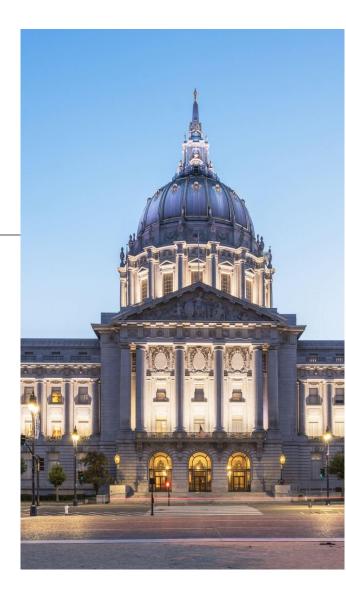
County Commissioners Public Meetings

This is your meeting





This is a business meeting, and generally, most are run according to Roberts Rules of Order.

All deliberation on public business, and all official action, must take place in a meeting open to the public.

The public is welcome to attend these meetings to hear firsthand how decisions are made.

This is an open meeting, not a public meeting. An open meeting does not require a governmental body to allow members of the public to speak or actively participate in an open session meeting.

Public Business

It is at the discretion of the Board to allow time on the agenda for a Public Forum allowing those attending the meeting time to address the Board.

A public conduct policy should be approved specifically stating the expectations of the Board on how guests should conduct themselves in their business meeting.

Public comment should be limited to agenda items unless the topic is approved by the President of the Board or their designee.

The best way to get public comment is to attend community events and make yourself available for conversation, making no promises, just listening to concerns and ideas. This allows you to bring up topics at your next open meeting.

Public Forum

County Administrator / Clerk to the Board

As County Administrator I also serve as Clerk to the Board

- 1. Manage day to day business on behalf of the Commissioners
- 2. Prepare agendas and assure they are posted and sent to media and others requesting copies of the agendas within twenty-four hours of the meeting.
- 3. Prepare resolutions for Board approval.
- 4. Schedule individuals requesting to speak to the Board during the meeting and note the topic of the meeting.





Most of you should have a seasoned staff in your office. Take advantage of the experience in your office and listen to what they have learned. These individuals can be your best friends!

Commissioners Best Friends

I have worked with ten different Commissioners. It is always nice to get a fresh outlook on the direction the County should be heading.

It is also good to remember many Commissioners have come before you with many ideas. Change is always good but sometimes not necessary and should be introduced cautiously.

United you stand divided you fall



There are three Commissioners. Every decision needs to have at least two
Commissioners to pass. Everyone has a different opinion and may take a different stance on different issues. When meeting in open session, just like your family, when you are in public you should present a united front and show mutual respect.
Without the mutual respect it opens a door for those watching to set you up against each other. Open meetings is not a time to air your differences.





Presented by Mark Landes MLandes@IsaacWiles.com (614) 221.2121



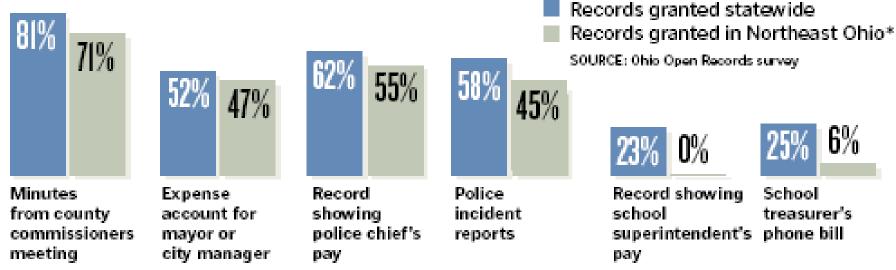
Fishbone in your throat?

Your County 1234 County Rd W Columbus, Ohio 43215	001 Date
Pay to the Order of	S Dollars
For	County Commissioner
1:044000037:1 001 1234567665	



Media Audit

Shaky access to records: Government, police and school offices across Ohio were asked for public records in late April. Results statewide were mixed, with school offices most often denying access to the records.



* Results from 20 communities in Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit counties.

How open was each county?

The results below are based on visits to the county seat. In Cuyahoga County, for example, records were requested at public offices in Cleveland.

