



Ohio Ethics Commission Public Records Policy

Appointing Authority Approval:

[Signature]
Effective Date: 1/14/2019

GENERAL PROVISIONS

The purpose of this policy is to outline the requirements of Ohio's Public Records Act and to establish a procedure for responding to requests for public records. It is the intent of the Ohio Ethics Commission to at all times fully comply with and abide by both the spirit and the letter of Ohio's Public Records Act.

POLICY SUMMARY

- Most of the documents created, received by, or that come under the jurisdiction of the Commission are public records
- A public record request does not have to be made in writing and the requester is not required to disclose their identity or the purpose of the request
- All requests for public records should be satisfied or acknowledged in writing within three business days after receipt of the request
- Non-routine record requests are routed to a supervisor
- An email that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the Commission is considered a record, and is a public record unless it is subject to an exception under the Public Records Act.

DEFINITION OF A PUBLIC RECORD

A public record is defined to include the following: A document in any format that is created, received by, or comes under the jurisdiction of the Commission that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. A record can be paper or electronic. All records kept by the Commission are public records unless they are exempt from disclosure under Ohio law.

The following information is not considered a public record and must be redacted from any disclosure in response to a public records request, in education materials, and advisory opinions provided to the public:

- Medical records (R.C. 149.43(A)(1)(a))
- Trial preparation records (R.C. 149.43(A)(1)(g))
- Confidential law enforcement investigatory records (R.C. 149.43(A)(1)(h))
- Residential and familial information for a designated public service worker, including that of a spouse, former spouse or child of a designated public service worker (R.C. 149.43(A)(1)(p) and R.C. 149.43(A)(7) and (8)), once requested pursuant to R.C. 149.45(D)(1).
- Personal information, including social security numbers, tax identification numbers, driver's license numbers, and financial or medical account numbers (R.C. 149.43(A)(1)(dd) and *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St.3d 605 (1994))



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- Residential address, e-mail address, and telephone numbers (See, e.g., *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, syllabus; See also, 2014 Ohio Atty.Gen.Ops. No. 2014-029, at 10)

Email:

Email that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the Commission is a public record (unless the information is otherwise exempted). Email messages follow the same retention schedules as records in other mediums. Employees are required to retain their email records and other electronic records in accordance with applicable records retention schedules.

Any correspondence and/or documents used to conduct public business that were created with, or sent to an employee's private email account, are public record and subject to disclosure. Employees are instructed to retain any private-account emails that relate to public business and to copy or forward them to their state email account.

Confidential Records Are Not Subject to Inspection:

All records kept by the Ethics Commission are public unless they are exempt from disclosure by law. Records specifically deemed confidential or exempt by law and thus not public records include, but are not limited to:

- Nonpublic portions of Financial Disclosure Statements filed by members of boards, commissions, or bureaus of the state for which no compensation is received other than reasonable and necessary expenses (except for the disclosures of the Southern Ohio Agricultural and Community Development Foundation board of trustees and its executive director) (R.C. 102.02(B))
- Nonpublic portions of Financial Disclosure Statements that are required to be kept confidential by specific statutory requirements, including JobsOhio (R.C. 102.02(A)), the Academic Distress Commission (R.C. 3302.10(G)), the State Audit Committee (R.C. 126.46(A)(4)), the Third Frontier Commission (R.C. 184.01(H)), and the Third Frontier Advisory Boards (R.C. 184.03(G))
- Nonpublic portions of Financial Disclosure Statements filed by business managers, treasurers, and superintendents of city, local, exempted village, joint vocational, or cooperative education school districts or educational service centers (except that any person conducting an audit of any such school district or educational service center pursuant to Section 115.56 or Chapter 117 may examine these disclosure statements) (R.C. 102.02(B))
- All papers, records, affidavits, and documents related to any complaint, charge, inquiry, or investigation of the Commission, except where the accused person requests that the



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evidence and/or record of a complaint hearing before the commission be made public or a settlement agreement authorizes its release (R. C. 102.06)

- Any information, books, papers, or documents presented to the Commission pursuant to R.C. 102.06, unless such were presented at a public hearing. If the records were not presented at a public hearing, the Commission must give written consent before they are made public. (R.C. 102.07)
- Employees' and their family members' records and documents relating to medical certifications or medical histories that have been created for purposes of the Family Medical Leave Act (FMLA) (29 CFR 825.500(g))

This is not a complete listing of all confidential records and data. Consult with your supervisor, the Executive Director or the General Counsel on all questions related to the potential confidentiality of information or documents prior to its release.

