

OPINION NO. 83-003**Syllabus:**

1. Materials of all varieties (including, but not limited to, correspondence, memorandums, notes, reports, audio and video recordings, motion picture films and photographs) which are received by public officials and employees, or created and maintained by them at public expense, are considered records as defined in R.C. 149.40 if they serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office.
2. The definition of records which appears in R.C. 149.40 is applicable to R.C. 149.31-.44.
3. Materials which are classified as records under R.C. 149.40 are subject to R.C. 149.43 and, if they fall within the definition of "public record," are available for public inspection as provided therein.
4. The State Records Commission is responsible for reviewing, revising, altering, approving, or rejecting applications for records disposal and schedules of records retention and destruction for state agencies and for approving a records management program; it has no direct enforcement responsibilities.

5. No records kept by departments, offices, and institutions, as defined by R.C. 121.01(C), may be disposed of except as provided by law or pursuant to a schedule or application approved by the State Records Commission.
6. R.C. 149.99 authorizes a penalty of not more than five hundred dollars for a violation of R.C. 149.351, 149.43, or 149.431.

To: **David Long, Chairman, State Records Commission, Ohio Historical Society, Columbus, Ohio**
By: **William J. Brown, Attorney General, January 6, 1983**

I have before me your request for my opinion on the following questions:

1. Are materials (including, but not limited to correspondence, memorandums, notes, reports, audio and video recordings, motion picture films and photographs) received by public officials and employees, or created and maintained by them at public expense, considered records as defined in Section 149.40 of the Ohio Revised Code[?]
2. Are these records of public officials and employees subject to sections 149.31-149.44, inclusive, of the Ohio Revised Code?
3. Are these records of public officials and employees subject to section 149.43, of the Ohio Revised Code, (although not expressly required by statute) [and, therefore,] open to public inspection?
4. What are the responsibilities of the State Records Commission in ensuring that sections 149.31-149.44, inclusive, of the Ohio Revised Code are enforced?
5. If these materials are records within the meaning of 149.40, does the penalty clause specified in 149.99 apply?

You have indicated that you have requested this opinion because many public officials and employees will soon be leaving office or public employment and disposing of their records, and because you feel that the statutory provision defining records "has been misunderstood or misinterpreted by some public officials and employees as to personal ownership of records and availability of records, especially the status of records maintained for internal use." Representatives of your office have informed me that your particular concern is whether there are any classes of records kept by departments, offices, or institutions, as defined by R.C. 121.01(C), that may be disposed of by public officials or employees, as defined by R.C. 102.01(B), without obtaining the approval of the State Records Commission as provided for in R.C. 149.32.

Let me note, at the outset, that because your questions are phrased in general terms, I can provide you only with a general discussion of applicable provisions. Where particular materials are under consideration, a more detailed analysis may be necessary.

Your first question asks whether materials (including, but not limited to, correspondence, memorandums, notes, reports, audio and video recordings, motion picture films, and photographs) received by public officials and employees, or created and maintained by them at public expense, are considered records as defined in R.C. 149.40. R.C. 149.40 states, in pertinent part:

Any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office, is a record within the meaning of sections 149.31 to 149.44, inclusive, of the Revised Code.

The statute includes within the definition of "record" "[a]ny document, device, or item, regardless of physical form or characteristic." Thus, the form of the materials is not important for determining whether they constitute records. Materials of any variety, including those materials which you have named—correspondence, memorandums, notes, reports, audio and video recordings, motion picture films, and photographs—are records for purposes of R.C. 149.40, if they are created or received by, or come under the jurisdiction of, any public office of the state or its political subdivisions, and if they serve "to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

You have asked whether all materials received by public officials and employees, or created and maintained by them at public expense, come within the definition of "record" appearing in R.C. 149.40. It is clear that many materials received by public officials and employees, or created and maintained by them at public expense, would serve "to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." I am not, however,¹ able to say that all such materials will necessarily serve the specified purposes. Whether a particular item comes within this definition is, therefore, a question which can be finally determined only on a case-by-case basis.