Key to colors on the maps

The requested records

Most recently available minutes

Information

was provided

 from a meeting of the county commissioners.
 of the county commissioners.



Most recently available police incident reports.



Information was provided, but with conditions, such as requiring a form to be filled out. Information was not provided. Not available

Any record that shows the salary of



- Most recently available expense account for the chief executive (such as mayor or city manager).
 - Totedo Cleveland Dayton Cincinnati
- 5. Most recently available telephone bill for the school district's treasurer.







 Any record that shows the total compensation for the schools superintendent.





Most recently available minutes from a meeting of the county commissioners.

of the county commissioners.





Most recently available minutes from a meeting of the county commissioners.

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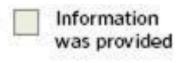


Most recently available minutes from a meeting of the county commissioners.

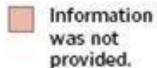
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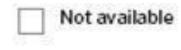






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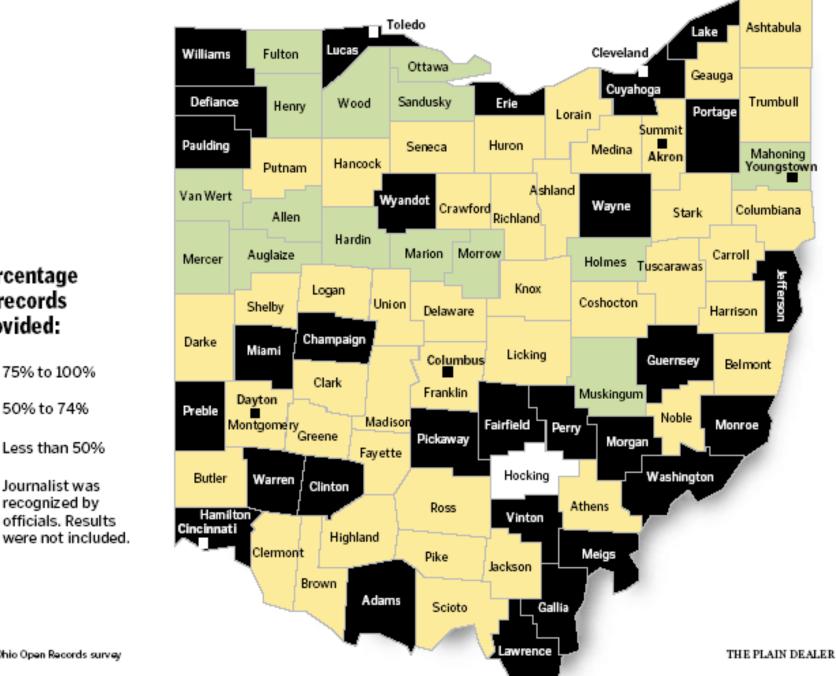


 Any record that shows the total compensation for the schools superintendent.



Percentage of records provided:

75% to 100% 50% to 74% Less than 50% Journalist was recognized by officials. Results

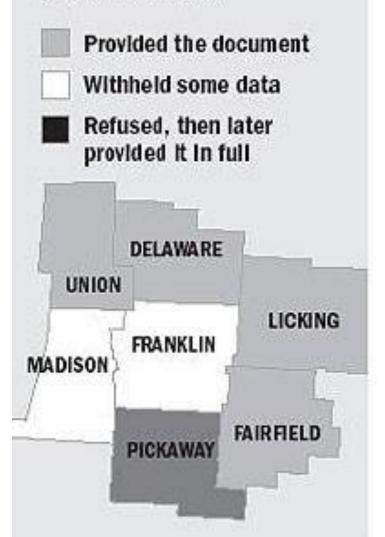


Here is a county-by-county look at how the record requests were handled.



Who complied

How Columbus-area counties reacted when asked to provide their chemical-response and preparedness plan:





Regular Meetings: Notice Required

Special Meetings

Limitations on Special Meetings





What Is a "Meeting?"





- 2. Majority of members of public body
- 3. To discuss or transact public business
- 4. Does email count?

Agendas

Journals and Minutes

Limitations on Citizen Participation





Executive Sessions

•Employee issues (unless employee asks for public)

- •Buying property
- •Attorney conferences
- •Union bargaining
- •Security
- •Trade Secrets of hospital





Procedure for Executive Session

•In session, vote to go in and state reason

•Penalties for Private Deliberations include action invalidated!





