

OHIO AUDITOR OF STATE
KEITH FABER

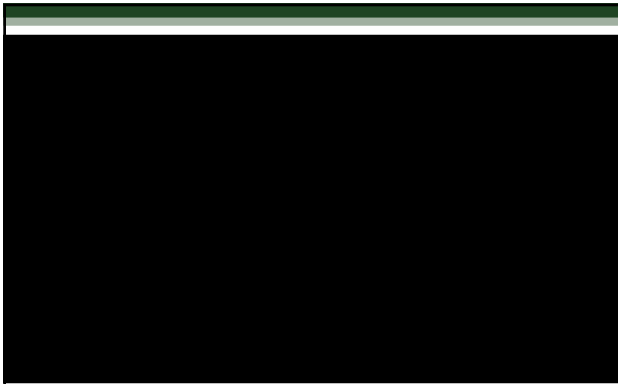
Ohio Sunshine Laws Certification Training

USING OHIO'S PUBLIC RECORDS ACT TO PROMOTE
OPEN AND ACCOUNTABLE GOVERNMENT

*A seminar for public officials, citizens, and the media
presented by the Ohio Auditor of State*

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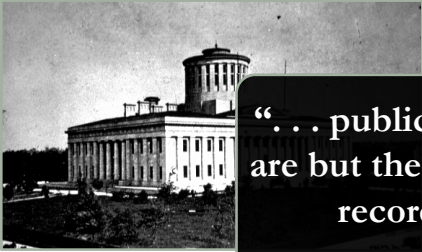
Credit and proof of attendance



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Why are we here?



“... public records
are but the people’s
records”

Wells v. Lewis
(Ohio 1901)

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Practical reasons for public records training



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Public Records Act overview

- ✓ What is a “public office”
- ✓ What is a “public record”
- ✓ What is a proper, enforceable request
- ✓ How must a public office respond
- ✓ Exemptions and redactions
- ✓ Litigation and liabilities
- ✓ Records management and retention

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What is a “public record”?

- (1) every “record
- (2) “kept by”
- (3) “public office”

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What is a “public office” subject to the Public Records Act?



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Public Records Act applies to “persons responsible for public records”



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Private entity can be the “functional equivalent” of a public office



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What is a “record”?

- (1) Exists on a fixed medium
- (2) Created, received by, or under jurisdiction of a public office
- (3) Documents activities of the office

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Public record: exists on a fixed medium




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**Public record:
created, received by, or under
jurisdiction of public office**



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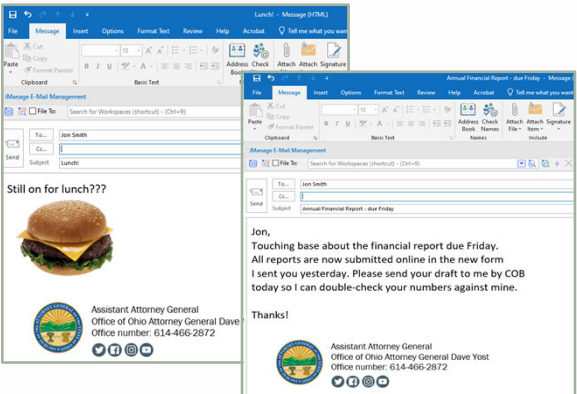
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**Public record:
documents the activities
of the office**



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Information or content determines whether records are public records



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Messages on personal account or device can be public records

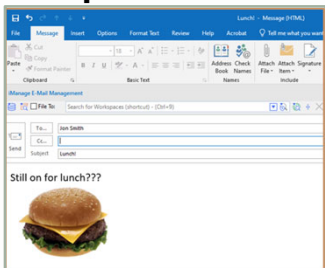


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Record doesn't document activities of the office if purely personal



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Record doesn't document activities of the office if purely personal



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Record doesn't document activities of the office if not used



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Record doesn't document activities of the office if not used




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Record doesn't document activities of the office if not used



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Notes and drafts can be public records



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Notes can be public records depending on use

- ✓ Personal?
- ✓ Used for employee's own convenience?
- ✓ Accessed by others?

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Drafts can be public records depending on use



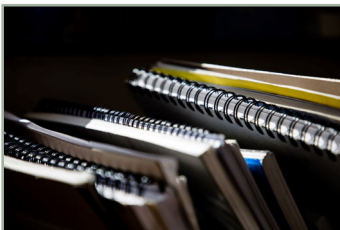
25

Notes and drafts can be transient records

Record Series Title	Agency and Series Authorization Numbers	Record Series Description	Confidential Description	Vital Description	Retention Period
Transient Documents	GAR-CM-04 10551778	All informal communications which convey information of temporary importance in lieu of oral communication including telephone voicemail, chats, posts, instant, and text messages, post-it notes, drafts, generic emails, social media posts, and shared departmental calendars. These communications have very little administrative value as they do not set policy, establish guidelines, define procedures, certify a transaction, or become a receipt.			Electronic – Retain until no longer of administrative value, then destroy. Paper – Retain until no longer of administrative value, then destroy.


