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Public Records Laws as Applied to Treasurers

Ohio Treasurer's Association



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What is a Public Record?

ORC 149.43

- **(A)(1) – Public Record means records kept by any public office, including, but not limited to, state, county, city, village, township and any school district units...**
 - Subsections (a) through (ss) are exceptions from public records
 - Most do not apply to treasurers
 - Exceptions to exceptions that are important to *all* public offices:
 - (dd) – Redaction of personal information. See *ORC 149.45*
 - (rr) – Marsy’s Law records. See *ORC 2930.04 - 2930.07*
 - (ss) – A “sunset” record deemed not a public record becomes a public record 75 years after the day when it was created
 - §§ (7) – (8) – Confidential information for “public service worker.” May be redacted upon request. *ORC 149.45*

Production of Records (*Your Duties*)



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- (B)(1):
 - Upon *request*
 - All records *responsive to the request*
 - *Promptly prepared* (response to request)
 - Made available for inspection
 - *Reasonable time period*
 - At a cost (*must be reasonable*)
 - *No provision for labor costs associated with response*
 - Notify of redaction (deemed by law as a refusal to produce)
- (B)(2):
 - A public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section
 - A copy of the record retention schedule should be present at the public office and readily available to the public
 - Ambiguous or overly broad requests may be denied
 - But the opportunity to revise the request must be provided



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Denials

- A request may be denied in whole or in part
- The denial must be explained
 - This includes citing to legal authority
- If the initial request was in writing, the explanation also shall be provided to the requester in writing
- The explanation shall not preclude the public office or the person responsible for the public record from relying upon additional reasons or legal authority in *defending* an action commenced under division (C) of this section
- There is no remedy available to the entity



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- **(B)(4):**
 - **The availability of public records may not be conditioned or limited**
 - **Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request**
 - **There is an exception if the action was authorized or required by state law**



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- **(B)(5):**
 - **A public office or person responsible for records may ask:**
 - A requester to make a request in writing;
 - For the requester's identity;
 - About the intended use of the information requested
 - ***But only after disclosing:***
 - To the presenter that a written request is not mandatory;
 - That the requester may decline to reveal the requester's identity
 - That the requester may decline to reveal the intended use
 - **And when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought**



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- **(B)(6):**
 - The public office or person responsible for the public record may require advance payment of the cost involved in providing the copy of the record in accordance with the requester's choice
 - The requester shall be permitted to choose to have the public record duplicate:
 - Upon paper
 - Upon the same medium upon which the public office or person responsible 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
 - This section does not requires public offices or persons responsible for public records to allow the requester to copy the record themselves



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- **(B)(7)(a):**
 - **Public records shall be transmitted by United States mail or by any other means of delivery or transmission**
 - ***Within a reasonable time***
 - **The public office or person responsible for the public record may request advance payment for the postage or any other cost of delivery**
 - **Advance payment may also be requested for costs incurred for supplies used in mailing, delivery, or transmission**
- **(B)(7)(b):**
 - **Any public office may adopt a policy and procedures that it will follow in transmitting copies of public records pursuant to division (B)(7). That office shall comply with them in performing its duties under that division.**
 - **(c)(i) – A public office may limit the number of records requested by a person that the office will physically deliver to ten a month *unless* the requester certifies that the requester does not intend to use the requested records for commercial purposes**
 - **(c)(ii) – A public office may limit the number of records requested by a person that the office will deliver in a digital format to ten a month *unless* the requester certifies *in writing* that the requester does not intend to use the requested records for commercial purposes**
 - **A public office may choose to provide some or all of its public records on a website that is fully accessible to and searchable by members of the public at all times, and charges no fee to search, access, download, or otherwise receive records provided on the website**



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- **(B)(8):**
 - **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 what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult**



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- **(B)(9)(a):**
 - **Upon written request made and signed by a journalist, a public office or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist:**
 - **the address of the actual personal residence of the designated public service worker; and**
 - **If the designated public service worker's spouse, former spouse, or child is employed by a public office, the name and address of their employer**
 - **The request shall include the journalist's name and title and the name and address of his or her employer**
 - **The request shall state that disclosure of the requested information would be in the public interest**



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- **(B)(10):**
 - **Marsy's law**
 - **A public office or person responsible for public records shall transmit a depiction of the victim as described in division (A)(1)(ii) of this section to the victim, victim's attorney, or victim's representative upon request**
 - **(A)(1)(ii) – any depiction by photograph, film, videotape, or printed or digital image under wither of the following circumstances:**
 - **(i) – the depiction is that of a victim of an offense that release of which would be, to a reasonable person, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity;**
 - **(ii) – the depiction captures or depicts the victim of a sexually oriented offense at the actual occurrence of that offense**



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Consulting Your County Prosecutor

Standard policy:

1. Vet through prosecutor's office
2. All or specific
3. Discuss policy issues
4. Response issues
5. Problematic requestors
6. Obligation to respond is on the public office, NOT the prosecutor

