



## Public Records

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Retired

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***“The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them...To cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man.”***

**Patrick Henry**

# Ohio Public Records Law

- The finance office acts as stewards of public records and has the responsibility to maintain the public records in accordance with laws and regulations.
- The public records law is very complex
- All finance department officers and employees should be familiar with the Ohio public records act.



# Ohio Public Records



- Defined: O.R.C. 149.011 & 149.43 (A) (1)
  - A record held by a public office that is stored on a fixed medium, created, received or sent under the jurisdiction of a public office and that *serves to document* the organization, functions, policies, decisions , procedures, operations or other activities of the office.

# Ohio Public Records Law

- Two components:
  - “record”: (paper, tapes, emails, photos, films, video , etc) that are “created, received or sent”
  - “Serve to document the activities of the public office”
    - Email sent requesting you come to a meeting: PUBLIC
    - Email reminder of your dentist appointment: NOT PUBLIC

# Ohio Public Records

- Obligation
  - To provide *prompt* inspection of public records
  - Upon request, provide copies within a *reasonable* period of time
  - To *any* person
    - UNLESS THE PUBLIC OFFICE CAN IDENTIFY AN EXEMPTION WHICH CLEARLY REQUIRES OR PERMITS WITHHOLDING A RECORD

# Public Records

- Exemptions
  - HIPAA
  - Confidential Law Enforcement Investigatory Records
    - Under conditions
  - Social security numbers
  - Student Records (identify students without consent)
  - Home addresses of public employees
    - State vs. Dispatch Printing Co.
    - Home addresses do not serve the underlying purpose of the Public Records Act
    - Disclosure would not help monitor the conduct of government.



**“We have a VP of Records Management, but we don’t know who it is because nobody can locate the file.”**

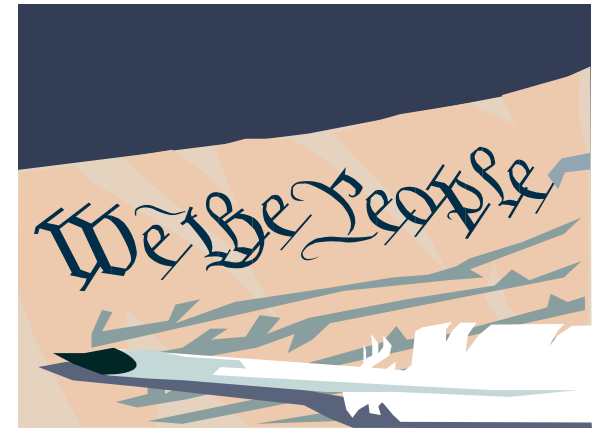


# Ohio Public Records Law

- House Bill 9
- Revised Public Records law
  - Enacted in 2007
  - Created records commissions for public libraries and special taxing districts
  - Required training for all elected officials or their designee provided by Attorney General.



# House Bill 9



- Charged the Attorney General with development of a model public records policy for public entities and to assist public entities with their own public records policies.
- Requires public entities to create a Public Records policy that addresses the agency's response to public records request
- Charged the AOS during audit to check compliance of public entity training and policy

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Section

**B**

Sunday,  
March 11,  
2018

## Auditor: Public records citations fall 22%

Julie Carr Smyth  
The Associated Press

COLUMBUS — Public records-related citations across Ohio fell last year, but some officials still need to work harder to comply with the law, Republican State Auditor Dave Yost said in releasing new statistics Sunday.

"I can understand a bookkeeping error — mistakes happen — but there's no justification for violating the clear law of public records," Yost said in a statement.

Yost's office issued 321 public

records-related citations against 267 public entities in 2017, according to the report. That's down 22 percent from the 414 citations issued in 2016 against 357 public entities.

Yost released his annual report to coincide with the kickoff of national Sunshine Week, a celebration of access to public information.

It showed that about 6 percent of 2017 audits included citations for non-compliance with Ohio's public records law, compared to 8 percent the previous year.

Nearly six in 10 of the violations were

against villages and townships, with villages accounting for 29 percent of citations and townships accounting for another 27 percent. Another 7 percent of citations were issued against police, fire, EMS and ambulance districts.

The remaining citations were issued against cities (6.5 percent), school districts (5 percent), counties (4.7 percent) and community schools (4 percent).

Yost said most violations involved failure to attend state-required public records training, lacking a public records policy or failing to make one available to the public.

"Message to public officials: These are not your records. These are public records, and it is the law," he said. "You need to do whatever it takes to remind yourself to comply."

Both the state auditor's office and the state attorney general's office offer public records trainings to public employees.

Dennis Hetzel, executive director of the Ohio News Media Association, said his group's legal hotline gets regular calls from journalists wrongly denied access or records, despite the training that occurs. But he said a fast-tracked

process through the Ohio Court Claims has "leveled the playing field between governments and individuals in public records disputes.

Hetzel cited the Cleveland city director's decision Friday to use a law exemption to allow police body camera video to be obscured as the kind of act that raises concerns.

"This is the kind of thing where they want to release stuff where it's convenient or it makes them look good, but they don't want to do it where it might cause some discomfort," said.