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Public record: "kept by" a public office



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Records on personal devices or accounts are records “kept by” public office



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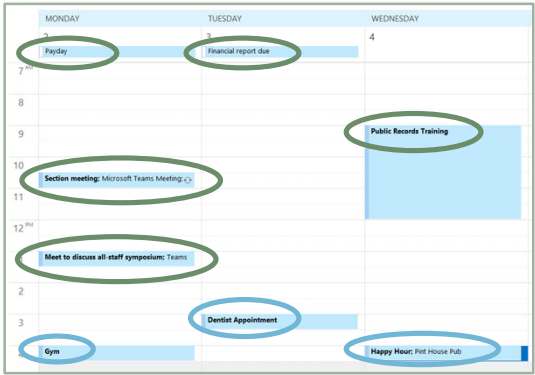
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Record not “kept by” public office if disposed of per retention schedule



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“Any person” can make public records request



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No form or language required to make public records request

Submit a Public Records Request

Remember: You are not required to identify yourself to request records, but we do need at least one way to contact you (email or phone number) if you wish to be notified when your records are available for pick up.

Name (optional):

Email address:

Contact phone number (optional):


Case number/name:

Brief summary of request:

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Identity and motive of requesters irrelevant



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Identity relevant if requester is journalist, next of kin, or insurer



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Identity relevant if requester is inmate seeking criminal records



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Request to inspect Records must be prepared promptly for inspection

Request for copies Copies must be produced in a reasonable period of time

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Can an office charge for responding to requests?

YES if the request is for copies of records.

↓

NO if the request is to inspect records.

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What is "actual cost" of providing records?

- ✓ Blank record medium (i.e., paper or disc)
- ✓ Ink or toner
- ✓ Packaging, delivery, or transmission
- ✓ Final copy provided to requester

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Responding to request to inspect records



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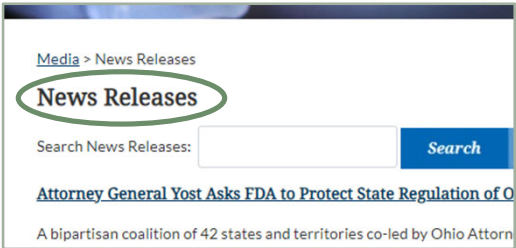
Responding to request for copies of records



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Office must provide copies even if available elsewhere




Media > News Releases
News Releases
Search News Releases: **Search**
[Attorney General Yost Asks FDA to Protect State Regulation of O...](#)
A bipartisan coalition of 42 states and territories co-led by Ohio Attorn

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Records must be provided in a "reasonable period of time"



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What is a “reasonable period of time”?



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Reasonable period of time: type of record



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Reasonable period of time: circumstances of request



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Reasonable period of time: communication with requester

42 public records requests → No response from public office → Requester sues

Not a reasonable period of time

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Reasonable period of time: communication with requester


Voluminous public records request → Public office acknowledges receipt promptly and provides updates → Requester sues

Reasonable period of time

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Burden of responding not excuse for delay



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Tips for responding timely

- ✓ Acknowledge request promptly
- ✓ Produce records on rolling basis
- ✓ Update requester on progress

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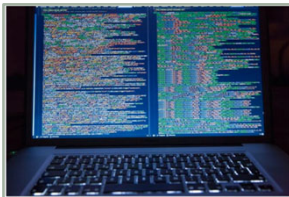
Proper request: asks for existing records

Records do not exist when

- ✓ They have been disposed of
- ✓ They were never created

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Record might “exist” if it can be produced from a database



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Proper request: doesn't ask for information or research



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Proper request: describes records sought with "reasonable clarity"

Burden is on requester to properly frame request

AND

Requester must identify records based on how office organizes and maintains

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Proper request: identifies records based on how office organizes and maintains




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**Proper request:
doesn't ask for complete
duplication or entire category**



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**Proper request:
doesn't ask for complete
duplication or entire category**



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**Ambiguous request:
office doesn't know what
requester wants or where to look**



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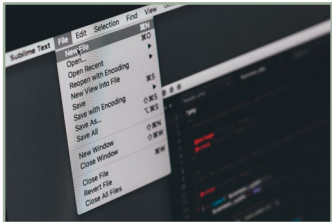
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Denying an overbroad or ambiguous request

- ✓ Must give requester opportunity to revise request
- ✓ Must inform requester of how office's records are maintained and accessed

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Inform requester of how records are kept



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Dear Requester,

I am writing in response to the public records request you submitted to the Ohio Attorney General's Office on DATE. Specifically, you requested "all emails between the Attorney General and the Solicitor General during the Attorney General's administration."

