

# Sunshine Law

Presented by Mark Landes

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**(614) 221.2121**

# Two Flavors of Sunshine

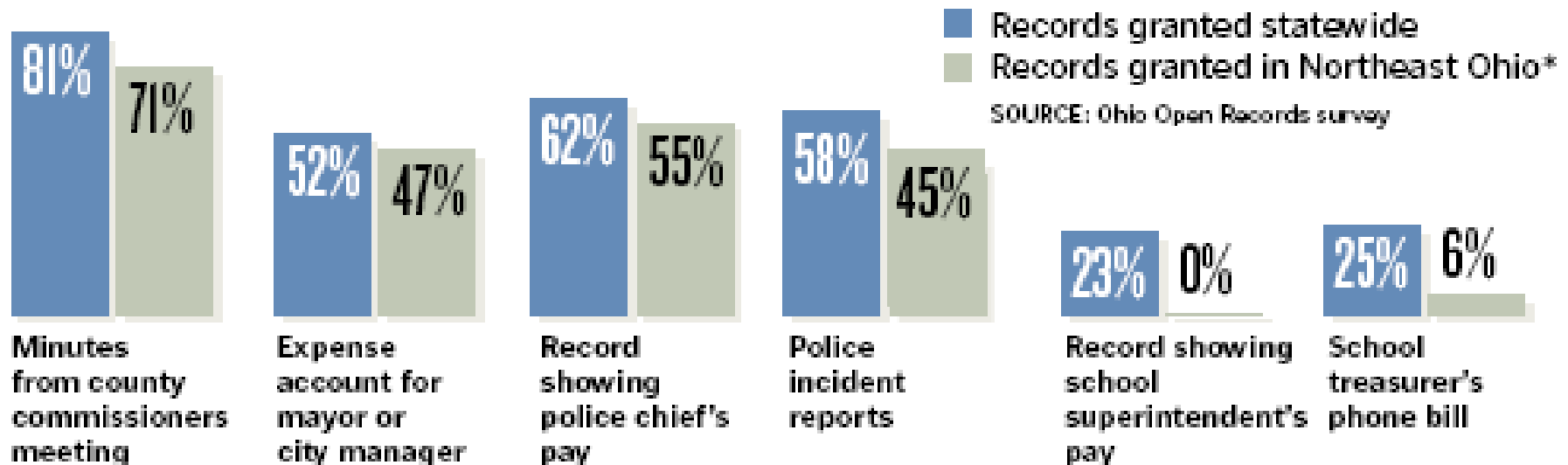
- Meetings
- Records

# Why this material is important . . .



# 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?

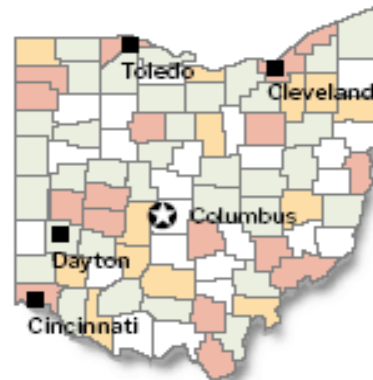
The results below are based on visits to the county seat. In Cuyahoga County, for example, records were requested at public offices in Cleveland.

Key to colors on the maps

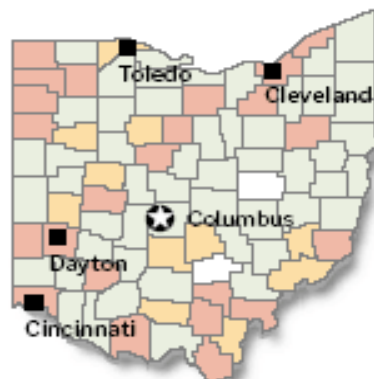
 Information was provided	 Information was provided, but with conditions, such as requiring a form to be filled out.	 Information was not provided.	 Not available
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## The requested records

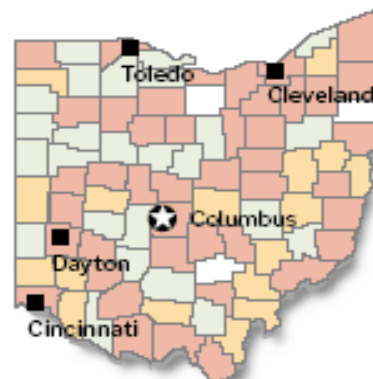
1. Most recently available minutes from a meeting of the county commissioners of the county commissioners.
2. Most recently available expense account for the chief executive (such as mayor or city manager).
3. Any record that shows the salary of the police chief.



