

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO EX REL.  
MICHELA HUTH

Relator,

vs.

THE ANIMAL WELFARE LEAGUE OF  
TRUMBULL COUNTY, INC.

Respondent.

Supreme Court Case No. 2021-1187

Original action in Mandamus

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**RELATOR MICHELA HUTH'S MERIT BRIEF SEEKING A WRIT OF MANDAMUS,  
STATUTORY DAMAGES, COSTS, AND ATTORNEY'S FEES UNDER R.C. 149.43**

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## ISSUES PRESENTED

**Writ of Mandamus compelling Respondent to inform Relator about the methods of records storage to assist Relator in narrowing her request:** Under R.C. 149.43(B)(2), if the records request is ambiguous or overly broad, the person responsible for the requested public record can deny the request, but must “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.” Relator Huth requested a copy of all criminal complaints filed by all humane agents employed by Respondent. Respondent asserted the request is overly broad as written. Respondent responded to Relator’s public record request by asserting that the request for overbroad, but failed to inform Relator about the methods of records storage to assist Relator in narrowing her request. Should the Court order Respondent to inform Relator about the manner in which records are maintained?

## STATEMENT OF FACTS

### **I. Relator Michela Huth requested a copy of all criminal complaints filed by Respondent’s Humane Agents.**

On July 28, 2021, Relator Michela Huth sent an email to the director of Respondent Animal Welfare League of Trumbull County, Inc., requesting,

a copy of all criminal complaints filed in any court by humane agents/officers employed by AWL. This includes both current humane agents and those who are no longer employed by AWL.

The time frame for this public records request is from 2015 to the date of production of the records.

Respondent’s Exhibit B, p. 12.

### **II. Respondent provided a deficient response to Relator’s public records request.**

On August 3, 2021, Respondent’s attorney, Jeffrey Holland, responded to the records request stating,

This office represents the Trumbull County Animal Welfare League in response to your request below[.]

This public records request is overly broad as written. The public records request seeking "all records" “to/between any and all” is overly broad and ambiguous. The Ohio Supreme Court has held that the Public Records Act “does not contemplate that any

individual has the right to a complete duplication of voluminous files kept by government agencies.” *State ex rel. Dehlerv. Spatny*, 127 Ohio St.3d 312, 2010-Ohio-571 (request for quartermaster's records of orders for and receipt of clothing and shoes for seven years was overly broad because it amounted to a “complete duplication” of quartermaster's records); *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-788, (request for all e-mail to and from a government official for a six-month period). Accordingly, the underlying requests are overly broad or ambiguous and denied pursuant to ORC§149.43. Ohio law requires that the request be formulated with enough specificity that the office can identify and locate only responsive records. Complete duplication of a major category of records are considered overbroad.

Please feel free to contact this office if you wish to revise or narrow your request, or if we can otherwise be of assistance. Otherwise, this correspondence will conclude the response to your public records request identified above.

Respondent’s Ex. B, p. 11.

**III. Relator responded to Respondent’s overbroad objection by attempting to narrow her request.**

On August 4, 2021, Relator Huth responded to this overbroad objection by informing Respondent “[i]f you provide a document which lists case names and case numbers, I will limit our request to that.” Respondent’s Exhibit A, p. 3. Respondent’s attorney responded to that email by stating,

I have determined that the Trumbull County Animal Welfare League does not create or possess a document listing the case names and case numbers for all cases for the time frame specified in your request. The public records law is for the purpose of obtaining existing records. There is no duty to create new records by searching for and compiling information from existing records. *State ex. rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154, 1999-Ohio-447, 707 N.E. 2d 496.

Please narrow your request to records which would be created and kept during the ordinary course of business.

Respondent's Ex. A, p. 2. Relator Huth emailed Attorney Holland in response, that she disagreed with Respondent's objections to producing the records she requested. Ex. F, p. 19 (Aug 9, 2021 Email). Attorney Holland responded as follows,

I would be happy to review any arguments or authority which is contrary to my message below. Again, you may wish to make your request more specific so we can provide you with what you require. Possible suggestions are to specify individual persons, addresses or dates.

Respondent's Ex. A, p. 1. In response, Relator Huth informed Attorney Holland that she does not "possess the knowledge of person, dates, etc." Id.

#### ARGUMENT

In Ohio, "public records are the people's records, and [ ] the officials in whose custody they happen to be are merely trustees for the people[.]" *Patterson v. Ayers* (1960), 171 Ohio St. 369, 371, 171 N.E.2d 508 (citation omitted). "It has long been the policy of this state, as reflected in the Public Records Act and as acknowledged by this [C]ourt, that open government serves the public interest and our democratic system." *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶ 20. "The purpose of [R.C. 149.43] is to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy." *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 9 (citation omitted). Ohio's public records laws "liberally [ ] favor [ ] broad access and resolve[s] any doubts in favor of disclosure of public records." *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶13.

