

Know Your Rights

Public Records and Open Meetings

A Guide for Activists
Second Edition



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Access to government records is the foundation of democracy. Complete and unfettered access to information is the best tool to hold our elected officials accountable and guard against corruption and wrongdoing. This guide is meant to instruct activists on their rights and responsibilities when requesting documents from government officials. By educating ourselves on this process, we are better able to ensure its effectiveness and empower others.

Public Records Act, Ohio Revised Code Section 149.43



Definitions

Public records:

1. Any items that are stored on a fixed medium (paper, computer, film), AND
2. Created, received, or sent under the jurisdiction of a public office, AND
3. Documents the organization, functions, policies, operations, or other activities of the office.

Public office:

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.

Private office as functional equivalent of public office:

A private entity may be considered a functional equivalent of a public office, and thus subject to the Public Records Act, if it meets these criteria:

1. The entity performs a government function.
2. The entity has a high level of government funding.



3. The government is involved or regulates the daily activities of the entity.

4. The entity was created by the government to avoid the requirements of the Public Records Act. Courts will determine functional equivalency on a case-by-case basis. There is no set number of criteria the private entity must meet in order to qualify as a functional equivalent.

Exceptions

The following are exempted from public records law:

- medical records
- DNA Records
- trial preparation records
- confidential information within law enforcement investigatory records
- probation/parole proceedings records
- youth services records
- mediation
- Communications and Civil Rights Commission proceedings
- law enforcement residential and familial records
- intellectual property records
- adoption records
- records prohibited from release by state and federal law

Private information, such as social security numbers and driver's license numbers, may be redacted (blacked out) within a public record.

For a complete list of all exceptions, see ORC §149.43(A)(1)(a-z).

How to make a request

- Any person (citizenship not required) may request public records by contacting the public office or person responsible for public records.
- Requests may be made in person, by phone, letter, or email.
- When making requests, be clear and specific enough for the public office to reasonably identify which public records you are requesting.

Rights and responsibilities of requester

If you submit a public records request, you:

- Do not have to state your name or the purpose of your request, nor must you sign to see the records.
- May inspect the records in person or obtain the records on a medium of your choice (e.g. paper, computer disc).
- May request the records be sent to you via mail.
- Are entitled to prompt inspection of records at all reasonable times during regular business hours. Whether it is “prompt” is determined on a case-by-case basis.
- May designate another person to inspect the records for you.
- Must make request with reasonable clarity and specificity.

For the exact text of the Sunshine Laws, visit these websites:

Public Records Act:

<http://codes.ohio.gov/orc/149.43>

Open Meetings Act:

<http://codes.ohio.gov/orc/121.22>

- Must pay the actual costs of obtaining the records (e.g. printed pages, disc), BUT not the cost for the effort or time put in fulfilling the request

Rights and responsibilities of public office

The public office:

- Must maintain records in a manner that can be made available for inspection and copying.
- Does not have to create new records in response to a request or format records in a way most convenient to the requester.
- Must make available a copy of the records retention schedule.
- Must respond to requests with reasonable speed and without delay, BUT does not have to respond immediately.
- May require payment for copies of records in advance.
- May not deny request because it will interfere with business of office, UNLESS it unreasonably interferes (request is so broad that retrieving it would prevent office from functioning).
- If a public office denies your request, they must legally explain the denial.
- If your request is too broad or vague, the public office must explain to the requestor why the request cannot be filled and attempt to remedy the problem. The office may ask requester for more information in order to help identify the records being sought, but may not require more information.
- Must ensure that all elected public officials are trained in public records law.

The State Attorney General provides a useful and thorough guide to Sunshine Laws.

<http://www.ohioattorneygeneral.gov/files/Publications/Publications-for-Legal/2009-Sunshine-Laws-Manual.aspx>

What to do if your request is denied

If you feel your request was wrongfully denied, you have the right to file a *mandamus* action in any Ohio state court (Common Pleas, Appellate, Supreme Court).

- A mandamus action is a lawsuit that asks the court to compel the public office to release the public records.
- Both attorney's fees and civil penalties may be available.



Open Meetings Act, Ohio Revised Code Section 121.22

Definitions

Public body:

A decision-making body of any state political entity or subdivision. A decision-making body may include regularly constituted committees, and subcommittees. It may also include informal bodies like political caucuses, which effectively control the decision-making process.

