

OPINION NO. 83-099**Syllabus:**

Since the examinations administered by the State Board of Examiners of Architects are "records" under R.C. 149.40, and there is no law prohibiting the destruction of such examinations or requiring the retention of such examinations for a specified period of time, such examinations may be disposed of in accordance with a schedule of records retention or an application for records disposal approved by the State Records Commission pursuant to R.C. 149.32. (1983 Op. Att'y Gen. No. 83-003 (syllabus 5), approved and followed.)

To: William N. Wilcox, Executive Director, State Board of Examiners of Architects, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, December 21, 1983

I have before me your request for my opinion as to the length of time that examinations administered by the State Board of Examiners of Architects must be retained before being destroyed. The provisions of R.C. 149.31 through R.C. 149.44 govern the retention, disclosure and destruction of records maintained by public offices.

R.C. 149.40, which defines the term "record," 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.

It seems clear that examination materials administered by the State Board of Examiners of Architects are "records" under this statute. The examination materials serve to document the Board's decisions as to which candidates are admitted to the practice of architecture in Ohio. As indicated in your letter, such documentation is especially useful in the disposition of an appeal filed by an unsuccessful candidate. Since the Board's examination materials are "records" within the meaning of R.C. 149.40, they are subject to the provisions of R.C. Chapter 149 regulating the destruction of such records. See 1971 Op. Att'y Gen. No. 71-084 at 2-289.

R.C. 149.34 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.

The "head" of the State Board of Examiners of Architects is, of course, the five-member board itself. R.C. 4703.02. Thus the Board, under R.C. 149.34(A), is responsible for establishing, maintaining, and directing a program for the management of the records of the Board. Under R.C. 149.34(C), the Board is responsible for submitting to the state records administrator proposals concerning the length of time that each record series warrants retention, and for submitting to the state records administrator applications for disposal of records not needed in the transaction of current business and not otherwise scheduled for retention or destruction. R.C. 121.212 requires that records be scheduled for retention or disposition within one year after the records have been created or received by the Board, unless the records are covered by a specific retention period prescribed by statute. Since the examinations are given on a regular basis, R.C. 4703.02, I recommend that the Board obtain authority to dispose of examination materials through use of a schedule of retention rather than an application for disposal. I make this recommendation because a schedule of retention can apply to records which are not yet created or received by the agency, whereas an application for disposal can apply only to those records that are in the "custody" of the agency at the time the application is filed.

In regard to the submission of schedules of retention and applications for disposal, I note first that R.C. 149.33 states, in part, that "[t]he director of administrative services or his appointed representative is hereby designated the state records administrator. . . ." The Department of Administrative Services has informed me that the director has appointed an individual within that department to serve as the state records administrator. Thus, under R.C. 149.34, the proper procedure for the Board to follow is to submit to this individual a schedule of retention or an application for disposal concerning the Board's examination materials. But before doing so, it would be wise to consult with this individual concerning any standards and procedures which he has established, under the authority provided by R.C. 149.34(C), concerning the submission of proposed schedules of retention.

In addition, the State Records Commission is vested with authority to prescribe procedures for compiling and submitting to the state records administrator schedules of retention and applications for disposal. R.C. 149.32. The Commission has done so in some detail in 1.Ohio Admin. Code. 149:1-1-02. Therefore, this rule should be perused before a schedule or application is formulated and submitted.

Once the state records administrator has been properly presented with a schedule or an application, it is that individual's duty to submit the schedule or application to the State Records Commission. R.C. 149.331(D). The powers of the Commission in regard to submitted schedules and applications are enumerated in R.C. 149.32. It reads, in pertinent part:

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. The decision of the commission to approve, reject, or modify the applications or schedules shall be based upon the continuing administrative, legal, fiscal, or historical value of the records to the state or to its citizens.

. . .

The commission may revise, alter, approve, or reject any schedule and application or portion thereof and may designate transfer and disposal dates and methods of disposal of records when such are not specifically provided for by law. No records shall be retained, destroyed, or otherwise transferred in violation of any records schedule or application approved as provided in this section. (Emphasis added.)

In 1983 Op. Att'y Gen. No. 83-003, my predecessor had occasion to opine upon the Commission's authority to review a records management program, schedules of records retention, and applications for records disposal. Op. No. 83-003 concluded, inter alia, 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." Op. No. 83-003 (syllabus 5). R.C. 121.01(C) defines "[d]epartments, offices, and institutions," 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." This definition clearly encompasses the State Board of Examiners of Architects. Accordingly, the Board may dispose of its records only as provided by law or pursuant to a schedule or application approved by the Commission.

As recognized in Op. No. 83-003, the Commission's authority to approve a records management program and to approve schedules of records retention and applications for records disposal is quite broad. If the Commission determines that a schedule or application is reasonable "based upon the continuing administrative, legal, fiscal, or historical value of the records to the state or to its citizens," R.C. 149.32, the Commission may approve such schedule or application, absent a law which prohibits the destruction of such records or provides that such records shall be kept for a specified period of time, R.C. 149.35. I am aware of no such law prohibiting the destruction of examinations administered by the Board or requiring such examinations be kept for any specified period of time.

Therefore, it is my opinion, and you are so advised, that since the examinations administered by the State Board of Examiners of Architects are "records" under R.C. 149.40, and there is no law prohibiting the destruction of such examinations or requiring the retention of such examinations for a specified period of time, such examinations may be disposed of in accordance with a schedule of records retention or an application for records disposal approved by the State Records Commission pursuant to R.C. 149.32. (1983 Op. Att'y Gen. No. 83-003 (syllabus 5), approved and followed.)

¹ Note also R.C. 149.351, which states, in part:

All records as defined in section 149.40 of the Revised Code and required by section 121.21 of the Revised Code [which includes records necessary to document the transaction of an agency or to protect rights of persons affected by agency's activities] are the 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. . . .

and R.C. 121.211 ("Records 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"). In addition, 1 Ohio Admin. Code 149:1-1-03(A) states: "Approval by the Commission is requisite to any destruction of records as defined in [R.C. 149.40]."