"Mandamus is an appropriate remedy to compel compliance with Ohio's Public Records Act." *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehabilitation and Correction*, 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928, ¶ 12, *citing* R.C. 149.43(C)(1)(b). To prevail

in a petition seeking a writ of mandamus, a relator must prove a clear legal right to the requested relief and that the respondents had a clear legal duty to perform the act requested. *State ex rel. Van Gundy v. Indus. Comm.*, 111 Ohio St.3d 395, 2006-Ohio 5854, ¶ 13; *State ex rel. Fields v. Cervenik*, 8th Dist. No. 86889, 2006-Ohio-3969, ¶ 4.

Entitlement to mandamus relief can only be established by clear and convincing evidence. *See State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133 Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.3d 877, ¶ 16, citing *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, paragraph three of syllabus. The “clear and convincing” evidentiary standard requires more than a preponderance of the evidence but less than “beyond a reasonable doubt.” *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E. 2d 1215, ¶ 18.

### **Proposition of Law No. 1**

**When a request is overbroad, or the requester has difficulty in making the public record request, R.C. 149.43(B)(2) mandates that the public office provide the requester with information on 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.**

Ohio Revised Code Section 149.43(B)(2) requires Respondent to inform relator about the methods of records storage to assist Relator in narrowing her request,

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.

R.C. 149.43(B)(2). Respondent objected to Relator's record request as being overbroad. Respondent failed to inform Relator about the manner in which the records are maintained. As a result, Respondent has failed to fulfill its obligation under the Ohio Public Records Act, entitling Relator Huth to a writ of mandamus ordering Respondent to inform Relator of the manner in which the records are maintained. Here, the Court should grant a writ compelling Respondents to provide the statutory information, because Respondent has a clear legal duty, and Relator has a clear legal right to performance. R.C. 149.43(B)(2).

If Respondent had assisted Relator in understanding how Respondent's records are maintained, Relator would have been able to redo her request promptly. Respondent has no legally valid excuse for refusing to assist Respondent in her public record request. Respondent has no legally valid excuse for failing to inform her how Respondent maintains its records, and how these records are accessed in the ordinary course of Respondent's operations. Relator has no adequate alternative remedy in the ordinary course of law. Relator is entitled to a writ of mandamus directed to Respondent to require Respondent to inform Relator how it maintains its records, and how these records are accessed in the ordinary course of Respondent's operations.

## **Proposition of Law No. 2**

**An aggrieved requester is entitled to recover costs, attorney's fees, and statutory damages where a public office fails to meet its clear obligations under R.C. 149.43.**

### **I. Relator is entitled to recover court costs.**

A public-records requestor may be entitled to an award of court costs if the Court determines that the Respondent failed to comply with an obligation set forth in R.C. 149.43(B) and issues a writ of mandamus. R.C. 149.43(C)(3)(a)(i); *see also State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, ¶ 53 (awarding court costs). Here, the Court



should determine that Respondents failed to comply with R.C. 149.43(B), and issue a writ of mandamus for the reasons detailed above.

**II. Relator Huth is entitled to recover statutory damages.**

A relator is entitled to receive statutory damages if she transmitted a valid written request for public records and the public office failed to comply with the obligations of R.C. 149.43(B). R.C. 149.43(C)(2); *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, ¶ 52 (awarding statutory damages). Statutory damages are fixed at \$100 for each day the respondent fails to comply with R.C. 149.43(B), for a maximum of \$1,000 for each category of requested records. R.C. 149.43(C)(2). Here Relator has shown that Respondent failed to provide the mandatory information of the manner in which it keeps its Records. *See* R.C. 149.43(B)(2).

**III. Relator is entitled to attorney's fees**

Based on the “ordinary application of statutory law and case law,” as the above arguments show, no well-informed public official would believe that Respondent’s response complied with his statutory obligations under R.C. 149.43. *See* R.C. 149.43(C)(2)(a) & (b) . Nor would any well-informed public official believe that Respondent’s conduct served the public policy. *Id.*

Any award of attorneys’ fees shall be construed as remedial, not punitive. *See* R.C. 149.43(C)(4)(a). The award “shall not exceed the total of the reasonable attorney’s fees incurred before the public record was made available to the relator” and “fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.” R.C. 149.43(C)(4)(b)-(c); *State ex rel. Miller v. Brady*, 123 Ohio St.3d 255, 2009-Ohio-4942,

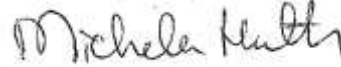
¶19. *See also State ex rel. Braxton v. Nichols*, 8th Dist. Nos. 93653, 93654, 93655, 2010-Ohio-3193, ¶13 (finding award of attorneys' fees "mandatory" when court issued writ of mandamus).

### CONCLUSION

Having established all elements of her mandamus claim, Relator Michela Huth is entitled to a peremptory or alternative writ of mandamus, (1) ordering Respondent to inform Relator 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; (2) awarding statutory damages, attorney's fees, and costs.

Upon an order establishing her entitlement to costs, statutory damages and attorneys' fees, Relator Huth requests leave to file her fee petition within 60 days, which would allow her time to assemble the billing up to that date, prepare a fee petition, and secure expert testimony.

