

In The Supreme Court of Ohio

Brandon D. Smith,	:	Case No. 2023-0923
	:	
Relator,	:	
	:	
v.	:	
	:	
Southern Ohio Correctional Facility,	:	
	:	Original Action in Mandamus
Respondent.	:	
	:	

RESPONDENT'S SUBMISSION OF EVIDENCE

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Ohio Attorney General

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IN THE SUPREME COURT OF OHIO

State ex rel., :
BRANDON D. SMITH, :
Relator, : Case No. 2023-0923
v. :
SOUTHERN OHIO :
CORRECTIONAL FACILITY :
Respondent. :

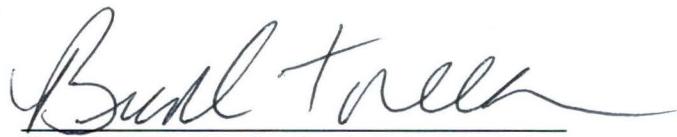
AFFIDAVIT OF BRANDI TRELKA

NOW COMES Brandi Trelka, after having been first duly sworn pursuant to law, deposes, and says that:

1. I have personal knowledge of the facts and information set forth in this Affidavit, and I am competent to testify to the truth of these matters.
2. I am the Warden's administrative assistant for the named Respondent, Southern Ohio Correctional Facility (SOCF), in this matter. I have served in this position since July 16, 2023.
3. As a part of my current job duties, I am the prison or institution's public information officer at the SOCF and respond to inmate public records requests in compliance with Ohio Revised Code § 149.43.
4. SOCF's former public information officer was Mr. Larry Greene. Mr. Greene retired on May 31, 2023. Mr. Jeremy Oppy, our UMA, stood in for Mr. Greene as the administrative assistant/public information officer until I took over the position officially on July 16, 2023. I am not aware of any public records requests made to Mr. Larry Greene or Jeremy Oppy during this time frame by Incarcerated Person (IP) Brandon Smith (Relator).
5. I have attempted to locate Larry Greene and Jeremy Oppy's public records requests to see if Relator addressed any to him during this time period (March 2023 through July 16, 2023), however I have been unsuccessful so therefore we have no record of any such public records requests being made by Relator that are relevant to mandamus action Case No. 2023-0923.

6. SOCF has a GTL representative on-site who handles all inmate tablet issues, including any issues related to music data transfer.
7. The Prison Rape Elimination Act (PREA) policy is posted in each unit, and available to all inmates in the SOCF Law Library.
8. Furthermore, being duly cautioned and sworn, deposes and states that the above facts are true of her own personal knowledge and information. That I am over the age of 18 and I am competent to testify as a witness. The original records are in the custody of the Southern Ohio Correctional Facility and ODRC.

AFFIANT FURTHER SAYETH NAUGHT.



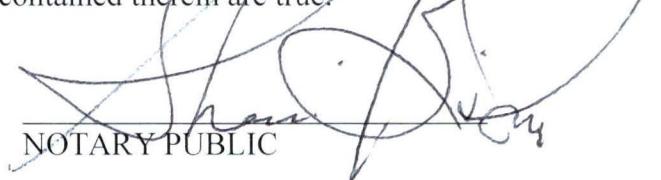
Brandi Trelka's, Warden's Administrative
Assistant at Southern Ohio Correctional Facility

STATE OF OHIO :

:

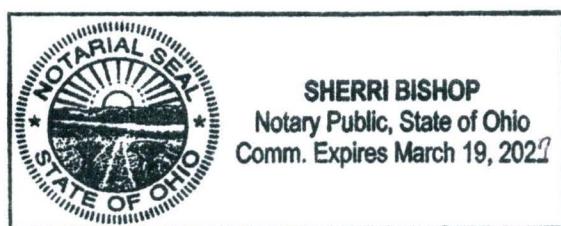
SCIOTO COUNTY :

Before me, a Notary Public in and for said county and State, personally appeared Brandi Trelka, a person known to me on the day of October 2023, who after having been duly sworn pursuant to law, execute the foregoing document, and averred that the same was his own free act and deed, and that the facts and representation contained therein are true.



