

CUYAHOGA
LAND
BANK



Douglas Sawyer

Assistant General Counsel

Responding to a Public Records Request

Definition of “Public Record”

Ohio’s Public Records Act – ORC 149.43

- A document, device, or item, regardless of physical form or characteristic, including an electronic record, which has information stored on a fixed medium (tapes, e-mails, photos, films, videos, paper, etc.),
- Created or received by, or coming under the jurisdiction of, a public office, and
- documenting what the public office does; the organization, functions, policies, decisions, procedures, operations, or its other activities.



Is this item a “Record” ?

- **Notes** – employee’s notes generally do not constitute “public records” if they are:
 - Kept as personal papers, not official records;
 - Kept for the employee’s own convenience (for example, to remember follow-up responsibilities);
 - Other employees did not use or have access to the notes.
- **Drafts** – will be “public record” if they meet the 3 criteria of a “public record”
 - Generally found to be public records if document is shared with others;
- **E-mail** – analyzed like any other document; must meet all 3 parts of the definition.
- **Computerized Data Bases** –
 - No requirement to search database and compile a summary.



Documenting what a public office does

- Examples of records which may not document what a public office does:
 - Junk mail and periodicals;
 - Purely personal communications (including e-mails) to, from, or between public employees [deputies' racist e-mails];
 - Home addresses of office employees [*Dispatch v. Johnson*];
 - Personal calendars and appointment books;
 - Non-record items and information in employee personnel files.



Exemptions

- Exempting a “public record” from disclosure does not mean that the record is no longer a “public record”
- It is still a “public record” but either must not or does not have to be disclosed
- What difference does this make? As a “public record,” the record must be retained for the retention period in the record retention policy



Exemptions

- Once something fits within the definition of a “public record,” the rule about disclosure is simple:
- Unless the public office can identify an exemption which clearly requires or permits withholding disclosure of a requested record, the office must disclose the record



Exemption - R.C. 1724.11(A)(1) Confidential Info

Financial and proprietary information, including trade secrets, submitted by or on behalf of an entity to the community improvement corporation in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity, or in the pursuit of any one or more of the purposes under division (B) of Revised Code Section 1724.01 for which a county land reutilization corporation is organized, held or kept by the community improvement corporation, or by any political subdivision for which the community improvement corporation is acting as agent, **is confidential information** and **is not a public record** subject to R.C. Section 149.43.

(R.C. Section 1724.11(A)(1))



Exemption - R.C. 1724.11(A)(1) Confidential Info

Any other information submitted by or on behalf of an entity to the community improvement corporation in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity held or kept by the community improvement corporation, or by any political subdivision for which the community improvement corporation is acting as agent, is confidential information and is not a public record subject to Section 149.43 of the Revised Code, until the entity commits in writing to proceed with the relocation, location, expansion, improvement, preservation of its business, or other purpose under division (B) of Section 1724.01 of the Revised Code.

(R.C. Section 1724.11(A)(2))



Your Obligations

Upon request,

- provide *prompt inspection* of public records; and
- provide *copies* within a *reasonable* period of time to the person requesting them.



Responding to a Public Records Request

- The Request:
 - ❑ Request can be made by letter, e-mail, phone or in person.
 - ❑ Requester: any person (includes a corporation); no requirement for Ohio or US citizenship.
 - ❑ No requirement that:
 - person identify him- or herself;
 - give a reason for the request.
 - ❑ “Request” must identify the records sought “with reasonable clarity” and “specifically and particularly.”
 - ❑ The request cannot be overbroad.



Rules of Special Note

- ***Any “person”*** can make a public records request including corporations and other governmental agencies
- ***No special format or special language*** required
- A request may be ***written*** or ***verbal***
- The requester’s motive ***is not relevant.***
However, the request must at least be specific and describe in detail the records being sought.



Rules of Special Note

- A public office cannot require the requester to put the request in *writing* or reveal his/her *name*
- The Act expressly states that any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request.
[R.C. 149.43(B)(4)]



Steps for Filling a Public Records Request

1. Acknowledge request promptly (24 hrs)
2. Identification of Responsive Records
 - Clarify or revise request
 - Identify the records
3. Location & Retrieval
 - Paper, e-mail, server, or off-site



Steps for Filling a Public Records Request

4. Review, analysis, and Redaction

- Examine all materials for possible release
- Perform necessary legal review
- Redact exempt materials
- Provide explanation and legal authority for all redactions/denials

5. Preparation

- Obtain requestors choice of medium (if not already known)

6. Delivery



We're Done!!

*Don't all cheer
at once!*

