IN THE SUPREME COURT OF OHIO

STATE EX REL. ASHLEY FLUTY *Relator,* v. **STEVEN G. RAIFF**, *et al.* *Respondents.*	Case No.: 2021-1250
RELATOR ASHLEY FLUTY'S MERIT BRIEF	

ORIGINAL ACTION IN MANDAMUS

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2. A relator is entitled to a writ of mandamus when a public office cannot clearly establish that properly requested records are exempt from disclosure. Respondents admit that Ms. Fluty's request was proper, but they offer no explanation for continuing to withhold portions of those records. Is Ms. Fluty entitled to a writ?
3. A relator is entitled to court costs if a public office withholds public records in bad faith. Respondents denied Ms. Fluty's requests for records despite "on point" precedent commanding them to release those records, because they felt like it and because they think the Court did a bad job writing those precedents. Is Ms. Fluty entitled to court costs based on Respondents' bad faith?
4. After decades in which the Court exercised its discretion to withhold fee awards to avoid punishing reasonable respondents, the General Assembly amended Ohio Rev. Code § 149.43 to carefully enumerate circumstances for reducing or denying fee awards and to clarify that those awards are remedial, not punitive. May courts use their discretion to protect reasonable respondents by writing additional criteria into the statute?
5. The Court may grant attorney's fees to relators whose requests confer a public benefit, whether through the release of information or simply by forcing recalcitrant public officials to comply with the law. Respondents admit that Ms. Fluty's request sought information in the public interest, but they knowingly refused to comply with precedents mandating its release. Should the Court grant Ms. Fluty her attorney's fees?

STATEMENT OF FACTS

On November 3, 2020, Ochanya McRoberts, the lower-school director at the Insightful Minds Community of Learning, placed a student in an isolation room after a series of disciplinary infractions. While alone in the room, the boy propped a mat against a wall and climbed onto it. When Ms. McRoberts saw him on top of the mat, she re-entered the room and ordered him down. When he refused, she yanked the mat out from underneath him, sending him plummeting to the floor, where he injured his arm. When witnesses reported that she had

deliberately injured the boy, administrators at Insightful Minds placed Ms. McRoberts on an administrative reassignment while they investigated.[1]

In response, Ms. McRoberts sued. She sued Alisa Jones, a teacher who told the boy's parents what had happened. She sued Amanda Yarger, a school employee who gave the police a witness statement after the boy's mother filed a complaint. And she sued Relator Ashley Fluty, who did nothing other than answer questions when the school's investigators summoned her for an interview.[2]

Ms. Fluty contacted attorney Brian D. Bardwell to defend her in the defamation case.[3] Soon after, Mr. Bardwell began his fact investigation by requesting a copy of the incident report the boy's mother had filed with the Broadview Heights Police Department, along with all its attachments ("the First Request").[4] Respondent Eric Grossnickle, a records clerk, denied the request soon after, claiming that the McRoberts Report was a confidential law enforcement investigatory record that would identify an uncharged suspect.[5]

Mr. Bardwell responded by making a new request for records ("the Second Request"), asking for a copy of the McRoberts Report with any exempt information redacted.[6] Mr. Grossnickle denied the Second Request as well. His denial did not offer any explanation or legal authority for refusing to produce the report with the uncharged suspect's name redacted. Instead, it directed Mr. Bardwell to the city's law director, Respondent Vince Ruffa, who Mr.

[1] Verified petition, ¶¶ 9–16.

[2] Verified petition, ¶¶ 17–18.

[3] Verified petition, ¶¶ 19–21.

[4] Relator's Exhibit A. Exhibits A through E are authenticated at Deposition of Vince Ruffa, Vol. I, 14:19–16:6 (Relator's Ex. Z).

[5] Relator's Exhibit B.

[6] Relator's Exhibit C.

Grossnickle said could authorize the release of the records.[7] Mr. Bardwell responded again, noting that Ohio law already authorized (and required) the City to release the record. His response cited this Court's decision in *State ex rel. Beacon J. Publ'g Co. v. Maurer*, 91 Ohio St. 3d 54, 56–57 (2001): "[T]his report, including the typed narrative statements, is not a confidential law enforcement investigatory record but is a public record, and … its custodian, Maurer, must release an unredacted copy immediately upon request." He again asked Mr. Grossnickle to release the report as the law requires.[8]

Mr. Bardwell called Mr. Ruffa, who returned the call the next day. Mr. Ruffa reiterated the City's position that the McRoberts Report was a confidential law enforcement investigatory record and reaffirmed Mr. Grossnickle's denials of the First Request and the Second Request, flatly stating, "We're not releasing that."[9] Mr. Bardwell explained that *Maurer* had rejected the City's interpretation of that exemption and required the release of initial incident reports. Mr. Ruffa said he would look into the matter and follow up.[10]

What happened next remains disputed. Mr. Ruffa alleges that he e-mailed Attorney Bardwell later that day, attaching a copy of the McRoberts Report with Ms. McRoberts's name redacted. But the remaining evidence suggests otherwise. The verified petition alleges that Attorney Bardwell never heard from Mr. Ruffa after their conversation about the report,[11] and that he never received the e-mail or the report.[12] When Respondents' counsel first alleged that Mr. Ruffa had sent that e-mail, Attorney Bardwell immediately asked the firm that had employed

[7] Relator's Exhibit D.

[8] Relator's Exhibit E.

[9] Bardwell–Ruffa transcript, 3:21–22 (attached as Relator's Ex. L and authenticated at Ruffa Dep., Vol. II, 77:3–6).

[10] Bardwell–Ruffa transcript, 4:2–5:25.

[11] Verified petition, ¶ 35–37

[12] *Id.*, ¶¶ 40, 43, 48, 52.

him at the time of those requests to investigate whether there was any chance he could have inadvertently overlooked Mr. Ruffa's e-mail. Working with its information-technology vendors, the firm reviewed all of Attorney Bardwell's e-mails from April 1, none of which were from Mr. Ruffa.[13] In response to a subpoena for copies of any e-mails from Mr. Ruffa, the firm dug further and confirmed it had no such records: "The email sought in the February 24, 2022 subpoena simply does not exist in our system and apparently never existed."[14] In consultation with a digital-forensics expert, Attorney Bardwell dug even further, reviewing the firm's e-mail server logs and requesting Mr. Ruffa's. The firm's server logs have no record of Mr. Ruffa ever sending the e-mail.[15]

Undisputed, though, is the fact that neither the e-mail nor the records allegedly attached to it were ever actually available to Ms. Fluty. Attorney Bardwell's verification of the complaint attests that he never heard from Mr. Ruffa after their phone call, and Mr. Ruffa, testifying on behalf of the City, admitted that Respondents "don't have any evidence" that the alleged e-mail "existed anywhere where it was available to Ms. Fluty" until after this case was filed.[16]

Based on (1) the City's refusal to produce the McRoberts Report to a previous requester, (2) Mr. Grossnickle's first and second denials of Ms. Fluty's request, (3) Mr. Ruffa's affirmation that "we're not releasing that," and (4) Mr. Ruffa's failure to deliver the unredacted report, Ms. Fluty filed her petition for mandamus on October 5.