- **(C)(1):**
 - If a person *“allegedly aggrieved”* by a *failure of a public office to comply*, the person may do one of the following:
 - File complaint with clerk of court of claims OR clerk of common pleas. See *ORC 2743.75*
 - Commence a mandamus action that would order an award of costs and reasonable attorney’s fees
 - Would include an order fixing statutory damages, see *(C)(2) of this statute*
 - May be commenced in:
 - The court of common pleas in the county in which division (B) of this section was allegedly not complied with;
 - The Supreme Court pursuant to its original jurisdiction; or
 - The court of appeals for the appellate district in which division (B) of this section allegedly was not complied
 - The amount of statutory damages shall be fixed at \$100 per business day during which the public office or person responsible for the requested records failed to comply with an obligation in accordance with division (B) of this section, starting from the day the mandamus action was filed
 - Maximum of \$1000
 - Injury conclusively presumed by court
 - The court determines frivolous conduct (*ORC 2323.51*)
 - May award public office court cost, expenses, and reasonable attorney’s fees

Attorney General Training

- ORC 109.43
- No charge
- Designee/elected official/future official
- Allow attendance of any interested party
- 3 hours for each terms of election or appointment
- State auditor to audit in each annual or biennial audit
- Public office

For compliance



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Two types of requests are considered *unduly burdensome*



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1. Vague/unduly burdensome amount of records
2. Frequency/purpose to harass (individual or agency)

Case examples to follow

See: *National Freedom of Information Coalition NFOIC white paper Entitled Beast or Burden: nuisance, vexatious, or burdensome requests*

- ▶ **Jason Parsley, Executive Editor of South Florida Gay News. Request on Broward County Sheriff's Office**
- ▶ **Requested a search of ALL email accounts for derogatory terms related to gays. Limited to one year search.**
- ▶ **Advised by Sheriff the cost for search was \$399,000**
- ▶ **Capability to respond limited, would take four years.**
- ▶ **Requester gave up request.**



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- ▶ **2015 Associated Press request to DMV (California).**
- ▶ **Number of suspended driver's licenses by zip code.**
- ▶ **Estimated cost of fulfilling was \$19,950.**
- ▶ **Included labor, database search, and copying.**
- ▶ **Requester narrowed request / cost was \$377**
- ▶ **Unreasonable because asked for records which did not exist. Raw data was present but format requested had to be compiled.**



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- ▶ **Medina Township**
- ▶ **Problematic issues between fiscal officer and Trustees**
- ▶ **Former employee (assist to FO)**
- ▶ **Fired in 2023**
- ▶ **Began campaign of harassment**
- ▶ **In 2023 filed 115 Public Record requests on Township**
- ▶ **Through April of 2024 filed 64**
- ▶ **In May 2024 requested copies of ALL accounts payable approved at special trustees meeting and a copy of each physical check payment and a copy of each signed approved invoice for this accounts payable.**
- ▶ **All other public requests for township over 3 year period totaled 134**



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- ▶ **Harm Reduction (HRO) v. Oneohio Recovery Foundation**
- ▶ **By way of background, One Ohio Foundation was set up as a private nonprofit organization to receive Ohio settlement funds from the National Opioid litigation settlement.**
- ▶ **Received 55% of the settlement**
- ▶ **HRO is a nonprofit. June 2022, their president attempted to attend the first meeting of the board of directors. He was told the meeting was not open to the public.**
- ▶ **August 2022 filed mandamus action. Foundation responded stating they were not a public office.**
- ▶ **Court rule that the Foundation was the “functional equivalent” of a public office.**
- ▶ **Court did not award statutory damages or attorney’s fees.**

Section 149.43 | Availability of public records for inspection and copying

...

(B)(1) Upon request by any person and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2)(a) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public.

(b) If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(c) If a requestor makes a request to the same public office for inspection or copy, regardless of whether the requests are related, and the public office has reason to believe, based on the volume of requests or the repeated nature of requests, that the request or requests are intended to harass the public office, or to disrupt the essential functions of the public office, the public office may bring an action in the common pleas court of the county where that public office is located to limit or deny the request or requests. During the pendency of such action the need for the public office to respond to the request or requests that are the subject of the action shall be stayed. If the court determines by a preponderance of the evidence that the request or requests were intended to harass the public office, or to disrupt essential functions of the public office, the court may limit or deny the request or requests and, in addition, if the court believes the requestor may make future requests to the same public office for the purpose of harassing the public office or disrupting essential functions of that public office, it may limit or restrict future requests of the requestor to that public office. This division does not apply to any journalist as defined in division (B)(9)(c) of this section and no court may limit, deny, or restrict the access of any journalist to public records under this division.

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require the requester to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the requester under this division. The public office or person responsible for the public record may choose to employ the services of a private contractor to respond to a request for copies of public records, including any redaction, so long as the decision to do so is reasonable based on a voluminous request, and the cost of these services may be included as a cost of providing the copy of the public record. The public office or the person responsible for the public record shall permit the requester 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 requester 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 requester. Nothing in this section requires a public office or person responsible for the public record to allow the requester of a copy of the public record to make the copies of the public record.

Section 2323.52 | Civil action to declare person vexatious litigator.

(D)(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;

(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

(d) Making any request for public records under section 149.43 of the Revised Code.

(2) A person prohibited from making a request for public records under division (D)(1)(d) of this section, in addition to obtaining leave to proceed from the court of common pleas as described in this division, must also obtain an accompanying order from the court that specifies with particularity what public records the person may request. Until the requirements set forth in this division are satisfied and evidence of satisfaction is presented to the public office or person responsible for public records, the public office or person responsible for public records has no duty to respond to a public records request submitted by a person who is subject to an order entered pursuant to division (D)(1)(d) of this section.