Your second question is whether all materials classified as records under R.C. 149.40 are subject to R.C. 149.31 through 149.44. R.C. 149.40 states expressly that documents, devices, or items which satisfy the criteria set forth in that section are records "within the meaning of sections 149.31 to 149.44, inclusive, of the Revised Code." Thus, items classified as records under R.C. 149.40 are considered records for purposes of R.C. 149.31 through 149.44 and are subject to such of those sections as apply to all records. E.g., R.C. 149.36 (R.C. 149.31-.42 shall not restrict authority given by other statutes over the creation of records or control of purchases). In certain instances, however, the provisions of R.C. 149.31 through 149.44 apply only to certain categories of records, and, in those instances, some items classified as records under R.C. 149.40 are excluded from coverage. E.g., R.C. 149.32-.34 (apply only to state records); R.C. 149.38 (applies only to county records); R.C. 149.39 (applies only to city records); R.C. 149.41 (applies only to school district records); R.C. 149.42 (applies only to township records).

Your third question is whether those materials which are classified as records under R.C. 149.40 are open to public inspection under R.C. 149.43. R.C. 149.43 designates certain records as public records and provides for public access to such records. It states in part:

(A) As used in this section:

- (1) "Public record" means any record that is required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings, trial preparation records, confidential law enforcement

¹ I note that R.C. 149.331(E) provides that the State Records Administrator shall submit to the State Records Commission "schedules designated 'general schedules' proposing the disposal, after the lapse of specified periods of time, of records of specified form or character common to several or all agencies that either have accumulated or may accumulate in such agencies and that apparently will not, after the lapse of the periods specified, have sufficient administrative, legal, fiscal, or other value to warrant their further preservation by the state." 1 Ohio Admin. Code 149:1-1-03(B) contains the following reference to "nonrecord material": "Nonrecord material will be defined by general schedules. When doubt arises whether certain papers are nonrecord materials, it shall be presumed that they are records." It is my understanding that General Schedules approved by the Commission cover the disposal of such items as blank forms (GS 1), preliminary drafts of letters, memorandums, worksheets, and informal notes (GS 2), library or museum material (GS 3), records of a professional association (GS 4), shorthand notes, steno-type tapes and mechanical recordings (GS 5), bulletins, posters, and

investigatory records, and records the release of which is prohibited by state or federal law.

. . . .

(B) All public records shall be promptly prepared and made available to any member of the general public at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division.

As noted above, the definition of "record" contained in R.C. 149.40 is applicable to R.C. 149.31 through 149.44, including R.C. 149.43. Hence, materials which are classified as records under R.C. 149.40 are subject to R.C. 149.43 and, if they fall within the definition of "public record," are available for public inspection as provided therein.

R.C. 149.43(A)(1) provides that, with the exception of medical records, records pertaining to adoption, probation, and parole proceedings, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law, any record that is required to be kept by a governmental unit is a public record. In 1980 Op. Att'y Gen. No. 80-096, I considered the "required to be kept" language of R.C. 149.43 in light of recent court cases, including Wooster Republican Printing Co. v. City of Wooster, 56 Ohio St. 2d 126, 383 N.E.2d 124 (1978); State ex rel. Citizens' Bar Ass'n v. Gagliardo, 55 Ohio St. 2d 70, 378 N.E.2d 153 (1978); and State ex rel. Milo's Beauty Supply Co. v. State Board of Cosmetology, 49 Ohio St. 2d 245, 361 N.E.2d 444 (1977), and concluded that the applicable statement of the law was that set forth in Dayton Newspapers, Inc. v. City of Dayton, 45 Ohio St. 2d 107, 341 N.E.2d 576 (1976) (also known as Dayton Daily News) (syllabus): "A record is 'required to be kept' by a governmental unit, within the meaning of R.C. 149.43, where the unit's keeping of such record is necessary to the unit's execution of its duties and responsibilities." I have applied that definition in subsequent opinions, e.g., 1981 Op. Att'y Gen. No. 81-043, 1981 Op. Att'y Gen. No. 81-038, 1981 Op. Att'y Gen. No. 81-014, 1981 Op. Att'y Gen. No. 81-006, 1980 Op. Att'y Gen. No. 80-103, and am aware of no reason to modify it at this time. I conclude, therefore, that a record is "required to be kept" for purposes of R.C. 149.43 if the maintenance of such record by a public office is necessary to the execution of the duties and responsibilities of the office.

