



OHIO SUNSHINE LAWS CERTIFICATION TRAINING

USING OHIO'S PUBLIC RECORDS ACT TO PROMOTE
OPEN AND ACCOUNTABLE GOVERNMENT

*A seminar for public officials, citizens, and the media
presented by Ohio Attorney General Dave Yost*

1

Credit and proof of attendance

In This Section

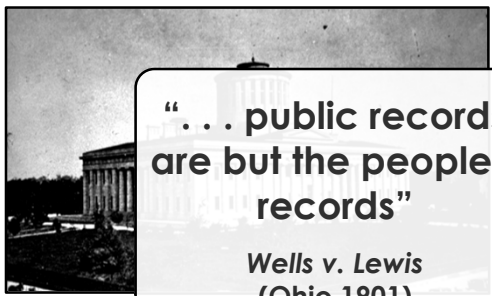
- Online Sunshine Laws Training
- Sunshine Laws Training Schedule
- Sunshine Laws Training Attendance Reports
- Redaction Request Forms
- Sunshine Laws Manual Request Form

www.OhioAttorneyGeneral.gov/Sunshine

Sunshine@OhioAGO.gov

2

Why are we here?



**“ . . . public records
are but the people’s
records”**

*Wells v. Lewis
(Ohio 1901)*

3

Practical reasons for public records training



4

4

Public Records Act overview

- ✓ What is a “public office”
- ✓ What is a “public record”
- ✓ What is a proper, enforceable request
- ✓ How must a public office respond
- ✓ Exemptions and redactions
- ✓ Litigation and liabilities
- ✓ Records management and retention

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What is a “public record”?

- (1) every “record”
- (2) “kept by” a
- (3) “public office”

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What is a “public office” subject to the Public Records Act?



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Public Records Act applies to “persons responsible for public records”



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Private entity can be the “functional equivalent” of a public office



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What is a “record”?

- (1) Exists on a fixed medium
- (2) Created, received by, or under jurisdiction of a public office
- (3) Documents activities of the office

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Public record: exists on a fixed medium



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Public record: created, received by, or under jurisdiction of public office



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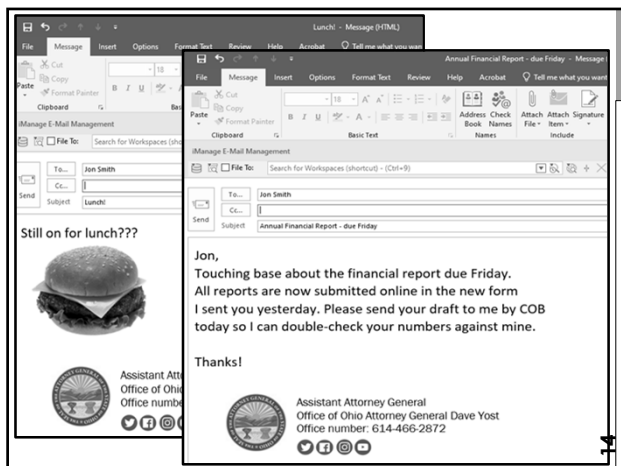
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Public record: documents the activities of the office



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Information or content determines whether records are public records



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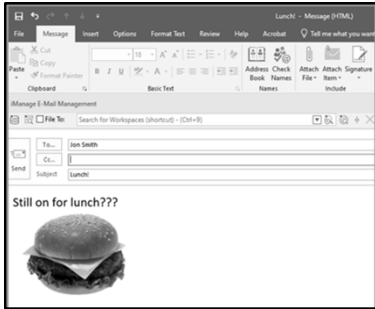
Messages on personal account or device can be public records



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Record doesn't document activities of the office if purely personal



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Records kept for administrative use or convenience



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Record doesn't document activities of the office if not used



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Record doesn't document activities of the office if not used



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Notes and drafts can be public records



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Notes can be public records depending on use

- ✓ Personal?
- ✓ Used for employee's own convenience?
- ✓ Accessed by others?

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Drafts can be public records depending on use



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Public record: "kept by" a public office



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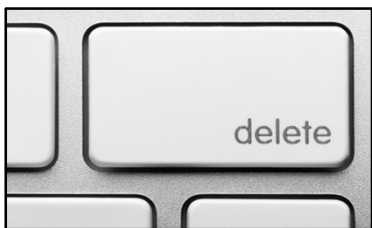
Records on personal devices or accounts are records “kept by” public office



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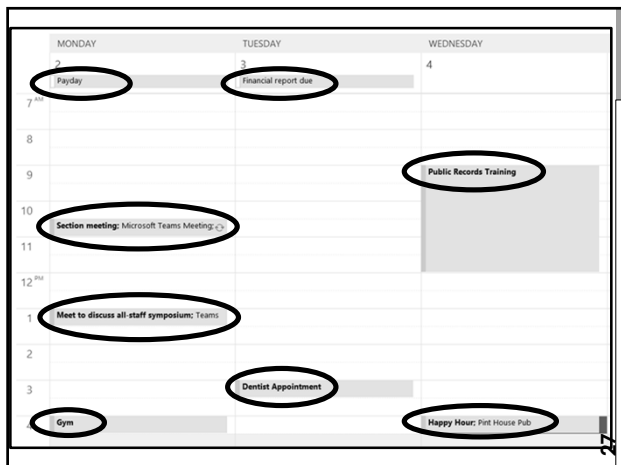
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Record not “kept by” public office if disposed of per retention schedule