Respondents' counsel e-mailed Attorney Bardwell with the redacted report on October 25. Although they knew once Ms. Fluty filed her case that she was still waiting for the

[13] Affidavit of Susie Sharp, ¶¶ 8–10 (Ex. U).
[14] Chandra affidavit, ¶ 9d (Ex. V).
[15] chandralaw.com server log (Ex. BB).
[16] Ruffa Dep. Vol. II, 43:21–44:10.

unredacted report, they still refused to produce it until December 20.[17] And even that production remained incomplete. Respondents acknowledged during depositions that although they knew Ms. Fluty was asking for the "call screen" (also known as a "CAD sheet") to be produced in response to her request,[18] they did not include it in their production.[19] They also acknowledged that the report included a letter from Mr. Ruffa recommending against prosecuting Ms. McRoberts[20] That attachment was likewise excluded from Respondents' productions.[21]

As of this filing, Respondents still have not produced either the call screen or the Ruffa Letter from the McRoberts Report, nor have they offered any explanation why they have not produced those portions of the report.

LAW & ARGUMENT

I. Because Respondents remained out of compliance with their obligations more than 10 business days after the petition for mandamus, Ms. Fluty is entitled to statutory damages.

Proposition of Law #1:
A relator is entitled to a full award of statutory damages when a respondent fails to comply with its obligations under the Ohio Public Records Act for more than 10 days after the filing of the mandamus action.

A relator is entitled to statutory damages if: (1) her request is transmitted by "hand delivery, electronic submission, or certified mail;" (2) her request "fairly describes the public record or class of public records" to be produced; and (3) the court determines that the public office or the person responsible for public records failed to comply with an obligation in

[17] Affidavit of Vince Ruffa, ¶ 16–17 (Respondents' Ex. 1).
[18] Deposition of Eric Grossnickle, 39:19–40:11 (Relator's Ex. X).
[19] Deposition of Steven Raiff, 30:4–11 (Relator's Ex. Y).
[20] Raiff Dep., 20:5–19.
[21] See Respondents' Exhibits 4 and 5.

accordance with division (B) of this section. "[S]tatutory damages are mandatory whenever a public-records custodian fails to comply with her obligation."[22]

Here, Respondents admit that the request was transmitted by electronic submission.[23] They likewise agree that the request fairly described what Ms. Fluty was seeking: "the complete record" of the McRoberts Report.[24] The only remaining question, then, is whether they failed to comply with an obligation under division (B) of the Ohio Public Records Act.

The Ohio Public Records Act "establishes a clear legal right to request that identifiable public records be made available for inspection or copying,"[25] as well as a right—in cases where requests are denied—to "an explanation, including legal authority, setting forth why the request was denied."[26] As laid out below, Respondents failed to comply with their obligations to honor both those rights.

A. Respondents failed to comply with their obligations under the Act when they failed to make the McRoberts Report "available."

"[U]pon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester."[27] Ms. Fluty anticipates that Respondents will argue they satisfied this obligation by sending the redacted McRoberts Report with the April 1 e-mail. That argument fails for three reasons:

[22] *State ex rel. Ware v. City of Akron*, 164 Ohio St. 3d 557, ¶ 18 (2021).
[23] Answer, ¶ 20.
[24] Ruffa Dep., Vol. II, 72:17–73:24; Grossnickle Dep., 39:8–40:14.
[25] *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 163 Ohio St. 3d 337, ¶ 25 (2020).
[26] Ohio Rev. Code § 149.43(B)(3).
[27] Ohio Rev. Code § 149.43(B)(1).

1. The April 1 e-mail did not fulfill Respondents' obligations because it redacted information that was not exempt from disclosure.

"Routine offense and incident reports are subject to immediate release upon request."[28] This includes not only the reports themselves, but also supplemental materials attached to or incorporated into those reports. In *Maurer*, for instance, the Beacon Journal sought copies of an offense report from an incident in which a sheriff's deputy shot and killed a suspect. Maurer, the sheriff, refused to produce the report, arguing that the exemption for confidential law-enforcement investigatory records (CLEIRs) applied because the report identified the deputy, who had not been charged in connection with the shooting. The Ninth District agreed, but this Court ordered the report released, holding that initial incident or offense reports—including narratives incorporated into those reports—cannot be withheld under CLEIRs because they "initiate criminal investigations but are not part of the investigation."[29] Law enforcement has resisted this simple rule since it was first announced in 1980,[30] but this Court has restated it in plain terms, over and over again for nearly three decades.[31]

Like in *Maurer*, Ms. Fluty requested an initial incident report, along with all its attachments. Respondents agree that *Maurer* is on point in analyzing their duties in responding to

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[28] *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 435 (1994)

[29] *Maurer* at 56.

[30] *State ex rel. Beacon Journal Pub. Co. v. Univ. of Akron*, 64 Ohio St. 2d 392, 397 (1980) ("This type of report does not fall within the statutory exemptions.").

[31] *See*, *e.g.*, *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 153 Ohio St. 3d 63, ¶ 88 (2017) ("In *Maurer*, we determined that because routine offense and incident reports are 'subject to immediate release upon request' pursuant to *Steckman*, law enforcement's desire to keep the identity of an uncharged police officer confidential did not permit law enforcement to redact identifying information from an incident report."); *State ex rel. Miller v. Pinkney*, 149 Ohio St. 3d 662, ¶ 3 (2017) ("Routine offense and incident reports are public records and are 'normally subject to immediate release upon request.'"); *State ex rel. Cincinnati Enquirer v. Ohio Dep't of Pub. Safety*, 148 Ohio St. 3d 433, ¶ 44 (2016) ("We have affirmed since *Steckman* that police incident reports are subject to disclosure."); *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 104 Ohio St. 3d 399, ¶ 55 (2004) ("*Maurer* 'held that a police incident report did not constitute a confidential law enforcement investigatory record and instead was a public record'").

her request,[32] and that *Maurer* required them to release an unredacted copy of the report.[33] Under *Maurer* and its progeny, their response should have been straightforward—"release an unredacted copy immediately."[34] That has been exactly their policy for decades,[35] but they decided they would not do so in this case, choosing instead to reject the request repeatedly.[36]

Respondents have only offered two suggestions why doing so might have been permissible, but both arguments fail. First, they have argued that *Maurer* reached the wrong outcome because they think it undermines the uncharged-suspect exemption.[37] But that is a policy preference that neither they nor this Court can enforce when the General Assembly has decided otherwise, and it is the same one *Maurer* rejected despite being offered by the dissent, the Ninth District, and the respondent in that case.

Second, Respondents claim that producing the redacted record was nonetheless sufficient because they had reached an agreement to that effect in an April 1 phone call with Attorney Bardwell.[38] But that agreement never happened. Attorney Bardwell explained in that call that incident reports are not confidential law enforcement investigatory records and must be released, and that confidential law enforcement investigatory records must also be released, even if the names of uncharged suspects can be redacted.[39] Mr. Ruffa may have had an incorrect recollection of those statements, but the Act does not exempt records from disclosure when their custodians mistakenly believe a requester consents to their refusal to fulfill their obligations.