Please note that this office is denying your request as overly broad because it does not provide enough information to allow us to identify responsive records based on the manner in which this office organizes and accesses the records it keeps. "[I]t is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue." *State ex rel. Zibonis v. Columbus State Cmty. College*, 133 Ohio St.3d 122, 2012-Ohio-4228, ¶ 21.

In general, the Ohio Attorney General's Office organizes its records by service division and by case name or overarching topic to which the record relates. The current records retention schedules for the Attorney General's Office, which further demonstrate how records are ordinarily maintained and accessed by our office, can be found on our office's website at:

<https://www.ohioattorneygeneral.gov/About-Ag/Public-Records-Access>.

You can also find a listing of the various service divisions of our office, including descriptions of what they each do, on our website at:

<https://www.ohioattorneygeneral.gov/About-AG/Service-Divisions>.

We would be happy to work with you to revise your request so that we can identify the records you seek based on the manner in which public records are organized and maintained by the Ohio Attorney General's Office. Please feel free to contact us.

Very respectfully yours,

Ohio Attorney General's Office

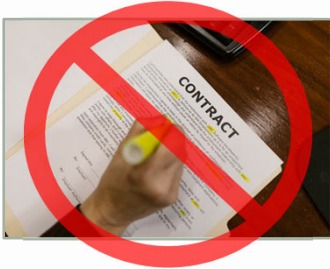
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We would be happy to work with you to revise your request so that we can identify the records you seek based on the manner in which public records are organized and maintained by the Ohio Attorney General's Office. Please feel free to contact us.

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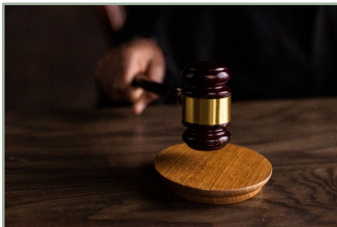
Exemptions: only created by state or federal law



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Exemptions: always narrowly construed



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Mandatory exemptions:
office must withhold

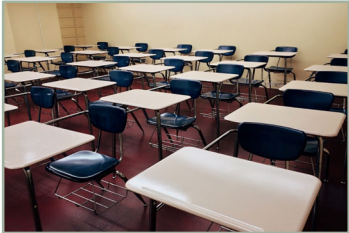
AND →

Discretionary exemptions: office
may withhold but not required
to

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Mandatory exemptions:
FERPA and LEADS



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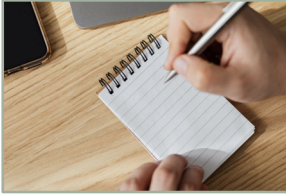
Discretionary exemption:
**confidential law enforcement
investigatory records (“CLEIRs”)**



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CLEIRs: specific confidential investigatory technique or procedures



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CLEIRs: investigatory work product

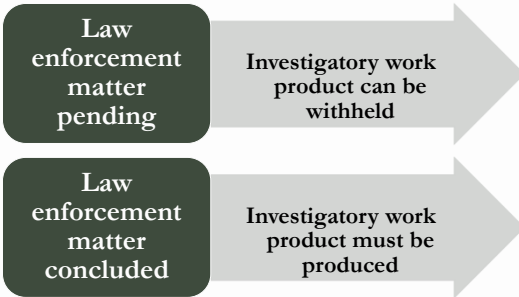


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Investigatory work product is time limited



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CLEIRs does not apply to 9-1-1 calls or initial incident reports



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Discretionary exemption: security and infrastructure records

Infrastructure records:

Records disclosing configuration of critical systems

Security records :

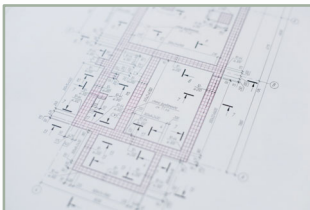
Records used to protect against attack

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Discretionary exemption: security and infrastructure records



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Discretionary exemption: security and infrastructure records



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No exemption for certain categories of records

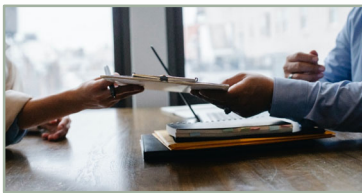
- ✓ Job application materials
- ✓ Juvenile records
- ✓ Right to privacy

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Discretionary exemptions can be waived



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More than one exemption may apply

A Venn diagram consisting of three overlapping circles. The top circle is light blue and labeled "Discretionary". The bottom-left circle is light green and labeled "Mandatory". The bottom-right circle is light blue and labeled "Non-record". The circles overlap in the center and at the intersections between two circles.

