OHIO SUNSHINE LAWS

Using Ohio’s Public Records Act to Promote Open and Accountable Government

Presented by: Mark Altier, Director of Open Government
WHAT IS A PUBLIC RECORD?

Ohio Revised Code Section 149.43

“‘Public Record’ means records kept by any public office...”
WHO IS SUBJECT TO THE PRA?

- Public Offices
- Persons Responsible
- Functional Equivalents
FUNCTIONAL EQUIVALENCE

1. Performing a governmental function
2. Level of government funding
3. Government involvement or regulation
4. Created to avoid requirements of the PRA
DEFINITION OF RECORD

Fixed Medium

Created, Received, Under Jurisdiction

Documents Activities
PUBLIC RECORDS — RECORDS “KEPT BY” ANY PUBLIC OFFICE
NOTES

Not records if:

1. Personal papers
2. Kept for convenience; and
3. Others did not use/access
DRAFTS

• Record?
• Transient?
WHO CAN MAKE A PUBLIC RECORDS REQUEST?

Any “person”
NO WRITING, OR SPECIAL FORMAT, OR PARTICULAR LANGUAGE REQUIRED

Verbal or Written

PUBLIC RECORDS REQUEST FORM

__________________________

__________________________

__________________________
IDENTITY AND MOTIVE IRRELEVANT

Cannot ask for motive unless specifically authorized by law

Cannot demand the identity of the requester
REQUESTER’S RIGHTS TO:
INSPECT OR COPY
COPIES

Requester can choose:

1. Paper
2. Medium record is kept on
3. Any other reasonably available medium
TIME TO RESPOND

Includes time to:

1. Retrieve
2. Review
3. Obtain legal advice
4. Redact
A PROPER REQUEST

1. Seeks existing records
2. **Not** research or information
IS THE REQUEST AMBIGUOUS, OR OVERLY BROAD?

Requester has a responsibility to identify records with “reasonable clarity”
OPTION TO ASK FOR PURPOSE, IDENTITY, OR WRITTEN REQUEST

Conditions:

1. Must enhance ability to identify, locate, or deliver records

AND

2. Advise that providing information is not required
COMMUNICATE
ACTUAL COST
DELIVERY?
Any available means
EXCEPTIONS ARE ONLY CREATED BY APPLICABLE STATE OR FEDERAL LAW

NOT by contract
MANDATORY EXCEPTIONS

No choice but to withhold
EXAMPLES OF MANDATORY EXCEPTIONS

Family Educational Rights and Privacy Act (FERPA)

Law Enforcement Automated Data System (LEADS)
May withhold, but not required to
WAIVER?

Intentional disclosure = Permanent waiver
WITHHOLDING/REDACTING

- Notify where you’ve withheld

- Provide explanation **and** the legal authority!
EXAMPLE

R.C. 149.43(A)(1)(dd),
to wit: R.C. 149.45

Redact?
Also consider protections for certain covered professionals, R.C. 149.43(A)(7)
DISPOSE OF RECORDS PROPERLY

As provided for by:

- Law
- Records retention schedules
WHO IS SUBJECT AND WHEN?

Applies to “public bodies” when:

1. there is a prearranged gathering of
2. a majority of the members of a public body
3. conducting or discussing public business
“PUBLIC BODIES”

Includes committees and sub-committees
“MEETING”

Prearranged

Discussion of Public Business

Majority of Members
RETREATS, WORK SESSIONS, ETC.?
MEETING MUST BE USED FOR DISCUSSION AND DELIBERATION OF “OFFICIAL BUSINESS”

NOT NECESSARILY FOR ...

- Information gathering
- Presentations
- Isolated conversations between employees
MEETING OBLIGATIONS

1. Notice
2. Openness
3. Minutes
OBLIGATION 1: NOTICE

Public bodies establish their own notice rules
NOTICE REQUIREMENTS DEPEND ON TYPE OF MEETING

**Two Types of Meetings:**

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<thead>
<tr>
<th>Regular</th>
<th>Special</th>
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<tbody>
<tr>
<td>Prescheduled Intervals</td>
<td>Anything other than Regular</td>
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NOTICE: REGULAR MEETINGS

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<tr>
<th>Regular</th>
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<tbody>
<tr>
<td>Time</td>
<td>Place</td>
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NOTICE: SPECIAL MEETINGS

<table>
<thead>
<tr>
<th>Special</th>
<th>Time</th>
<th>Place</th>
<th>Purpose</th>
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SPECIAL MEETINGS: MEDIA

At least 24 hours notice to all media outlets that have requested it
EMERGENCY MEETINGS

Immediate Notice Required

- Type of special meeting
- Must include media with notice

ACT NOW!
NOTICE TO PUBLIC OF PLANNED DISCUSSION OF PARTICULAR TOPIC

1. Public body must have a method to sign up for such notice
2. May require payment of reasonable fee
OPENNESS

Vote and take official actions in public
OPENNESS

No round-robin meetings

No voting by secret ballot
OPENNESS

Forum requirements:

1. Public
2. In area public body serves
3. Large enough
RECORDING AND SPEAKING?

Cannot ban non-disruptive recording

Do not have to allow public participation
OBLIGATION 3: MINUTES

Requirements:

1. Promptly prepared
2. Filed
3. Maintained
4. Open to public
EXECUTIVE SESSION
PROPER PROCEDURE

Motion → Second → Roll Call Vote

Identify particular purpose and matter
Do not **BEGIN** or **END** a meeting in executive session

Insert executive session here!
NINE ACCEPTABLE EXECUTIVE SESSION TOPICS

1. Certain personnel matters (must be specific)
2. Purchase or sale of property
3. Pending or imminent court action
4. Collective bargaining matters
5. Matters required to be kept confidential
6. Security matters
7. Hospital trade secrets
8. Confidential business information of an applicant for economic development assistance
9. Veterans Service Commission applications
WHO CAN BE PRESENT?

1. Members
   • But cannot exclude minority!

2. Anyone else the members invite
CONFIDENTIALITY?

- No confidentiality provisions created in OMA

- Other laws, like Ethics Law, may require confidentiality (but only of the members!)
WHAT NOT TO DO IN EXECUTIVE SESSION

- Vote
- Make Any Decisions
- Discuss Other Matters
VIRTUAL PARTICIPATION?

Not unless *specifically* authorized by law...
QUESTIONS?
Ohio Attorney General’s Sunshine Laws Webpage

www.OhioAttorneyGeneral.gov/Sunshine

Ohio Sunshine Laws Manual

www.OhioAttorneyGeneral.gov/YellowBook