under RC § 149.43: *State ex rel. Beacon Journal Publishing Co. v. Akron*, No. 15872 (9th Dist.), 1993 Ohio App. Lexis 3979.

- (1994) Social security numbers of a city's employees are "records" for purposes of the public records act. However, they are not "public records" subject to disclosure under RC § 149.43. The high potential for fraud and victimization caused by the unchecked release of such numbers outweighs the minimal information about governmental processes gained through the release of the numbers: *State ex rel. Beacon Journal Publishing Co. v. Akron*, 70 O.S.3d 605, 640 N.E.2d 164.

State Board of Psychology

- (1983) To the extent that records maintained by the Ohio State Board of Psychology contain information or other data the release of which is prohibited by RC § 2953.35(A), such records are not "public records" within the meaning of RC § 149.43(a)(1). The Board may, therefore, seal such information or data or otherwise segregate it from its public records in order to comply with RC § 2953.35(A): OAG No. 83-100.

State medical board

- (1992) Revised Code § 4731.22(C)(1) clearly removes all information received by the state medical board from disclosure under RC § 149.43: *Degordon v. Ohio State Med. Bd.*, 62 Ohio Misc. 2d 584, 609 N.E.2d 247 (CP).

Tax records

- (1992) For purposes of RC § 149.43, a copy of federal income tax Form W-2, prepared and maintained by a township as an employer, is subject to inspection as a public record: OAG No. 92-005.
- (1991) 26 U.S.C. § 6103, imposing confidentiality on federal income tax returns, is not applicable to a federal income tax return submitted to a court of common pleas by a litigant in connection with a child support determination or modification proceeding in that court: OAG No. 91-053.
- (1990) Neither RC § 149.43 nor any other Revised Code section serves to make confidential all records filed with Ohio taxation authorities. Particular tax information is made confidential by specific Revised Code sections: OAG No. 90-102.

Township records

- (1986) Pursuant to RC § 507.05, the township clerk is given responsibility for overseeing the township books. Pursuant to RC § 149.35.1, the township clerk is prohibited from wrongfully removing, damaging, or disposing of the township clerk is required to maintain the township books in a manner that they can be made available for inspection to any member of the general public at all reasonable times during regular business hours: OAG No. 86-057.

Trade secrets

- (1992) Court errs when it determines that documents submitted as part of an application for financial agreement under RC § 1728.06 for approval of a tax-exempt project were not exempted from disclosure as trade secrets without first reviewing the documents in camera. In camera review was needed to determine whether the documents had become public and thus had lost their protection as trade secrets not subject to disclosure under RC § 149.43: *State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland*, 63 O.S.3d 772, 591 N.E.2d 708.
- (1994) Trade secrets which are prohibited from disclosure pursuant to RC 1333.51 may be exempt from disclosure as public records under RC 149.43: *State ex rel. Seballos v. School Emp. Retirement Sys.*, 70 O.S.3d 667, 640 N.E.2d 829.
- (1994) Unless there is an applicable statutory waiver, trade secret protection is not lost merely because information is included in an application or proposal to a public agency: *State ex rel. Fisher v. PRC Pub. Sector, Inc.*, 99 Ohio App. 3d 387, 650 N.E.2d 945.

Transcript, request for

- (1989) Under RC § 149.43(B), a person seeking to inspect or receive a copy of the transcript prepared pursuant to RC § 2301.23 by a shorthand reporter or assistant shorthand reporter of the court of common pleas may direct the request to inspect or receive copies to the official shorthand reporter of the court of common pleas. If a transcript is filed with the court of common pleas, any person seeking to inspect or receive a copy of the transcript may direct the request to inspect or receive a copy to the clerk of court of common pleas: OAG No. 89-073.
- (1967) A demand by a party not included with the terms of RC § 2301.23 upon the court reporter to transcribe and deliver a copy of such transcription is not a

request to make available public records under the terms of RC § 149.43: OAG No. 67-018.

Trial judge's handwritten notes

- (1993) A trial judge's personal handwritten notes made during the course of a trial are not public records: *State ex rel. Steffen v. Kraft*, 67 O.S.3d 439, 619 N.E.2d 688.