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Exempted records or information may be withheld or redacted

A photograph of a laptop screen showing a code editor. The code is in a dark theme. Some lines of code are highlighted in red, indicating redaction. The code includes comments and variable assignments.

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Non-record information may be withheld or redacted

A photograph of a smartphone screen displaying a meme. The meme features a close-up of a pug's face with a grumpy expression. Below the image, the text reads "WHAT DO YOU MEAN... IT'S ALREADY MONDAY??".

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Redactions must be plainly visible and supported by legal authority



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Use “cheat sheets” with common exemptions

Items from Personnel Files that May or Must Be Withheld

- Social security numbers (R.C. 149.43(A)(1)(dd), 149.45(A)(1)(a))
- Public employee home addresses, phone numbers, and personal email addresses, generally (as non-record)
- Residential and familial information of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, youth services employee, firefighter, EMT, BCI investigator, EMS medical director or member of a cooperating physician advisory board, board of pharmacy employee, judge, magistrate, or federal law enforcement officer, other than residence address of prosecutor (see R.C. 149.43(A)(1)(p) and (A)(7)-(8))
- Employee ID numbers (if the number is part of the public office’s security) (R.C. 149.433)
- Charitable deductions and employment benefit deductions such as health insurance (as non-records)
- Beneficiary information (as non-record)

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Ohio Civil Service Application for State and County Agencies

GEN-0288 (REVISED 3/16)
The State of Ohio is an Equal Opportunity Employer and provider of ADA services.

<small>POSITION:</small> ADMINISTRATIVE ASSISTANT	<small>AGENCY:</small> OHIO AGENCY	<small>POSITION NUMBER:</small> 123456
--	---------------------------------------	---

Please submit one application per position or examination to the address indicated on the job posting or examination announcement. Copies are acceptable. Applications lacking sufficient information will not be processed. Please ensure your application is received or postmarked the closing date, as required by the hiring agency. Please be sure to complete the entire application. Also note that once submitted to a governmental agency, this completed form will be subject to all applicable public records laws.

PLEASE TYPE OR PRINT IN INK

<small>NAME (Last, First, Middle)</small> CANDIDATE, PUBLIC EMPLOYEE	<small>DATE OF BIRTH - Year Not Required</small> Month 01 Day 01
<small>ADDRESS (Street, City, State, ZIP+4)</small> [REDACTED]	
<small>HOME PHONE:</small> [REDACTED]	<small>ALTERNATE PHONE:</small> [REDACTED]
<small>E-MAIL ADDRESS:</small> [REDACTED]	

<small>DRIVER'S LICENSE:</small> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<small>LEGAL RIGHT TO WORK IN THE U.S.:</small> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	--

PREFERENCES

<small>PREFERRED SALARY:</small> [REDACTED]	<small>ARE YOU WILLING TO RELOCATE?</small> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
--	--

WHAT TYPE OF JOB ARE YOU LOOKING FOR?
[REDACTED]

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Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested "a copy of the job application for Public Employee Candidate."

Please find attached the records responsive to your request. Note that we have redacted information that is subject to following:

- Information that is not a record of this office, pursuant to *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274; and
- Driver's license numbers, pursuant to R.C. 149.45(A)(1)(c).

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,
Public Office Employee

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Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested "a copy of Public Employee Jon Smith's calendar for April 11-April 15, 2022" and "copies of emails about the press release issued by your office on DATE."

Please find attached the records responsive to your request. Note that we have redacted information that is subject to following:

- Information that is not a record of this office, pursuant to *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274.

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,
Public Office Employee

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MEDICAL HISTORY

Patient Name: _____
 Address: _____
 Date of Birth: _____ Telephone Number: _____

Past Medical History: Circle any of the following that you have had

Cholera or Arthritis	Conjunctive Membrane Infection	Hemorrhoids	Migraines
Alcoholism	Depression	Hepatitis (A, B, C)	Phlebitis
Asthma	Diabetes	High Blood Pressure	Psoriasis
Arthritis	Drug Abuse	Heart Blockage	Tennis
Brain Injury (TBI)	Common Cold	Kidney Stones	Stroke
Cancer (Colon)	Epilepsy or Seizures	Liver Disease	Suicidal Thoughts
Colic	Heart Attack	Lung Disease	Thyroid Disease

Other: _____

Medications: (List all you are taking, the dosage (strength), and how often you take it.)