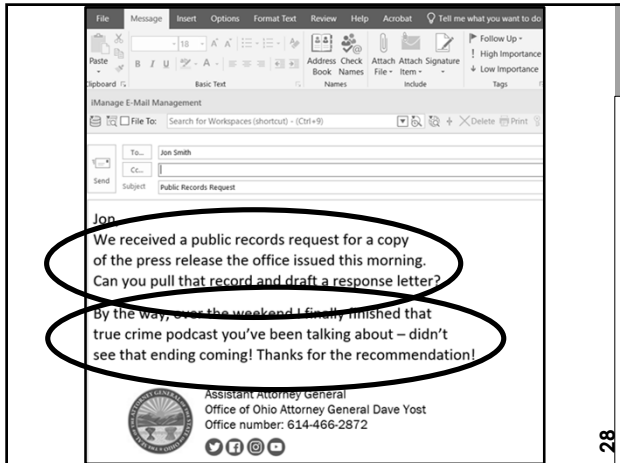
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“Any person” can make public records request



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No form or language required to make public records request

Submit a Public Records Request

Remember: You are not required to identify yourself to request records, but we do need at least one way to contact you (email or phone number) if you wish to be notified when your records are available for pick up.

Name (optional):

Email address:

Contact phone number (optional):

Case number/name:

Brief summary of request:

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Identity and motive of requesters irrelevant



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Identity relevant if requester is a journalist, next of kin, or insurer



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Identity relevant if requester is an inmate seeking criminal records



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Identity relevant if a court declared the requester a vexatious litigator

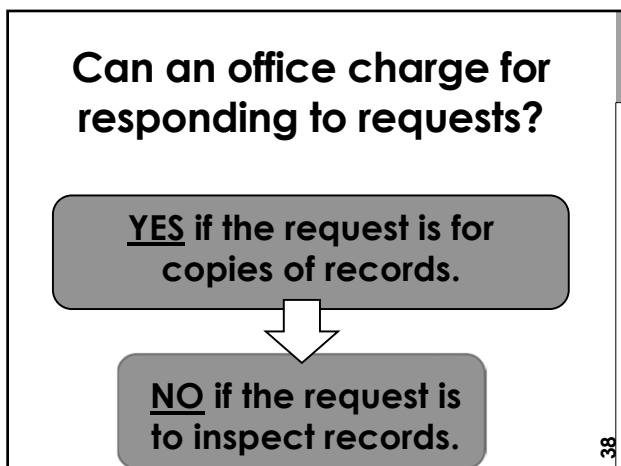


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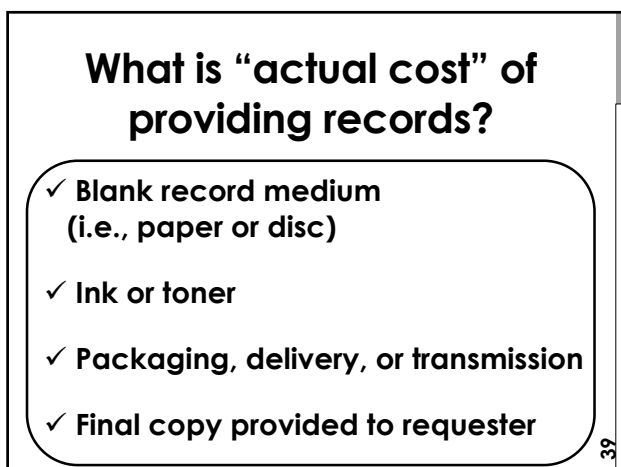
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Some public offices can charge more than "actual cost"

- ✓ BMV for accident reports
- ✓ Coroners for copies of records
- ✓ Law enforcement agencies up to \$75/hour for reviewing/producing video recordings



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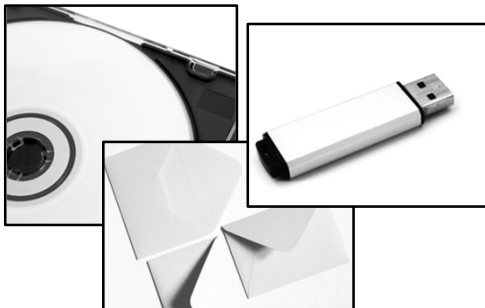
Responding to request to inspect records



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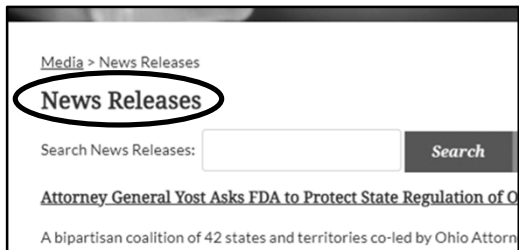
Responding to request for copies of records



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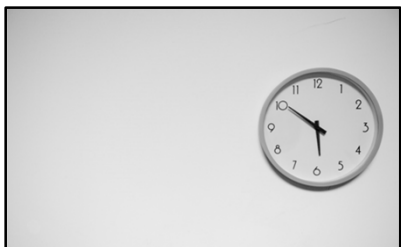
Office must provide copies even if available elsewhere



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Records must be provided in a "reasonable period of time"



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What is a "reasonable period of time"?