NOTARY PUBLIC

My Commission Expires: 3/19/21





SUBJECT: Public Records	PAGE <u>1</u> OF <u>5</u> .
NUMBER: 07-ORD-02	
RULE/CODE REFERENCE: ORC 149.43, 149.011 & 5120.21 & AR 5120-9-49 & 5120:1-1-36	SUPERSEDES: 07-ORD-02 dated 01/02/12
RELATED ACA STANDARDS: 2-1079, 2-1128 & 4-APPFS-3C-03	EFFECTIVE DATE: April 1, 2021
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to establish a comprehensive and consistent procedure for complying with Ohio's public record law and responding to public record requests.

III. APPLICABILITY

This policy applies to all Ohio Department of Rehabilitation and Correction (ODRC) employees and contractors, particularly those who receive and/or process requests for public records access and who review those materials prior to release.

IV. DEFINITIONS

The definitions for the below listed terms can be found at the top of the ODRC policies page on the ODRC Intranet at the following:

[Definitions Link](#)

Public Record

Public Records Coordinator

Record

Redaction

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to make available to requesting persons, organizations, and agencies any records that are considered public records. ODRC will endeavor to keep non-public, within the constraints of Ohio's public record law, any records that are exempt from public disclosure.

VI. PROCEDURE**A. General Information**

1. Each managing officer shall designate a public records coordinator to a) manage public records requests for the institution and b) be responsible for overseeing compliance with the requirements set forth in this policy and Ohio's public record law. The public records coordinator shall work closely with the ODRC Office of Legal Services to implement these procedures and Ohio's public record law.
2. All ODRC personnel should familiarize themselves with the records considered "public" and "non-public" by ODRC. In addition to Ohio Revised Code (ORC) 149.43, public records are addressed in administrative rules and other ODRC policies. Determining whether a record is a public record focuses on the use and substance of the document or record, not on its form or where and how it was created.
3. ODRC may disclose, provide access to, and/or make copies available of, any public record, as described in paragraph (A) of rule 5120-9-49 of the Ohio Administrative Code (OAC). ODRC shall not disclose, nor provide access to, nor make copies available of, any non-public record, as described in paragraph (B) of rule 5120-9-49 of the OAC or required by state or federal law.
4. The most common non-public records are inmate records and records of offenders under the supervision of the Adult Parole Authority pursuant to ORC 5120.21(F). However, certain inmate and offender records may be made available to the public at the discretion of the Director, managing officers, or the deputy director of the Division of Parole and Community Services (DPCS) or, as appropriate, their designees. Additionally, certain non-public records may be disclosed to the public according to paragraphs (C) and (D) of rule 5120-9-49 of the OAC.

B. Public Record Maintenance and Organization

1. Records, and copies thereof, that are considered public, shall be made available at the office or institution where the records are maintained. Each office or institution shall organize and maintain all public records in a manner that serves both their administrative needs and the public's interest in the availability of those records for inspection and copying. The public records coordinator shall manage the processing of public record requests and arrange for an area to accommodate in-person inspection. The public records coordinator shall be responsible for approving the material to be inspected or copied and keeping a written record of each request and the response thereto.
2. Announcements regarding the availability of public records shall be posted in areas accessible to the public. The DAS and ODRC record retention schedules shall be posted on the ODRC's internet website <http://www.drc.ohio.gov>.

C. Record Requests

Each request for public records shall be evaluated for a response using the following guidelines.

1. Identification of Requested Record. Although Ohio's public record law does not require specific language to make a public records request, the requester must specifically identify the requested records with enough clarity to allow staff to identify, retrieve, and review the records. If it is not clear what records are being sought, staff shall ask the requester for clarification, and assist the requestor in revising the request by informing the requestor of the way the office maintains its records (e.g., ODRC's record retention schedule lists record titles and record descriptions).
2. Form of Request. Requests may be made in person, by letter, e-mail, fax, or telephone. Requestors are encouraged to make all public record requests in written form, but a requestor is not required to do so. The requestor may be informed that a written request enables ODRC staff to identify responsive records with greater speed and accuracy and maintains a better record of the request and response.
3. Identification of Requestor and Intended Use of Records. A requestor is neither required to provide his/her identity nor the intended use of the requested public record. This does not preclude requesting delivery information, such as a mailing or e-mail address. Security considerations require that visitors produce identification and sign into ODRC institutions or other offices before entry.