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[32] Ruffa Dep., Vol. II, 37:19–25.
[33] Ruffa Dep., Vol. II, 38:1–3.
[34] *Maurer* at 56.
[35] Grossnickle Dep., 21:18–22:1.
[36] Grossnickle Dep., 22:21–24.
[37] Ruffa Dep., Vol II, 24:24–25:9.
[38] Ruffa Dep., Vol. II, 33:6–34:6.
[39] Bardwell–Ruffa transcript, 4:2–5:9.

Even if Attorney Bardwell's discussion of the current state of the law could reasonably be construed as a request for a redacted copy of the McRoberts Report, producing it would only fulfill Respondents' obligations to fulfill the Second Request; the First Request—for the unredacted report—remained unfulfilled. And even treating the two requests as one, or treating the purported agreement as an acquiescence to a redacted report in response to *both* requests, the Court should not endorse a defense that permits public offices to repeatedly refuse to produce indisputably public records and then avoid liability by offering a requester less than she is entitled to. If a borrower defaults, the lender does not waive its right to full repayment by accepting whatever portion of the debt is already past due.[40] Likewise, a public office that repeatedly refuses to release a public record in full cannot cure its breach of the Act by producing parts of it while redacting nonexempt information.

Respondents were obligated to produce the unredacted McRoberts Report immediately upon request, but they did not produce it until nine months later. Because they had still failed to comply with that obligation more than 10 business days after she filed for mandamus, Ms. Fluty is entitled to damages at the statutory cap of $1,000.

2. The April 1 e-mail did not fulfill Respondents' obligations because it did not "make copies of the requested public record available."

Even if Mr. Ruffa sent the April 1 e-mail, and even if Attorney Bardwell agreed to receive a redacted record in response to the Second Request, and even if that agreement relieved Respondents of their obligation to fulfill the First Request, Respondents still failed to comply with their obligations under the Act.

[40] *Wells Fargo Bank, N.A. v. Baldwin*, 2012-Ohio-3424, ¶ 17 (12th Dist.) ("[A] court will not find that an agreement is supported by adequate consideration if a party has a preexisting duty to perform the obligations assumed under the contract.").

The April 1 e-mail and attachment were insufficient to fulfill their obligations because whatever efforts Mr. Ruffa may have made to send them, those efforts failed. A public office's obligations under the Act do not end when the custodian "sends" or "tries to send" requested records. Instead, the Act places the burden on the custodian to ensure those records are "ma[d]e … available." Here, Respondents admit there is no evidence that the McRoberts Report was ever actually delivered, and no evidence that it was ever "available" to Ms. Fluty before Respondents' counsel e-mailed it to Attorney Bardwell.[41] Neither of those e-mails—of the redacted report on October 25 or the unredacted report on December 20—arrived within 10 business days of Ms. Fluty filing for mandamus. Even assuming that Mr. Ruffa actually *sent* the April 1 e-mail, then, that e-mail did not satisfy Respondents' obligations.

Because it is undisputed that the records she requested remained unavailable to her until more than 10 business days after she filed for mandamus, Ms. Fluty is entitled to damages at the statutory cap of $1,000.

3. The April 1 e-mail did not fulfill Respondents' obligations because it withheld information beyond the identity of an uncharged suspect.

Finally, even accepting all Respondents' arguments about the April 1 e-mail, that e-mail still failed to fulfill their obligations because it withheld additional portions of the McRoberts Report that they still have not produced, even today.

Ms. Fluty's request sought not only an initial incident report but also any attachments, such as "narrative supplements, witness statements, etc." As Mr. Grossnickle admitted, Respondents knew from that language that Ms. Fluty was asking "for the complete record" of the McRoberts Report.[42] But the April 1 e-mail provided only portions of the complete record. Even

[41] Ruffa Dep., Vol. II, 43:21–44:11 ("Q: Do you have any evidence that the email existed anywhere where it was available to Ms. Fluty before Todd sent it to us? A: No, I don't have any evidence of that.").
[42] Grossnickle Dep., 39:13–40:14.

if Ms. Fluty had received it, that production impermissibly withheld at least three additional pieces of the report.

1. First, Respondents' production withheld several pieces of video that Officer Adams incorporated into his report. The narrative states that a video of the McRoberts incident taken by Amanda Yarger, one of the school's staff members, "is attached to this report."[43] It says Officer Adams's interview with Ms. McRoberts "is attached as well."[44] And it says additional surveillance videos "will be attached to this report" and that they "are included in this investigation."[45] Respondents did not disclose that they were withholding these videos, did not explain their denial of access to the videos, and did not produce these videos until December 20, 2021—264 days after the request was made.[46]
2. Second, Respondents' production withheld the dispatcher's call screen or "CAD sheet." Dispatchers create call screens by entering basic information about an incident when they first receive a complaint, before an officer creates an initial incident report. Once the officer begins that report, the information from the call screen and the information from the incident report "tie together," "everything intertwines with each other," and the two records "become part of the same report."[47] Respondents admit they did not produce the call screen with the McRoberts Report.[48]

[43] Relator's Ex. N, at CITY005.
[44] *Id.*
[45] *Id.*
[46] Ruffa Aff., ¶ 17.
[47] Grossnickle Dep., 11:15–12:8.
[48] Raiff Dep., 30:4–11.

3. Third, Respondents' production withheld a letter from Mr. Ruffa directing the department not to file charges against Ms. McRoberts. Mr. Raiff admits that after drafting the report, the department forwarded it to Mr. Ruffa for review, and that Mr. Ruffa drafted a letter advising against pursuing criminal charges and attached it to the report before returning it to the department.[49] When Mr. Raiff received and reviewed the final McRoberts Report from Mr. Ruffa, that letter was attached to it.[50] Although it is part of the McRoberts Report, Respondents continue to withhold this letter to this day.

Because the videos, the call screen, and the Ruffa Letter were "incorporated" into the McRoberts Report, Respondents were obligated to produce them "immediately upon request."[51] Because none of them had been produced within the 10 business days after she filed for mandamus, Ms. Fluty is entitled to damages at the statutory cap of $1,000.

B. Respondents failed to comply with their obligations under the Act when they failed to provide a written explanation for withholding the McRoberts Report.

"If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied."[52] "If the initial request was provided in writing, the explanation also shall be provided to the requester in writing."[53]

Respondents' denials of both the First Request and the Second Request failed to comply with these obligations. The response to the First Request included a written explanation for the

[49] Raiff Dep., 20:5–16.
[50] Raiff Dep., 20:17–19.
[51] *Maurer* at 58.
[52] Ohio Rev. Code § 149.43(B)(3).
[53] Ohio Rev. Code § 149.43(B)(3).

denial, but it did not provide "legal authority" for it; it cited the CLEIRs exemption, but *Maurer* makes clear that that exemption is not a legal authority to withhold the report. And when Ms. Fluty sent the Second Request—seeking the redacted McRoberts Report—Mr. Grossnickle provided no explanation or legal authority for his refusal to produce it. Respondents were obligated to provide written explanations with legal authority for their denials, but they have not done so, even today.