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Reasonable period of time: type of record



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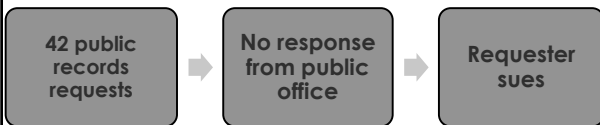
Reasonable period of time: circumstances of request



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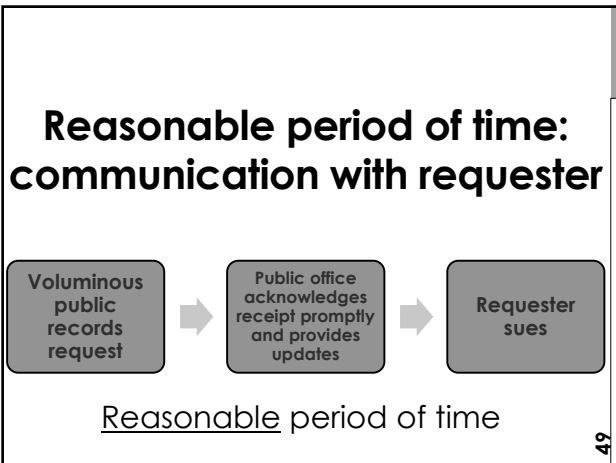
Reasonable period of time: communication with requester



Not a reasonable period of time

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- ### Tips for responding timely
- ✓ Acknowledge request promptly
 - ✓ Produce records on rolling basis
 - ✓ Communicate with requester
- 51

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**Proper request:
asks for existing records**

Records do not exist when

- ✓ They have been disposed of
- ✓ They were never created

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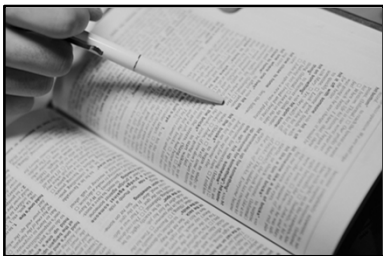
**Record might “exist”
if it can be produced
from a database**



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**Proper request:
doesn't ask for
information or research**



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**Proper request:
describes records sought with
“reasonable clarity”**

Burden is on requester to properly frame request

→


Requester must identify records based on how office organizes and maintains

AND

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Whether a request is overly broad depends on the facts and circumstances



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**Proper request:
identifies records based
on how office organizes
and maintains**



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**Proper request:
identifies records based
on how office organizes
and maintains**



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**Ambiguous request:
office doesn't know
what requester wants
or where to look**



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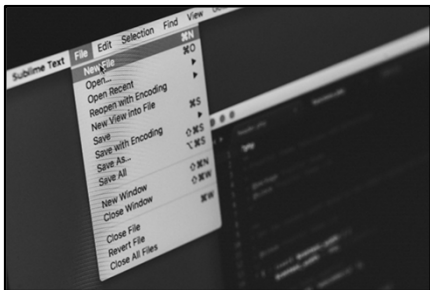
**Denying an overbroad
or ambiguous request**

- ✓ **Must give requester opportunity to revise request**
- ✓ **Must inform requester of how office's records are maintained and accessed**

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Inform requester of how records are kept



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Dear Requester,

We are writing in response to the public records request you submitted to the Ohio Attorney General's Office on DATE. Specifically, you requested:

All emails between the Attorney General and the Solicitor General during the Attorney General's administration.

We are denying your request as overly broad. R.C. 149.43(B)(2). A requester has the responsibility "to identify with reasonable clarity the records at issue." *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-6228, ¶ 21. A public records request must identify, with reasonable clarity, existing records; a request is improper if it is a request to search for information wherever it may exist across an office's records. See *State ex rel. Carr v. London Corr. Inst.*, 2013-Ohio-2263, ¶ 22 (a request that required an office to "search through voluminous documents for those that contain certain information" was improper). Moreover, requesters must describe the records they seek in a way that allows the public office to identify responsive records based on how the office maintains and accesses its records. *Zidonis* at ¶ 30; see also *State ex rel. Zauderer v. Joseph*, 62 Ohio App. 3d 752, 755-756 (10th Dist. 1989) (a public records request must comport with the public office's method of record retrieval). Your request is overly broad because it does not provide enough information to allow us to identify responsive records based on the way the Office organizes and accesses its records.

The Ohio Attorney General's Office generally organizes its records by service division (or "section"), each of which represents specific clients and specific legal areas; and within each service division by case name or overarching topic to which the record relates. A list of the various service divisions of our Office, including descriptions of what they each do, can be found on our website at <http://www.ohioattorneygeneral.gov/About-AG/Service-Divisions>.

Identifying a service division that may have responsive records, or providing a specific topic, case, or matter, may help our Office determine if we have responsive records. Our Office's retention schedules also show how our records are generally maintained and accessed and may help you revise your request, should you wish to do so. These are on our Office's website at <http://www.ohioattorneygeneral.gov/About-Ag/Public-Records-Access>.

We would be happy to work with you to revise your request so that we can identify the records you seek based on the way public records are organized and maintained by the Ohio Attorney General's Office. Please feel free to contact me at 555-555-5555.