4. Most recently available police incident reports.



5. Most recently available telephone bill for the school district's treasurer.



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





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





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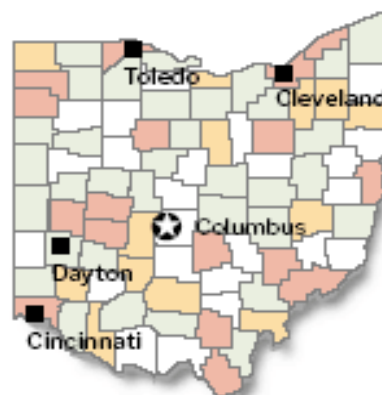
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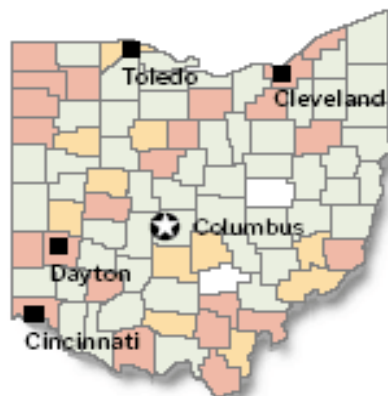
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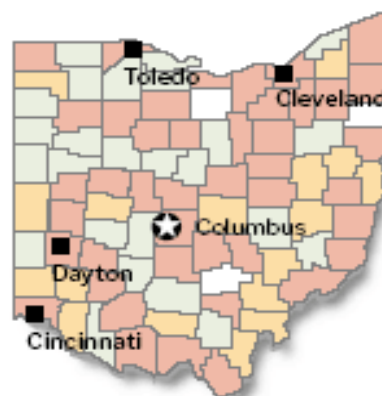
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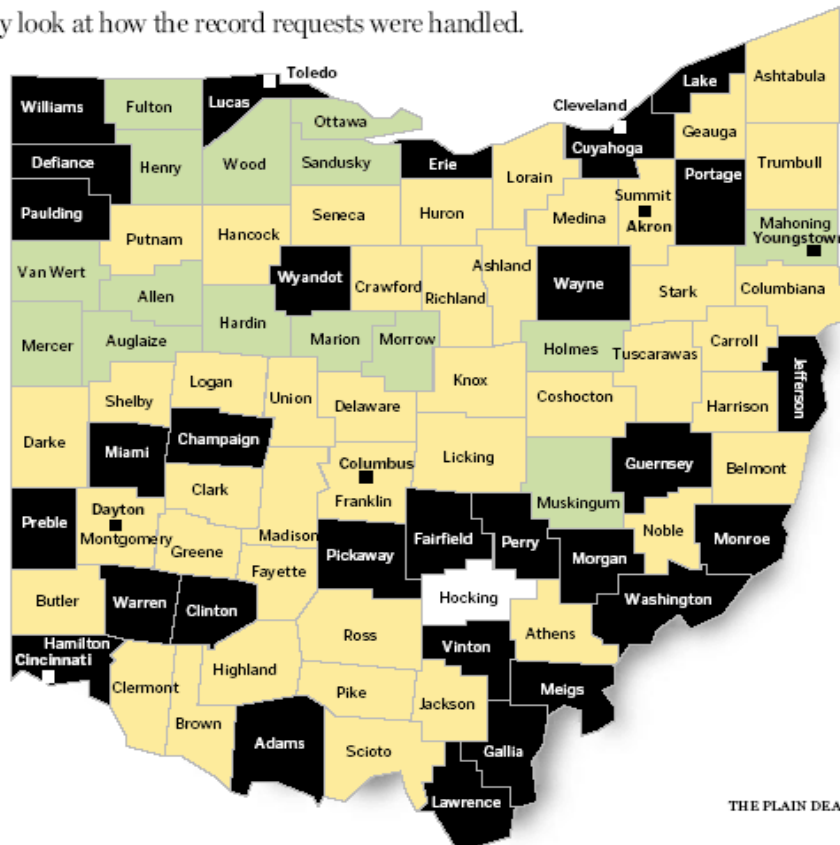


# Records often denied

In late April, journalists across the state stopped in government buildings to ask for public records. They went to the county seat in all of Ohio's 88 counties, stopping at the county administration building, city hall, police department and the school board. For Cuyahoga County, for example, journalists stopped at public offices in Cleveland. The journalists, who did not identify themselves unless asked, requested six records in each community. State law says public records should be made available "promptly." But many of the public records requests were denied. Some journalists were allowed to see the records, but only after complying with a requirement, such as filling out a form. State law does not mandate such requirements. Here is a county-by-county look at how the record requests were handled.