notices to employees (GS 6), extra or carbon copies of documents (GS 7), routine correspondence (GS 8), automatic data processing recording media (GS 9), and stocks of publications (GS 10). I am, however, not aware of any general definition of nonrecord materials which may have been adopted or approved by the Commission. I do note that the following definition of "nonrecord material" appears in Policy and Procedures Manual 66 (3d ed.) prepared by the State Records Center:

NON-RECORD MATERIAL--These are such items as library and museum material made or acquired and preserved solely for reference or exhibition purposes. Non-record materials also include stocks of publications, processed documents and manuals, and blank forms.

See generally 1960 Op. Att'y Gen. No. 1348, p. 335 at 340 (construing earlier version of R.C. 149.40) ("[c]ounty offices. . . are not required to secure the approval of the county records commission to dispose of copies of a record as long as the office retains the original, or in those cases where the office retains a copy in the first instance, then they are not required to secure such approval to dispose of extra copies).

The question whether all materials which are classified as "records" for purposes of R.C. 149.40 are open to public inspection pursuant to R.C. 149.43 cannot be answered in the abstract. Rather, each record must be considered individually to determine whether it comes within the definition of "public record" appearing in R.C. 149.43(A)(1). Any record which is "required to be kept"—that is, which is necessary to the execution of the duties and responsibilities of the office which maintains it—and which does not come within the exceptions set forth in R.C. 149.43(A)(1) is a public record which must be made available for public inspection pursuant to R.C. 149.43(B).

In Op. No. 80-096, I noted the similarity between the "required to be kept standard" of R.C. 149.43 and the provisions of R.C. 121.21 and R.C. 1347.05 which govern the maintenance of records by governmental bodies. R.C. 1347.05, part of Ohio's Privacy Act (R.C. Chapter 1347), provides in pertinent part, as follows:

Every state or local agency that maintains a personal information system shall:

. . .

(H) Collect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule and eliminate personal information from the system when it is no longer necessary and relevant to those functions. (Emphasis added.)

R.C. 121.21 states:

The head of each department, office, institution, board, commission, or other state agency shall cause to be made and preserved only such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities. (Emphasis added.)

I concluded in Op. No. 80-096 that an assertion by a governmental agency which is subject to R.C. Chapter 1347 that particular records covered by that Chapter are not "required to be kept" is an implicit admission that the agency has violated R.C. 1347.05(H), and I also concluded that an assertion by a state agency that records maintained are not necessary for the documentation of the agency's organization, functions, policies, decisions, procedures, and transactions is an implicit admission that the agency has violated R.C. 121.21.

The language of R.C. 149.40 parallels that of R.C. 121.21² and sets forth a standard similar to that contained in R.C. 1347.05. It appears, then, that in most instances in which an item is determined to be a record for purposes of R.C. 149.40 (that is, to "document the organization, functions, policies, decisions, procedures, operations, or other activities of the office"), the item will, unless it comes within the exceptions set forth in R.C. 149.43, also be found to be a public record. An argument that records maintained by a public body are not "required to be kept" would cast doubt upon the authority of the body to maintain those records,