Where did public records law come





The unanimous Declaration of the thirteen united States of America.

Some in the lower of human events, it becaus needeary for one people to dipole the patient bands which have connected them with another, and to symme energe the proves of the oath. 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Joseph Herres, Edward fulledge 1.

for Hocpor

The long war to Junt Althur Midaleton

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.



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To prove this let Sweets be formated to a ca world ?._____ It has refused his operation , the most wholesome and neepary for the public good ._____ It has fabilitien his lovern and propring importance, unlip fuspended in this operation that his Openet should be obtained; and when so fuspended, behas uttrity neglected to attend to them - He has forbidden his Governors topas Laws of immediale es for the accommodation of large districts of furple, units lives proper would alinguish the right of Representation in the desistation, a right in opinable bettern and formidable paper the shows for the accommodation of large districts of facests, units lives people several using the right of Representation in the sligistation, a right inclinitiate to them and formedabile to theme and formedabile to the accommodation of large districts of the data in the second several according to the second several tot so as to render it at one an acample and fit inframment for introducing liesame absolute rule into these Colonies : ____ Her Taking away our Chartes, abobehing most valuable Saws, and g fundamentally the drame of our Genernments: - To, such ending our own Legislatures, and declaring themselves involted with power to legislate for us mall cover whatoever -new addicated Government two, by declaring us out ophis Reletion and waging the against us . - He has plandered our soars raveged our boards, burst our towns. 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He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

The unanimous Declaration of the thirteen united States of America.

Some in the lower of human events, it becaus needeary for one people to dipole the patient bands which have connected them with another, and to symme energe the proves of the oath. The openate and equal fabies to which the Law of Sidner and of Sidner and of Sidner and for the the for a chard scoped to the openate of mankind requires that they final deduce the coups which impel them to the for all of sidner and of Sidner and of Sidner and of Sidner and the for a chard of the and the proves of the coups which impel them to the for an edge of the for a sidner and the for a sidner of the coups which impel them to the for and sight of the the set of the coups which among there are start of the coups which impel them to the for and sight of the the set of the coups which and the for and sight of the coups which among there are start of the coups which among there are start of the coups which among there are start of the coups which impel the set of the coups which among there are start of the coups which impel the set of the coups which among there are start of the coups which impel the set of the coups which among there are start of the coups which among there are start of the coups which among the set of the coups the coups which and to institute new set of the coups which and the prove of the coups which and the prove the set of the coups which and the set of the coups the coups and the set of the set of the coups which and the set of the coups of the co generativel laying its fundation on such principles and organizing term more occurs formation of more and a sum couple of data between of and the internation of generation of the second of a sum organizing terms of generation of the second of a sum organizing terms of generation of the second of a sum organizing terms of generation of the second of a sum organizing terms of the second of a sum organizing terms of the second of a sum organizing terms of the second of the second of a sum organizing terms of the second of a sum organizing terms of the second world . _____ Ile has refused his operation, the most wholesome and necessary for the public good . _____ Ile has folded in his Govern and propring importance, unlip furgenetic in their operation that his officer should be obtained, and when so furgeneticd, he has attenty reglected to attend be them -- He has forbidden his Governors to pap Laws of immediate pope blue down for the accommodation of large distribute of papels under hive papels avoid using the supply of Representation in the depicture is a right in expressive terms of the adjusted begins at places unusual, uncomfordable, and distant from the depicture of the replication of the papels and the order of the papels of the adjusted before the papels of the replication of the replication of the replication of the adjusted before the papels are supply in the replication of the rep w for the accommodation of large district of freque , units these proper would whinguesh the right of Representation in the stepistature , a right in optimistic tellum and formidable found found table in the most barbon ago, and being more the the of a verified million _____ He has constrained on follow binner taken barbon with a set of a firme agoant the barbon of the print and Bahma, or to just the most with the most of the intervention of the print of the theory of the theory of the set of t



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He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

Public Records Law Training for Public Officials & Employees

- All elected officials <u>or their designees</u> must attend state-approved training.
- 3 Hours required for each term of office.
- Training must provide guidance in developing and updating offices' policies.