## Percentage of records provided:

- 75% to 100%
- 50% to 74%
- Less than 50%
- Journalist was recognized by officials. Results were not included.





## Who complied

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

- Provided the document
- Withheld some data
- Refused, then later provided it in full





# Notice Requirements

**Regular Meeting:**

**Rule for determining time and place**

**Special Meeting:**

**24 hour notice including time, place, purpose**

**Emergency Meeting:**

**Immediate notice including time, place, purpose**

# What Is a “Meeting?”

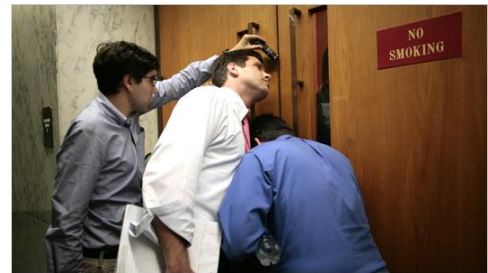


1. Prearranged gathering
2. Majority of members of public body
3. To discuss public business, not “information gathering”
4. Does email count?

# Proper Procedure for Executive Session

- 1. Motion (state purpose)**
- 2. Second**
- 3. Roll Call Vote**

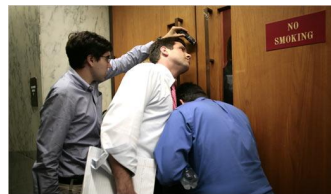




**3. Conference with agency's attorney to discuss pending/imminent court action.**

**4. Preparing for, conducting, or reviewing negotiations with public employees.**

- 5. Matters to be kept confidential by federal/state law.**
- 6. Security arrangements and emergency response protocols.**
- 7. County hospital trade secrets.**
- 8. Economic development trade secrets.**





# Liabilities for Violations



**1. Injunction**

**2. Fines**

**3. Attorney's Fees**

**4. Invalidate Action**

**5. Remove Members**

# Open Meetings Law

**Agendas**

**Journals and Minutes**

**Limitations on  
Citizen Participation**





## **How Detailed Must Meeting Minutes Be?**

### **Full and accurate**


**Minutes must state sufficient facts and information to permit the public to understand and appreciate the rationale behind the public body's decision.**

# Open Meetings Law



**Best advice ever**

**-Use your staff**

Where did  
public records law  
come from 

The unanimous Declaration of the thirteen united States of America.

When in the Course of human events, it becomes necessary for one People to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We find these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let facts be submitted to a candid world. — He has refused his assent to Laws, the most wholesome and necessary for the public good. — He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. — He has refused to pass other Laws for the accommodation of large districts of People, unless those People would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. — He has called together legislative Bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of frustrating their compliance with his measures. — He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the People. — He has refused for a long time, after such Dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of anarchy. — He has endeavoured to prevent the Population of these States; for that purpose obstructing the Law for Naturalization of Strangers; refusing to grant Letters of Naturalization to others; and raising the conditions of new Appropriations of Lands. — He has obstructed the Administration of Justice, by refusing his assent to Laws for establishing Judiciary Powers. — He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. — He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance. — He has kept among us, in times of peace, Standing Armies without the Consent of our Legislature. — He has affected to render the Military independent of and superior to the Civil Power. — He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our Laws; giving his assent to their Acts of pretended Legislation: — For quartering large bodies of armed troops among us; — For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States; — For cutting off our Trade with all parts of the world; — For imposing Taxes on us without our Consent; — For depriving us in many cases, of the benefits of Trial by Jury; — For transporting us beyond Seas to be tried for pretended offences; — For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies; — For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments; — For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever. — He has abdicated Government here, by declaring us out of his Protection and waging war against us. — He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our People. — He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. — He has constrained our fellow Citizens taken Captive on the high seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands. — He has excited domestic insurrections amongst us, and has endeavoured to bring on the Inhabitants of our frontiers, the merciless Indian Savages, whose known mode of Warfare, is an undistinguished Destruction of all ages, sexes and conditions. In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant is unfit to be the ruler of a free People. Nor have We been wanting in attention to our British Brethren. We have warned them from time to time of attempts by their Legislature to extend an unwarrantable Jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native Justice and Magnanimity, and we have conjured them by the ties of our common Kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of Justice and of Consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be, Free and Independent States; that they are absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