²Both R.C. 121.21 and R.C. 149.40 speak of materials which document "the organization, functions, policies, decisions, procedures" of a governmental body. There are also differences in language. R.C. 149.40 includes items which "[serve] to document" the operations and activities of the body, whereas R.C. 121.21 is limited to items which "are necessary for the adequate and proper documentation" of the organization, functions, policies, decisions, procedures, and "essential transactions" of the body. The differences can be explained by the fact that R.C. 149.40 merely defines the term "record," whereas R.C. 121.21 addresses the question of which records are to be made and preserved.

particularly if that body were subject to the Privacy Act or were a state agency subject to R.C. 121.21. See 1981 Op. Att'y Gen. No. 81-043 (a ledger which is not required to be kept by a city police department is not a public record); Op. No. 80-096.

In response to your third question, I conclude, generally, that materials classified as records pursuant to R.C. 149.40 are subject to R.C. 149.43 and, if they fall within the definition of "public record," are available for public inspection as provided therein.

Your fourth question asks what responsibilities the State Records Commission has in ensuring that R.C. 149.31 through 149.44 are enforced. I am not aware of any enforcement responsibilities that have been delegated to the Commission.

The State Records Commission was established by R.C. 149.32 and given the responsibility of prescribing "procedures for the compiling and submitting to the state records administrator of lists and schedules of records proposed for retention and disposal, procedures for the disposal of records authorized for disposal, and standards for the reproduction of records by photographic or microphotographic processes." R.C. 149.32 designates the functions of the Commission as follows: "The functions of said commission shall be to review all applications for records disposal or transfer and all schedules of records retention and destruction as submitted by the state records administrator." R.C. 149.32 also authorizes the Commission to revise, alter, approve, or reject any application or schedule and to designate transfer and disposal dates and methods of disposal of records when they are not specifically provided for by law, and it requires the Commission to make an annual report to the Governor. Thus, the Commission's basic duties relate to the review of applications for the disposal of state records and schedules for the retention and destruction of state records. E.g., 1971 Op. Att'y Gen. No. 71-084 at 2-289 (the State Records Commission "was created in order to formulate uniform procedures for the making and keeping of records in all agencies of the State, for the preservation of such records as are necessary, and for the destruction of those that are superfluous").

R.C. 149.33 designates the Director of Administrative Services, or his appointed representative, as the State Records Administrator and makes the Administrator responsible for establishing and administering a records management program "which will apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposition of state records." R.C. 149.331 sets forth the duties of the State Records Administrator, which include submitting to the Commission applications for records disposal and schedules of record retention and destruction, establishing and operating state records centers, making continuing surveys of record-keeping operations, recommending improvements in current records management practices, and obtaining reports necessary for the effective administration of the program. R.C. 149.33 specifies that the records management program must be "approved by the state records commission."

Members of the Commission have inquired as to the extent of the Commission's authority in approving the records management program. Where a statute authorizes performance of a particular act, but does not specify how the act is to be performed, the implication is that it is to be carried out in a reasonable manner. *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878). Thus, it is apparent that, in acting under R.C. 149.33 to approve the records management program, the Commission may undertake to ascertain that the program addresses matters that it considers essential to the efficient operation of the program—such as practicability of enforcement, extent of coverage, assurance of adequate review and supervision, periodic review and updating of schedules, modification of schedules as appropriate, and so on. The Commission has express authority under R.C. 149.32 to prescribe procedures for the submission of lists and schedules to the Administrator. The Commission's authority to "revise, alter, approve, or reject" applications for records disposal and schedules for records retention and destruction is, however, limited to applications and schedules submitted to the Commission by the Administrator pursuant to R.C. 149.331. R.C. 149.32.

The Commission must, of course, comply with applicable provisions in carrying out its duties. R.C. 149.35 prohibits the Commission from ordering the destruction or other disposition of records contrary to any law governing their retention, and R.C. 149.37 authorizes the Commission to order the destruction of records after copies or reproductions have been obtained in accordance with R.C. 9.01. I am, however, unaware of any provision which imposes upon the Commission the responsibility for ensuring that any portion of R.C. Chapter 149 is enforced.