D. Availability of Records

1. Public records must be made available for prompt inspection Monday through Friday between 8:00 a.m. and 5:00 p.m. except for published holidays. Copies of public records must be made available within a reasonable time. "Reasonable" and "prompt" consider the volume of records requested, the form of the requested records, the proximity of the location where the records are stored, the necessity for any legal review and redaction, and other facts and circumstances of the records requested.

When the requested records are available on the ODRC website the requestor should be advised of this fact.

If not feasible to satisfy the record request within five (5) business days following ODRC's receipt thereof, staff shall acknowledge, in writing, that ODRC received request and plans to respond within a reasonable time.

2. ODRC staff is only obligated to make records available as they are kept in the normal course of business. ODRC staff is not required to perform research or create new records to respond to a public record request or other request for information.

E. Redaction or Withholding

ODRC staff shall review all public records for redaction and/or withholding of any non-public records or portions of records. The public records coordinator shall redact any non-public information using Adobe Acrobat Pro prior to the release of any public record. ODRC staff shall direct any legal question to the Office of Legal Services. If a request is denied in part (redactions within a document) or in whole (withhold entire document), the public records coordinator must provide a citation to the statutory/rule authority which exempts the information from disclosure and describe the record withheld. See Appendix A for a list of non-public/exempt records.

F. Response Time

Upon receipt, each public records request shall be evaluated for an estimated length of time required to gather the records.

1. Routine Requests. Routine requests should be satisfied immediately if feasible to do so. An immediate reply should not be feasible at the institutions or other offices where records are kept in secure areas not accessible to the public. In addition, there may be a requirement for legal review. These facts do not relieve the public records coordinator from responding quickly where there is not a need for redaction or legal review. Records in this category include, but are not limited to, press releases, budgets, salary information, forms and applications, personnel rosters, ODRC policies (except security policies in the 310 Series), and administrative rules. For such policy or rule requests, direct requestor, if acceptable to him/her, to ODRC's internet website <http://www.drc.ohio.gov> to satisfy the request.
2. Requested records may be transmitted by e-mail in a reasonable time, without charge for copies, if the records are readily available/scanned in an electronic format that can securely and easily be e-mailed.
3. Non-Routine Requests. If a request is beyond routine (e.g., seeking many copies, seeking records more than one-year old, seeking records from multiple institutions or other offices, records involving multiple persons, requests involving pending or potential litigation, or other circumstances that would make the request non-routine), ODRC staff shall acknowledge the request in writing.

Legal Services may coordinate or direct the response to a non-routine request such as preparing and delivering a response.

4. Record Review. Prior to providing records deemed responsive to a specific record request, the public records coordinator or other designated staff shall review the records to ensure the response complies with applicable ODRC policies and rules as well as any statutory restrictions on dissemination of information. Staff may address any legal question to Legal Services.

G. Waiver of Exemption

The ODRC Director or designee may decide to voluntarily waive a valid exemption when providing non-public, discretionary records in response to a public records request. This waiver should not be construed to waive, and does not in fact waive, any right to the future assertion of the exemption. The waiver is only as to that specific record, not to other related records, or to the same kind of records in other cases or files.

H. Failure to Respond to a Public Records Request

There are legal and non-legal consequences in failing to timely or properly respond to a public record request. In addition to the distrust in government that failure to comply may cause, failure to comply with a request may result in a court ordering the ODRC to produce the records, pay the court costs, and pay the requestor's reasonable attorney's fees, and, if applicable, pay statutory damages.

