Public Records Act Overview

Definitions
Obligations
Exemptions
Liabilities
Definitions – The “Who?” of Public Records

- Public Office – R.C. 149.011(A)
- A person responsible for public records
- Any private entity that is the functional equivalent of a governmental entity
Definitions – The “Who?” of Public Records

Factors considered in “Functional Equivalence”:

- Whether the entity performs a governmental function
- Level of government funding
- Extent of government involvement or regulation
- Whether the entity was created by the government or to avoid the requirements of the Public Records Act

Definitions – The “What?” of Public Records

Records – R.C. 149.011(G):

• Have information stored on fixed media (paper, tapes, electronic text, photos, films, videos, etc.), and
• Are created or received by, or come under the jurisdiction of, a public office, and
• Document what the public office does: the organization, functions, policies, decisions, procedures, operations, or other activities of the office.
Definitions – The “When” of Public Records

Public Records – R.C. 149.43(A) includes records “kept by” any public office

“Kept by” means any record that is actually in existence and in the possession of the public office or person responsible for public records

- Examples of records not “kept by” a public office:
  1. a record not yet in existence,
  2. a record that has been disposed of lawfully
Email

- Handle electronic records just like any other tangible record
- Analyze based on content, rather than storage medium

Uniform Electronic Transactions Act – R.C. Chapter 1306
Electronic Records

Databases

• If the existing program can perform a search and produce a compilation or summary described by the requester, that output is deemed to already “exist” as a record for the purposes of the Public Records Act.

• A public office is otherwise not required to search a database for information and compile or summarize to create new records.

Electronic Records Management Resources

• Ohio Electronic Records Committee: http://www.ohiohistory.org/ohiojunction/erc
Notes

Notes can be “records,” but are usually transient

Notes are **not** records if they are:

1) Kept as personal papers, not official records;
2) Kept for the employee’s own convenience (for example, to recall events);
   **AND**
3) Other employees did not use or have access to the notes

*State ex rel. Cranford v. Cleveland*, 2004 Ohio 4884
Drafts

If a draft meets the definition of a record, it is subject to both the Public Records Act and records retention laws.

A public office can address the length of time that drafts must be kept in its records retention schedules.
Rights and Obligations

- Any “person” can make a public records request, including corporations and other governmental agencies.
- No special format or special language is required.
- A request may be oral or written.
- The requester’s motive is not relevant. However, the request must at least be specific and describe in detail the records being sought.
- A public office cannot require the requester to reveal his/her identity.
Rights and Obligations

• Promptly, or reasonable period of time
• Reasonable times during regular business hours
• Choice of copy media from normal office operations
• Copies at “cost”
• Payment in advance (optional)
• Methods of delivery
Open Meetings Act Overview

Definitions
Obligations
Executive Sessions
Liabilities
Who is Subject to the Open Meetings Act and When? Definitions

Public Body:
Any decision-making body of the state, its political subdivisions, and school districts (including any committee or subcommittee of each body)

Meeting:
(1) Prearranged gathering of
(2) a majority of members of public body
(3) conducting or discussing public business
Looking Deeper: What is a Meeting?

Discussion/Deliberation vs. Information Gathering:

- Discussion and deliberation involve the weighing of reasons for/against a course of action and **must be conducted in open**

- Gatherings **solely** to receive factual information **may not be meetings** – **but consult legal counsel first!**

Work sessions:

- **Prearranged** work sessions, retreats, etc. where **public business is discussed** among a **majority of the members** of the public body are “meetings” and must be as noticed and open as any other meeting
Obligations

Give appropriate **notice**
R.C. 121.22(F)

Take action & deliberate on public business in **open** session
R.C. 121.22(C)

Take & file **minutes**
R.C. 121.22(C)
Obligation 1: Notice (by rule)

Types of Meetings and the Notice Required

**Regular Meetings**
- Meetings held at prescheduled intervals
- Notice = time and place

**Special Meeting**
- Any meeting that is not a regular meeting
- Notice = at least 24 hrs advance notice of time, place, and purpose, unless it is:

*Emergency Meeting*, where notice must still be given immediately to news media who have so requested
Obligation 2: Openness
Take Action & Deliberate in Public

Where must public meetings be held?
• In a public forum within the area that the public body serves

Does the public have a right to speak at public meetings?
• Not required by the OMA, but may otherwise be permitted or required

Can members of the public record proceedings?
• Yes, if it does not disrupt the meeting
Obligation 3: Minutes

“The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to the public.”
– R.C. 121.22(C)

- Minutes do not have to be a verbatim transcript of the proceedings but must be full and accurate and enable the public to understand the rationale behind the public body’s decisions.
- There is no requirement to keep minutes of executive sessions.
Executive Sessions

Proper Procedures:

• Must be preceded by specific motion, second, and roll call vote
• Motion should state the specific permissible topic(s) to be discussed
• Meetings must always begin & end in open session
Executive Sessions

Acceptable Topics for Discussion:

• Personnel (must state specific type of personnel matter to be discussed, but not identity of the person)
• Certain property sale or purchase issues
• Court action (only with the body’s attorney)
• Collective bargaining preparation and sessions
• Matters required to be kept confidential by codified law
• Security arrangements
• Certain public hospitals’ trade secrets
• Economic development applications
Executive Sessions

Present in Executive Sessions:

Who may members include?
- anyone who is invited to stay

Who may the members exclude?
- any other members of the public
Restrictions On Executive Session

- There can be no decision-making
- No voting, including “straw polls”
- Non-permitted matters may not be discussed in executive session, even if intertwined with permitted matters
Executive Sessions - Records

• Executive sessions provide private space for discussion, but they do not make any materials confidential, including documents that are handed out.

• Analyze public records issues separately, as though taking place outside of executive session.

• No minutes need to be taken (and probably shouldn’t be) of executive session discussions.
Miscellaneous Topics: Virtual Participation

• A member “shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting” – R.C. 121.22(C)

• Virtual participation (teleconferencing) is only permitted when it is specifically authorized by law
Penalties for Violating the OMA

- Fines
- Injunction
- Court Costs
- Attorney Fees
- Action Invalidated
- Removal from Office