Agenda

- Legislative Updates
  - Public Records Act
    - Definitional Exclusions
    - Body Cameras
    - Training for Future Officials
    - Statutory Damages
  - Credit Cards Legislation
- Indigent Burials Refresher
Public Records Act Updates

- Public Records Act = R.C. 149.43
- General Obligations:
  - Adopt a public records policy.
  - Promptly prepare records and make available for inspection.
  - Make copies within a reasonable period of time.
  - Follow an approved records retention schedule.

Public Records Update

- A “record” is:
  - Any document, device, or item, regardless of physical form or characteristic, including electronic records;
  - Created or received by or coming under the jurisdiction of any public office;
  - Which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.
A “public record” is:
- A record kept by any public office.
- However, Ohio Rev. Code Section 149.43(A)(1)(a) – (1)(hh) specifically EXCLUDES over 30 different types of records from the definition of a public record.
- Examples: Intellectual property records, medical records, and mediation communications.

Definition of “Public Record”
Ohio Rev. Code Section 109.43

- Effective September 28, 2018: The following is NOT a public record:
  - (A)(1)(gg): The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;
  - (A)(1)(hh): Protected health information … that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual’s identity.
House Bill 425
132nd General Assembly

- Effective March 8, 2019:
  - Provides that a recording from a law enforcement body-worn or dashboard camera is a public record, subject to certain exceptions.
  - Exempts certain recordings from a law enforcement body-worn or dashboard camera from disclosure under the Public Records Law based on the content of the recording.
  - Allows certain restricted recordings from a law enforcement body-worn or dashboard camera to be released by consent of the subject of the recording or that person's representative.
  - Allows any person whose public records request for a law enforcement body-worn or dashboard camera recording has been denied to file a mandamus action requesting the court to order the release of all or portions of the recording.

**Body v. Dashboard Camera**

- **Body-worn camera:** A visual and audio recording device worn on the person of a peace officer while the peace officer is engaged in the performance of the peace officer’s duties.
- **Dashboard camera:** A visual and audio recording device mounted on a peace officer’s vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer’s duties.

**Section 149.43(A)(1):**

- “Public record” does not mean any of the following:
  - (gg) Restricted portions of a body-worn camera or dashboard camera recording.

**What is a restricted portion?**
“Restricted portion” means any visual or audio portion that shows, communicates or discloses any of the following:

1. Image or identity of a child who is a subject of the recording;
2. Death of a person or deceased person's body unless death caused by peace officer;
3. Death of a peace officer, firefighter, or first responder who dies in the line of duty;
4. Grievous bodily harm unless injury by peace officer;
5. Act of severe violence that results in serious physical harm, unless caused by officer;
6. Grievous bodily harm to peace officer, firefighter, etc., while in the line of duty;
7. Act of severe violence resulting in serious physical harm against a peace officer, firefighter, etc., while engaged in the line of duty;
8. Person's nude body;
9. Protected health information, identity of a person in a health care facility not subject to law enforcement encounter or any other information in a health care facility that could identify a person not subject to encounter;
10. Information that could identify an alleged victim of a sex offense, stalking, or domestic violence;
11. Information that doesn't qualify as CLEIRS but could identify a person who provides similar information;
12. Personal information of a person who was not arrested, cited, charged, or issued a written warning;
13. Proprietary police contingency plans intended to prevent crime and maintain public order and safety;
14. Personal conversations unrelated to work between peace officers and other law enforcement employees;
15. Conversations between a peace officer and public person that does not concern law enforcement activities;
16. Interior of a residence unless it concerns an adversarial encounter with a peace officer; and
17. Interior of a private business, unless it concerns an adversarial encounter with a peace officer.
Exception to the Exceptions

CONSENT

- (H)(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(15)(b) to (h) of this section may be released by the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:
  - (a) The recording will not be used in connection with any probable or pending criminal proceedings;
  - (b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

Training for Future Officials

An elected official, or appropriate designee, is required to attend a three-hour training on public records and open meetings laws during each term.

Effective November 2, 2018:

- A future official may satisfy this requirement by attending the training before taking office.
  - “Future official” means a person who has received a certificate of election to a local or statewide office but has not yet taken office.
- NOTE:
  - Future official may NOT send a designee in his or her place.
Statutory Damages for Electronic Submissions

Ohio Rev. Code Section 109.43(C)(2)

1. If a requester serves a written request for delivery or certified mail to inspect or receive copies of public records in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public record, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

2. If a requester serves a written request by hand delivery, personal service, or certified mail to inspect or receive copies of public records in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public record, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

Statutory Damages:

- $100 per each business day during which the public office fails to comply with obligation;
- Begins the day the requester files a mandamus action; and
- Maximum of $1,000.