John Hancock	John Hancock	John Hancock	John Hancock	John Hancock
Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams	Samuel Adams
John Adams	John Adams	John Adams	John Adams	John Adams
Thomas Jefferson	Thomas Jefferson	Thomas Jefferson	Thomas Jefferson	Thomas Jefferson
Benjamin Franklin	Benjamin Franklin	Benjamin Franklin	Benjamin Franklin	Benjamin Franklin
James Oglethorpe	James Oglethorpe	James Oglethorpe	James Oglethorpe	James Oglethorpe
George Washington	George Washington	George Washington	George Washington	George Washington
Richard Henry Lee	Richard Henry Lee	Richard Henry Lee	Richard Henry Lee	Richard Henry Lee
John Jay	John Jay	John Jay	John Jay	John Jay
Francis Pickens	Francis Pickens	Francis Pickens	Francis Pickens	Francis Pickens
Robert A. Taft	Robert A. Taft	Robert A. Taft	Robert A. Taft	Robert A. Taft
Charles Sumner	Charles Sumner	Charles Sumner	Charles Sumner	Charles Sumner
William Pitt	William Pitt	William Pitt	William Pitt	William Pitt
John C. Calhoun	John C. Calhoun	John C. Calhoun	John C. Calhoun	John C. Calhoun
Jefferson Davis	Jefferson Davis	Jefferson Davis	Jefferson Davis	Jefferson Davis
Abraham Lincoln	Abraham Lincoln	Abraham Lincoln	Abraham Lincoln	Abraham Lincoln
Ulysses S. Grant	Ulysses S. Grant	Ulysses S. Grant	Ulysses S. Grant	Ulysses S. Grant
George Eastman	George Eastman	George Eastman	George Eastman	George Eastman
Thomas Edison	Thomas Edison	Thomas Edison	Thomas Edison	Thomas Edison
Walt Whitman	Walt Whitman	Walt Whitman	Walt Whitman	Walt Whitman
Mark Twain	Mark Twain	Mark Twain	Mark Twain	Mark Twain
Ernest Hemingway	Ernest Hemingway	Ernest Hemingway	Ernest Hemingway	Ernest Hemingway
John F. Kennedy	John F. Kennedy	John F. Kennedy	John F. Kennedy	John F. Kennedy
Lyndon B. Johnson	Lyndon B. Johnson	Lyndon B. Johnson	Lyndon B. Johnson	Lyndon B. Johnson
Richard Nixon	Richard Nixon	Richard Nixon	Richard Nixon	Richard Nixon
Jerry Brown	Jerry Brown	Jerry Brown	Jerry Brown	Jerry Brown
Jimmy Carter	Jimmy Carter	Jimmy Carter	Jimmy Carter	Jimmy Carter
Ronald Reagan	Ronald Reagan	Ronald Reagan	Ronald Reagan	Ronald Reagan
George H.W. Bush	George H.W. Bush	George H.W. Bush	George H.W. Bush	George H.W. Bush
Bill Clinton	Bill Clinton	Bill Clinton	Bill Clinton	Bill Clinton
Barack Obama	Barack Obama	Barack Obama	Barack Obama	Barack Obama
Mit Romney	Mit Romney	Mit Romney	Mit Romney	Mit Romney
Donald Trump	Donald Trump	Donald Trump	Donald Trump	Donald Trump



# IN CONGRESS, JULY 4, 1776.

## The unanimous Declaration of the thirteen united States of America.

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Joseph Brewster  
John Dixon  
Edward Rutledge

Samuel Adams  
10th Decr  
Thos. Paine  
Caleb Bond  
Margaretta

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Samuel Adams  
10th Decr  
Thos. Paine  
Caleb Bond  
Margaretta

Boston, Gaiman's  
Lynch, Hall,  
Grennell.

John Hancock  
Samuel Adams  
10th Decr  
Thos. Paine  
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READY TO PARTNER

The unanimous Declaration of the thirteen united States of America.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands...



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.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled...

Signatures of the Founding Fathers: John Hancock, John Adams, Thomas Jefferson, etc.





# Public Records Law Training for Public Officials & Employees



- All elected officials or their designees 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 and can recover cost*



# A “Public Record” is held by a public office and...



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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.



# A note....

**The home addresses, cell numbers, and personal email addresses of government employees do NOT document the activities, processes, decisions, or functions of a public office.**



Dearest Wife-

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

# Liabilities



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1. No criminal liability.

