

BELMONT COUNTY SHERIFF'S OFFICE
PUBLIC RECORDS REQUESTS
PROCEDURAL OUTLINE
JULY, 2023

BACKGROUND

The federal Freedom of Information Act (FOIA) and its exemptions do not apply to Ohio public offices. A request for public records from a state or local agency in Ohio is governed only by the Public Records Act, or Ohio Revised Code (ORC) 149.43.

R.C. 149.011(A) defines a “public office” as “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.” If any entity meets this definition, it must make its records available under the Public Records Act.

This definition includes all state and local government offices, and also many agencies not directly operated by a political subdivision, such as police departments, operated by private universities. Some examples of other entities determined to be “public offices” include some public hospitals, community action agencies, and county emergency medical services organizations.

All public offices are required to create and adopt a policy for responding to public records requests. The public records policy must be distributed to the records manager, records custodian, or the employee(s) who otherwise has custody of the records of the office, and that employee(s) must acknowledge receipt. The public records policy must be included in the office’s policies and procedures manual, if one exists, and may be posted on the office’s website. The Public Records Requests Policy for the Belmont County Sheriff’s Office can be viewed at:

<https://www.belmontsheriff.com/public-records/>

The primary reference for the information contained in this procedural document is the 2023 Ohio Sunshine Laws Manual, Chapters 1-6. The Ohio Sunshine Laws Manual is available via the Ohio Attorney General’s website (www.OhioAttorneyGeneral.gov) for the purpose of keeping employees of the office and the public educated as to the office’s obligations under Ohio’s Public Records Act, Ohio’s Open Meetings Act, records retention laws, and the Personal Information Systems Act.

RECORDS AND NON-RECORDS

The Public Records Act applies only to “public records,” which are defined as “records kept by any public office.” The term “records” includes “any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in [R.C. 1306.01], created or received by or coming under the jurisdiction of any public office in the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” 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 the Public Records Act or Ohio’s records retention requirements.

A public office is not required to disclose or create items that are “non-records.” There is no obligation that a public office produce items that do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. A record must document something that the office does. The Supreme Court of Ohio expressly rejected the notion that an item is a “record” simply because the public office must actually use the item; otherwise, it is not a record. The Public Records Act itself does not restrict a public office from releasing non-records, but other laws may prohibit a public office from releasing certain information in non-records.

A public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records. The office also need not conduct a search for and retrieve records that contain described information that is of interest to the requester.

RECORDS MANAGEMENT

Like other important government resources, records and the information they contain must be well-managed to ensure accountability, efficiency, economy, and overall good government. The term “records management” encompasses two distinct obligations of a public office, each of which furthers the goal of the Public Records Act.

First, in order to facilitate broader access to public records, a public office must organize and maintain the public records it keeps in a manner such that they can be made available for inspection or copying in response to a public records request.

Second, Ohio’s records retention law, R.C. 149.351, prohibits the 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 commission (i.e., pursuant to approved records retention schedules.)

RECORDS MANAGEMENT *(continued)*

A public office must have copies of its current records retention schedule at a location readily available to the public. It may be worthwhile for a requester to review a public office's records retention schedule to see how an office organizes its records before making a public records request. The Belmont County Sheriff's Office's current records retention schedule is available at their Administrative Office, Monday-Friday, 8 a.m. to 4 p.m., or can be viewed at <https://www.belmontsheriff.com/public-records/>.

REDACTION AND DENIAL

A public office may withhold or redact specific records that are covered by an exemption to the Public Records Act. The public office has the burden of establishing that an exemption applies; the public office fails to meet that burden if it does not prove that the requested records fall squarely within a valid exemption.

"Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record." For records on paper, redaction is the blacking-out of non-public information in an otherwise public document. A public office may redact audio, video, and other electronic records by processes that obscure or delete specific content.

"If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt." Therefore, a public office may redact only that part of a record subject to an exemption or other valid basis for withholding.

However, an office may withhold an entire record when exempted information is "inextricably intertwined" with the entire content of a particular record such that redaction cannot protect the exempted information. Whether a record contains exempted information that is "inextricably intertwined" with non-exempt information must be determined on a record-by-record basis.

R.C. 149.43(B)(2) permits a public office to deny any part of a public records request that is ambiguous or overly broad. An ambiguous request is one that lacks the clarity a public office needs to determine what the requester is seeking and where to look for records that might be responsive, and/or when the wording of the request is vague or subject to interpretation.

A request can be overly broad when it is so inclusive that the public office is unable to identify the records sought based on the manner in which the office routinely organizes and accesses records. The courts have also held a request is overly broad when it seeks what amounts to a complete duplication of a major category of a public office's records.

REDACTION AND DENIAL *(continued)*

Both the withholding of an entire record and the redaction of any part of a record are considered a denial of the request to inspect or copy that particular item. The Public Records Act states that, “[a] redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if a federal or state law authorizes or requires a public office to make the redaction.”

Any requirement by the public office that the requester disclose the requester’s identity or the intended use of the requested public record also constitutes a denial of the request.