Responsibilities For All Public Offices



Every public body MUST adopt a public records policy.

- Must prepare and display (in the main office and all branch offices) a poster that describes the policy.
- May establish minimum period for response of up to 8 hours.
- May not restrict the number of requests per person nor per day.
- Must be included in any employee handbooks.

A model policy will be available from the state.



The Auditor of State is required to audit public offices for compliance with the training and public records policy provisions.

The 2 Basic Responsibilities Of A Public Office

- Provide prompt inspection of public records;
- Upon request, provide copies within a reasonable period of time
- Cost of copies?





Dearest Wife-

1/1

Page 1

Sec 1

At 1"

Ln 1

Col 1

On Saturday night, how about you get out that "Catwoman" costume you wore last Halloween and we can buy some of that two dollar wine we love so much and then after that we can both jump in the

A "Public Record" is held by a public office and...

Stored on a fixed medium (tape, video, film, photos, etc);

Created, received or sent under the jurisdiction of a public office; and

Documents what the office does.









Liabilities

- 1. No criminal liability.
- 2. No civil liability.
- 3. Attorney General cannot investigate or enforce.
- 4. Mandamus.
 - ✤ A legal action filed in common pleas, appellate court, or the Ohic Storeme Court to enforce the public records act.
- 5. Attorney's fees, *court costs, and *statutory damages.



Statutory Damages



 \$100 for each business day (up to \$1,000)

- Clock starts running the day the requester files a mandamus action.
- Available ONLY if *written request* was submitted by hand delivery or certified mail.





R.C. 149.351



A government agency that unlawfully removes or destroys a public record that the agency is required to maintain is subject to a civil forfeiture of \$1,000 for each violation (each document).

Kish v. Akron , 2006-Ohio-1244

What about redaction?

- If redaction isn't obvious, then the requester must be informed of redaction.*
- A redaction is a denial of a request to inspect or copy the redacted information
 <u>except</u> if federal or state law authorizes the redaction.*





A Redaction Is A Denial





Can someone request a copy of everything?

Scenario:

Your office receives a request for all memos the department has ever created.

Must a public office comply with the request?



A public office may deny a request that's ambiguous or overly broad ***BUT** must first give the requester the opportunity to revise the request for clarity after "educating" the requester of how records are kept and retrieved.





An explanation of the reasons for the denial, including legal authority, is required if a request for public records is denied. And, the denial must be in writing if original request was in writing.



Disclose or Not to Disclose, That Is the Question

- If a record is clearly public with no applicable exceptions, disclose (green light).
- If a record falls squarely in a "catch-all" exception, withhold (red light).
- If a § 149.43 exception could be applicable, use caution and consult your attorney (yellow light).



Exception:

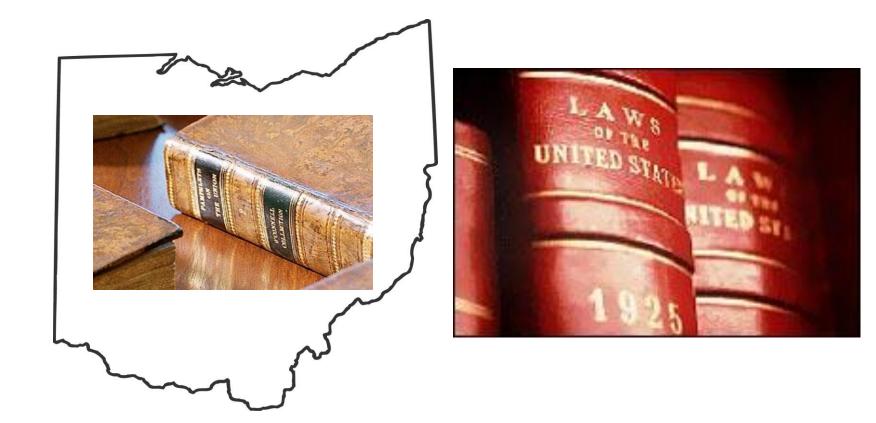
Catch-All





If any provision of Ohio or federal law prohibits the disclosure of a certain type of record, it may not be disclosed under the public records act.





Exception:

Scenario:

Medical Records

A road crew worker hurts his back working on his home. His doctor diagnoses a slipped disk. The doc sends a detailed report to the city manager, asking that the worker be put on desk duty. A reporter wants to inspect the report.