RESPONDING TO RECORDS REQUESTS

No Specific Request Method is Required:

The requester is not required to request records in writing; however, the requester must at least identify the records requested with sufficient clarity to allow the office to retrieve the records. If it is not clear what records are being sought, then the Executive Director, or the General Counsel, may deny the request, stating the legal authority for the denial and providing the requester with an opportunity to revise the request by informing the requester of the manner in which the Commission keeps its public records.

Disclosure of the Requester's Identity and Intended Use is not Required:

A requester is not required to provide his or her identity, or the intended use of the requested public record. This information can only be requested if it would improve the ability to comply with the request, and the requester **must** be informed that the information is optional.

The Commission is Not Compelled to Create New Records:

In processing the request, the Commission does not have an obligation to create new records or perform new analysis of existing information. An electronic record is deemed to exist so long as a computer is already programmed to produce the record through simple sorting, filtering, or querying. Although not required by law, the Commission may accommodate the requester by generating new records when it is reasonable and practical under the circumstances.

Availability of Records:

All public records must be organized and maintained in such a way that they can be made readily available for inspection and copying. Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made



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available for inspection promptly (see next section for an explanation of the term 'promptly'). In processing a request for inspection of a public record, a Commission employee must remain with the requester during inspection to safeguard the integrity of the original documents. For the same reason, requesters are not permitted to make copies of records.

Response Timeframes:

There is no defined period of time by which a public records request must be completed by law, except that public records must be made available for inspection promptly and copies must be provided within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested, the proximity of the location where the records are stored, and the necessity for any legal review and redaction of the records requested.

It is the goal of the Commission that all requests for public records should be acknowledged in writing or, if possible, satisfied within three business days following the office's receipt of the request. The acknowledgement may be in either paper or electronic form.

Responding to Routine Requests:

Routine requests for records should be satisfied in an expedient manner and within three business days. Routine requests are those that do not require an extensive search for responsive documents, detailed pre-release review and/or are not voluminous. For example, requests for copies of a small number of financial disclosure statements for years that are stored on-site are generally considered routine requests.

Responding to Non-Routine Requests:

If a request is deemed to be non-routine, such as a request for a voluminous number of copies or that requires an in-depth pre-release review, the requester shall be provided with written acknowledgement of the request. An estimate of the response time, and if known, identification of any items within the request that may be exempt from disclosure and/or subject to redaction will subsequently be provided to the requester once it is determined.

Non-routine requests must be coordinated with the appropriate supervisor and the General Counsel. The Executive Director must be notified by the supervisor and/or General Counsel.

All non-routine requests must undergo a pre-release review by the supervisor to prevent disclosure of personal information that may be protected by state and federal privacy laws (e.g., Social Security numbers) and confidential records that must not be disclosed under penalty of law (e.g., investigatory records).



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Redacting Records:

If portions of a record are public and portions are confidential or otherwise exempt from the public records law, the non-public portions must be visibly redacted (e.g., deleted or obscured) and the rest released. If there are redactions, the redactions should be made in black and each redaction must be accompanied by a supporting explanation, including legal authority.

Redacting Financial Disclosure Statements:

In addition to any information that is deemed confidential or otherwise exempt by law, information contained in the “personal contact information” section of a financial disclosure statement, which includes the filer’s mailing address, email address, and phone number, should be redacted prior to releasing the record. The redactions should appear in black and must be accompanied by a supporting explanation, including legal authority.

For financial disclosure statements that are not confidential under R.C. 102.02(B), the following legal authority should be provided to the requester:

In accordance with Ohio law, we have redacted certain personal information that is not subject to disclosure. Specifically, we have redacted the filer’s personal contact information, including his or her mailing address, email address, and phone number. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, syllabus. (“State-employee home addresses are generally not ‘records’ under R.C. 149.011(G) and are thus not subject to disclosure under R.C. 149.43, the Public Records Act.”); *State ex rel. DeGroot v. Tilsley*, 128 Ohio St.3d 311, 2011-Ohio-231 ¶ 8 (home addresses of city retirees are not public records); *See, also*, 2014 Ohio Atty.Gen.Ops. No. 2014-029, at 10 (“Personal email addresses that are contained in an email sent by a township fiscal officer that do not document the organization, functions, policies, decision, procedures, operations, or other activities of the township do not constitute ‘records,’ as defined in R.C. 149.011(G), and are not required to be disclosed by R.C. 149.43.”).