Very respectfully yours,

Ohio Attorney General's Office

62

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We would be happy to work with you to revise your request so that we can identify the records you seek based on the way public records are organized and maintained by the Ohio Attorney General's Office. Please feel free to contact us.

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Exemptions: only created by state or federal law



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**Exemptions:
always narrowly construed**



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Mandatory exemptions:
office must withhold

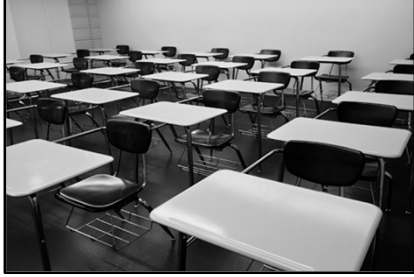
AND →

Discretionary exemptions:
office may withhold but
not required to

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**Mandatory exemptions:
FERPA and LEADS**



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**Discretionary exemption:
confidential law enforcement
investigatory records (“CLEIRs”)**



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**CLEIRs:
specific confidential investigatory
technique or procedures**



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CLEIRs: investigatory work product



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Investigatory work product is time limited

Law
enforcement
matter
pending

Investigatory work
product can be
withheld

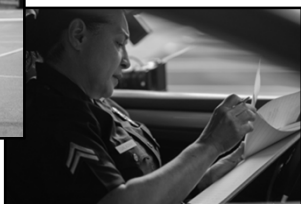
Law
enforcement
matter
concluded

Investigatory work
product must be
produced

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CLEIRs does not apply to routine offense and incident reports



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CLEIRs does not apply to 9-1-1 calls



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73

Discretionary exemption: security and infrastructure records

Infrastructure records:

Records disclosing configuration of critical systems

Security records :

Records used to protect against attack

74

74

Discretionary exemption: security records



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Discretionary exemption: infrastructure records



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No exemption for certain categories of records

- ✓ Job application materials
- ✓ Juvenile records
- ✓ Right to privacy

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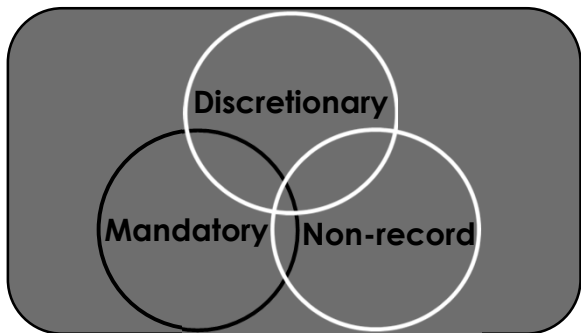
Discretionary exemptions can be waived



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More than one exemption may apply



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Exempted records or information may be withheld or redacted



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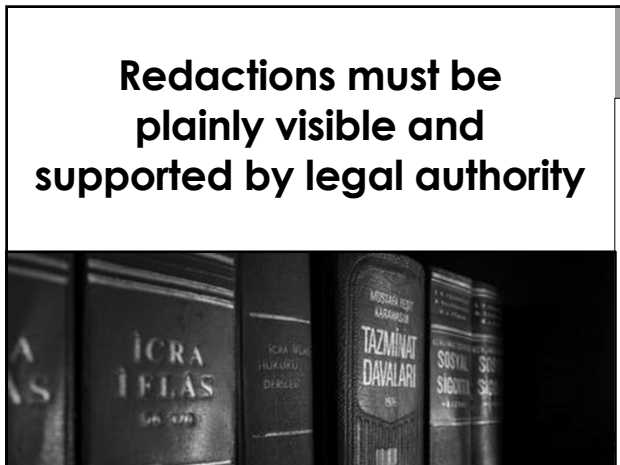
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Non-record information may be withheld or redacted



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82

PERSONNEL FILES

The following lists are intended as a starting point for public offices when compiling lists appropriate to their employee records. The lists are not exhaustive, and public offices should consult with their legal counsel or conduct independent legal research to decide if these exemptions, or other exemptions, apply.

Information in Personnel Files that May or Must Be Withheld

- Social security numbers (R.C. 149.43(A)(1)(dd), 149.45(A)(1)(a))
- Public employee home addresses, phone numbers, and personal email addresses, generally (as non-record)
- Residential and familial information of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the Bureau of Criminal Identification and Investigation, emergency service telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer, other than actual personal residence address of a prosecuting attorney or judge (R.C. 149.43(A)(1)(p) and (A)(7)-(8))
- State employee ID numbers pursuant to R.C. 1306.23 [ID numbers of other public employees may be exempt as "security records" under R.C. 149.43(B)(1) if that definition applies]
- Charitable deductions and employment benefit deductions such as health insurance (as non-records)
- Beneficiary information (as non-record)
- Federal tax returns and "return information" filed under the jurisdiction of the IRS (26 U.S.C. 6103)
- Personal history information of state retirement contributors (R.C. 145.27(A); R.C. 742.41(B); R.C. 3307.20(B); R.C. 3309.22(A); R.C. 5505.04(C))

83

Ohio Civil Service Application
for State and County Agencies
GEN-4268 (REVISED 3/16)
The State of Ohio is an Equal Opportunity Employer and provider of ADA services.

| | | |
|--|-------------------------------|-----------------------------------|
| POSITION: ADMINISTRATIVE ASSISTANT | AGENCY: OHIO AGENCY | POSITION NUMBER: 123456 |
|--|-------------------------------|-----------------------------------|

Please submit one application per position or examination to the address indicated on the job posting or examination announcement. Copies are acceptable. Applications lacking sufficient information will not be processed. Please ensure your application is received or postmarked by the closing date, as required by the hiring agency. Please be sure to complete the entire application. Also note that once submitted to a governmental agency, this completed form will be subject to all applicable public records laws.