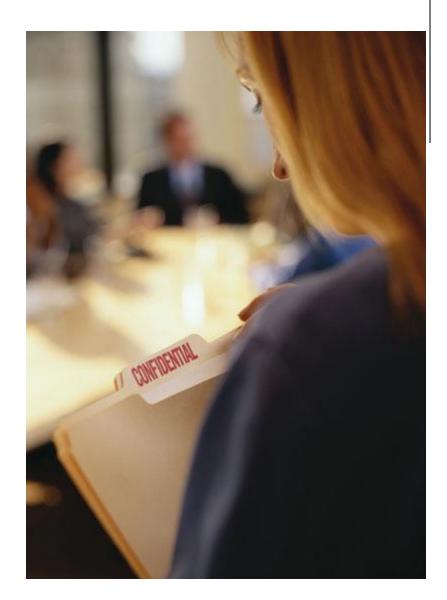


Should the report be released or withheld?

If a record pertains to a patient's **medical condition**

and was generated and maintained in the process of **medical treatment**, it need not be

disclosed under the public records act.





Exception: Trial Preparation Records Scenario:

The city janitor makes a log every Friday morning describing the condition of the city building. On Friday afternoon, someone slips on the main stairs. The city manager asks the janitor for a report on the stair's condition because it looks as if they might have been slippery.

Is either the log or the report a public record?





A record that contains information that was <u>specifically compiled</u> in <u>reasonable</u> <u>anticipation of litigation</u> is a trial preparation record and need not be disclosed under the public records act.





Infrastructure and Security Records



Since 9/11, the law has changed. Infrastructure" and "Security" records are exempt from disclosure as public records.



Infrastructure Records:

Configuration of a public office's critical systems such as:

- ✓Communication and Computer
- ✓ Electrical
- ✓ Mechanical
- ✓ Ventilation
- ✓ Water and plumbing
- ✓ Security codes

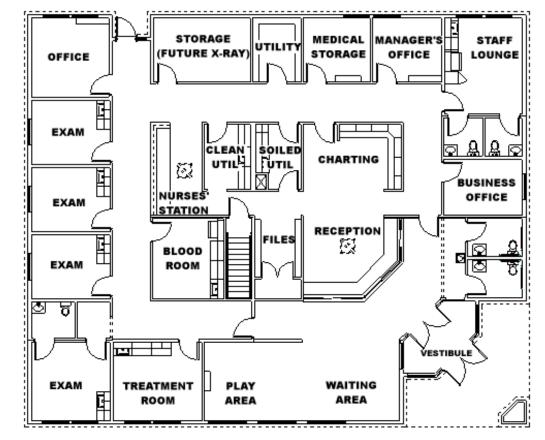








"Infrastructure record" does not mean a simple floor plan that discloses only the spatial relationship of a public office or building.



E-mail, Text and Voicemail Messages



They may be public records depending on their substance. Be sensitive to retention issues.





Exception: Law Enforcement

1. Pertains to a law enforcement matter:

☑ Specific suspicion of misconduct

- It must have been initiated upon a suspicion that someone did something wrong
- ☑ Conduct violates law
 - The law allegedly violated may be criminal, civil, or administrative in nature
 - A violation of an internal code of conduct is not a violation of "law" as contemplated by the public records act
- **☑** Agency has authority to enforce law





- 2. <u>High probability</u> of disclosing one or more of five types of information:
 - Investigatory work product;
 - Uncharged suspect;

- Confidential source or witness;
- Endanger physical safety;

Investigatory techniques or procedures



Strategy for retaining emails that are public records

 Instruct all staff that they create public records with smartphones, text messages, and live chats (consider Detroit's mayor)

Note: these go away, but when?

- Retain copies of emails electronically in a separate folder to ease the burden of responding by topic, if possible
- Begin a systematic approach to reviewing these records under the requirements in your public records retention policy
- <u>Warning</u>: reply-all to emails will give rise to public meetings issues

HOW TO LOSE IN COURT AND IN PUBLIC OPINION _____

Secret meetings

> Throw stuff away

- Don't provide public records
- Double delete emails



Policies and Training Are Key!