Respectfully submitted,



MICHELA HUTH (Reg. No. 0091353)

PO Box 17

Bolivar, OH 44612

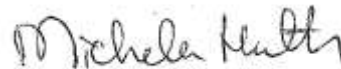
Phone: 330-440-4027

Email: michelahuth.esq@gmail.com

*Attorney for Relator Michela Huth*

### Certificate of Service

On April 20, 2022, I emailed a copy of the above Brief to Respondent's Attorney Jeffrey Holland at [jjholland@hmlawohio.com](mailto:jjholland@hmlawohio.com).



MICHELA HUTH (Reg. No. 0091353)

**APPENDIX**

**FOR MERIT BRIEF OF RELATOR MICHELA HUTH**

*State of Ohio ex rel. Michela Huth v. Animal Welfare League of Trumbull County, Inc.*  
**2021-1187**

Relator Appx001 – March 23, 2022 Alternative Writ of Mandamus  
Relator Appx002 – March 23, 2022 Entry granting alternative writ  
Relator Appx003 – Current version of R.C. 149.43

The Supreme Court of Ohio **FILED**

MAR 23 2022

CLERK OF COURT  
SUPREME COURT OF OHIO

2021-1187

State ex rel. Michela Huth

ALTERNATIVE WRIT

v.

OF MANDAMUS

The Animal Welfare League of Trumbull  
County, Inc.

STATE OF OHIO, CITY OF COLUMBUS

To: The Animal Welfare League of Trumbull County, Inc.  
c/o Statutory Agent, Robert Hotchkiss  
1875 Warner Road  
Hubbard, OH 44425

You are hereby served with a copy of the following writ.

WHEREAS, a complaint for a writ of mandamus has been filed in the Supreme Court of Ohio, and an order has been made by said Court on March 23, 2022, allowing an alternative writ, a copy of which order is attached hereto;

NOW, THEREFORE, in order that full and speedy justice should be done in the premises, we do command that, immediately upon the receipt of this alternative writ, you comply with the order of the court as stated.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court, on this March 23, 2022.

SANDRA H. GROSKO CLERK

C. Madigan DEPUTY

FILED

MAR 23 2022

CLERK OF COURT  
SUPREME COURT OF OHIO

# The Supreme Court of Ohio

State ex rel. Michela Huth

v.

The Animal Welfare League of Trumbull  
County, Inc.

Case No. 2021-1187

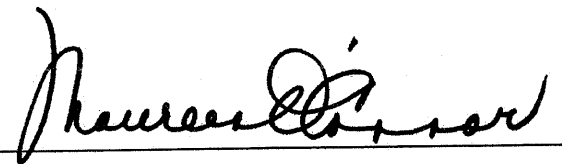
IN MANDAMUS

ENTRY

This cause originated in this court on the filing of a complaint for a writ of mandamus.

Upon consideration thereof, it is ordered by the court, sua sponte, that an alternative writ is granted and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 12.05:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within 10 days of the filing of the evidence; respondent shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within 7 days after the filing of respondent's brief.



Maureen O'Connor  
Chief Justice

Relator's Appx002

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

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

[Ohio Revised Code](#) / [Title 1 State Government](#) / [Chapter 149 Documents, Reports, and Records](#)



You are viewing a past version of this section that is no longer in effect

[View Current Version](#)

**Effective:** *September 8, 2016*

**Legislation:** *Senate Bill 321, House Bill 359, House Bill 317 - 131st General Assembly*

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(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 or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

Relator's Appx003

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- (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

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) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer 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 [4751.04](#) 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 bal

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.

(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) "Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based

correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information" means any information that discloses any of the following about a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer:

(a) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, an investigator of the bureau of criminal identification and investigation, or federal law enforcement officer, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer 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 peace

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parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-b

correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer'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 peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer;

(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.

As used in divisions (A)(7) and (B)(9) of this section, "peace officer" has the same meaning as 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.

As used in divisions (A)(7) and (B)(9) of this section, "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.

As used in divisions (A)(7) and (B)(9) of this section, "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.

As used in divisions (A)(7) and (B)(9) of this section, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A)(7) and (B)(9) of this section, "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 same meanings as in section [4765.01](#) of the Revised Code.

As used in divisions (A)(7) and (B)(9) of this section, "investigator of the bureau of criminal identification and investigation" has the meaning defined in section [2903.11](#) of the Revised Code.

As used in divisions (A)(7) and (B)(9) of this section, "federal law enforcement officer" has the meaning defined in section [9.88](#) of the Revised Code.



(8) "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.

(9) "Community control sanction" has the same meaning as in section [2929.01](#) of the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section [2967.01](#) of the Revised Code.

(11) "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.

(12) "Designee" and "elected official" have the same meanings as in section [109.43](#) of the Revised Code.

(B)(1) Upon request 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 any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available 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

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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 intend

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 and 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 chooses to obtain 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 that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. The public office or the person responsible for the public record shall permit that person 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 person seeking the copy makes a choice under this division, the pul

or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking 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

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 on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer and, if the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law

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enforcement officer's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer'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 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.

(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.

(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



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 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 the provisions of 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 lit

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. In addition, 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,

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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.

(2) The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section 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.

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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

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- 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)
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