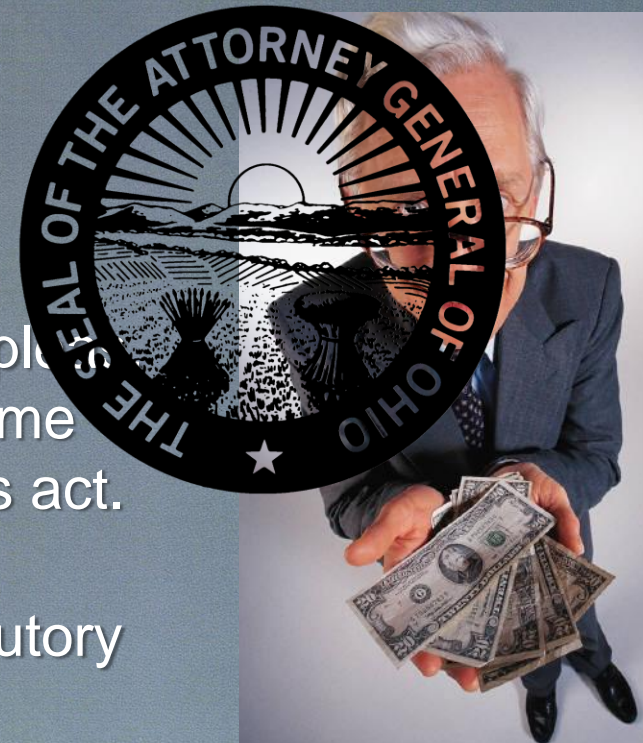
2. No civil liability.

3. Attorney General cannot investigate or enforce.

4. Mandamus.

❖ A legal action filed in common pleas court, an appellate court, or the Ohio Supreme Court to enforce the public records act.

5. Attorney's fees, court costs, and statutory damages.





# Ohio Court of Claims Records Express Lane



# 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.



# What about a "draft?"

Jane O'Neil  
1452 - CSR Memo  
Wendy Ames  
11 February, 2014

To: Robert A. Iger, Chairman and Chief Executive Officer  
From: Jane O'Neil, Vice President of Communications  
Date: February 11, 2014  
Subject: Proposal for "Heroes Work Here" CSR program

Our main goal as employees of The Walt Disney Company is to do right by our customers. Our long history of effective corporate citizenship has helped us shape our image and show the world we are philanthropic and good-natured. We have done an exceptional job in our efforts thus far, but it is time to take another step to provide for our loyal citizens.

**Proposal:**  
I propose we launch a program called Heroes Work Here where we aim to support U.S. veterans and military families. We will hire, train, and support at least 1,000 veterans during the year of 2014.

**Details:**  
Many of our citizens have ties in these areas and supporting them would benefit our company as a whole. Not only will this build upon our commitment to the men and women returning from war, but it will add significant value company-wide. The services and skills these individuals will provide us can allow us to hire trustworthy employees for a good cause.

**Evidence:**  
Our engagement in corporate social responsibility and our customers' intent to buy are directly linked. Maintaining positive corporate citizenship is beneficial as fiscally. According to a study done in Public Relations Review, "there is a positive relationship between the consumers' awareness of CSR activities and consumers' purchase intentions" because consumers "intend to buy products from a 'good' company and lead to fiscal benefits." This program launch will help us maintain our image as a "good" company and lead to fiscal benefits.

Heroes Work Here is a program The Walt Disney Company needs to act on. The costs are minimal and the cause is worthy. This is a good call on the part of the company. I look forward to seeing the values of our company displayed in a way that will positively affect our citizens. I would love to discuss the details of Heroes Work Here anytime you are available.

<sup>1</sup> Ki-Hoon Lee, & Dongyong Shin (2009). Consumers' Responses to CSR activities: The linkage between increased awareness and purchase intention. Public Relations Review, 36 (2), 193-195.

**DRAFT**

Nice intro Jane!

This section is very hard to comprehend. You are assuming knowledge.

you don't want to describe the program as a hero. It's not the case. It's not the case. It's not the case.

In what areas?

