

 **Dave Yost**
Auditor of State

2013 Annual Local Government
Officials' Conference

**RETENTION AND
DISPOSAL OF PUBLIC
RECORDS**


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Presented by:
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Agenda

- Public Records Act Overview
- Records Retention and Disposal



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Public Records Act Overview

- Definitions
- Types of Records



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Definition of a Public Record

- “Records” includes (1) any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, (2) created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, (3) which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. R.C. 149.011(G).
- If a document or other item does not meet all three parts of the definition of a “record,” then it is a **non-record** and is **not** subject to either the Ohio Public Records Act or records retention requirements.



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Definition of a Public Record

- *“Any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code . . .”*
- The physical form of an item does not matter, so long as it can record information: a paper or electronic document, e-mail, video, map, blueprint, photograph, voice mail, or item stored on any other medium could be a record. With the exception of one’s thoughts and unrecorded verbal communication, most public office information is stored on a fixed medium of some sort. A public office has discretion to determine the form in which it will keep its records.



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Definition of a Public Record

- *“ . . . created, received by, or coming under the jurisdiction of a public office . . .”*
- It is usually clear when items are created or received by a public office. However, even if an item is not in the public office’s physical possession, it may still be considered a “record” of that office. If records are held or created by another entity that is performing a public function for a public office, those records may be “under the public office’s jurisdiction.”



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Definition of a Public Record

- “. . . which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office”
- In addition to obvious non-records such as junk mail and electronic “spam,” many items found in the possession of a public office do not meet the definition of a record because they do not “document the activities of a public office” (e.g. personal calendars, appointment books, etc.) **It is the message or content, not the medium, which makes a document a record of a public office.**



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Definitions – The “Who?” of Public Records

- **Public Office** – R.C. 149.011(A)
- Any private entity that is the **functional equivalent** of a governmental entity
- A **person responsible for public records**



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Definition of a Public Record

Applying the Definition – Email:



- As electronic documents all e-mails are items containing information stored on a fixed medium (the **first part** of the definition). If an e-mail is received, created by, or comes under the jurisdiction of a public office (the **second part** of the definition), then its status as a record depends on the content of the message. If an e-mail created by, received by, or coming under the jurisdiction of a public office serves to document the organization, functions, etc. of the public office, then it meets the three parts of the definition of a record. If an e-mail does not serve to document the activities of the office, then it does not meet the definition of a record.



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Definition of a Public Record

Applying the Definition – Notes:



- Personal notes of public officials generally do not constitute public records.
- Notes have been found not to be public records if they are:
 - Kept as personal papers, not official records;
 - Kept for the employee’s own convenience (for example, to recall events); and
 - Other employees did not use or have access to the notes.



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Definition of a Public Record

Applying the Definition – Drafts:

- If a draft kept by a public office 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.



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Definition of a Public Record

Applying the Definition – Computerized Database Content:

- A public office is not required to search a database for information and compile or summarize to create new records.
- If a computer 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.
- Where the public office would have to reprogram its computer system to produce the requested output, it is deemed not to be an existing record of the office.



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Definition of a Public Record

Applying the Definition – Audio Tape

- An audio tape recording of a meeting of a board of township trustees that is created by the township fiscal officer for the purpose of taking notes to create an accurate record of the meeting is a public record.
- Thus, the audio tape recording must be made available for public inspection and copying, and retained in accordance with the terms of the township records retention schedule for such a record.



- Attorney General Opinion 2008-019



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Definition of a Public Record

- *“Public record” is also defined as records kept by any public office...R.C. 149.43(A)(1)*
- Future minutes of meetings, or any other anticipated future creation or receipt of a record, are therefore not public records until the record is actually in existence and “kept” by the public office.
- If the office kept a record in the past, but has properly disposed of the record and no longer keeps it, then it is no longer a public record of that office.
- As long as a public record is kept by a government agency, it can never lose its status as a public record.



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Definition of a Public Record

Exceptions:

- Both within the Public Records Act, and in separate statutes throughout the Ohio Revised Code, the General Assembly has identified items and information that are either removed from the definition of “public record, or otherwise required or permitted to be withheld.”



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Electronic Records

- Information Technology and Records Managers must work together;
- Must create and follow records retention schedules for all electronic records;
- Deletion of records must be:
 - automatically purged and/or
 - scheduled on a routine basis



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Records Retention & Disposal



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Records Retention & Disposal



- In order to facilitate broader access to public records, a public office must organize and maintain public records in a manner that they **can be made available for inspection or copying.**

R.C. 149.43(B)(2)



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Office Public Records Policy R.C. 149.43(E)

- All public offices must prepare, distribute, and post a public records policy
- The Auditor of State's model public records policy is available at:
<http://www.auditor.state.oh.us/services/opengov/PublicRecordsPolicy85x11.pdf>
- The model public records policy is for guidance, it is **not** a substitute for an individualized policy suited to each public office



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ACKNOWLEDGEMENT OF RECEIPT BY RECORDS MANAGER OF PUBLIC RECORDS POLICY

In accordance with Ohio Revised Code Section 149.43(E)(2), I hereby acknowledge receipt of the Auditor of State Public Records Policy, a copy of which is attached hereto and incorporated herein by reference.

Cory Haydock
Cory Haydock, Assistant Legal Counsel
Open Government Unit, Legal Division
Auditor of State

3/18/2013
Date



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Records Retention & Disposal

- In order to facilitate transparency in government, Ohio's records retention law prohibits unauthorized removal, destruction, mutilation, transfer, damage, or disposal of any record or part of a record, except as provided by law or under the rules adopted by the records commissions (i.e., pursuant to approved records retention schedules).
- R.C. 149.351(A)
- Therefore, in the absence of a law or retention schedules permitting disposal of particular records, an office lacks the required authority to dispose of those records, and must maintain them until proper authority is obtained.



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Records Retention & Disposal

Retention Schedules:

- Records of a public office may be destroyed, but only if they are destroyed in compliance with a properly approved records retention schedule.
- However, if the retention schedule does not address the particular type of record in question, the record must be kept until the schedule is properly amended to address that category of records.
- If a public record is retained beyond its properly approved destruction date, **it keeps its public record status** until it is destroyed.



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Records Retention & Disposal

Retention Schedules- How Long Should Records Be Kept?:

- In crafting proposed records retention schedules, a public office must evaluate the length of time each type of record warrants retention for administrative, legal or fiscal purposes after it has been received or created by the office.
- Consideration should also be given to the enduring historical value of each type of record, which will be evaluated by the Ohio Historical Society when that office conducts its review.
- Records commissions may consult with the Ohio Historical Society during this process. R.C. 149.31(A).



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Records Retention & Disposal

Retention Schedules- Assessing the Value of Records:

- **Administrative Purposes**
 - records used by the office to carry out its duties (e.g. manuals and memos setting forth office policy, organizational charts).
- **Fiscal Tracking**
 - pertaining to the receipt, transfer, payment, adjustment, or encumbrances of funds or if it is required in an audit (e.g. payroll records and travel vouchers).
- **Legal Value**
 - documents or protects the rights or obligations of citizens or the agency that created it (e.g. contracts and real estate records).
- **Historical Value**
 - documents an agency's organization, policies, decisions, procedures, operations, and other activities
 - contains significant information about people, places, or events (e.g. minutes).



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