A public office cannot deny or delay response to a public records request on the grounds that responding will interfere with the operation of the public office. However, when a request unreasonably interferes with the discharge of the public office’s duties, the office may not be obligated to comply. For example, a requester does not have the right to the complete duplication of voluminous files of a public office. Courts have also held that public offices are not required to permit in-person inspection of public records if the requester is an inmate and, “doing so would...create[] security issues, unreasonably interfere[] with the officials’ discharge of their duties, and violate[] prison rules.”

A public office that denies any part of a public records request is required to give the requester an explanation, including legal authority, for each denial.

The Public Records Act contains a list of records and types of information removed from the definition of a “public record.” The full text of those exemptions appears in R.C. 149.43 (A)(1).

RESPONDING TO PUBLIC RECORDS REQUESTS

There is no set, predetermined time period for responding to a public records request. If the requester wants to inspect records, the records must be “promptly” prepared for inspection, which has been interpreted by the courts as being “without delay” and “with reasonable speed.” If the requester wants copies of records, the public office must produce the records in a “reasonable period of time.” The reasonableness of the response time depends on the facts and circumstances of the particular request. These terms do not mean “immediately” or “without a moment’s delay,” but the courts will find a violation of this requirement when an office cannot show that the response time was unreasonable. Time spent on the following response tasks may contribute to the calculation of what is “prompt” or “reasonable” in a given circumstance:

Identification of Responsive Records:

- Clarify or revise request, and
- Identify records

RESPONDING TO PUBLIC RECORDS REQUESTS *(continued)*

Location and Retrieval:

- Locate records and retrieve from storage location, e.g., file cabinet, branch office, off-site storage facility

Review, Analysis, and Redaction:

- Examine all materials for possible release;
- Perform necessary legal review or consult with knowledgeable parties;
- Redact exempt materials; and
- Provide explanation and legal authority for all redactions and/or denials

Preparation:

- Obtain requester's choice of medium, and
- Make copies.

Delivery:

- Wait for advance payment of costs, and
- Deliver copies or schedule inspection.

A public office must make its public records available for inspection at all reasonable times during regular business hours. "Regular business hours" means established business hours. When a public office operates twenty-four hours a day, such as a police department, the office may adopt hours that approximate normal administrative hours during which inspection may be provided. Public offices may not charge requesters for inspection of public records. A public office is required to make the records available only at the place where they are stored. Posting records online is one means of providing them for inspection—the public office may not charge a fee just because a person could use their own equipment to print or otherwise download a record posted online. Requesters are not required to inspect the records themselves; they may designate someone to inspect the requested records. In processing a request for inspection of a public record, an office employee will accompany the requester during inspection to make certain original records are not taken or altered. There is no charge to inspect public records.

A public office may charge, at cost, for copies and/or for delivery or transmission of requested public records, and it may require payment of both costs in advance. "At cost" includes the actual cost of making copies, packaging, postage, and any other costs of the method of delivery or transmission chosen by the requester. The cost of employee time cannot be included in the cost of copies or delivery. A public office may choose to employ the services, and charge the requester the costs of, a private contractor to copy public records so long as the decision to do so is reasonable.

RESPONDING TO PUBLIC RECORDS REQUESTS *(continued)*

There is no obligation to provide free copies to someone who indicates an inability or unwillingness to pay for requested records. However, before a public office is permitted to deny a request for failure to pay the actual cost of the copies, the public office must first inform the requester of the amount that must be paid. The Public Records Act neither requires a public office to allow those seeking a copy of the public record to make copies with their own equipment nor prohibits the public office from allowing this.

REQUESTING PUBLIC RECORDS

Any person can make a public records request. The requesting "person" need not be an Ohio or United States resident. In fact, in the absence of a specific law to the contrary, foreign individuals and entities domiciled in a foreign country are entitled to inspect and copy public records. The requester need not be an individual, but may be a corporation, trust, or other body.

The proper subject of a public records request is a record that actually exists at the time of the request. Records may not exist if the public office properly disposed of the records pursuant to a records retention schedule. If a case is open/under investigation, some records may not be available for release until the investigation has concluded.

A public records request does not need to be in writing or identify the person making the request. If the request is verbal, it is recommended that the public employee receiving the request write down the complete request and confirm the wording with the requester to ensure accuracy. In most circumstances, the Public Records Act neither requires the requester to specify the reason for the request nor use particular wording to make a request.

Public records requests made to the Belmont County Sheriff's Office should be done by **one** of the following methods:

Phone: (740) 695-7933, ext. 116

E-mail: Submit your request on-line OR print and complete the Public Records Request Form (<https://www.belmontsheriff.com/public-records/>) and e-mail it to records@belmontsheriffohio.gov

Appear: In person at the Belmont County Sheriff's Office, 68137 Hammond Road, St. Clairsville, OH 43950, Monday-Friday, 8 a.m. to 4 p.m.

~ THERE IS NO SAME DAY SERVICE FOR PUBLIC RECORDS REQUESTS ~
PLEASE ALLOW A MINIMUM OF 3 BUSINESS DAYS FROM THE DATE YOUR REQUEST IS ACCEPTED FOR THIS OFFICE TO RESPOND