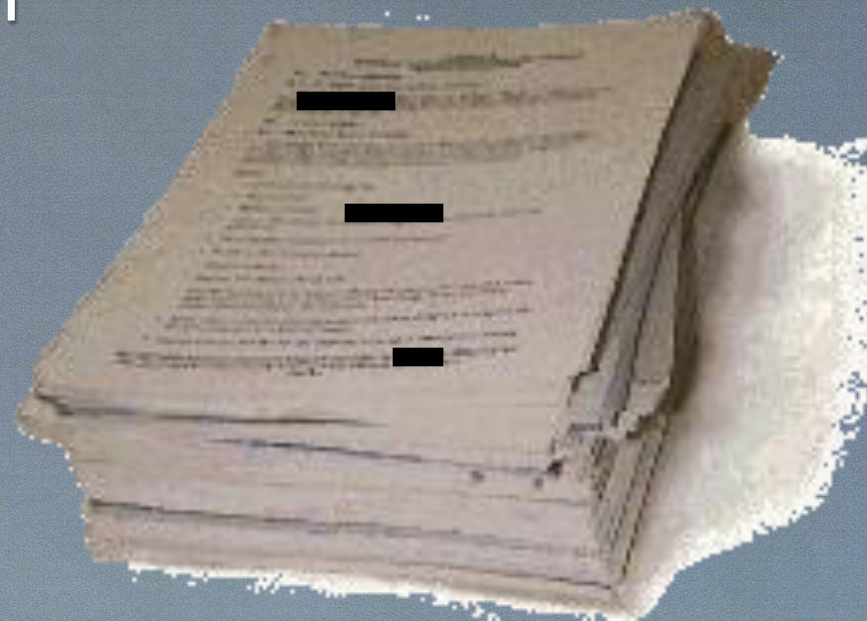
which/that

The costs are different, but you are the numbers.

No, this is not a call to action! You will be ignored.

# 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 except if federal or state law authorizes the redaction.



# 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?





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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.

A row of law books on a shelf, with text overlays. The books are dark with gold lettering. The text is overlaid on semi-transparent white rounded rectangles.