Because Respondents did not make the unredacted report available and did not provide Ms. Fluty any authority that permitted them to withhold it, even 10 business days after she filed for mandamus, Ms. Fluty is entitled to damages at the statutory cap of $1,000 for each request.

II. Because Respondents have still not produced the public records she requested, Ms. Fluty is entitled to a writ of mandamus.

Proposition of Law #2:
A relator is entitled to a writ of mandamus when undisputed evidence shows that a public office has neither produced portions of a requested record nor explained its failure to do so.

"To be entitled to a writ of mandamus, a relator … must establish, by clear and convincing evidence, a clear legal right to the requested relief and a clear legal duty on the part of the respondent to provide it."[54] "In a mandamus-enforcement action, the requester's basic burden of production is to plead and prove facts showing that he or she requested a public record pursuant to R.C. 149.43(B)(1) and that the public office or records custodian did not make the record available."[55]

Here, there is no dispute Ms. Fluty made a valid request for records. Likewise, it is undisputed that the record she requested includes at least two pieces—the call screen and the Ruffa Letter—that remain unavailable. Because it is undisputed that Ms. Fluty has requested

[54] *State ex rel. Ware v. Dewine*, 163 Ohio St. 3d 332, ¶ 16 (2020).
[55] *Welsh-Huggins* at ¶ 26.

public records but not received them, she has shifted the burden onto Respondents to justify their failure to produce them.

"If a public office or person responsible for public records withholds a record on the basis of a statutory exception, the 'burden of production' is on the public office or records custodian to plead and prove facts clearly establishing the applicability of the exemption."[56] "A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception."[57]

Here, Respondents cannot satisfy their burden to demonstrate that either the call screen or the Ruffa Letter falls into any exemption. The call screen is merely a memorialization of the information gathered during a 911 call.[58] It is therefore even farther removed than an initial incident report from either the prosecution or investigation of a crime, so it is neither a trial-preparation record nor a confidential law enforcement investigatory record.[59] Just as "all 911 tapes are public records subject to immediate release upon request,"[60] the Court should hold that all call screens are public records subject to immediate release upon request.

The Ruffa Letter is likewise subject to disclosure. Because it recommended *against* pursuing charges, it was not "compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding" and cannot be a trial-preparation record. Because Respondents have already disclosed Ms. McRoberts's identity, they have waived any conceivable argument that the letter would be a confidential law enforcement investigatory record.[61] And even if those

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[56] *Welsh-Huggins* at ¶ 27.

[57] *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St. 3d 81, ¶ 10 (2008).

[58] Grossnickle Dep. 11:9–12:1.

[59] *State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St. 3d 392, ¶¶ 12-18 (2015).

[60] *State ex rel. Dispatch Printing Co. v. Morrow Cty. Prosecutor's Office*, 105 Ohio St. 3d 172, ¶ 6 (2005).

[61] Ohio Rev. Code § 149.43(A)(2).

records were exempt from disclosure, Respondents would remain out of compliance with the Act because they have not provided Ms. Fluty a written explanation for their failure to produce them.

Because neither the call screen nor the Ruffa Letter is exempt from disclosure, Respondents cannot justify their failure to produce them, and Ms. Fluty is entitled to a writ of mandamus compelling Respondents to disclose them, or—at a minimum—to provide her the statutorily mandated explanation for withholding them.

III. Because she is entitled to a writ of mandamus and because Respondents acted in bad faith, Ms. Fluty is entitled to costs.

Under Ohio Rev. Code § 149.43(C)(3)(a), a relator is entitled to costs if any of the following are true:

1. "[T]he court renders a judgment that orders the [Respondents] to comply with division (B)" of the Act.
2. "[Respondents] failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B)."
3. "[Respondents] promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time."
4. "[Respondents] acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section."

"As a general rule, when a relator prevails on a public-records mandamus claim, an award of court costs is mandatory."[62] Here, Ms. Fluty is entitled to court costs under both the first and the third criteria.

A. Ms. Fluty is entitled to costs because she is entitled to a writ of mandamus.

As laid out above, Ms. Fluty is entitled to a writ of mandamus because Respondents are still withholding the call screen and the Ruffa Letter, despite each being an attachment to the

[62] *State ex rel. McDougald v. Greene*, 163 Ohio St. 3d 471, ¶ 18 (2020).

McRoberts Report. Even if she is not entitled to those records, she is entitled to an explanation, including legal authority, setting forth why the request was denied. Because Ms. Fluty is entitled to a writ based on either the failure to make records available or the failure to explain the denial of her requests, "an award of court costs is mandatory."[63]

B. Ms. Fluty is entitled to costs because Respondents acted in bad faith.

Even if the Court were to conclude that she was not entitled to either the remaining records or a written explanation for withholding the call screen and the Ruffa Letter, Ms. Fluty would nonetheless be entitled to costs because Respondents acted in bad faith when they withheld the unredacted McRoberts Report until after she commenced the mandamus action.

"[B]ad faith, although not susceptible of concrete definition, embraces more than bad judgment or negligence. It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud. It also embraces actual intent to mislead or deceive another."[64]

The evidence in this case demonstrates that Respondents acted in bad faith. Even if Mr. Ruffa's April 1 e-mail had actually been both sent and delivered, the refusal to produce the unredacted report until after Ms. Fluty filed this action was not attributable to mere "bad judgment or negligence," but rather to conscious wrongdoing. There are at least three bases on which the Court can and should base a finding of bad faith:

Proposition of Law #3:
A public office acts in bad faith when it disregards clear commands from this Court.

The right of access to initial incident reports has been firmly established for more than 40 years. This Court first acknowledged it in *State ex rel. Beacon Journal Pub. Co. v. Univ. of*

[63] *State ex rel. Hicks v. Fraley*, 2021-Ohio-2724, ¶ 25.
[64] *Hoskins v. Aetna Life Ins. Co.*, 6 Ohio St. 3d 272, 276 (1983).

Akron, holding that "This type of report does not fall within the statutory exemptions."[65] The rule was sufficiently settled 14 years later that the Court could note in *State ex rel. Steckman v. Jackson*, without further discussion, that "[r]outine offense and incident reports are subject to immediate release upon request."[66] And when police departments continued to treat that holding as mere dicta, the Court tried to set them straight in *Maurer*: "[W]e hold that this report, including the typed narrative statements, is not a confidential law enforcement investigatory record but is a public record, and that its custodian … must release an unredacted copy immediately upon request."

But records custodians across the state have inexplicably thumbed their noses at the Court all along, clogging its docket and the dockets of lower courts with their attempts to evade public oversight of their operations.[67] This case is only the latest in that long line. Respondents admit they were already familiar with *Maurer* when they received the First Request, but they refused to comply anyway.[68] Even when reminded of *Maurer*, Respondents recognized that their denial was in conflict with the law, but they ignored the request anyway.[69]

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[65] 64 Ohio St. 2d 392, 397 (1980).

[66] 70 Ohio St. 3d 420, 421 (1994).