“The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from loss of the requested information.”
Timeline:

- **Dec. 6** - Michael Parks made the following public records request to the clerk (Webb) of the Pickaway County Board of Commissioners:
  - Please send me the minutes from yesterday’s commissioners’ meeting(s).
  - Send them in whatever format they are at the time of this email. 3:45 P.M.
    - Handwritten
    - Draft word doc
    - Draft PDF
    - And/or
    - Audio

- **Dec. 11** - Webb sent Parks a copy of the minutes in PDF format.

- **Dec. 13** - Parks responds via email: “The record is not what I requested.”

- **Dec. 18** - County Administrator, Brad Lutz, emailed Parks that the requested records were provided as required by law. Within the message, Lutz noted: “it is not appropriate nor required by sunshine law to send a document that can be edited, such as a Word document.”

- **Dec. 20** - Parks filed a complaint under Ohio Rev. Code Section 2743.15 for denial of timely access to public records in violation of Ohio Rev. Code Section 149.43(B).
Timeline (continued):

- Dec. 29 - Matter referred to mediation.
- Jan. 8 - Webb filed a motion to dismiss.
- March 5 - Court advised case was not resolved in mediation.
- March 14 - Webb filed a supplemental motion to dismiss.

Public Records Update

Ohio Rev. Code Section 149.46(B)(6)

(B)(6): The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy.

After Parks v. Webb, now what?

1. Does a public office have an additional duty to convert files?
2. Will maintaining all “final” versions in a non-editable format such as pdf help prevent the release of Word docs?
3. What about concerns of data manipulation or the security of metadata?
Credit Card Legislation

How to minimize the risk of credit-card abuse

Credit card fraud is a crime of opportunity, now likely to occur when financial controls are weak. Local governments can prevent fraud when they adopt practices that reduce the opportunities for fraud. This article outlines a number of steps which are, and should be taken, to ensure that credit cards are not abused. Some of these steps are described below.

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BEST PRACTICES

How to minimize the risk of credit-card abuse

Credit card fraud is a crime of opportunity, now likely to occur when financial controls are weak. Local governments can prevent fraud when they adopt practices that reduce the opportunities for fraud. This article outlines a number of steps which are, and should be taken, to ensure that credit cards are not abused. Some of these steps are described below.

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Dave Yost • Auditor of State

Recovering Credit and Debit Card Fraud in Local Government

The use of credit cards by local governments has become more prevalent in recent years. However, new laws regarding credit card theft by local government officials. Credit card fraud can have a negative financial impact on entities, as demonstrated by recent investigations in our neighborhood.

- **Elyria School District**
  - District total fraud early, 25 of which were related to the Treasurer.
  - A cash clerk in the district made 39 of those fraudulent transactions; spending $680.20.
  - Used the card for personal travel expenses, grocery and clothing.

- **Pomeroy School District**
  - District total fraud was reported in a single year.
  - A cash clerk was identified as the perpetrator.
  - The total amount of the fraud was $2,699.99.

- **Village of Mount Clemens**
  - Village administrator made fraudulent credit card transactions totaling $374.27 over a 4-year period.
  - Made purchases of vehicles, cameras, television, and other items for personal use.
  - Sentenced to 10 years in prison in addition to restitution to the amount stolen by the Village.

As shown above, an individual can make hundreds of dollars of transactions and accumulate a considerable amount of debt while personally paying a ресторан licensee on the card, and within reason, to the local government entity after the fact. Based on the foregoing, the Auditor of State (“AOS”) is preparing legislation to tighten controls over credit card use by local governments.
Credit Card Legislation

Key Points:

- Amended nine statutes and enacted eight to regulate the use of credit and debit cards.
- The credit card requirements apply to all political subdivisions, except colleges/universities and counties.
- The debit card requirements apply to all political subdivisions, except law enforcement.
- The Act establishes general procedures that political subdivisions must follow when using credit card accounts.

Key Points (continued):

- Requires the implementation of a written credit card policy by **February 2, 2019**.
- Otherwise, a written policy must be adopted **before** beginning the use of a credit card.
- Establishes two separate internal control models for credit card usage by political subdivisions:
  - (1) the custody and control model;
  - (2) the compliance officer model.


Specific Provisions: **Ohio Rev. Code § 717.31**:

Not later than three months after the effective date of this section (February 2, 2019), a legislative authority of a municipal corporation that holds a credit card account on the effective date of this section shall adopt a written policy for the use of credit card accounts.

Otherwise, a legislative authority shall adopt a written policy before first holding a credit card account.

The policy shall include provisions addressing all of the following:
(1) The officers or positions authorized to use a credit card account;
(2) The types of expenses for which a credit card account may be used;
(3) The procedure for acquisition, use, and management of a credit card account and presentation instruments related to the account including cards and checks;
(4) The procedure for submitting itemized receipts to the village clerk or city auditor or the clerk’s or auditor’s designee;
(5) The procedure for credit card issuance, credit card reissuance, credit card cancellation, and the process for reporting lost or stolen credit cards;
(6) The municipal corporation's credit card account’s maximum credit limit or limits;
(7) The actions or omissions by an officer or employee that qualify as misuse of a credit card account.