**Public Information  
Request**

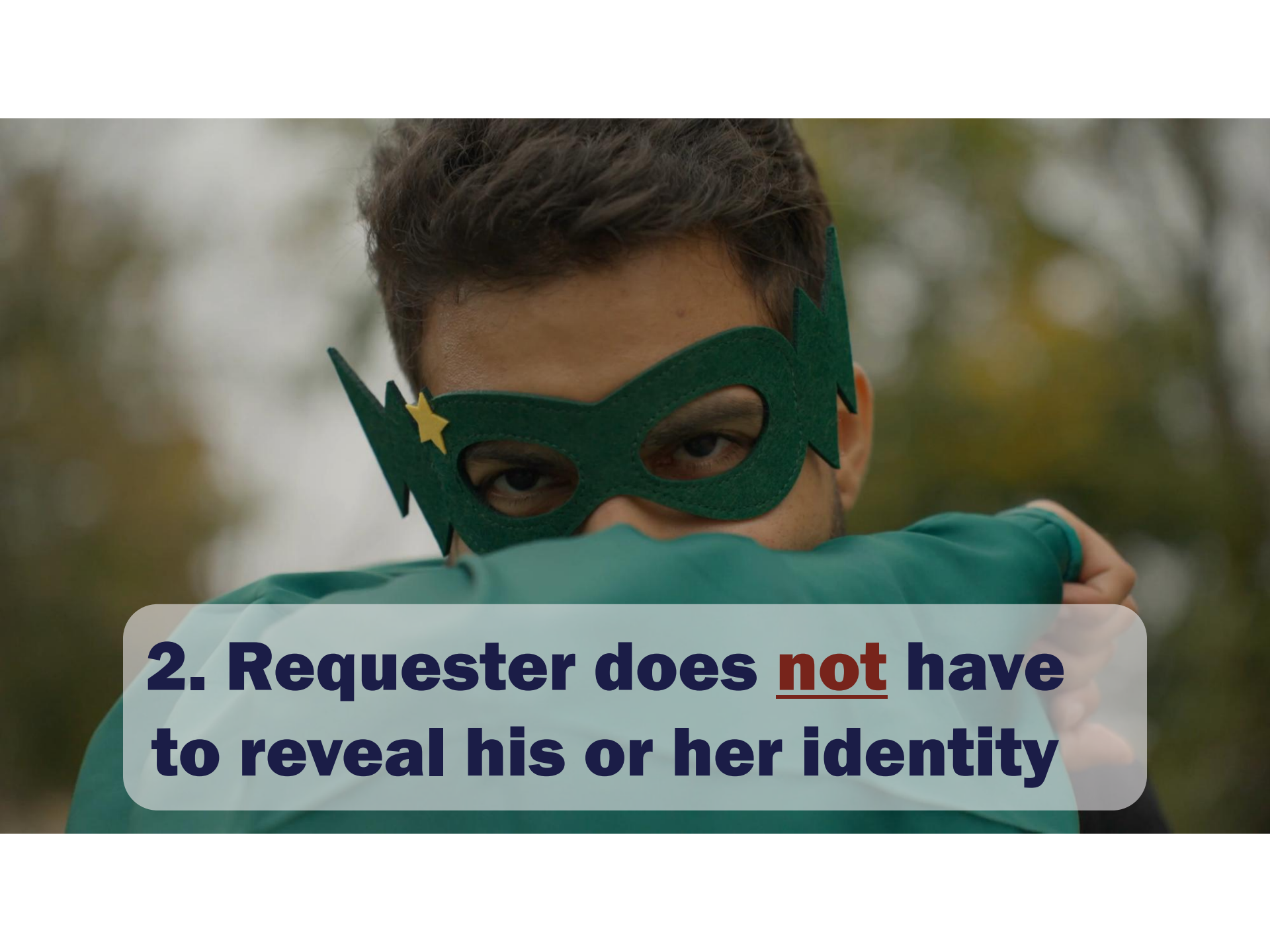
**vs.**

**Public Records Request**

**We Don't  
Have to  
Create a  
Record**





A young boy with dark hair is wearing a green superhero mask with a yellow star on the left side and a green cape. He is looking over his right shoulder towards the camera. The background is a blurred outdoor setting with green foliage.

**2. Requester does not have to reveal his or her identity**

**Can the  
purpose of  
the request  
be required?**





The image shows a map of Ohio with a yellow rectangular box in the center containing the text 'Exceptions to Ohio's Public Records Act'. The map includes labels for neighboring states (Michigan, Indiana, Kentucky, Virginia, West Virginia, Pennsylvania, New York) and Canada. Major cities and towns are marked with red diamonds, and the Maumee, Sandusky, and Scioto rivers are shown. The text in the box is in a bold, red, serif font.

# Exceptions to Ohio's Public Records Act

# Disclose or Not to Disclose, That Is the Question



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- 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).