I turn now to your question as to whether there are any classes of records kept by departments, offices, or institutions, as defined by R.C. 121.01(C), that may be disposed of by public officials or employees, as defined by R.C. 102.01(B), without obtaining the approval of the State Records Commission as provided for in R.C. 149.32. It is my understanding that you are not concerned about records which are governed by statutes specifically setting forth time periods for retention. See, e.g., R.C. 121.212 ("if such records are not retained in accordance with or applicable to specific time periods prescribed by law"); R.C. 149.35. Therefore, I am assuming, for purposes of this discussion, that records which are subject to such provisions will be retained and disposed of in accordance with law.

R.C. 149.351 requires that outgoing officials and employees deliver records to their successors. It provides as follows:

All records as defined in section 149.40 of the Revised Code and required by section 121.21 of the Revised Code are property of the agency concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules and regulations adopted by the state records commission provided for under sections 149.32 to 149.42, inclusive, of the Revised Code. Such records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, transferred, or destroyed unlawfully.

As discussed above, R.C. 149.40 defines the term "record" for purposes of R.C. 149.31 through 149.44, and R.C. 121.21 prescribes the records which the head of a department, office, institution, board, commission, or other state agency shall cause to be made and preserved. R.C. 121.01(C) defines "[d]epartments, offices, and institutions," for purposes of R.C. 121.01 through 121.21, as including "every organized body, office, and agency established by the constitution and laws of the state for the exercise of any function of the state government, and every institution or organization which receives any support from the state." Thus, all records made and preserved under R.C. 121.21 by the departments, offices, and institutions included within the definition of R.C. 121.01(C) are subject to R.C. 149.351 and "shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules and regulations adopted" by the Commission. See also R.C. 149.32 ("[n]o records shall be retained, destroyed, or otherwise transferred in violation of any records schedule or application approved as provided in this section").

As discussed in note 2, *supra*, the language of R.C. 149.40 defining "record" is not precisely the same as the language of R.C. 121.21 describing records which are to be made and preserved by state agencies. R.C. 149.40 includes as a record any item which "serves to document the organization, functions, policies, decisions, procedures, operations, or other activities" of a public office, whereas R.C. 121.21 authorizes the head of a state agency to cause to be made and preserved "only such

³ Enforcement provisions relating to R.C. 149.31-44 appear in R.C. 149.352, which states:

The attorney general may replevin any public records which have been unlawfully transferred or removed in violation of sections 149.31 to 149.44, inclusive, of the Revised Code or otherwise transferred or removed unlawfully. Such records shall be returned to the office of origin and safeguards shall be established to prevent further recurrence of unlawful transfer or removal.

records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions" of the agency. It is, therefore, possible that there may be some items held by state departments, offices, and institutions which are classified as records under R.C. 149.40 but are not made and preserved pursuant to R.C. 121.21. The argument that particular records were so classified would, as noted above in connection with your third question, cast doubt upon the authority of the body to maintain those records. Nevertheless, any such records which may exist are not subject to R.C. 149.351.

There remains the question whether some other statutory provision would require Commission approval for the disposal of state records which do not come within R.C. 149.351. R.C. 121.211 provides that "[r]ecords in the custody of each agency shall be retained for time periods in accordance with law establishing specific retention periods, and in accordance with retention periods or disposition instructions established by the state records commission." R.C. 121.212 states:

The head of each agency creating and receiving records, if such records are not retained in accordance with or applicable to specific time periods prescribed by law, shall, within one year of the date of creation or receipt, schedule such records for disposition or retention by request to the state records commission in the manner prescribed by section 149.34 of the Revised Code.