Definition of “Credit Card Account”

“Credit Card Account” means:
- Any bank-issued credit card account, store-issued credit card account, financial institution-issued credit card account, financial depository-issued credit card account, affinity credit card account, or any other credit card account allowing the holder to purchase goods or services on credit or to transact with the account, and any debit or gift card account related to the receipt of grant moneys.
- This definition does **NOT** include the following:
  - Procurement Card (P-Card) Accounts;
  - Gasoline and Telephone Cards;
  - Any other card account similar to gasoline/telephone card.
- Auditor of State Bulletin 2018-003 provides additional details.

Internal Control Models

- House Bill 312 establishes two separate internal control models for credit card usage by political subdivisions:
  - Custody and Control Model
  - Compliance Officer Model
Custody and Control Model

- Model in which the treasurer or fiscal officer maintains physical control over all credit cards of the entity.
- Allows the cards to be “signed out.”
- Auditor of State Bulletin 2018-003 elaborates on specific items that should be included in an entity’s written policy when using the control model:
  - Who the authorized, designated users are;
  - A reasonable length of time the card can be “signed out”; and
  - Procedures regarding the submission of itemized receipts.

Compliance Officer Model

- Model in which the treasurer or fiscal officer does NOT maintain physical control over all credit cards of the entity.
- Two types: [Requirements differ!]
  - Authority to operate a mayor’s court.
    - R.C. 717.31(C)(1), (D)
  - No authority to operate a mayor’s court.
    - R.C. 717.31(C)(2)

Authority to Operate a Mayor’s Court

- The chief executive officer shall appoint a compliance officer to perform the following duties:
  - R. 717.31(D) With the legislative authority, shall:
    - Quarterly review the number of cards and accounts issued;
    - Review the number of active cards and accounts issued;
    - Review the expiration dates of the cards and accounts;
    - Review the credit limits of the cards and accounts.

Note: The appointed compliance officer may not:
- Be the village clerk or city auditor;
- Use the credit card account;
- Authorize an officer or employee to use the credit card account.
717.31(C)(2) The village clerk or city auditor shall:

- Present monthly to the legislative authority credit card transaction detail from the previous month.
- The legislative authority shall then review the credit card account transaction detail and the presiding officer of the legislative authority shall sign an attestation stating the legislative authority reviewed the credit card account transaction detail.
- Talk to your legal counsel if you have questions as to which type of compliance officer model your entity is subject to!

House Bill 312 now prohibits a political subdivision from obtaining/using a debit card account.

Ohio Rev. Code Section 9.22:

- “No political subdivision may hold or utilize a debit card account, except for law enforcement purposes . . .”

Possession and use of a debit card for purposes other than law enforcement is now a violation of Section 2913.21 of the Ohio Revised Code

- Misuse of Credit Cards Statute
Indigent Burials

Townships and Municipalities often are unaware:

- Of the requirements of Ohio Rev. Code Section 9.15.
- Refuse to pay because they do not believe they must.
- Do not have funds budgeted for this legal requirement.

**Ohio Rev. Code § 9.15**

- Statute provides for the public payment when:
  1. The body of a dead person is found within a township or municipal corporation;
  2. The deceased person was not an inmate of a correctional, benevolent, or charitable institution of Ohio;
  3. The body is not claimed by any person for private interment or cremation;
  4. The body is not delivered for the purpose of medical study, surgical study or dissection.

When all of these requirements are met, the body of the dead person must be disposed of by the appropriate governmental entity as follows…
(A) If the person was a legal resident of the county, the proper officers of the township or municipal corporation in which the person's body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.

(B) If the person had a legal residence in any other county of the state at the time of death, the superintendent of the county home of the county in which such body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.

(C) If the person was an inmate of a correctional institution of the county or a patient or resident of a benevolent institution of the county, the person had no legal residence in the state, or the person's legal residence is unknown, the superintendent shall cause the person to be buried or cremated at the expense of the county.

What is a legal residence?

Legal residence:
- A permanent place of abode used or occupied as living quarters at the time of a person's death.

Includes:
- A nursing home.
- Hospital.
- Other care facility.

If the Statute Applies, What Must The Officials Do?

“... [A]t the grave of the person or, if the person's cremated remains are buried, at the grave of the person's cremated remains, a metal, stone, or concrete marker on which the person's name and age, if known, and date of death shall be inscribed.”
Who pays if a municipality is located within a township?

- Ohio Rev. Code Section 9.15 does not specify which political subdivision should bear the cost when a municipal corporation is located within a township's borders.

- “…at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.”

- However, the statutory provision has long been construed to mean the municipal corporation within a township shall bear the cost.
  - See Ohio Attorney General Opinion No. 1996-026

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Case Example

Turner & Son Funeral Home v. Hillsboro
Court of Appeals of Ohio, Fourth District, Highland County
28 N.E.3d (2015) | 12792015-Ohio-1138

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QUESTIONS?