I. Calculation of Costs for Public Records

1. Actual Costs. The ODRC may only charge the requestor for the actual cost of making copies, as follows:
 - a. Five cents per page for paper copies. Two-sided copies shall be charged at the rate of ten cents per page.
 - b. Downloaded computer files to a compact disk at the rate of one dollar per disk.
 - c. If a requestor asks that documents be mailed to them, then charge the actual cost of postage.
2. Prepayment of Costs. Advanced payment is required for all actual costs which are anticipated to exceed five dollars.
3. Waiver of Costs. The ODRC may choose to waive costs in connection with a public record request. Any waiver should not be construed to waive and does not waive, any future right of the ODRC to request and collect actual costs in response to a public record request.

Attachments:

Appendix A List of Common Public Records Exceptions for ODRC Records

07-ORD-02
Appendix A

The following is a list of non-public/exempt records that ODRC staff may frequently encounter in responding to public records requests.

This is not an exhaustive list of every exception that may apply to ODRC records. Independent legal research is still recommended to determine whether any additional exceptions may apply to requested records.

Contact Legal Services with any questions regarding exceptions for public records requests.

OFFENDER RECORDS

Inmate/supervision records

ORC 5120.21(F)

- This exception applies to records of inmates committed to ODRC and to records of persons under the supervision of the APA.
- This exception **does not include** charges and decisions in inmate disciplinary cases (OAC 5120-9-49(A)(2)).
- Common inmate examples include:
 - Visitation records
 - Inmate housing records
 - Property records
 - Refer to the remainder of this Appendix for additional exceptions that apply to inmate records.
- Common APA examples include:
 - Field notes
 - Special Conditions of Supervision
 - Refer to the remainder of this Appendix for additional exceptions that apply to supervision records, for example:
 - Substance Abuse and Mental Health Treatment documents (refer to sections below on ***Offender medical/mental health records*** and ***Recovery services offender records*** for more guidance)
 - ORAS assessments (refer to section below on ***Ohio Risk Assessment System (ORAS) records*** for more guidance)
- The following records may be released:
 - Records that the Director or designee agrees to disclose, per ODRC Policy 07-ORD-02.
 - The following ***non-public information about an inmate or parolee, probationer, or other releasee*** may be released with the prior approval of ODRC's Bureau of Communication or the appropriate managing officer: name and inmate number, age and date of birth, race, sex, physical description, county where crime was committed, crime, sentence, admission date, sentencing entry, RIB actions (charges and decisions only), prison transfers (dates and locations only), outside court actions regarding confinement and release, institutional work assignments, security level, prior ODRC incarceration, release eligibility and supervision history (i.e.,

date and type), time at large (i.e., absconded or escaped), and death (identity withheld until next-of-kin notified or 24 hours following death, whichever occurs first). OAC 5120-9-49(C).

Offender medical/mental health records

ORC 5120.21(C) and 149.43(A)(1)(a)

- This exception applies to any document 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.
- This exception does not include births, deaths, and the fact of admission to or discharge from a hospital.
- Common ODRC examples include:
 - Inmate medical files
 - Inmate mental health files
 - Medical exam reports included in investigation packets, e.g., use of force investigations
- Inmate medical and mental health records are not released as public records. Note, however, that these records may be released or inspected under other circumstances. For additional guidance, refer to the following policies:
 - ODRC Policy 07-ORD-05, Section (VI)(B)(4)(b)
 - ODRC Policy 07-ORD-11

Education records

ORC 3319.321

- This exception applies to personally identifiable information concerning any student attending a public school unless the student consents to disclosure of the record(s).
- Common ODRC examples:
 - School transcripts
 - Attendance records
- This exception does not apply to:
 - “Directory information,” which means a student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, date of graduation, and awards received.
 - Transfer of a student’s education record to another educational institution for a legitimate educational purpose.

Recovery services offender records

ORC 5119.27(A) and 42 U.S.C. § 290dd-2

- This exception applies to records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research.
- Note that this exception applies even when the requestor already has the information, has other ways of getting the information, has some form of official status, is authorized by state law, or has a subpoena or search warrant.

- Refer to ODRC Policy 07-ORD-11 for additional guidance on release of Recovery Services records or information.