1. _____
 2. _____
 3. _____
 4. _____
 5. _____
 6. _____

Drug Allergies: _____

Review of Systems:

When the last 6 weeks have you had problem with	Yes	No	Describe
General (fatigue, weakness, etc.)			
Eye (blurred, tearing, vision, etc.)			
Ears, Nose, Throat (hoarseness, hearing, pain, etc.)			
Heart (chest pain, palpitations, etc.)			
Lungs or Breathing (cough, wheezing, etc.)			
Mouth (throat pain, mouth, ulcers, etc.)			
Nerve (tingling, numbness, pain, etc.)			
Skin (rash, sores, etc.)			
Stomach, Intestine, Urinary, Reproductive (GI, GU, etc.)			
Thyroid, Neck (swelling, lump, etc.)			
Other (problems with hair, cold, nose, cancer, etc.)			

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Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested "a copy of the personnel file for Public Employee."

Please find attached the records responsive to your request. Note that we have withheld records that are subject to the following:

- Medical records, pursuant to R.C. 149.43(A)(1)(a) and R.C. 149.43(3).

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,
Public Office Employee

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Public records litigation

Mandamus lawsuit in court of common pleas, court of appeals, or Supreme Court of Ohio


OR

Public records procedure in Ohio Court of Claims

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Mandamus asks court to order office to comply with Public Records Act



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Statutory damages in successful mandamus lawsuit



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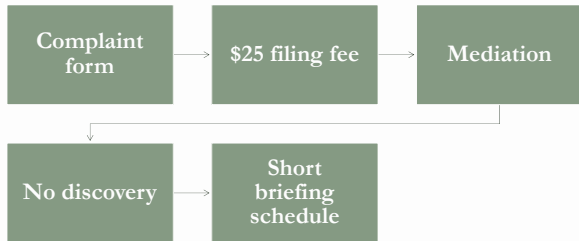
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Attorney fees in successful mandamus lawsuit

- ✓ Court order to comply with PRA
- ✓ Fails to respond “affirmatively or negatively” in time allowed
- ✓ Promises records in certain timeframe
- ✓ Office acted in bad faith in providing records after lawsuit filed

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Complaint in Court of Claims



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Best practices to avoid litigation



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Document all requests office receives

	A	B	C	D	E	F
1	PUBLIC RECORDS REQUEST LOG					
2						
3						
4						
5						
6						
7						
8						

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Document all requests office receives

- ✓ Request
- ✓ Communications
- ✓ Steps taken
- ✓ Response

<https://ohioauditor.gov/publications/bulletins/2011/2011-006.pdf>

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Be prepared

- ✓ Attend trainings
- ✓ Keep lists of common issues and exemptions
- ✓ Have a process for receiving and responding to requests
- ✓ Know your resources

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Stay up-to-date on public records law



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Public offices must have public records policy



www.OhioAttorneyGeneral.gov/Media/Publications

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Public records policy

DO NOT:

- ✓ Limit number of records available to one person
- ✓ Limit number of records available in fixed period of time
- ✓ Establish fixed period before office will respond to request

DO:

- ✓ Distribute policy
- ✓ Include policy in existing manual of policies
- ✓ Display poster of policy conspicuously in office

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Office must organize and maintain records for inspection and copying



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Importance of good records management

More records means more work

Identification of records that can be destroyed

Defensible and consistent disposition of records

Removal of inactive or useless records from public office

Compliance with laws and regulations

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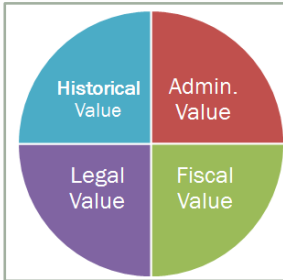
Contents of records retention schedules

- ✓ Title
- ✓ Description of purpose/function of records and types of information
- ✓ Retention period
- ✓ Retention format
- ✓ Disposal method

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Factors determining record retention period

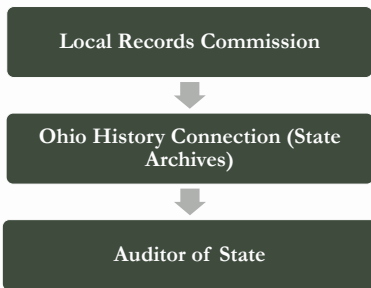


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Retention schedule approval process