# House Bill 9

- What HB 9 DID NOT DO:
  - Did NOT Change the definition of Public Records
  - Did NOT Change duty to maintain or produce records
- What HB 9 DID DO:
  - Create penalties for non compliance
  - Create specific provisions for denying requests

# Ohio Public Records

- Can deny overly broad and ambiguous requests
  - Allow the requester to revise the request after explaining how records in the office are maintained and accessed by the public office.
- If denied, public office must provide:
  - Explanation of why it was denied and the legal authority under which it was denied (exceptions later).

# Ohio Public Records

- Penalties
- Civil penalties
  - \$100 for each business day that the public office or person responsible for requested record failed to comply
  - Attorney's fees and court costs



# New Records Dispute System

- Effective September 2016
  - Claimant files case in Common Pleas Court
    - Damage Claim
    - Mandamus
- If case is accepted:  
    Mediator is used
- If Mediation fails:  
    Case goes to Special Master
- If that fails the case goes before a judge

# Public Records

- Public office does not have to create records but records contained within electronic databases must be made available upon public request
  - Request for payroll report cannot be denied because the report is not printed and on your desk!



# Public Records

- Redact information that is not public:
  - Know what is public and what is not
  - Redaction must be plainly visible or advise requester of the redaction
  - W-2 is a public record in Ohio
    - Social Security number is NOT
  - Personnel file is public record
    - Health insurance information is not.

# Public Records

- Public can inspect all public records.
  - Copy charge cannot be greater than actual cost of copy.  
Cannot include labor
  - Cannot charge for inspection of records
- Cannot require that requests be in writing or requestor's name or why they want the records (but you can write down the information requested)
- Can ask the request to be specific.

# Public Records Retention

- ORC 149 dictates the establishment of Records Commissions
  - Establish and oversee the records retention schedule
  - Designates members
    - City: Chief Executive officer (or appointed representative), chief fiscal officer, the chief legal officer and a citizen appointed by the chief executive
  - Designates required meetings.

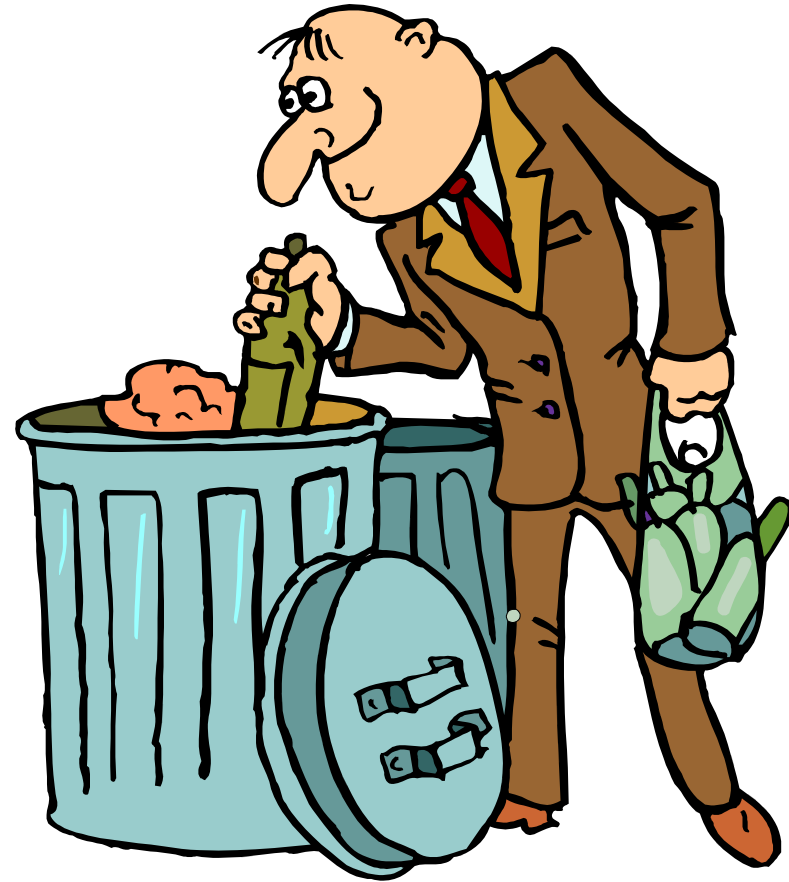
# Records Commission

- Meet (at least) every 6 months
  - County ORC 149.38
  - Municipal Corp. ORC 149.39
- Meet (at least) every year
  - School District ORC 149.41
  - Township ORC 149.42.



# Records Retention

- Establish Retention Schedule
- Submit to AOS & Historical Society
- Prior to Disposal, Inform Ohio Historical Society
  - O.H.S. has 60 day period to request records prior to disposal
  - May have continuing historical value



# Records Retention Assistance

- Ohio Historical Society
- Website:

[www.ohiohistory.org/resource](http://www.ohiohistory.org/resource)

# Records Retention

- Electronic records
  - VERY IMPORTANT!!
  - Public Records
  - Need retention schedule
  - Need to adhere to schedule
  - GET RID OF WHAT YOU DON'T NEED



# Quiz

- You may charge the public for the inspection of records
- The Auditor of State may deny my public records disposal request because of the historical significance of the records.
- Personnel files are public records