For financial disclosure statements that are confidential under R.C. 102.02(B), the following legal authority should be provided to the requester:

In accordance with the statutorily mandated confidential review process outlined in R.C. 102.02(B), we have redacted some portions of the statement. Specifically, enclosed are the public portions of the statement, as identified by the Commission pursuant to R.C. 102.02(B). The remainder of the statement is confidential, and therefore is not a “public record” under the Public Records Act. See R.C. 102.07 and R.C. 149.43(A)(1)(v); See also O.A.C. 102-5-02(C) and 102-5-08.

We have also redacted some personal information that is not subject to disclosure. Specifically, we have redacted the filer’s personal contact information, including



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his or her mailing address, email address, and phone number. *See, e.g., State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, syllabus. (“State-employee home addresses are generally not ‘records’ under R.C. 149.011(G) and are thus not subject to disclosure under R.C. 149.43, the Public Records Act.”); *State ex rel. DeGroot v. Tilsley*, 128 Ohio St.3d 311, 2011-Ohio-231 ¶ 8 (home addresses of city retirees are not public records); *See, also*, 2014 Ohio Atty.Gen.Ops. No. 2014-029, at 10 (“Personal email addresses that are contained in an email sent by a township fiscal officer that do not document the organization, functions, policies, decision, procedures, operations, or other activities of the township do not constitute ‘records,’ as defined in R.C. 149.011(G), and are not required to be disclosed by R.C. 149.43.”).

If it is determined that the filer disclosed any other type of personal information (either in the disclosure statement or in any attachments filed with the statement) that is not otherwise required to be disclosed (e.g., a bank account number, credit card number, tax identification number, driver’s license number), such personal information should also be redacted prior to releasing the record. Again, the redactions should appear in black and must be accompanied by a supporting explanation, including legal authority. Because such personal information does not constitute a “record” under R.C. 149.011(G), the same legal authority justifying the redaction of the “personal contact information” as set forth above should be used to explain the redaction to the requester.

Before responding to the public records request, Commission employees should consult with the appropriate supervisor and the Executive Director and/or the General Counsel if they have any questions regarding the disclosure of personal information.

Denial of a Records Request:

If the requester makes an ambiguous or overly broad request, the Executive Director or the General Counsel may deny the request, but must provide the requester an opportunity to revise the request by informing the requester of the manner in which records are maintained and accessed by the Commission.

Any other denial in part, or in whole, of a public records request must include an explanation, including legal authority. If the initial request was made in writing, the explanation must also be in writing.

Copying Costs:

Those seeking public records may be charged only the actual cost of making copies, not labor.

- The charge for paper copies is five cents per page
- The charge for electronic files downloaded to a compact disc is one dollar per disc
- There is no charge for emailed documents



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Advance payment may be required for all actual costs of providing copies if the anticipated costs are substantial or the requester has a balance due from previous requests.

Mailing Costs:

If a requester asks that documents be mailed, he or she may be charged the actual cost of the postage and mailing supplies. Advance payment may be required for all actual costs of mailing copies if the anticipated costs are substantial or the requester has a balance due from previous requests.

Waiver of Costs:

The Executive Director may choose to waive any and all costs associated with fulfillment of a public record request. Any waiver of costs should not be construed to waive, and does not in fact waive, the Commission's right to request and collect actual costs associated with fulfillment of a later public record request.

RECORDS MANAGEMENT

Records kept by the Ethics Commission are subject to records retention schedules. The office's current records retention schedules are available on-line at this address: <http://apps.das.ohio.gov/rims/SelectMenu/Selection.asp> and in our offices located at the William Green Building, 30 W. Spring St., L3, Columbus, Ohio 43215.

Each section of the Commission is responsible for timely compliance with the established records retention schedules, and for completing corresponding Certificate of Records Disposal forms.

AUTHORITY

This policy is issued in compliance with R.C. 149.43 and the Ohio Attorney General's Model Public Records Policy, and was drafted in consultation with that office.

EMPLOYEE RESPONSIBILITY

Violations of this policy may result in discipline up to and including termination, and civil action or criminal charges, if warranted. It is the employee's responsibility to read the Public Records Policy and address any questions to the appropriate supervisor, the General Counsel, and/or the Executive Director.