[67] *See*, *e.g.*, *State ex rel. Logan Daily News v. Jones*, 78 Ohio St. 3d 322, 323 (1997) ("Routine offense and incident reports are subject to immediate release upon request."); *State ex rel. Kim v. Wachenschwanz*, 93 Ohio St. 3d 586, 588 (2001) ("the log sheets, time sheets, and police report appear to be comparable to routine offense and incident reports, which are subject to immediate release upon request."); *State ex rel. Rasul-Bey v. Onunwor*, 94 Ohio St. 3d 119, 122 (2002) ("[I]t appears beyond doubt that Rasul-Bey is entitled to the requested extraordinary relief in mandamus."); *Miller* at ¶ 4 (Incident reports "are not security records and are subject to release."); *Fields* at ¶ 51 (8th Dist.) (Incident reports "are not exempt under any exception."); *State ex rel. Cincinnati Enquirer v. Ohio DOC, Div. of State Fire Marshal*, 145 N.E.3d 1232, ¶ 100 (10th Dist. 2019) ([F]ire marshal's incident report "constitutes a public record"); *Cobb v. Office of the Summit Cty. Prosecutor*, 2020-Ohio-636, ¶ 8 (Ct. Cl.) ("The incident report kept by the Prosecutor's Office is therefore a public record that was subject to immediate release to Cobb's request."); *Sutelan v. Ohio State Univ.*, 2019-Ohio-3675, ¶ 36 (Ct. Cl.) ("OSU's failure to produce the report immediately, and its failure to unredact the name of the suspect in the report for eight months, violated its duty under R.C. 149.43(B)(1).").

[68] Grossnickle Dep., 27:9–19.

[69] Grossnickle Dep., 28:5–20.

Because they had actual knowledge of this Court's mandates but refused to follow them, the Court should find Respondents acted in bad faith by refusing to "release an unredacted copy immediately upon request." *Maurer* at 56.

Proposition of Law #4:
A public office acts in bad faith when it substitutes its policy preferences for the General Assembly's.

Although Respondents' policy had always been to release initial incident reports immediately and without redaction, Mr. Raiff ordered the McRoberts Report withheld because it included an uncharged suspect's name and a juvenile's name.[70] But that decision wasn't based on the Act; the report had to be withheld because that's "just the way I feel about it."[71] He offers no explanation why he feels that way or how his feelings affect his legal obligations.

And when Respondent Ruffa reviewed the request, he decided to withhold it because he had concluded that *Maurer* "may be bad law."[72] Not "bad law" in the sense that the Court has overturned it, or that the General Assembly has abrogated it through some amendment to the Act; instead, he simply thinks the Court did a bad job writing it. As he sees it, the failure to extend the protection for uncharged suspects from CLEIRs to other contexts "defeats the whole purpose" of the exemption.[73] But Mr. Ruffa cannot ask the Court to rewrite the Act to reflect his own priorities: "[I]n enumerating very narrow, specific exceptions to the public records statute, the General Assembly has already weighed and balanced the competing public policy considerations between the public's right to know how its state agencies make decisions and the potential harm, inconvenience or burden imposed on the agency by disclosure."[74]

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[70] Raiff Dep., 43:14–17.
[71] Raiff Dep., 49:7–16.
[72] Ruffa Dep. 2, 25:6–7.
[73] Ruffa Dep. 2, 25:23–9.
[74] *State ex rel. James v. Ohio State Univ.*, 70 Ohio St. 3d 168, 172 (1994).

Respondents refuse to respect that balance, choosing to enforce their own policy preferences and squishy, "how I feel" standards for releasing public records. Because their noncompliance elevates their subjective feelings over the law, Respondents acted in bad faith.

Proposition of Law #5:
A public office acts in bad faith when it withholds records arbitrarily.

Even if the Court does not believe that Respondents actually knew about their legal obligations and simply made a mistake about how the law applied to the McRoberts Report, it should nonetheless find that they acted in bad faith because that conduct was arbitrary and capricious, and not based on any factual circumstances that reasonably justified it.

Again, Mr. Grossnickle admits that it has always been the City's policy to release incident reports without redaction. Indeed, he insists that in his 10 years as a police clerk, he has "never redacted anything,"[75] and that he "would never" redact the name of an uncharged suspect, because he's never been told that he's allowed to do so.[76] Mr. Raiff admits he imposed this policy to ensure compliance with *Maurer*.[77] But *just this once*, he says, the presence of information Respondents are required to release and always have released triggered a different response—again, not for any legal reason they can articulate, simply because the chief didn't feel like it. And even when confronted with law to the contrary, Mr. Raiff chose not to correct himself merely because he and Mr. Ruffa "had a decision already in place" after deciding not to release the report in response to another request months before Ms. Fluty's.[78] But a pre-existing agreement to break the law once doesn't entitle a police officer to break the law again.

[75] Grossnickle Dep., 20:15–20.
[76] Grossnickle Dep., 21:18–22:4.
[77] Raiff Dep., 14:2–9.
[78] Raiff Dep., 13:21–24.

Because Ms. Fluty is entitled to a writ of mandamus, and because Respondents acted in bad faith by (1) ignoring clear precedent; (2) substituting their policy preferences for the law; and (3) withholding the McRoberts Report arbitrarily and capriciously, Ms. Fluty is entitled to court costs.[79]

IV. Because she is entitled to a writ of mandamus and because Respondents acted in bad faith, Ms. Fluty is entitled to her attorney's fees.

A. Ms. Fluty is entitled to fees because the structure and purpose of the amended Act require the Court to treat fee awards as mandatory.

The Act authorizes an award of attorney's fees in the same circumstances that trigger an award of court costs, described above. Although the Court's dicta often describes these awards as "discretionary," they are now mandatory.

The structure of the Act compels this result. This Court has long construed attorney's fees as discretionary and cited various circumstances under which it believed it was appropriate to reduce those awards or refuse to grant them at all, focusing on evidence as to whether a respondent's refusal to fulfill a request was reasonable,[80] whether the respondent acted in good faith,[81] and whether the relator demonstrated a public benefit to releasing the requested records.[82]

Against that backdrop, the General Assembly amended the Act to specify not only the circumstances under which the Court may award fees, but also the circumstances under which the Court may either "not award attorney's fees"[83] or "reduce the amount of fees awarded."[84] For four reasons, those amendments now require the Court to treat these awards as mandatory—

[79] *Hicks* at ¶ 25.
[80] *State ex rel. Fox*, 39 Ohio St. 3d 108, 112 (1988).
[81] *State ex rel. Beacon Journal Pub. Co. v. Akron Metro. Hous. Auth.*, 42 Ohio St. 3d 1 (1989).
[82] *State ex rel. Hirshler v. Frazier*, 63 Ohio St. 2d 333, 335 (1980).
[83] Ohio Rev. Code § 149.43(C)(3)(c).
[84] Ohio Rev. Code § 149.43(C)(4)(d).

albeit subject to reduction or elimination under statutorily specified circumstances—when a Relator satisfies any of the criteria in Section (C)(3)(b) that permit an award.

Proposition of Law #6:
Fee awards are mandatory when a Relator satisfies any of the criteria in Ohio Rev. Code § 149.43(C)(3)(b).