Victim impact statements and information

- ORC 5120.21(D)(5): this exception applies to victim impact statements and information provided by victims of crimes that ODRC considers when determining the security level assignment, program participation, and release eligibility of inmates.
- ORC 5120.60(G): this exception applies to information provided to the office of victim services by victims or a victim representative for the purpose of program participation, of receiving services, or to communicate acts of an inmate or person under the supervision of the adult parole authority that threaten the safety and security of the victim.
- ORC 2947.051(C): this exception applies to a victim impact statement associated with a felony committed by an adult offender that involved a threat of “physical harm” to the victim. The same is true for juvenile offenders who commit similar offenses (ORC 2152.19(D)(3)).

Security threat groups

ORC 5120.21(D)(6)

- This exception applies to any information and data pertaining to security threat groups.

Monitored inmate telephone calls

ORC 5120.21(D)(7)

- This exception applies to conversations recorded from the monitored inmate telephones.

Sealed records

ORC 2953.35 and 2953.60

- This exception applies to information, records, or data concerning an arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision about which the ODRC officer or employee had knowledge were sealed by a court order or were expunged.

Inmate informant statements

ORC 5120.21(D)(3)

- This exception applies to statements made by inmate informants, including confidential informants.

Criminal history records

- ORC 109.57(D): This exception applies to any data provided to, or gathered from, the Ohio law enforcement gateway (**OHLEG**) administered by the Ohio Bureau of Criminal Investigation (BCI).
- 42 U.S.C. § 3789g: This exception applies to information obtained from the federal National Crime Information Center (**NCIC**) system. See also 28 C.F.R. § 20.21, § 20.33(a)(3).
- ORC 5503.10 and OAC 4501:2-10-06: This exception applies to messages and/or throughput of any kind accessed through the Ohio law enforcement automated data system

(LEADS). This material is restricted to the use by duly authorized law enforcement and/or criminal justice agencies for the administration of criminal justice.

Pre-sentence investigation reports/offender background investigation

ORC 2951.03

- This exception applies to pre-sentence investigation reports sent to ODRC or offender background investigations conducted by ODRC.
- DRC may disclose these records to courts, law enforcement agencies, community-based correctional facilities, halfway houses, and medical, mental health, and substance abuse treatment providers.
 - The disclosure must be made in a manner calculated to maintain the report's confidentiality.
 - The disclosure shall not include a victim impact section or information identifying a witness (this information should be redacted).

DYS records released to ODRC

ORC 5120.21(D) and 149.43(A)(1)(l)

- This exception applies to records maintained by DYS pertaining to youth in its custody that are released to ODRC regarding persons who are under the jurisdiction of ODRC and who have previously been committed to DYS.

Transfer from ODRC to a psychiatric hospital

ORC 5120.17

- This exception applies to records that identify an inmate or former inmate who is transferred from ODRC to a psychiatric hospital.
- ODRC may disclose the contents of these records if:
 - The inmate or their legal guardian consents to the disclosure
 - A court order signed by a judge requires the disclosure
 - The inmate seeks access to their own records, unless that kind of access is specifically restricted in the inmate's treatment plan

INSTITUTION/ODRC RECORDS

***Quality assurance records* (medical/mental health)**

ORC 5120.211

- This exception applies to the proceedings, records, minutes, and reports that emanate from quality assurance program activities.
- Note that "quality assurance program activities" includes "the activities of the institutional and central office quality assurance committees, of persons who provide, collect, or compile information and reports required by quality assurance committees, and of persons who receive, review, or implement the recommendations made by quality assurance committees." This specifically applies to activities "performed by a quality assurance committee or by persons who are directed by a quality assurance committee" to include "credentialing, infection control, utilization review including access to patient care, patient care assessments, medical and mental health records, medical and mental health resource

management, mortality and morbidity review, and identification and prevention of medical or mental health incidents and risks.”

Plans of a correctional institution

ORC 5120.21(D)(1)

- This exception applies to architectural, engineering, or construction diagrams, drawings, or plans of a correctional institution.