PLEASE TYPE OR PRINT IN INK

| | | |
|--|--|---|
| NAME (Last, First, Middle) CANDIDATE, PUBLIC EMPLOYEE | DATE OF BIRTH - Year Not Required Month 01 Day 01 | |
| ADDRESS (Street, City, State, ZIP Code) [REDACTED] | | |
| HOME PHONE: [REDACTED] | ALTERNATE PHONE: [REDACTED] | E-MAIL ADDRESS: [REDACTED] |
| DRIVER'S LICENSE (if available) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | LEGAL RIGHT TO WORK IN THE U.S.: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

84

Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested:

A copy of the job application for Public Employee Candidate

Please find attached the records responsive to your request. Note that we have redacted information that is subject to the following:

- Information that is not a record of this office, pursuant to *State ex rel. Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384; and
- Drivers' license numbers pursuant to R.C. 149.43(A)(1)(dd) and R.C. 149.45(A)(1)(c)

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,
Public Office Employee

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| | MONDAY | TUESDAY | WEDNESDAY |
|------------------|--|----------------------|-------------------------|
| 2 | Payday | Financial report due | |
| 7 ^{AM} | | | |
| 8 | | | |
| 9 | | | Public Records Training |
| 10 | Section meeting: Microsoft Teams Meeting | | |
| 11 | | | |
| 12 ^{PM} | | | |
| 1 | Meet to discuss all staff symposium: Teams | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

86

86

File Message Insert Options Format Text Review Help Acrobat Tell me what you want to do

Paste B U I A - A - Address Check Attach Attach Signature Block Names File - Item - High Importance Low Importance

Clipboard Basic text Names File - include Tags

Manage E-Mail Management

File To: Search for Workspaces (shortcut) - (Ctrl+9)

To: Jon Smith

CC:

Subject: Public Records Request

Jon,
 We received a public records request for a copy of the press release the office issued this morning. Can you pull that record and draft a response letter?

[Redacted Signature]

Assistant Attorney General
 Office of Ohio Attorney General Dave Yost
 Office number: 614-466-2872

87

87

Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested "a copy of Public Employee Jon Smith's calendar for April 11-April 15, 2022" and "copies of emails about the press release issued by your office on DATE."

Please find attached the records responsive to your request. Note that we have redacted information that is subject to following:

- Information that is not a record of this office, pursuant to *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274.

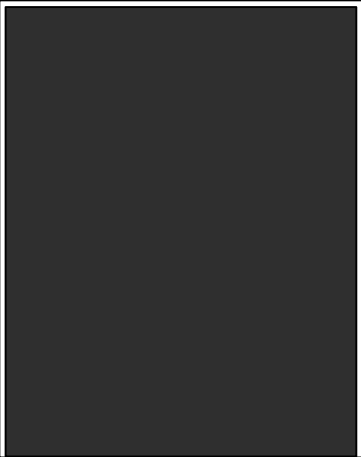
If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,

Public Office Employee

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Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested "a copy of the personnel file for Public Employee."

Please find attached the records responsive to your request. Note that we have withheld records that are subject to the following:

- Medical records, pursuant to R.C. 149.43(A)(1)(a) and R.C. 149.43(3).

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.


Very respectfully yours,

Public Office Employee

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**Withhold in good faith,
talk to attorney when in doubt**



91

**Anyone can enforce the
Public Records Act**



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Two litigation options

**Mandamus lawsuit in court of
common pleas, court of appeals,
or Supreme Court of Ohio**

OR

**Public records procedure in
Ohio Court of Claims**

93

Pre-filing complaint requirement

- ✓ Requester must serve a pre-filing complaint on the public office
- ✓ Standard complaint form through the Court of Claims
- ✓ Three business days to “cure or otherwise address” alleged violation

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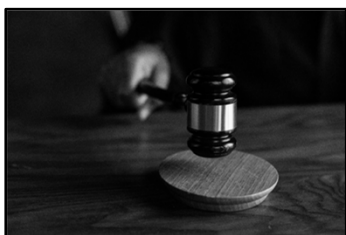
Pre-filing complaint requirement

- ✓ If alleged violation not resolved requester can file in mandamus or Court of Claims after three-day period expired
- ✓ Must file affirmation that pre-filing complaint process followed, otherwise court will automatically dismiss

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Mandamus asks court to order office to comply with Public Records Act



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Statutory damages may be awarded in successful mandamus lawsuit – but not available to inmates



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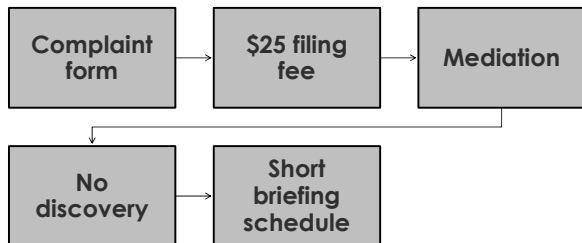
Attorney fees in successful mandamus lawsuit

