



TO: House Government Accountability and Oversight Committee  
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio  
DATE: May 24, 2016  
RE: Senate Bill 321

To Chairman Brown, Vice Chair Blessing, Ranking Member Clyde, and members of the House Government Accountability and Oversight Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present interested party testimony on Senate Bill 321.

The ACLU of Ohio chooses to testify as interested party because there are parts of SB 321 we generally support, as well as specific parts we oppose because they weaken Ohio's current public records laws.

Undoubtedly, there is a problem with government entities at all levels around the state denying public records to Ohioans who are entitled by law to them. The ACLU of Ohio knows this full well as we may be the organization in Ohio that receives the most complaints and requests for legal assistance regarding this issue. Indeed, if all we chose to litigate were cases involving public records (and open meetings) we would still have a full docket. Unfortunately, we turn away more people denied public records than we are able to assist.

So, to the extent SB 321 provides a voluntary and quicker alternative to hiring an attorney, going to court to seek a mandamus action, and then pursuing legal action that may last months to years, it can be considered a positive change.

However, there are several aspects of SB 321 we oppose and those are as follows:

- SB 321 makes all attorneys' fees awards in mandamus actions remedial. This prohibits courts from awarding fees above and beyond actual attorneys' fees when government entities act in particularly egregious ways to deny public records. Thus, this change removes some amount of incentive to dissuade government actors from doing so in the future. In sponsor testimony, Senate President Faber stated "courts are best suited to determine the amount of attorney's fees in a particular case." Yet, in this case, that authority is taken away in SB 321.

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org

A MEMBER OF  
COMMUNITY  
SHARES



- With regard to mandamus actions, SB 321 also allows courts to reduce the amount of fees awarded if the court finds “an alternative means should have been pursued to more effectively and efficiently resolve the dispute.” This appears to be an attempt to route cases through the mediation process created by SB 321 and essentially punish some of those who may choose, for a variety of legitimate reasons, to instead file a mandamus action.
- Also with mandamus actions, SB 321 allows courts to award to the government all court costs, expenses and attorneys’ fees should a mandamus action be ruled frivolous. Courts already have this authority and use it. Regrettably, courts have used this against Ohioans who have proven to be pesky and unwavering when seeking, through mandamus actions, public records they are entitled to under law. In our opinion, enshrining this idea in Ohio law is unwise and may further deter people from seeking a mandamus action.

Given our historical and ongoing involvement and interest in public records laws, the ACLU of Ohio will be closely observing to see if the new mediation process created by SB 321 works as intended.

But, it does a disservice to Ohioans seeking public records through mandamus actions should it limit their desire, ability, or potential relief if they choose to stick with the current available route.

If the Ohio General Assembly is intent on passing Senate Bill 321, we ask that the issues identified in this testimony be removed and the sole focus be on the establishment of the mediation process through the court of claims.