

Mary Taylor, CPA Auditor of State

Bulletin 2007-014

Date Issued: December 21, 2007

TO: All Public Offices
All Elected Officials¹
Independent Public Accountants

FROM: Mary Taylor, CPA
Ohio Auditor of State

SUBJECT: New Public Records Law

Overview

Recently enacted House Bill 9 has made significant changes to the existing Public Records Act. The new provisions of the Ohio Revised Code place additional responsibilities upon all public offices and most elected officials. Section 109.43 now requires that elected officials receive three hours of public records training for each term of office. In addition, Section 149.43 now requires that public offices comply with additional requirements regarding public records policies and responding to public records requests. This Bulletin is intended to notify public offices and elected officials about the items which the Auditor of State (AOS) will be reviewing to ensure compliance with the new provisions of the law and to describe how the AOS intends on fulfilling its role to ensure compliance with these new provisions.

Required Public Records Training

There is now a requirement in Ohio Revised Code §109.43(B) and 149.43(E)(1) that officials elected to statewide or local office¹ receive three hours of Public Records training for each term of office. The training is designed to enhance the elected officials' knowledge of the duty to provide access to public records. The training received must be certified by the Ohio Attorney General. Proof that training has been completed must include documentation that either the Attorney General's office or another entity certified by the Attorney General provided the training the elected official received. It is expected that attendees who successfully complete the training will receive a certificate that will serve as proof of training. The Attorney General will have a list of those entities that have been certified to provide this training.

If the elected official so chooses, the law allows a designee to be appointed to receive the training on the elected official's behalf. The designee must be an employee in the public office and there must be evidence of the designation. If there is more than one elected

¹ This includes officials elected to local or statewide office but does not include: justices of the Supreme Court, court of appeals, common pleas, municipal court, county court or a clerk of any of those courts.

official in the public office, the designee should be the designee of all of the elected officials within the office.

The AOS will require documentation that the elected official or his/her designee successfully completed three hours of public records training for each term of office. If an elected official chooses to use a designee, the designee must be an employee in the public office and there must be documentation of the designation.

Public Records Policy

By September 29, 2007, all public offices² were required to adopt a public records policy that described how the public office will be responding to public records requests. Although not required to do so, the public office may obtain guidance in developing its policy from the Model Public Records Policy developed by the Ohio Attorney General. Please note that there are three specific items that public offices' cannot have in their public records policies. The policy cannot: 1) limit the number of public records it will make available to a single person; 2) limit the number of public records it will make available during a fixed period of time; or 3) establish a fixed period of time before it will respond to a request for inspection/copying of public records unless that period is less than eight hours. Therefore, the AOS will: 1) require evidence that the public office adopted a public records policy; and 2) inspect the policy to confirm that none of the above-mentioned three items are included in such policy.

All public offices are required to distribute their Public Records Policy to the employee who is the records custodian/manager or otherwise has custody of the records of that office. Please note that the AOS will require written evidence that the records custodian/manager acknowledged receipt of a copy of the policy.

Posting Public Records Policy

By September 29, 2007, all public offices were required to create a poster that describes the public records policy adopted by the public office. In addition, the public office is required to post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. Finally, if the public office has an employee policies and procedures manual or handbook, it is required that the public records policy be included in such manual or handbook. The AOS will require evidence that: 1) the public office created a poster to describe its public records policy; 2) the poster containing the policy has been posted in required locations; 3) the policy has been included in the employee manual/handbook.

Compliance Enforcement

Section 109.43(G) of the Revised Code requires the AOS or contracted Independent Public Accountant (IPA) firm to audit public offices for compliance with the requirements of Ohio Revised Code Sections 109.43 and 149.43(E)(1) and (2). If the AOS determines that the public office is not compliant with the provisions, the AOS will issue a non-compliance citation.

² By statute, a public office includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government Ohio Revised Code §149.011(A).

Avoiding a Citation

To help avoid receiving a non-compliance citation, the AOS recommends that all public offices and each elected official subject to these requirements review the recently enacted provisions of the Ohio Revised Code with legal counsel to assure full compliance with the Public Records Act.

Please note that there are other changes to the Ohio Revised Code as a result of House Bill 9 in addition to the changes mentioned in this Bulletin. However, this Bulletin includes only the provisions of the new law that the AOS is required to enforce. The following is a convenient checklist of the documentation required to prove compliance with the provisions enforced by the AOS:

- The elected official or his/her designee attended a three-hour certified Public Records Training for each term of office;
- If a designee has attended the training on behalf of the elected official, the designee is an employee in the elected official's office;
- If the training was attended by a designee, there must be documentation of such designation;
 - The attendee should retain documentation of attendance.
- The public office has adopted a public records policy;
- The public office's public records policy does not:
 - 1) limit the number of public records it will make available to a single person;
 - 2) limit the number of public records it will make available during a fixed period of time; or
 - 3) establish a fixed period of time before it will respond to a request for inspection/copying of public records unless that period is less than eight hours.
- The public office's records custodian/manager or employee who otherwise has custody of the records of the office acknowledged receipt of the public records policy in writing;
- The public office created a poster that describes the public records policy of the office; and
- The public office's public records policy is included in the employee handbook or manual (if a handbook or manual exists).

Questions and Comments

If you have any questions regarding the information presented in this Bulletin, please contact the AOS Open Government Unit, Legal Division at (800) 282-0370.



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