Security plans

ORC 5120.21(D)(2)

- This exception applies to security plans for hostage negotiation, for disturbance control, for the control and location of keys, and for dealing with escapes

Security record

ORC 149.433(B)

- This exception applies to any record that contains information:
 - That is directly used for protecting or maintaining the security of ODRC against attack, interference, or sabotage; or
 - That is assembled, prepared, or maintained by ODRC to prevent, mitigate, or respond to acts of terrorism, including portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel.

Infrastructure record

ORC 149.433(B)

- This exception applies to any record that discloses the configuration of critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of a building.
- This exception also includes a risk assessment of infrastructure performed by a state or local law enforcement agency at the request of a ODRC/DAS.
- This exception does not include a simple floor plan.

DRC victim notification records

ORC 2930.16(D)(2)

- This exception applies to records that reflect attempts by ODRC to notify victims pursuant to ORC 2930.16(D)(1).

Ohio Risk Assessment System (ORAS) records

ORC 5120.115(B)

- This exception applies to all reports generated by, or data collected in, the Ohio Risk Assessment System (ORAS).
- DRC authorized users may disclose ORAS reports to 1) law enforcement agencies, halfway houses, and medical, mental health, and substance abuse treatment providers for penological and rehabilitative purposes, and 2) qualified persons and research

organizations for research, evaluative, and statistical purposes under the terms of written agreements between ODRC and the recipients of the report.

Confidential law enforcement investigatory record (CLEIR)

ORC 149.43(A)(1)(h)

- This exception applies to records that both:
 - Pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, and
 - Would create a high probability of disclosure of any of the following:
 - The identity of an uncharged suspect
 - The identity of an information source or witness to whom confidentiality has been reasonably promised
 - Specific confidential investigatory techniques or procedures
 - Specific investigatory work product (Note this exception expires when the investigation is closed or the criminal trial is over, whichever comes first.)
 - Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source
- CLEIR does not apply to administrative investigations conducted for purposes of public office employment matters (e.g., internal disciplinary investigations, pre-employment questionnaires and polygraph tests, or to public records that later become the subject of a law enforcement investigation).

PREA investigation

- CLEIR: PREA investigations may include records covered by the CLEIR exception. Please refer to the CLEIR exception for more information.
- Personally identifiable inmate and staff reporting information should be redacted per 28 CFR § 115.51.

Competitive solicitation

ORC 9.28(B), (C)

- This exception applies to materials submitted to ODRC in response to a competitive solicitation
- This exception expires on the date ODRC announces the award of a contract based on the competitive solicitation or the cancellation of the competitive solicitation.

Financial information for competitive solicitation

ORC 9.312(A)

- This exception applies to an additional financial information ODRC requests for review from an apparent low bidder after it opens all submitted bids during a competitive solicitation process.

Security of computer or telecommunications devices

ORC 1306.23

- This exception applies to records that would disclose or may lead to the disclosure of information that would jeopardize the state's continued use or security of any computer or

telecommunications devices, or services associated with electronic signatures, electronic records, or electronic transactions.

Attorney-client privilege

ORC 149.43(A)(1)(v)

- This exception applies to legal advice and requests for legal advice exchanged between attorneys representing ODRC.
- Attorneys representing ODRC includes ODRC Legal Services, the Ohio Attorney General's office, and lawyers appointed to represent ODRC by the Ohio Attorney General's Office.

EMPLOYEE RECORDS

Residential and familial information

ORC 149.43(A)(1)(p)

- Applies to, among others, parole officers, probation officers, correctional employees, community-based correctional facility employees, and youth services employees.
- This exception includes any information that discloses any of the following:
 - Home address, except the state or political subdivision
 - Employee assistance program referrals or participation
 - Social security number
 - Home telephone number
 - Any bank account, debit card, charge card, or credit card number
 - Emergency telephone number
 - Any medical information pertaining to the employee
 - Name of the beneficiary of any employment benefits, including life insurance
 - Identity and amount of any charitable or employment benefit deduction, unless the amount of the deduction is required by state or federal law
 - Spouse, former spouse, or child's information, including name, home address, employer, employer address, social security number, home telephone number, any bank account, debit card, charge card, or credit card number, emergency telephone number
- A journalist may obtain some of this information (home address; whether the spouse, former spouse or child is also employed by ODRC; the employer name and address for the spouse, former spouse, or child). The journalist must make a written request for this information and include the journalist's name, title, name and address of the journalist's employer, and state that disclosure of the information sought would be in the public interest.