Both of these provisions speak of "records"⁴ generally and seem to contemplate that all records in the custody of a state agency shall be held or disposed of in accordance with retention periods or disposition instructions established by the State Records Commission, at least where no specific retention period is prescribed by law. Both use the term "each agency" as an obvious reference to the term "each department, office, institution, board, commission, or other state agency" appearing in R.C. 121.21. Thus, both R.C. 121.211 and R.C. 121.212 apply to all "[d]epartments, offices, and institutions," as defined in R.C. 121.01(C). They require that such departments, offices, and institutions follow the directives of the State Records Commission in retaining or disposing of all records which are not governed by specific statutory retention provisions.

R.C. 149.34, referenced in R.C. 121.212, supports this conclusion. It states:

The head of each department, office, institution, board, commission, or other state agency shall:

(A) Establish, maintain, and direct an active continuing program for the effective management of the records of the agency;

(B) Cooperate with the state records administrator in the conduct of surveys pursuant to section 149.331 of the Revised Code;

(C) Submit to the state records administrator, in accordance with the standards and procedures established by him, schedules proposing the length of time each record series warrants retention for administrative, legal, or fiscal purposes after it has been received or created by the agency. The head of each agency also shall submit to the state records administrator applications for disposal of records in his custody that are not needed in the transaction of current business and are not otherwise scheduled for retention or destruction.

(D) Transfer to a state records center, in the manner prescribed by the state records commission and the state records administrator, those records of the agency that can be retained more efficiently and economically in such a center.

Pursuant to this provision, the head of each state agency is required to establish, maintain, and direct a program for the effective management of the records of the

⁴I note that, while the definition of "record" appearing in R.C. 149.40 does not, by its terms, apply to R.C. 121.21, 121.211, and 121.212, the sections are in pari materia, and should be read together. See generally State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956). Thus, I read "record" as having the same meaning as R.C. 121.21-.212 as in R.C. 149.40. See also R.C. 149.351.

agency. R.C. 149.34(C) requires the head of each state agency to submit to the State Records Administrator schedules proposing the length of time "each record series" (emphasis added) warrants retention after it has been received or created by the agency, and also requires him to submit applications for disposal of records that are not needed in the transaction of current business and are not otherwise scheduled for retention or destruction. The language of R.C. 149.34(C) is broad enough to include all records of an agency (at least where no specific retention statute is applicable), whether or not made and preserved under R.C. 121.21, since it covers both series of records for which schedules are submitted and records for which no schedules have been provided. R.C. 149.331(D) requires that the Administrator submit to the Commission "applications for records disposal and schedules of record retention and destruction" initiated by the Administrator or any department, office, or institution, and R.C. 149.331(E) provides for the submission of general schedules. See generally note 1, supra. R.C. 149.32 provides for Commission review of applications and schedules. Pursuant to this statutory scheme, any records which are not covered by specific retention statutes should be the subject of schedules or applications for retention and disposal submitted to the State Records Commission.

I note that, in expressing this question to me, members of the Commission referenced the definition of public officials or employees appearing in R.C. 102.01(B).⁶ That definition is, by its terms, applicable only to R.C. Chapter 102, which contains provisions governing ethics. Since that subject is not the same as the one discussed herein, and since that chapter is not limited to state agencies, I am reluctant to attempt to apply that definition directly to the provisions here under consideration. I find, however, that, even absent the direct application of such definition, the provisions in question have broad application, since they are not limited to particular officials or employees, but rather are phrased so as to protect the records in question from unauthorized disposal by anyone. See R.C. 149.32 ("[n]o records shall be retained, destroyed, or otherwise transferred in violation of any records schedule or application approved as provided in this section"); R.C. 149.351("[a]ll records as defined in section 149.40 of the Revised Code and required by section 121.21 of the Revised Code. . . shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules and regulations adopted by the state records commission. . . . Such records. . . shall not be otherwise removed, transferred, or destroyed unlawfully"); R.C. 149.99 ("[w]hoever violates section

⁵I note that, while the definition of "[d]epartments, offices, and institutions" appearing in R.C. 121.01 does not, by its terms, apply to R.C. Chapter 149, the reference in R.C. 121.212 to R.C. 149.34 makes it clear that both provisions apply to the same entities. This result is evident also from the fact that R.C. 121.21 and 149.34 contain identical language referencing the "head of each department, office, institution, board, commission, or other state agency." See generally *State ex rel. Pratt v. Weygant*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (provisions which are in pari materia should be read together).