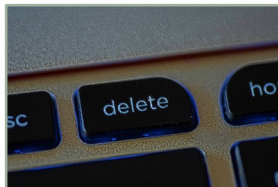


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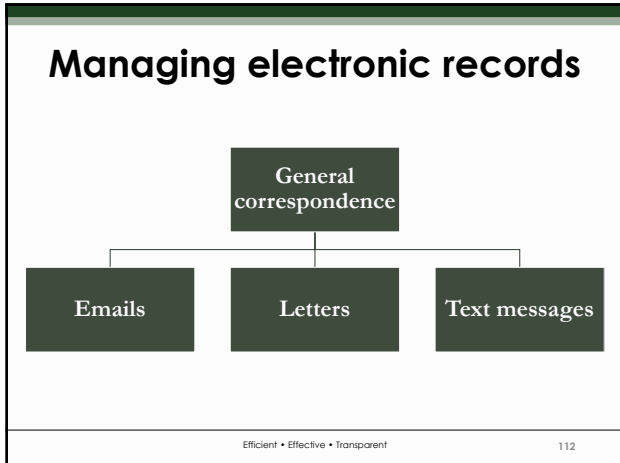
Office can only dispose of records pursuant to approved retention schedule



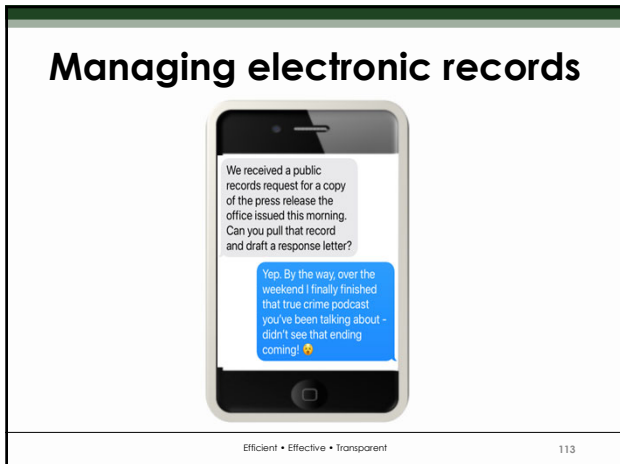
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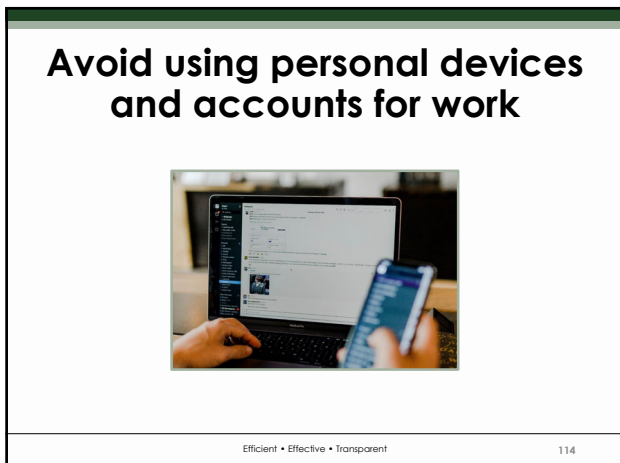
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Update retention schedules to keep up with technology

Record Series Title	Agency and Series Authorization Numbers	Record Series Description	Confidential Description	Vital Description	Retention Period	Retention Justification	Method of Disposal	Date Schedule Approved
AGO Podcasts	SR-OMG-11 1051181	Outward-facing communications to the public to educate or relay information concerning the work/services of the AGO. Records include, but are not limited to, emails, draft scripts, and podcast recordings.			Machine Readable - Retain 4 years, prior to destroying have received by State Archives.		Machine Readable - Delete	4/26/2018

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Include electronic records in public records policy

C. Electronic Records

- Records in the form of e-mail, text messaging, and instant messaging, including those sent and received via a hand-held communications device, are to be treated in the same fashion as records in other formats, such as paper or audiotape.
- Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All employees or representatives of this office are required to retain their e-mail records and other electronic records in accordance with applicable records retention schedules.

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Managing transient records

“Thank you” emails, accepted/declined meeting requests, read receipts, etc.

Applicable records retention schedule in place

No records retention schedule in place

Delete immediately

Retain indefinitely

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Transient records retention schedule

Record Series Title	Agency and Series Authorization Numbers	Record Series Description	Confidential Description	Vital Description	Retention Period
Transient Documents	GAR-CM-04 10551778	All informal communications which convey information of temporary importance in lieu of oral communication including telephone voicemail, chats, posts, instant, and text messages, post-it notes, drafts, generic emails, social media posts, and shared departmental calendars. These communications have very little administrative value as they do not set policy, establish guidelines, define procedures, certify a transaction, or become a receipt.			Electronic – Retain until no longer of administrative value, then destroy. Paper – Retain until no longer of administrative value, then destroy.