Driver's license/state identification number

ORC 149.43(A)(1)(dd)

- This exception applies to:
 - Social security numbers
 - An individual's state or federal tax identification number
 - An individual's driver's license number or state identification number

- An individual's checking account number, savings account number, credit card number, or debit card number
- An individual's demand deposit account number, money market account number, mutual fund account number, or any other financial or medical account number

Income tax returns and return information

- **Federal (26 U.S.C. § 6103):** This exception applies to federal tax returns and “return information” filed under the jurisdiction of the IRS. This includes:
 - Returns, which are any tax or information return, declaration of estimated tax, or claim for refund, and any amendment or supplement.
 - Return information, which is a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the IRS about a return or tax liability or offense.
- **State (R.C. 5747.18):** This exception applies to any information gained as the result of returns, investigations, hearings, or verifications required or authorized by the Ohio Department of Taxation.
- **Municipal (R.C. 718.13(A)):** This exception applies to any information gained through returns, investigations, hearings, or verifications required or authorized by a municipal corporation.

Employee medical records

ORC 149.43(A)(1)(a)

- This exception applies to any document, 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.
- Note that this exception applies to employee medical exam reports.
- Remember that employee medical information of any kind is also an exception (ORC 149.43(A)(1)(p)). Refer to the section above on the “Residential and familial information” exception for additional guidance.

Employee health program records

29 C.F.R. 1630.14(d)(1)

- This exception applies to Information gathered for a voluntary medical examination of an employee as part of an employee health program

Medical examination for ability to perform job functions
29 C.F.R. 1630.14(c)(1) (Americans with Disability Act)

- This exception applies to any information regarding an employee's medical condition or history compiled because of a medical examination required by employer to ensure employee's ability to perform job-related functions

FMLA medical records

29 C.F.R. § 825.500(g)

- This exception applies to records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA.

Personal history information of state retirement (e.g., OPERS) contributors

- ORC 145.27(A): This exception applies to information maintained by the ***public employee retirement system (OPERS)*** including statement of previous service, amount of a monthly allowance or benefit paid to the individual, address, telephone number, social security number, record of contributions, correspondence with the public employees retirement system, or other information the OPERS board determines to be confidential.
- ORC 742.41(B): This exception applies to the same information as above for the ***police and fire pension fund***.
- ORC 3307.20(B): This exception applies to the same information as above for the ***state teachers retirement system (STRS)***.
- ORC 3309.22(A): This exception applies to the same information as above for the ***public school employees retirement system***.
- ORC 5505.04(C): This exception applies to the same information as above for the ***state highway patrol retirement system***.

OAKS identification numbers

ORC 1306.23

- This exception applies to records that disclose or may lead to the disclosure of information that would jeopardize the ***Security of computer or telecommunications devices***, like OAKS identification numbers (refer to the section on this exception above for additional guidance)

Orders for active military service

ORC 149.43 (A)(1)(ff).

- This exception applies to orders for active military service of an individual who currently or formerly served in the armed forces of the United States (including a reserve component) or the Ohio organized militia
- This exception expires fifteen years after the published or effective date of order.

PAROLE BOARD RECORDS

Proceedings for probation, parole, community control sanctions, and post-release control sanctions

ORC 149.43(A)(1)(b)

- This exception applies to records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions.
- Refer to OAC 5120:1-1-36 for additional guidance on Parole Board records. In particular, the following Parole Board records are available for public records requests pursuant to OAC 5120:1-1-36(B):

- Determinations
- Orders
- Minutes
- Records of notice attempts to any individual or entity other than a victim

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2023, a copy of *Respondent's Submission of Evidence* was filed electronically. Notice of this filing will be sent by prepaid, U.S. Mail to Pro se Relator, Brandon D. Smith, #A756-254, Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699.

/s/ Adam Beckler

ADAM BECKLER (0101151)
Assistant Attorney General