- ✓ Court order to comply with PRA
- ✓ Fails to respond “affirmatively or negatively” in time allowed
- ✓ Promises records in certain timeframe
- ✓ Office acted in bad faith in providing records after lawsuit filed

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Complaint in Court of Claims



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Best practices to avoid litigation



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Document all requests office receives

| | A | B | C | D | E | F |
|---|----------------------------|---|---|---|---|---|
| 1 | PUBLIC RECORDS REQUEST LOG | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| 4 | | | | | | |
| 5 | | | | | | |
| 6 | | | | | | |
| 7 | | | | | | |
| 8 | | | | | | |

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Document all requests office receives

- ✓ Request
- ✓ Communications
- ✓ Steps taken
- ✓ Response

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Be prepared

- ✓ Attend trainings
- ✓ Keep lists of common issues and exemptions
- ✓ Have a process for receiving and responding to requests
- ✓ Know your resources

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Stay up-to-date on public records law



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Public offices must have public records policy



www.OhioAttorneyGeneral.gov/Publications

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105

Public records policy

DO NOT:

- ✓ Limit number of records available to one person
- ✓ Limit number of records available in fixed period of time
- ✓ Establish fixed period before office will respond to request

DO:

- ✓ Distribute policy
- ✓ Include policy in existing manual of policies
- ✓ Display poster of policy conspicuously in office

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Office must organize and maintain records for inspection and copying



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Importance of good records management



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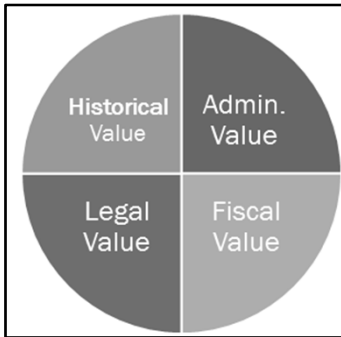
Contents of records retention schedules

- ✓ Title
- ✓ Description of purpose/function of records and types of information
- ✓ Retention period
- ✓ Retention format
- ✓ Disposal method

109

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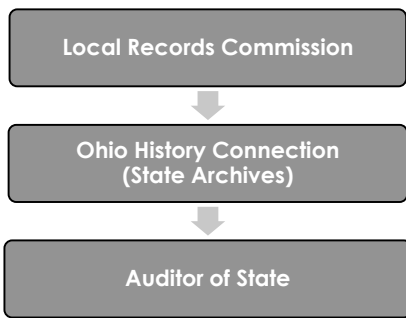
Factors determining record retention period



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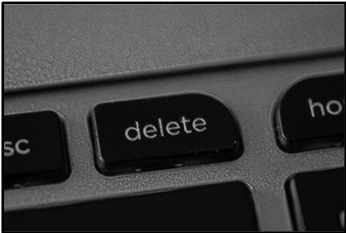
Retention schedule approval process



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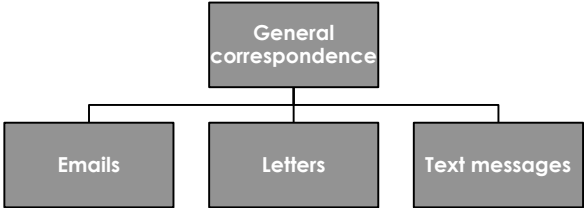
Office can only dispose of records pursuant to approved retention schedule



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112

Managing electronic records




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graph TD; A[General correspondence] --> B[Emails]; A --> C[Letters]; A --> D[Text messages]
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113

113

Managing electronic records



114

114

Avoid keeping public records on personal devices and accounts



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115

Update retention schedules to keep up with technology

| Record Series Title | Agency and Series Authorization Numbers | Record Series Description | Confidential Description | Vital Description | Retention Period | Retention Justification | Method of Disposal | Date Schedule Approved |
|---------------------|---|---|--------------------------|-------------------|---|-------------------------|---------------------------|------------------------|
| AGO Podcasts | 88-OAG-11 10551681 | Outward-facing communications to the public to educate or relay information concerning the work/services of the AGO. Records include, but are not limited to, emails, social scripts, and podcast recordings. | | | Machine Readable - Retain 4 years, prior to destroying here reviewed by State Archives. | | Machine Readable - Delete | 4/26/2018 |

116

116

Include electronic records in public records policy

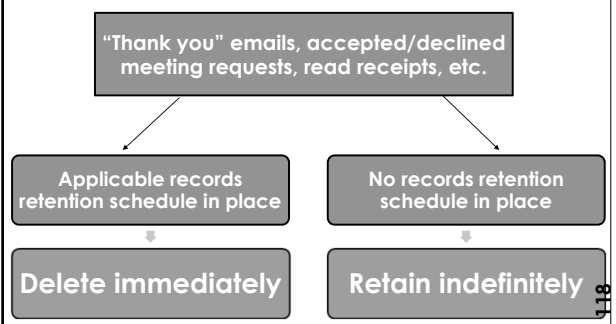
C. Electronic Records

- Records in the form of e-mail, text messaging, and instant messaging, including those sent and received via a hand-held communications device, are to be treated in the same fashion as records in other formats, such as paper or audiotape.
- Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All employees or representatives of this office are required to retain their e-mail records and other electronic records in accordance with applicable records retention schedules.