Trial preparation records

- (2001) Criminal pretrial discovery documents, which usually are exempted from public records requests, change character -- from discovery materials to court documents -- when introduced in court as exhibits on a motion hearing: *State ex rel. Cincinnati Enquirer v. Dinkerlacker*, 144 Ohio App. 3d 725, 761 N.E.2d 656.
- (1993) Witness statements from aggravated murder conviction case are not exempt as "trial preparation records" under RC § 149.43: *State ex rel. Jells v. Cleveland*, 67 O.S.3d 436, 619 N.E.2d 686.
- (1993) The witness statements and forensic tests from relator's aggravated murder prosecution were exempt as trial preparation records and investigatory work product: *State ex rel. Hamblin v. Brooklyn*, 67 O.S.3d 152, 616 N.E.2d 883.
- (1991) Police homicide investigation files are not exempt from disclosure as "trial preparation records" where they are not "specifically compiled" in anticipation of a criminal proceeding: *State ex rel. Coleman v. Cincinnati*, 57 O.S.3d 83, 566 N.E.2d 151.
- (1990) Investigations conducted for multiple purposes do not qualify for exemption as "trial preparation records." Any possible exemption is waived where the records are voluntarily disclosed in another lawsuit: *State ex rel. Zuern v. Leis*, 56 O.S.3d 20, 564 N.E.2d 81.
- (1992) A prosecutor's records compiled in anticipation of litigation are exempt as trial preparation records. General police investigation records are not exempt from disclosure. An award of attorney fees is justified here respondent unreasonably refused to respond to the request for disclosure: *State ex rel. Collins v. Corbin*, 73 Ohio App. 3d 410, 597 N.E.2d 544.
- (1993) The witness' statements were not exempt as trial preparation records: *State ex rel. Morales v. Cleveland*, 67 O.S.3d 573, 621 N.E.2d 403.

- (1988) The record of an investigation of alleged wrongdoing by a police chief compiled to establish the accuracy of the accusations in a public record. While the investigation may lead to litigation, the record of that investigation does not qualify as a trial preparation record: *Barton v. Shupe*, 37 O.S.3d 308, 525 N.E.2d 812.
- (1988) The attorney-client privilege establishes an exclusion to disclosure under the Ohio Public Records Law, RC § 149.43, of records consisting of communications between attorneys and government clients, even when such records do not fall within the "trial preparation" exception set forth in RC § 149.43(A)(4), since the release of such records is "prohibited by state law": *Woodman v. Lakewood*, 44 Ohio App. 3d 118, 541 N.E.2d 610.
- (1981) Pursuant to RC § 140.43, the term "trial preparation records" includes only those records specifically compiled by a governmental unit after the unit's attention has focused upon a particular person or claim, in reasonable anticipation of a civil or criminal proceeding, and does not include those records routinely compiled by a governmental unit as a matter of common practice: OAG No. 80-103.
- (1980) With the exception of trial preparation records, records compiled by the Department of Commerce pursuant to RC Chapter 169, are public records (as defined by RC § 149.43), to which the general public is entitled to access: OAG No. 80-103.

Trial videotapes

- (1986) Videotapes of trial proceedings are public records: *State ex rel. Harmon v. Bender*, 25 O.S.3d 15, 25 OBR 13, 494 N.E.2d 1135.

Victim's statement

- (1990) A victim's statement reporting an offense to a police officer is a public record: *Pinkava v. Corrigan*, 64 Ohio App. 3d 499, 581 N.E.2d 1181.

Workmen's compensation claim files

- (1975) The materials which comprise a workmen's compensation claim file and any other file pertaining thereto fall within the exception to the definition of a "public record" found in RC § 149.43 because RC § 4123.88 specifically prohibits the examination or release of any claim file without the express prior authorization of the claimant, employer, a member of the industrial commission, or the administrator of the bureau of workmen's compensation: OAG No. 75-062.

"Workshop" meetings

- (1990) Where county, village and township officials meet with prospective developers in a "workshop" meeting closed to the public, such officials have a clear legal duty to prepare minutes of the meeting and make them available for public inspection: *State ex rel. The Fairfield Leader v. Ricketts*, 56 O.S.3d 97, 564 N.E.2d 486.

OHIO REVISED CODE SECTION 149.43

149.43 Availability of public Records

(A) As used in this section:

(1) "Public record" means any record that is 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 Ohio kept by a nonprofit or for profit entity operating such alternative school pursuant to section 3313.533 [3313.53.3] of the Revised Code.* "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 [2919.12.1] 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 [3107.06.2] 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 2317.023 [2317.02.3] or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 [109.57.3] 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 [3121.89.4] of the Revised Code;

(p) Peace officer residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. 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 [307.62.1] to 307.629 [307.62.9] of the Revised Code, other than the report prepared pursuant to section 307.626 [307.62.6] 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

* The purpose of the school, which purpose shall be to serve students who are on suspension, who are having truancy problems, who are experiencing academic failure, who have a history of class disruption, or who are exhibiting other academic or behavioral problems specified in the resolution.

[5153.17.1] 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.

(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 residential and familial information" means either of the following:

(a) Any information maintained in a personnel record of a peace officer that discloses any of the following:

(i) The address of the actual personal residence of a peace officer, except for the state or political subdivision in which the peace officer resides;

(ii) Information compiled from referral to or participation in an employee assistance program;

(iii) 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;

(iv) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided

to a peace officer by the peace officer's employer;

(v) The identity and amount of any charitable or employment benefit deduction made by the peace officer's employer from the peace officer's compensation unless the amount of the deduction is required by state or federal law;

(vi) 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.