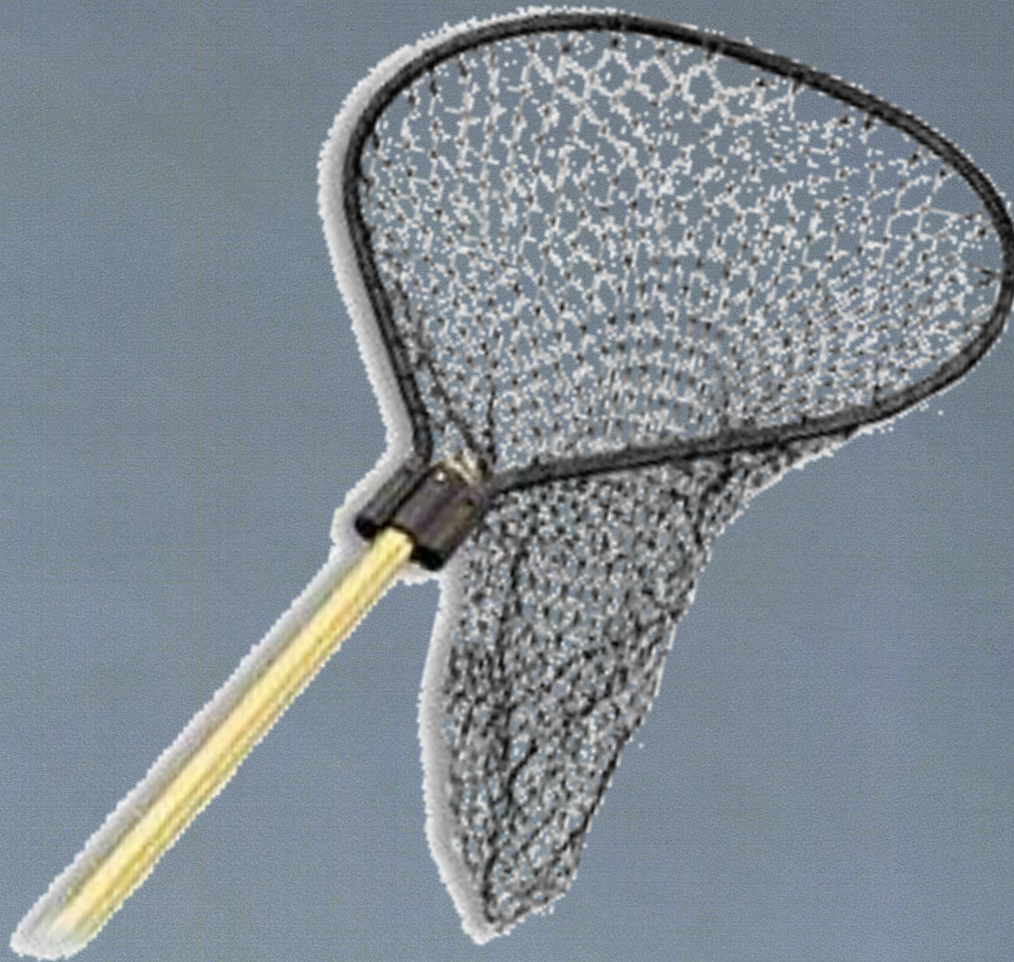


# Exception: Catch-All



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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.



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# Exception: Trial Preparation Records

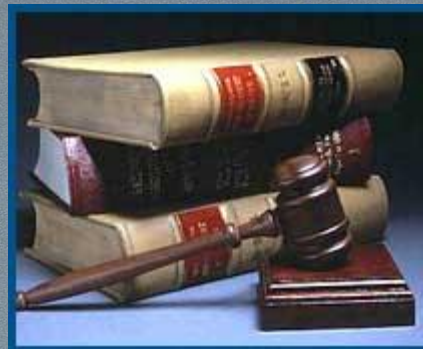
## Scenario:

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 specifically compiled in reasonable anticipation of litigation is a trial preparation record and need not be disclosed under the public records act.





A photograph of three public service workers standing in front of a fire truck and ambulance. On the left is a female firefighter in a tan turnout coat with reflective yellow stripes, wearing glasses and holding a helmet. In the center is a male police officer in a brown uniform with a badge and a radio. On the right is a male EMT in a dark blue uniform with a yellow life preserver patch and a radio. Behind them is a red and white fire truck with 'LYNCHBURG' written on the front and a red and white ambulance with 'LYNCHBURG FIRE DEPT.' and 'AMBULANCE' written on the side. The scene is outdoors on a paved area under a clear blue sky.

**R.C. 149.43 (A)(1)(p)**

**“Designated public service worker  
residential and familial information”**

# 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



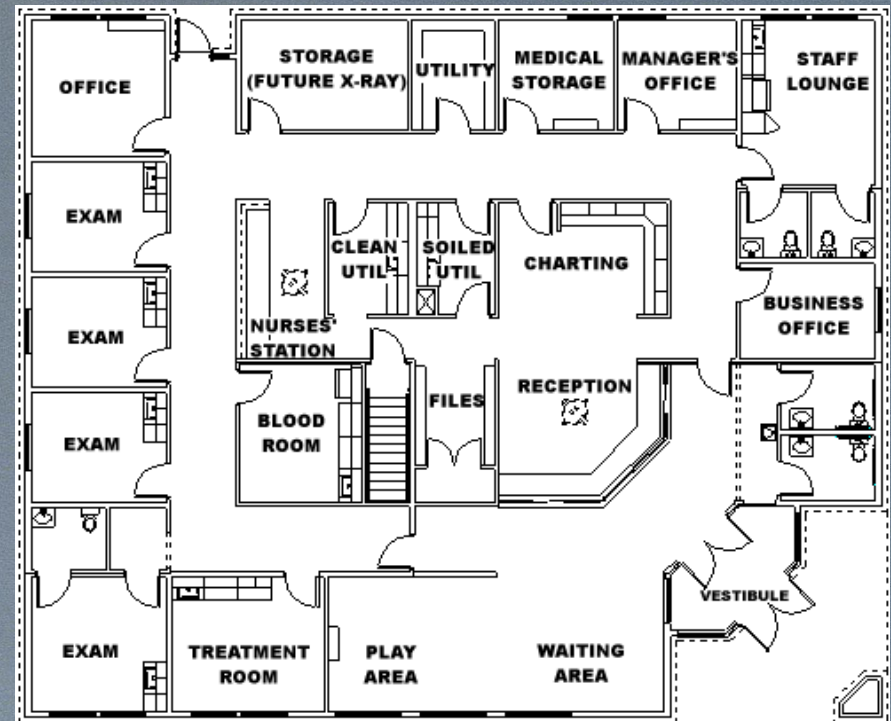
# Note!



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



# E-mail 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

**AND**

2. High probability 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

# Body-worn cameras and Cruiser Cameras have their own rules





# 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!**



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