117

117

Managing transient records



118

Transient records retention schedule

| Record Series Title | Agency and Series Authorization Numbers | Record Series Description | Confidential Description | Vital Description | Retention Period |
|---------------------|---|--|--------------------------|-------------------|---|
| Transient Documents | GAR-CM-04 10551778 | All informal communications which convey information of temporary importance in lieu of oral communication including telephone voicemail, chats, posts, instant, and text messages, post-it notes, drafts, generic emails, social media posts, and shared departmental calendars. These communications have very little administrative value as they do not set policy, establish guidelines, define procedures, certify a transaction, or become a receipt. | | | <div style="border: 1px solid black; padding: 2px;"> Electronic – Retain until no longer of administrative value, then destroy. Paper – Retain until no longer of administrative value, then destroy. </div> |

119

Litigation and liabilities for improper disposal

- ✓ Civil lawsuit
- ✓ Court of Claims proceeding
- ✓ Forfeiture of \$1,000 per violation
- ✓ Attorney fees

120

Records management resources



Ohio History Connection
& State Archives



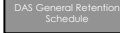
Ohio
Department of
Administrative
Services



OhioERC
OHIO
ELECTRONIC
RECORDS
COMMITTEE



CARMA



DAS General Retention
Schedule



Ohio Electronic Records
Committee (OhioERC)



Ohio County Archivists
and Records Managers
Assn.

121

121

Open Meetings Act Overview

- ✓ What is a “public body”
- ✓ What is a “meeting”
- ✓ Obligations of public bodies
- ✓ Executive session
- ✓ Litigation and liabilities

122

122

Open Meetings Act applies to the “meetings” of “public bodies”



123

123

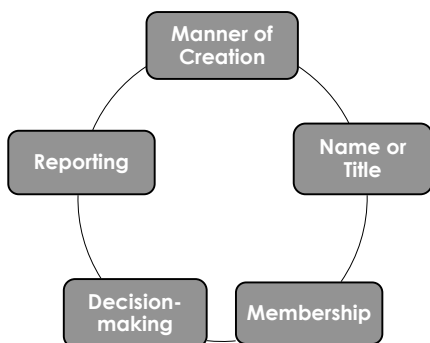
What is a “public body”?



124

124

What is a “public body”?



125

125

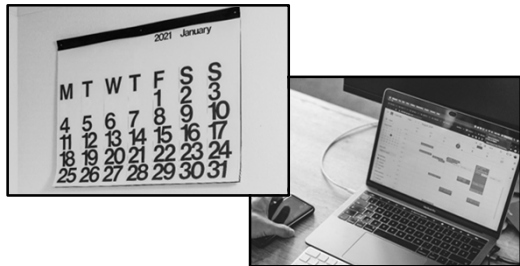
What is a “meeting”?

- (1) A prearranged
- (2) Discussion of public business
- (3) By a majority of members of public body

126

126

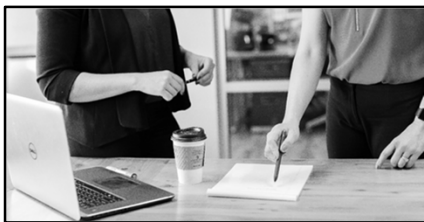
When is a meeting “prearranged”?



127

127

A meeting has discussion and deliberation of “official business”



128

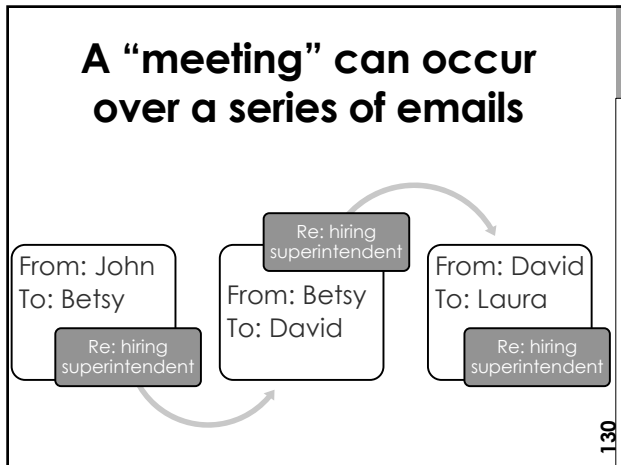
128

A “meeting” can occur in a series of meetings, each with less than a majority present