Meeting:

A prearranged gathering of a majority of members of a public body for the purpose of discussing public business

Executive session:

A conference among members of a public body from which the public is excluded.

Duties

Government bodies must:

- Ensure meetings are open to the public. This does not give the right to the public to speak at the meeting. If public comment is allowed, it can be restricted for time and required to be on topic.
- Establish a reasonable method for notifying the public in advance of the meeting.
- Keep full and accurate minutes of meetings. Minutes are public records that must be made available for inspection.

Executive session procedure

Executive sessions may only be held during open meetings, and they must begin and end during the meeting. An executive session can only be called when there is a motion (with the purpose of the motion stated), a second, and a roll call vote with a majority of the quorum voting to go into executive session.

Executive session topics

The following topics are the only ones that may be discussed during an executive session:

- Considerations of appointment, discipline, promotion, and compensation for a public official, or investigations or charges against a public official.
- Purchase or sale of property.
- Meetings with the public body's attorneys regarding pending litigation.

Ohio Sunshine Laws apply only to the records and meetings of state and local bodies. Other laws, such as the Freedom of Information Act, regulate federal records.

**The US Department of Justice provides an online guide to the Freedom of Information Act.
<http://www.usdoj.gov/oip/index.html>**

- Collective bargaining matters.
- Confidential matters under state and federal law.
- Security arrangements and emergency response protocols.
- Hospital trade secrets.
- Veterans Service Commission applications.

Remedy

Any person can ask for an injunction in the county court of common pleas.

- An injunction compels the public body to refrain from prohibited behavior or to conduct meetings in accordance with the law.
- Must file within two years of violation.
- In addition, any action taken or legislation enacted in violation of this section is void.

Recent Important Court Decisions

Kish v. City of Akron (2006), 109 Ohio St. 3d 162 (Ohio 2006)
 Two Akron city workers filed suit against the city for unpaid compensated time. When petitioners sought records indicating the amount of compensated time, another city worker illegally destroyed the documents, totaling 860 time sheets. The Ohio Supreme Court upheld a **civil penalty** against the city for \$860,000, \$1,000 for each violation. The Court held that each individual timesheet constituted a separate record.

Oriana House v. Montgomery (2006), 110 Ohio St. 3d 456 (Ohio 2006)
 The state auditor conducted a special audit and sought the records of Oriana House, a private entity that controlled the daily operations of the public Summit County Community-Based Correctional Facility. The Ohio Supreme Court formally adopted the **functional equivalency test**, but held that Oriana House was not the functional equivalent of a public office. While it met two of the factors of the functional

equivalency test—performing a government function and primarily funded by public money—it did not meet the other two factors: having its daily functions controlled by the government and being established by the government. Thus, the state auditor could not show by clear and convincing evidence that Oriana House was the functional equivalent of a public office.



State ex. rel. Glasgow v. Jones (2008), 119 Ohio St. 3d 391 (Ohio 2008)

A private citizen filed a mandamus action seeking all **email, text messages** and correspondence sent to or from a state representative, from both her public and private computer. The Ohio Supreme Court held that the **requests were overbroad**. The Court did not answer whether email messages from private accounts can be public records, since the state representative conceded they were. Additionally, because the text message request was denied due to the messages not documenting work matters, the Court has yet to determine whether text messages generally can be public records.

Remember, an open, democratic process is protected by the Bill of Rights. While the American Civil Liberties Union can initiate litigation against recalcitrant public officials, citizen activists can get results, often more quickly, than litigation.

Please note: The material provided here is for basic informational purposes only. It is not meant to be, and should not be taken as, legal advice, nor should you rely on this information instead of seeking the advice of an attorney.

The legal issues surrounding civil rights and civil liberties are complex, and a person's rights may vary from case to case depending on subtle details. Only a lawyer who has taken the time to become fully aware of the facts in a given case can provide you with sound legal advice.

If you feel your rights have been violated, contact an attorney at once. The law imposes time limits on most actions to vindicate your rights, so it is important to act quickly. If you do not know how to reach an attorney, call the lawyer referral service of your local bar association. They will be able to direct you to a lawyer experienced in the type of law involved in your case.

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