1. Mandatory fee awards are required under the *expressio unius* canon.

"Under the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded."[85] Although there are narrow circumstances under which the general rule does not apply, it is in full force wherever "the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence."[86]

Here, the General Assembly has expressed the conditions for denying a full fee award as an associated group or series in Section (C) of the Act, laying out the circumstances in which it may award fees in Section (C)(3)(b), followed by the two circumstances that justify denying an award altogether in Section (C)(3)(c)(i) and (ii), then laying out in Sections (C)(4)(a), (b), (c), and (d) the remaining limitations on fee awards. Because the General Assembly was aware that courts were denying fees based on vague standards of reasonableness and public benefit,[87] its carefully structured amendment outlining circumstances under which an award may be reduced or zeroed out implies its rejection of any criteria excluded from that list.

Because the Act's language authorizing reductions in fee awards provides an exclusive list of exceptions, fee awards are mandatory in cases where the relator satisfies any of the criteria laid out in Section (C)(3)(b), unless one of those exceptions is also satisfied.

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[85] *State v. Droste*, 83 Ohio St. 3d 36, 39 (1998).

[86] *Summerville v. City of Forest Park*, 128 Ohio St. 3d 221, ¶ 35 (2010).

[87] *Clark v. Scarpelli*, 91 Ohio St. 3d 271, 278 (2001) ("It is presumed that the General Assembly is fully aware of any prior judicial interpretation of an existing statute when enacting an amendment.").

2. Mandatory fee awards are required to give effect to every word in the Act.

When interpreting statutory language, "the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged; significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act."[88] "No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative."[89]

Here, the Court must treat fee awards as mandatory in Section (C)(3)(b) cases because treating them as discretionary would render Sections (C)(3)(c) and (C)(4) superfluous. If the General Assembly intended to condition fee awards on courts' discretion, its amendments to add Sections (C)(3)(c) and (C)(4) would have been pointless, as the courts already had the authority to reduce or eliminate based on the criteria those clauses lay out.

Because the General Assembly codified those factors while excluding all others, the Court must treat fee awards as mandatory (though subject to reduction) in Section (C)(3)(b) cases.

3. The Court's consideration of good-faith factors is contrary to the amended language of the Act.

The Court's fee cases have for assumed for more than 30 years that "attorney fees are regarded as punitive." *State ex rel. Fox v. Cuyahoga Cty. Hospital Sys.*, 39 Ohio St. 3d 108, 112 (1988). That assumption underlies all the Court's subsequent decisions about what factors should inform the decision to grant or deny fees, leading to the current state of the law, which makes clear that fee awards are contingent primarily on the public benefit associated with compliance, the respondent's bad faith, and the respondent's unreasonableness. *Id.* In the absence of such

[88] *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St. 3d 390, ¶ 13 (2004).
[89] *State ex rel. Myers v. Bd. of Educ.*, 95 Ohio St. 367, 373 (1917).

circumstances, the Court assumed, "courts should not be in the practice of punishing parties" that violate the Act.[90]

But the General Assembly's amendments to the Act have upended that assumption. The Act now makes perfectly clear that awards of attorney's fees "shall be construed as remedial and not punitive."[91] If the General Assembly's intent in permitting fee awards is to make a relator whole for the effort she expended in securing access to the record, the Court's traditional discretionary-award framework undermines that intent. When a relator spends thousands of dollars litigating access to a record, fee shifting is equally remedial in good-faith cases and bad-faith cases. Because the award is meant to be remedial, the only question the Court should be asking is whether there is anything to remedy. If fee awards are remedial, the Court should award fees when they remedy an injury. If fee awards are not punitive, the Court should not withhold them to avoid being punitive.

Because the General Assembly has rejected the Court's holdings treating fee awards as punitive, the Court must treat them as mandatory (though subject to reduction) in Section (C)(3)(b) cases where there is an injury to remedy.

4. Mandatory fee awards will advance the Act's purpose of promoting broader access to public records.

"The purpose of Ohio's Public Records Act, R.C. 149.43, is to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy."[92] The Act must be "construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records."[93]

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[90] *State ex rel. Olander v. French*, 79 Ohio St. 3d 176 (1997).

[91] Ohio Rev. Code § 149.43(C)(4)(a).

[92] *State ex rel. Gannett Satellite Info. Network v. Shirey*, 78 Ohio St. 3d 400, 404 (1997).

[93] *State ex rel. Cordell v. Paden*, 156 Ohio St. 3d 394, ¶ 7 (2019) (quoting *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St. 3d 374, 376 (1996).

Continuing to treat attorney's fees as a discretionary matter undermines this purpose. It resolves doubts about the Act's construction in favor of secrecy and discourages efforts to expose government activity to public scrutiny. Under the Court's current fee framework, a records custodian has no incentive to cooperate with citizen oversight, as he can simply refuse to produce records until he is sued, and then produce them to moot the case. If the requester's ability to recover the fees incurred to that point are contingent on a court's assessments of the custodian's reasonableness or good faith, a requester has no way to know whether the court will grant her remedial relief in the form of attorney's fees. This framework is particularly perverse in its exclusion of relators who personally benefit from the records they seek.[94] If they won't personally benefit her, what rational requester will spend tens of thousands of dollars litigating for access to records? Most requesters lack the resources to pay an attorney up front to fight over records that provide them no direct benefit, and few attorneys will take a case on contingency when damages are capped at $1,000 and the criteria for fee-shifting are so nebulous that no one can determine at the time of filing how a court will balance the competing facts pointing toward and away from good faith.

As they stand, this Court's fee decisions erect massive barriers to access. If the Court intends to deliver on its promise to construe the Act "liberally in favor of broad access," it must

[94] *See*, *e.g.*, *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St. 3d 497, ¶ 60 (2010) ("Mahajan is also not entitled to an award of attorney fees because … any minimal benefit conferred by the writ granted here is beneficial mainly to Mahajan rather than to the public in general."); *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St. 3d 33, ¶ 58 (2006) ("We deny Morgan's request [for fees] because she has not established a sufficient *public* benefit … beneficial mostly to *her* for purposes of a potential civil action."); *State ex rel. Cranford v. Cleveland*, 2004-Ohio-4884, ¶ 26, 103 Ohio St. 3d 196, 200 (2004) ("Cranford did not establish a sufficient public benefit. These records were mostly beneficial to *him*."); *State ex rel. Herthneck v. Gambino*, 1997 Ohio App. LEXIS 5686, at *4 (8th Dist. Dec. 18, 1997) ("Mr. Herthneck has not established a sufficient public benefit to warrant an award of attorney's fees. The pleadings and their attachments indicate that Mr. Herthneck sought these records not for public use or distribution but for use in a private civil lawsuit.").

revisit those cases. Given the Court's standard rules of statutory construction, the amendments to the Act since the Court first decided that fee awards were discretionary, and the danger posed by the discretionary-award framework, the Court must treat fee awards as mandatory in Section (C)(3)(b) cases.