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Litigation and liabilities for improper disposal

- ✓ Civil lawsuit
- ✓ Court of Claims proceeding
- ✓ Forfeiture of \$1,000 per violation
- ✓ Attorney fees

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Records management resources



Ohio History Connection & State Archives



DAS General Retention Schedule



Ohio Electronic Records Committee (Ohio-ERC)



Ohio County Archivists and Records Managers Assn.

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Open Meetings Act Overview

- ✓ What is a “public body”
- ✓ What is a “meeting”
- ✓ Obligations of public bodies
- ✓ Executive session
- ✓ Litigation and liabilities

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Open Meetings Act applies to the “meetings” of “public bodies”



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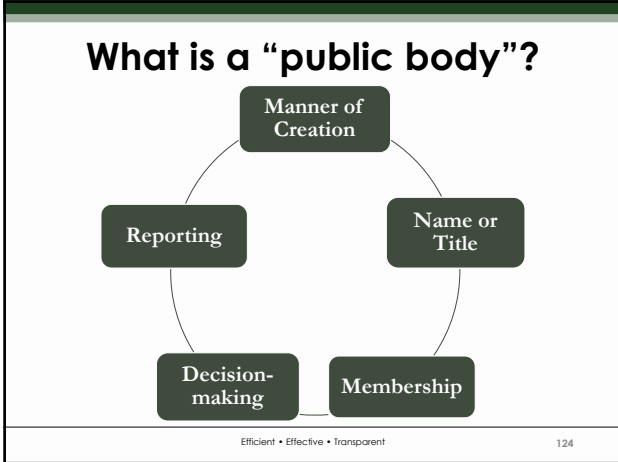
What is a “public body”?



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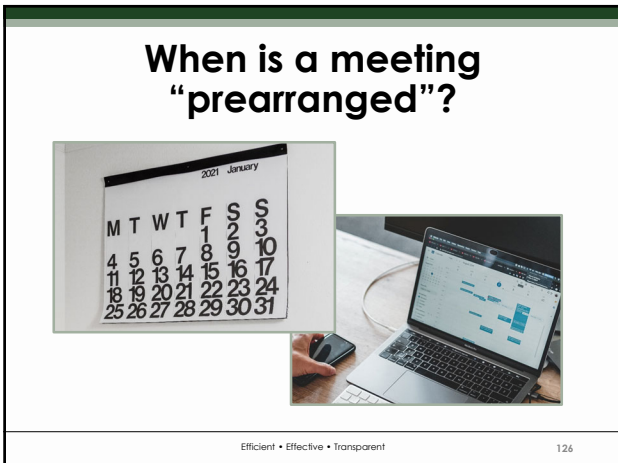
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124

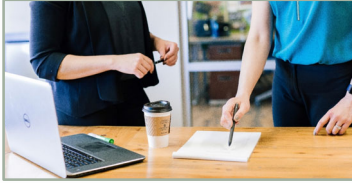
- ### What is a "meeting"?
- (1) A prearranged
 - (2) Discussion of public business
 - (3) By a majority of members of public body
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A meeting has discussion and deliberation of "official business"



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A "meeting" can occur in a series of meetings, each with less than a majority present

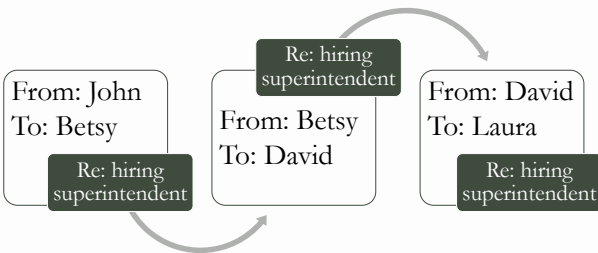


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A "meeting" can occur over a series of emails



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A meeting is still a meeting even if called something else

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“Meeting” obligations

- (1) Notice
- (2) Openness
- (3) Minutes

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Open meeting obligation 1: Notice

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Type of notice required depends on type of meeting


Regular

Special

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Notice to public of planned discussion of particular topic



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Open meeting obligation 2: Openness

- ✓ Deliberate in public
- ✓ Vote in public
- ✓ Take official actions in public

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Openness: forum requirements



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Openness: deliberation and decision-making



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Openness: no secret ballots or whispering



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Openness: consent agendas

Consent agenda example

- ✓ Approve meeting minutes
- ✓ Approve subcommittee actions
- ✓ Renew contracts
- ✓ Update policies

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Members of public body cannot participate in meetings virtually

Unless specifically authorized by law!