⁶R.C. 102.01(B) states:

As used in Chapter 102. of the Revised Code:

. . . .

(B) "Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency. "Public official or employee" does not include a person elected or appointed to the office of precinct, ward, or district committee member under section 3517.03 of the Revised Code, any presidential elector, or delegate to a national convention. "Public official or employee" does not include a person who is a teacher, instructor, professor, or any other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

149.351, 149.43, or 149.431 of the Revised Code shall forfeit not more than five hundred dollars for each offense to the state").

Based on the foregoing, I conclude that no records kept by departments, offices, and institutions, as defined by R.C. 121.01(C), may be disposed of except as provided by law or pursuant to a schedule or application approved by the State Records Commission.

Your final question concerns the penalty set forth in R.C. 149.99, which states: "Whoever violates section 149.351, 149.43, or 149.431 of the Revised Code shall forfeit not more than five hundred dollars for each offense to the state. The attorney general shall collect the same by civil action."

R.C. 149.351, quoted above, prohibits the removal or destruction of records as defined in R.C. 149.40 and required by R.C. 121.21, except "as provided by law or under the rules and regulations" adopted by the Commission. As noted above, R.C. 121.21 is applicable only to the records of state agencies. Thus, R.C. 149.351 applies to records which are made and preserved by a state agency pursuant to R.C. 121.21. Anyone violating its provisions is subject to the penalty set forth in R.C. 149.99. See generally 1979 Op. Att'y Gen. No. 79-023 (construing "each offense" to mean each transaction which results in the removal, destruction, mutilation, transfer, or other disposal of records, or other damage to records, in violation of R.C. 149.351).

R.C. 149.43, the public records section, is discussed above in connection with your third question. R.C. 149.43(B) requires that public records be made available to the general public. Anyone who fails to make public records available as required by R.C. 149.43 is subject to the penalty set forth in R.C. 149.99.

R.C. 149.431 provides that certain contracts or agreements under which governmental entities or nonprofit organizations provide services for the government, and financial records related to such contracts or agreements, shall be deemed to be public records under R.C. 149.43(A)(1) and shall be subject to R.C. 149.43(B), with specified exceptions. Anyone who fails to make such materials available as required by R.C. 149.431 and 149.43(B) is subject to the penalty set forth in R.C. 149.99.

In conclusion, it is my opinion, and you are hereby advised, as follows:

1. Materials of all varieties (including, but not limited to, correspondence, memorandums, notes, reports, audio and video recordings, motion picture films and photographs) which are received by public officials and employees, or created and maintained by them at public expense, are considered records as defined in R.C. 149.40 if they serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office.
2. The definition of records which appears in R.C. 149.40 is applicable to R.C. 149.31-.44.
3. Materials which are classified as records under R.C. 149.40 are subject to R.C. 149.43 and, if they fall within the definition of "public record," are available for public inspection as provided therein.
4. The State Records Commission is responsible for reviewing, revising, altering, approving, or rejecting applications for records disposal and schedules of records retention and destruction for state agencies and for approving a records management program; it has no direct enforcement responsibilities.

5. No records kept by departments, offices, and institutions, as defined by R.C. 121.01(C), may be disposed of except as provided by law or pursuant to a schedule or application approved by the State Records Commission.

6. R.C. 149.99 authorizes a penalty of not more than five hundred dollars for a violation of R.C. 149.351, 149.43, or 149.431.