B. Ms. Fluty is entitled to fees because she satisfies all the Court's criteria for discretionary fee awards.

Even if the Court continues to treat fee awards as discretionary, Ms. Fluty is still entitled to fees, as she satisfies all the Court's criteria. As laid out above, a court considering a fee award should consider the respondents' reasonableness and good faith, as well as the public benefit conferred by the release of the record.

This brief already lays out Ms. Fluty's entitlement to a writ of mandamus and the evidence that Respondents acted in bad faith. The only question left, then, is whether releasing the requested record benefits the public. That question is already answered as a matter of law. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights."[95] Here, Ms. Fluty was requesting the McRoberts Report to prevent the violation of her First Amendment rights in the underlying defamation case.[96] Accessing the report to ensure she remained free to warn parents about Ms. McRoberts was therefore in the public interest.

Respondents do not contest this point. As Mr. Raiff acknowledged, members of the public want to know "if there's an allegation of child abuse in the schools," and having that information is essential "to avoid future abuse."[97] Mr. Ruffa elaborated on that point: "[A]s a parent, yeah, I would like to know if there was any crimes committed by anybody who was

[95] *G V Lounge v. Michigan Liquor Control Com'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (citing *Gannett Co., Inc. v. DePasquale,* 443 U.S. 368, 383 (1979).

[96] Verified petition, ¶¶ 17–19.

[97] Raiff Dep., 54:11–55:3.

taking care of my children. … [I]t would assist me in determining where I would want to send my kids to school," which is "[o]ne of the most important decisions a parent can make for their child."[98]

Given the obvious benefits associated with releasing reports showing how the government uses its coercive police authority, it should not be a surprise that the Court has consistently awarded fees in other cases that likewise seek access to initial incident reports. In *Maurer*, the Court awarded the Beacon Journal its fees to discourage future resistance to its holding: "Our prior decisions have unequivocally held that incident reports are public records and must be disclosed immediately upon request. Thus, we have consistently and summarily rejected Maurer's arguments. Consequently, the court of appeals abused its discretion in not awarding attorney fees to the Beacon Journal." *Maurer* at 58.

The Court has likewise already determined that a relator seeking access to initial incident reports satisfies the public-benefit test even when she sought the records not for direct release to the public, but rather for use in litigation. In *State ex rel. Rasul-Bey v. Onunwor*, the Court awarded fees to a relator who, like Ms. Fluty, wanted an incident report to prepare a defense in an unrelated court case. Although the benefit to the public was more indirect than when the media sought similar reports, it was more than enough to support a fee award: "[B]y forcing a recalcitrant public official to comply with the unambiguous mandate of precedent, it will make compliance with this precedent more likely in the future."[99]

Here, Ms. Fluty's willingness to litigate for access to the McRoberts Report serves the public interest by vindicating her First Amendment rights, by informing parents about a threat to

[98] Ruffa Dep., Vol II, 44:25–45:10. See also Grossnickle Dep., 32:23–25 ("I would want to know if my child -- if I was planning on sending my child to that school if they had issues there.").
[99] 94 Ohio St. 3d 119, 122 (2002).

their children, and by forcing the recalcitrant public officials in the City of Broadview Heights to comply with the unambiguous mandate of precedent. The Court should therefore grant Ms. Fluty a full award of attorney's fees.

CONCLUSION

Respondents' refusal to produce the unredacted McRoberts Report was unjustified and unjustifiable, every time it happened. It has been clear for more than 40 years that requesters like Ms. Fluty are entitled to a full incident report, unredacted, immediately upon request. But Respondents repeatedly denied the request based on their personal qualms about the General Assembly's decision to make the report public. Because of their bad-faith denials, Ms. Fluty has incurred a substantial debt in vindicating the public's right to access the report, and she is entitled to the relief permitted by all the Act's remedial measures. The Court should enter a writ of mandamus, compel Respondents to produce the call screen and Ruffa report, and award Ms. Fluty the full measure of statutory damages, court costs, and attorney's fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 16, 2022, this document was served on opposing counsel as provided by Civ. R. 5(B)(2)(f).

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APPENDIX

Section 149.43 | Availability of public records for inspection and copying.

Effective: *September 30, 2021* ***Latest Legislation:*** *House Bill 110 - 134th General Assembly*

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings, to proceedings related to the imposition of community control sanctions and post-release control sanctions, or to proceedings related to determinations under section 2967.271 of the Revised Code regarding the release or maintained incarceration of an offender to whom that section applies;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

(p) Designated public service worker residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.15 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(y) Records listed in section 5101.29 of the Revised Code;

(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;

(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;

(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;

(dd) Personal information, as defined in section 149.45 of the Revised Code;

(ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record, and records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state. As used in this division, "confidential address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.

(ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order;

(gg) The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;

(hh) Protected health information, as defined in 45 C.F.R. 160.103, that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual's identity;

(ii) Any depiction by photograph, film, videotape, or printed or digital image under either of the following circumstances:

(i) The depiction is that of a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity.

(ii) The depiction captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.

(jj) Restricted portions of a body-worn camera or dashboard camera recording;

(kk) In the case of a fetal-infant mortality review board acting under sections 3707.70 to 3707.77 of the Revised Code, records, documents, reports, or other information presented to the board or a person abstracting such materials on the board's behalf, statements made by review board members during board meetings, all work products of the board, and data submitted by the board to the department of health or a national infant death review database, other than the report prepared pursuant to section 3707.77 of the Revised Code.

(ll) Records, documents, reports, or other information presented to the pregnancy-associated mortality review board established under section 3738.01 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than the biennial reports prepared under section 3738.08 of the Revised Code;

(mm) Except as otherwise provided in division (A)(1)(oo) of this section, telephone numbers for a victim, as defined in section 2930.01 of the Revised Code or a witness to a crime that are listed on any law enforcement record or report.

(nn) A preneed funeral contract, as defined in section 4717.01 of the Revised Code, and contract terms and personally identifying information of a preneed funeral contract, that is contained in a report submitted by or for a funeral home to the board of embalmers and funeral directors under division (C) of section 4717.13, division (J) of section 4717.31, or section 4717.41 of the Revised Code.

(oo) Telephone numbers for a party to a motor vehicle accident subject to the requirements of section 5502.11 of the Revised Code that are listed on any law enforcement record or report, except that the telephone numbers described in this division are not excluded from the definition of "public record" under this division on and after the thirtieth day after the occurrence of the motor vehicle accident.

A record that is not a public record under division (A)(1) of this section and that, under law, is permanently retained becomes a public record on the day that is seventy-five years after the day on which the record was created, except for any record protected by the attorney-client privilege, a trial preparation record as defined in this section, a statement prohibiting the release of identifying information signed under section 3107.083 of the Revised Code, a denial of release form filed pursuant to section 3107.46 of the Revised Code, or any record that is exempt from release or disclosure under section 149.433 of the Revised Code. If the record is a birth certificate and a biological parent's name redaction request form has been accepted under section 3107.391 of the Revised Code, the name of that parent shall be redacted from the birth certificate before it is released under this paragraph. If any other section of the Revised Code establishes a time period for disclosure of a record that conflicts with the time period specified in this section, the time period in the other section prevails.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Designated public service worker" means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, emergency service telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.