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Recording and speaking at open meetings



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Open meeting obligation 3: Minutes

Minutes must be:

- ✓ Promptly prepared
- ✓ Filed
- ✓ Maintained by public

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Content must allow public to understand rationale behind a decision

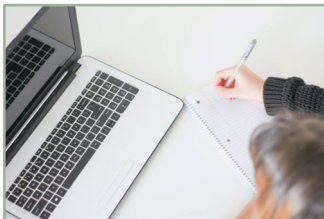


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Meeting minutes are public records



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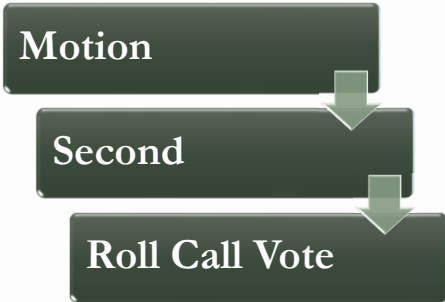
Openness exception: executive session



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Voting procedure to convene executive session



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Executive session must occur after meeting opens and before meeting closes



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Nine permissible executive session topics

- 1) Certain personnel matters (must be specific)
- 2) Purchase or sale of property
- 3) Pending or imminent court action
- 4) Collective bargaining matters
- 5) Matters required to be kept confidential
- 6) Security matters
- 7) Hospital trade secrets
- 8) Confidential business information of an applicant for economic development assistance
- 9) Veterans Service Commission applications

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Executive session topic: personnel matters

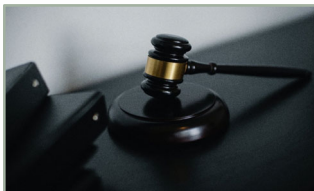


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Executive session topic: pending or imminent court action



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Who can be present in executive session?

- ✓ Members of the public body
- ✓ Majority cannot exclude minority
- ✓ Anyone else members invite

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Do not vote or make decisions in executive session



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Discussion and documents in executive session not necessarily confidential



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Disclosure of executive session discussion or information

- ✓ Executive session doesn't itself create confidentiality
- ✓ Other sources of confidentiality may apply
- ✓ Ethics rules may apply to public officials in executive session

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Anyone can enforce the Open Meetings Act



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Litigation and liabilities for violating Open Meetings Act

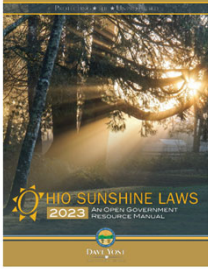
- ✓ Fine
- ✓ Attorney fees
- ✓ Invalidation of action(s)
- ✓ Removal from office

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Ohio Sunshine Laws Manual



OHIO SUNSHINE LAWS
PUBLIC RECORDS AND OPEN MEETINGS
RESOURCE MANUAL
2023
DAVIDSON

www.OhioAttorneyGeneral.gov/YellowBook

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Trainings offered through the Auditor of State's Office

- ✓ Certified Training Online
- ✓ Certified Training Virtual Webcast
- ✓ Certified Training In-Person

<https://ohioauditor.gov/trainings/publicrecords.html>

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Attorney General's Office Sunshine Laws webpage

In This Section

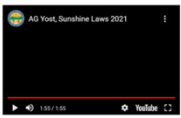
- Online Sunshine Laws Training
- Sunshine Laws Training Schedule
- Sunshine Laws Training Attendance Reports
- Redaction Request Forms
- Sunshine Laws Manual Request Form

Publications

- 2021 Sunshine Law Manual
- 2021 Sunshine Law Manual: Appendix A
- 2021 Sunshine Law Manual: Appendix B
- 2021 Sunshine Law Manual: Appendix C
- Model Public Records Policy

Legal • Sunshine Laws

Ohio Sunshine Laws



Ohio's Public Records and Open Meetings laws, collectively known as the "Sunshine Laws" give meetings and records. The Ohio Attorney General's Office helps public officials and citizens understand their responsibilities under these laws.

The Public Records Unit (PRU) is housed in the Constitutional Offices Section and consists of a staff. The PRU receives inquiries from fellow AGC employees, clients, constituents, public officials, guidance and non-legal advice to these individuals and officers regarding the Ohio's Sunshine Laws, processing of public records requests received by the Attorney General's Office.

www.OhioAttorneyGeneral.gov/Sunshine

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**Attorney General's Office
Public Records Unit**

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Sunshine@OhioAGO.gov

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Credit and proof of attendance



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