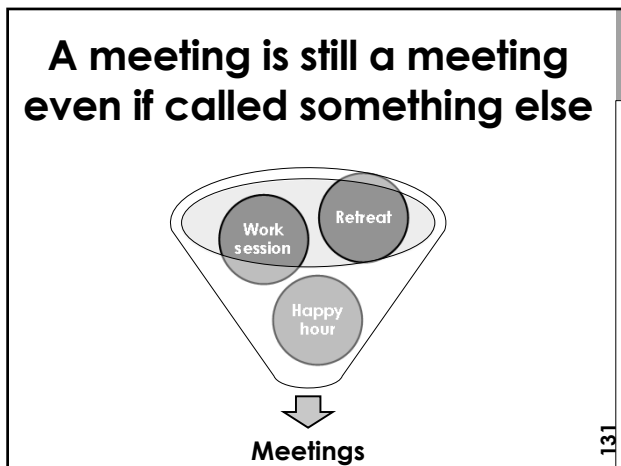


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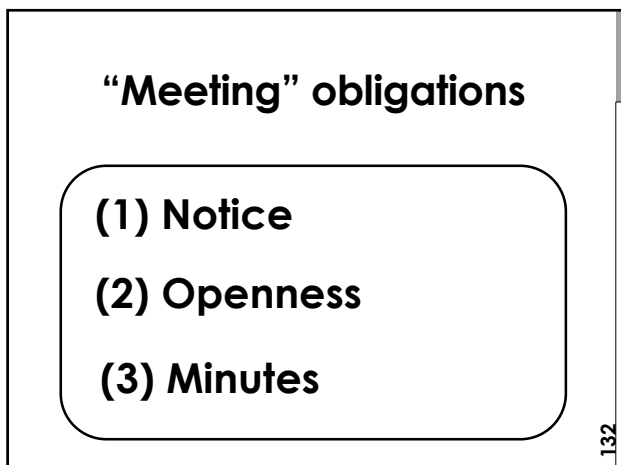
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130



131



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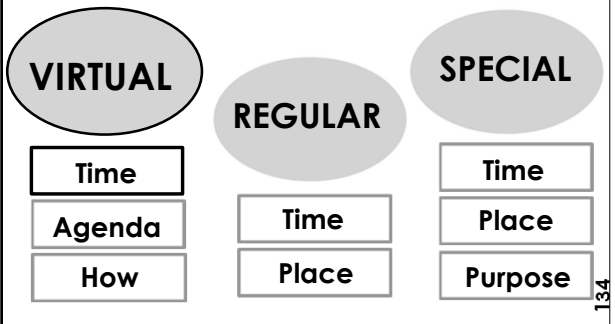
Open meeting obligation 1: Notice



133

133

Type of notice required depends on type of meeting



134

134

Open meeting obligation 2: Openness

- ✓ Deliberate in public
- ✓ Vote in public
- ✓ Take official actions in public

135

135

**Openness:
forum requirements**



136

136

**Openness:
deliberation and
decision-making**



137

137

**Openness:
no secret ballots, whispering,
and caution if voting on a
consent agenda**



138

138

Some public bodies can meet via video conference or other electronic means

R.C. 121.221 applies to bodies whose members are NOT paid or elected by general public



139

139



Some public bodies have statutes that authorize them to meet virtually

140

140

Recording and speaking at open meetings



141

141

Open meeting obligation 3: Minutes

Minutes must be:

- ✓ Promptly prepared
- ✓ Filed
- ✓ Maintained by public body

142

142

Meeting minutes are public records



143

143

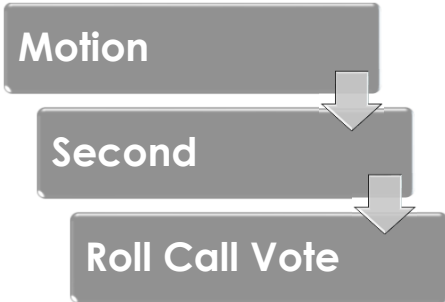
Openness exception: executive session



144

144

Voting procedure to convene executive session



145

145

Executive session must occur after meeting opens and before meeting closes



146

146

Nine permissible 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

147

147

Executive session topic: personnel matters

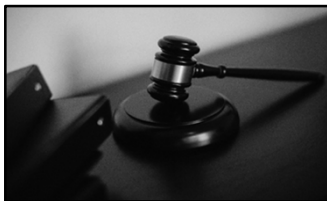


- ✓ Appointment
- ✓ Employment
- ✓ Dismissal
- ✓ Discipline
- ✓ Promotion
- ✓ Demotion
- ✓ Compensation

148

148

Executive session topic: pending or imminent court action



149

149


Who can be present in executive session?

- ✓ Members of the public body
- ✓ Majority cannot exclude minority
- ✓ Anyone members invite

150

150


Do not vote or make decisions in executive session



151

151

Discussion and documents in executive session not necessarily confidential



152

152

Anyone can enforce the Open Meetings Act



153

153

Liabilities for violating the Open Meetings Act

- ✓ Fine
- ✓ Attorney fees
- ✓ Invalidation of action(s)
- ✓ Removal from office

154

154

Ohio Sunshine Laws Manual

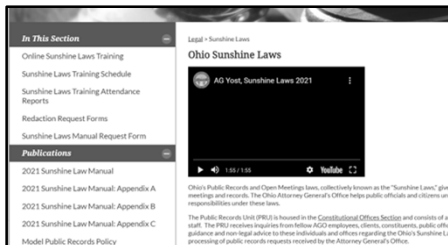


www.OhioAttorneyGeneral.gov/YellowBook

155

155

Attorney General's Office Sunshine Laws webpage



www.OhioAttorneyGeneral.gov/Sunshine

156

156

Attorney General's Office Public Records Unit

Public Records Unit
Ohio Attorney General's Office
30 East Broad Street
Columbus, Ohio 43215
614-466-2872
Sunshine@OhioAGO.gov

157

157

Credit and proof of attendance

In This Section

Online Sunshine Laws Training

Sunshine Laws Training Schedule

Sunshine Laws Training Attendance
Reports

Redaction Request Forms

Sunshine Laws Manual Request Form

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158

158