(8) "Designated public service worker residential and familial information" means any information that discloses any of the following about a designated public service worker:

(a) The address of the actual personal residence of a designated public service worker, except for the following information:

(i) The address of the actual personal residence of a prosecuting attorney or judge; and

(ii) The state or political subdivision in which a designated public service worker resides.

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a designated public service worker;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

(9) As used in divisions (A)(7) and (15) to (17) of this section:

"Peace officer" has the meaning defined in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

"Correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

"County or multicounty corrections officer" means any corrections officer employed by any county or multicounty correctional facility.

"Designated Ohio national guard member" means a member of the Ohio national guard who is participating in duties related to remotely piloted aircraft, including, but not limited to, pilots, sensor operators, and mission intelligence personnel, duties related to special forces operations, or duties related to cybersecurity, and is designated by the adjutant general as a designated public service worker for those purposes.

"Protective services worker" means any employee of a county agency who is responsible for child protective services, child support services, or adult protective services.

"Youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

"Firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

"EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the meanings defined in section 4765.01 of the Revised Code.

"Investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

"Emergency service telecommunicator" has the meaning defined in section 4742.01 of the Revised Code.

"Forensic mental health provider" means any employee of a community mental health service provider or local alcohol, drug addiction, and mental health services board who, in the course of the employee's duties, has contact with persons committed to a local alcohol, drug addiction, and mental health services board by a court order pursuant to section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code.

"Mental health evaluation provider" means an individual who, under Chapter 5122. of the Revised Code, examines a respondent who is alleged to be a mentally ill person subject to court order, as defined in section 5122.01 of the Revised Code, and reports to the probate court the respondent's mental condition.

"Regional psychiatric hospital employee" means any employee of the department of mental health and addiction services who, in the course of performing the employee's duties, has contact with patients committed to the department of mental health and addiction services by a court order pursuant to section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code.

"Federal law enforcement officer" has the meaning defined in section 9.88 of the Revised Code.

(10) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(11) "Community control sanction" has the meaning defined in section 2929.01 of the Revised Code.

(12) "Post-release control sanction" has the meaning defined in section 2967.01 of the Revised Code.

(13) "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" in section 149.011 of the Revised Code.

(14) "Designee," "elected official," and "future official" have the meanings defined in section 109.43 of the Revised Code.

(15) "Body-worn camera" means a visual and audio recording device worn on the person of a peace officer while the peace officer is engaged in the performance of the peace officer's duties.

(16) "Dashboard camera" means a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer's duties.

(17) "Restricted portions of a body-worn camera or dashboard camera recording" means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

(a) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the law enforcement agency knows or has reason to know the person is a child based on the law enforcement agency's records or the content of the recording;

(b) The death of a person or a deceased person's body, unless the death was caused by a peace officer or, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(c) The death of a peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(d) Grievous bodily harm, unless the injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(e) An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(f) Grievous bodily harm to a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(g) An act of severe violence resulting in serious physical harm against a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(h) A person's nude body, unless, subject to division (H)(1) of this section, the person's consent has been obtained;

(i) Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;

(j) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;

(k) Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;

(l) Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;

(m) Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;

(n) A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency;

(o) A conversation between a peace officer and a member of the public that does not concern law enforcement activities;

(p) The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a peace officer;

(q) Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a peace officer occurs in that location.

As used in division (A)(17) of this section:

"Grievous bodily harm" has the same meaning as in section 5924.120 of the Revised Code.

"Health care facility" has the same meaning as in section 1337.11 of the Revised Code.

"Protected health information" has the same meaning as in 45 C.F.R. 160.103.

"Law enforcement agency" has the same meaning as in section 2925.61 of the Revised Code.

"Personal information" means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.

"Sex offense" has the same meaning as in section 2907.10 of the Revised Code.

"Firefighter," "paramedic," and "first responder" have the same meanings as in section 4765.01 of the Revised Code.

(B)(1) Upon request by any person and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. 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. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make

the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory, that the requester may decline to reveal the requester's identity or the intended use, and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require the requester to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the requester under this division. The public office or the person responsible for the public record shall permit the requester to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the requester makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the requester. Nothing in this section requires a public office or person responsible for the public record to allow the requester of a copy of the public record to make the copies of the public record.

(7)(a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to division (B)(7) of this section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

(iii) For purposes of division (B)(7) of this section, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service

worker's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for:

(i) Customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information;

(ii) Information about minors involved in a school vehicle accident as provided in division (A)(1)(gg) of this section, other than personal information as defined in section 149.45 of the Revised Code.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(10) Upon a request made by a victim, victim's attorney, or victim's representative, as that term is used in section 2930.02 of the Revised Code, a public office or person responsible for public records shall transmit a copy of a depiction of the victim as described in division (A)(1)(ii) of this section to the victim, victim's attorney, or victim's representative.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:

(a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be

entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a)(i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to division (C)(4) of this section:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

(c) The court shall not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

(a) The fees shall be construed as remedial and not punitive.

(b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.

(c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.

(d) The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.

(5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

(2) All public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

The public office shall distribute the public records policy adopted by the public office under this division to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(G) A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

(H)(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(17)(b) to (h) of this section may be released by consent of the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:

(a) The recording will not be used in connection with any probable or pending criminal proceedings;

(b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

(2) If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, as defined in division (A)(17) of this section, any person may file a mandamus action pursuant to this section or a complaint with the clerk of the court of claims pursuant to section 2743.75 of the Revised Code, requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court shall order the public office to release the recording.

The Legislative Service Commission presents the text of this section as a composite of the section as amended by multiple acts of the General Assembly. This presentation recognizes the principle stated in R.C. 1.52(B) that amendments are to be harmonized if reasonably capable of simultaneous operation.

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Available Versions of this Section

September 29, 2013 – House Bill 59 - 130th General Assembly

March 20, 2015 – Senate Bill 23 - 130th General Assembly

March 23, 2015 – House Bill 663 - 130th General Assembly

September 29, 2015 – House Bill 64 - 131st General Assembly

September 8, 2016 – Amended by Senate Bill 321, House Bill 359, House Bill 317 - 131st General Assembly

December 19, 2016 – Amended by House Bill 471 - 131st General Assembly

November 2, 2018 – Amended by House Bill 34, House Bill 312, House Bill 8 - 132nd General Assembly

April 8, 2019 – Amended by House Bill 341, Senate Bill 201, Senate Bill 214, House Bill 425, House Bill 139, House Bill 34, Senate Bill 229, House Bill 312, House Bill 8 - 132nd General Assembly

October 17, 2019 – Amended by House Bill 166 - 133rd General Assembly

March 24, 2021 – Amended by Senate Bill 284 - 133rd General Assembly

September 7, 2021 – Amended by Senate Bill 284 (GA 133), Senate Bill 4 (GA 134)

September 30, 2021 – Amended by House Bill 110 - 134th General Assembly

April 29, 2022 – Amended by House Bill 110 (GA 134), Senate Bill 4 (GA 134), House Bill 93 (GA 134), Senate Bill 284 (GA 133)