(b) Any record that identifies a person's occupation as peace officer other than statements required to include the disclosure of that fact under the campaign finance law.

As used in divisions (A)(7) and (B)(5) 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.

(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.

(B)(1) Subject to division (B)(4) of this section, all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(4) of this section, upon request, a public office or person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

(2) If any person chooses to obtain a copy of a public record in accordance with division (B)(1) of this section, the public office or 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.

(3) Upon a request made in accordance with division (B)(1) 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 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 and other supplies used in the mailing.

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 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.

(4) 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 of any public record concerning a criminal 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 justiciable claim of the person.

(5) 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 shall disclose to the journalist the address of the actual personal residence of the peace officer and, if the peace officer's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer'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 division (B)(5) of this section, "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) If a person allegedly is aggrieved by the failure of a public office 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 if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a public office or the person responsible for the public record to make a copy available to the person allegedly aggrieved 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 and that awards reasonable

attorney's fees to the person that instituted the mandamus action. 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 the 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.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E) (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 cost, 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 divisions (B)(3) and (E)(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 of 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 (E)(1) and (2) of this section, "commercial surveys, marketing, solicitation, or resale" shall be narrowly construed and does not include reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

OHIO REVISED CODE SECTION 149.011

149.011 **Definitions.**

As used in this chapter:

(A) "Public office" includes any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

(B) "State agency" includes every department, bureau, board, commission, office, or other organized body established by the constitution and laws of this state for the exercise of any function of state government, including any state-supported institution of higher education, the general assembly, or any legislative agency, any court or judicial agency, or any political subdivision or agency thereof.

(C) "Public money" includes all money received or collected by or due a public official, whether in accordance with or under authority of any law, ordinance, resolution, or order, under color of office, or otherwise. It also includes any money collected by any individual on behalf of a public office or as a purported representative or agency of the public office.

(D) "Public official" includes all officers, employees, or duly authorized representatives or agents of a public office.

(E) "Color of office" includes any act purported or alleged to be done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.

(F) "Archive" includes any public record that is transferred to the state archives or other designated archival institutions because of the historical information contained on it.

(G) "Records" includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

PROPOSED LETTER DEMANDING PUBLIC RECORDS
UNDER § 149.43 OHIO REVISED CODE

Insert Name
insert Address

Re: *Request to view and receive copies of public records under § 149.43 of the Ohio Revised Code*

Dear _____:

In accordance with § 149.43 of the Ohio Revised Code, _____ hereby makes a formal request to review, inspect and receive copies of all documents which constitute a "public record" as defined in said section, which pertain to _____.

The scope of this request includes all original writings of any nature whatsoever and all non-identical copies thereof, and includes any other means of recording or preserving information, including, but not limited to, all letters, memoranda, reports, hand-written notes, photographs, records, tape recordings, summaries, minutes, computer print-outs or information otherwise stored or preserved in computers, which have been prepared by you or a person in your department as it applies to _____.

_____ believes that the records requested hereby are "public records" as defined by § 149.43(A)(1) of the Ohio Revised Code. Accordingly, the law requires that these records shall be promptly prepared and made available for inspection by _____ at any reasonable time during regular business hours. Additionally, since _____ has requested copies of said records, the person responsible for maintaining custody of the requested records is required by law to provide copies of the same to _____, at cost, and within a reasonable period of time. **ACCORDINGLY, PLEASE BE INFORMED THAT _____ WISHES TO REVIEW THE ABOVE REQUESTED RECORDS AT YOUR OFFICE ON _____, 2__ AT _____ .M.** It is requested that copies of such records be made available at that time. _____ will, of course, pay all costs of reproduction of said documents, as required by law.

Please note that if this request is denied, or if any record or portion thereof responsive to this request is withheld or redacted, you are required to identify the nature of any document or information withheld and/or redacted, and state your reasons for withholding or redacting the same. Please be informed that merely because a document or a portion of a document contains material which is not subject to disclosure, under § 149.45, you are *not relieved* of your *legal*

duty to produce that document; rather, you must redact the protected information and release all remaining information. *See, State, ex rel. NBC v. City of Cleveland*, 38 Ohio St. 3d 79 (1988).

Additionally, please note that § 149.43(C) of the Ohio Revised Code provides that a person who is aggrieved by either (1) the failure of a government unit to promptly prepare a public record and make it available to him/her for inspection, or (2) the failure of a governmental unit to make and provide copies of a public record in a timely fashion after being requested to do so, may file a lawsuit to obtain a judgment ordering the governmental unit to comply with such request and ***pay the attorney fees and costs that person incurred in bringing such a lawsuit.***

In closing, should you have any questions or comments with respect to this matter, please do not hesitate to contact the undersigned.

Sincerely,

Insert Company/Agency Name

By: Insert Name
Insert Title