

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Elliot P. Forhan,	:	
	:	
Plaintiff-Appellee/ Cross-Appellant,	:	No. 25AP-895
	:	(Ct. of Cl. No. 2025-00596PQ)
v.	:	
	:	(REGULAR CALENDAR)
Ohio House of Representatives,	:	
	:	
Defendant-Appellant/ Cross-Appellee.	:	

D E C I S I O N

Rendered on September 30, 2026

On brief: *The Law Office of Elliot P. Forhan, Elliot P. Forhan, pro se; Flowers & Grube, and Louis E. Grube, for plaintiff-appellee/cross-appellant. Argued: Louis E. Grube.*

On brief: *Isaac Wiles Burkholder & Miller, LLC, Scott O. Sheets, Aaron M. Glasgow, and Brian T. Johnson, for defendant-appellant/cross-appellee. Argued: Scott O. Sheets.*

APPEAL from the Court of Claims of Ohio

LELAND, J.

{¶ 1} Defendant-appellant/cross-appellee, The Ohio House of Representatives (the “House”), appeals from a judgment of the Court of Claims of Ohio, granting in part and denying in part public records requests filed by plaintiff-appellee/cross-appellant, Elliot P. Forhan (“Forhan”). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} On April 16, 2024, Forhan, a representative in the House, sent a public records request to the House’s Chief Legal Counsel, Kevin Stanek. Forhan asked Stanek to produce the “full investigation file in connection with the report, dated March 15, 2024,” including “notes of interviews.” (House’s Submission of Evidence at 22.) The March 15, 2024 report, drafted by the law firm of Perez and Morris, LLC (“Perez Morris” or the “firm”), addressed allegations of “erratic, aggressive, violent behavior, and interactions by [] Forhan with staff and Members of the Democratic caucus, constituents, stakeholders, and other third parties.” (House’s Submission of Evidence at 1767, the “Forhan Report” at 2.) The report noted that on November 16, 2023, Minority Leader Allison Russo issued a memorandum detailing several concerning incidents involving Forhan and stripped Forhan of his committee assignments and access to caucus staff services. The report also noted that on November 17, 2023, Speaker of the House Jason Stephens suspended Forhan’s badge access to the Ohio Statehouse and directed Forhan to call the House Sergeant-at-Arms regarding access to state facilities. Following a request from the Speaker, the Attorney General appointed Perez Morris to serve as special counsel for the House to investigate the allegations against Forhan.

{¶ 3} Perez Morris interviewed 14 individuals during its investigation and determined the witnesses produced “corroborating statements generally supporting the facts outlined in the [November 16, 2023] Russo Memo.” (Forhan Report at 4.) The report found the measures taken by House leadership against Forhan were within the authority granted under “applicable rules of the House, given the concerning pattern of conduct, escalation in behavior, and altercations with others in which [] Forhan engaged.” (Forhan Report at 15.)

{¶ 4} On June 3, 2024, the House, through Stanek, produced numerous documents in response to Forhan’s April 16, 2024 public records request. However, the House refused to produce any notes the Perez Morris attorneys took while conducting witness interviews. Stanek explained the House would not produce the interview notes because the notes were “covered by the personal notes exception.” (House’s Submission of Evidence at 25.)

{¶ 5} Forhan responded to Stanek on June 4, 2024, stating that the personal notes exception was “not applicable” to the interview notes and that he would like the “full file” with “no withholdings.” (House’s Submission of Evidence at 87.) Forhan also requested the “full file for each outside counsel report performed during the last two years for the House.” (House’s Submission of Evidence at 87.) On July 5, 2024, Forhan asked Stanek to produce “any complaints against and discipline files on any House member or staff member since the date [Stanek] last produced records responsive to [Forhan’s] initial request.” (House’s Submission of Evidence at 92.)

{¶ 6} On August 13, 2024, Stanek responded to Forhan’s June 6 and July 5, 2024 requests, providing him with records related to Perez Morris’s May 31, 2023 report regarding Sarah Cherry (“Cherry Report”), who was legal counsel for the House Minority Caucus at the time. The Cherry Report addressed Cherry’s “informal complaints” that disciplinary actions by the House’s chief administrative officer were “being conducted, documented, and maintained . . . in a discriminatory or retaliatory manner.” (Cherry Report at 2.) Cherry’s allegations of discrimination “related to implementation of work policies, including work from home, time keeping, discipline and record keeping related to discipline files.” (Cherry Report at 2.) The Attorney General appointed Perez Morris to serve as special counsel for the House to investigate the Cherry matter. Perez Morris interviewed ten witnesses during its investigation and found no support for Cherry’s allegations of discrimination.

{¶ 7} Forhan responded to Stanek on August 13, 2024, and asked him to produce the “full investigation file including interview notes and draft reports and any other documents for both of the Perez Morris engagements.” (House’s Submission of Evidence at 1372.) On October 17, 2024, Forhan emailed Sarah Perez, the managing partner at Perez Morris, and asked her to produce “all records of [her] so-called ‘investigation’ into [him], including drafts and all witness interview documentation.” (House’s Submission of Evidence at 1782.) Heather Blessing, the House’s deputy chief legal counsel, responded to Forhan’s August 13 and October 17, 2024 requests, explaining that the House would not produce materials that did not “document the functions or policies of the public office – thus falling under the ‘non-record’ category.” (House’s Submission of Evidence at 1377, 1785.)

{¶ 8} On January 9, 2025, Forhan emailed Mike Lenzo, deputy chief of staff and general counsel for the Speaker of the House, and requested the “full investigative files, including interview notes, with respect to each of (1) the Perez Morris investigation, completed in March 2024, into me and (2) the Perez Morris investigation, completed in May 2023, into [Cherry].” (House’s Submission of Evidence at 1971.) Blessing responded to Forhan’s January 9, 2025 request, noting that the House had “fulfilled previous public records requests from [Forhan] for the same records” and reiterating that “notes of interviews” did not meet the “definition of record in ORC 149.011(G).” (House’s Submission of Evidence at 1973.)

{¶ 9} On June 25, 2025, Forhan filed an R.C. 2743.75 public records access complaint against the House. Forhan alleged the records the House wrongly refused to produce included: “(1) all report drafts and witness interview documentation in connection with the P.M.-Forhan Matter and (2) all interview notes created in connection with the P.M.-[Cherry] Matter.” (Compl. at Attachment 1.) The Court of Claims appointed a special master to the case who ordered the parties to submit evidence supporting their respective positions. The special master also ordered the House to file the documents it claimed were exempt from production under seal. The parties complied with the special master’s order.

{¶ 10} On July 24, 2025, the House filed a brief responding to Forhan’s complaint. The House initially argued that the interview notes and drafts of the reports were not public records because the House did not create or receive the documents and the materials did not document activities of the House. The House also asserted that the interview notes were not records of the House because they were “used solely for the benefit of the individual attorney note takers, including for recalling information.” (House’s Trial Brief at 6.) The House claimed the notes and drafts were exempt from disclosure either as trial preparation records or because they were protected by the attorney-client privilege.

{¶ 11} Forhan responded to the House’s brief on August 4, 2025. Forhan argued that both the interview notes and report drafts were public records because the House delegated its duty to investigate the Cherry and Forhan matters to Perez Morris. Forhan asserted that the House bore the burden to prove the records satisfied an exception to production, and claimed the House failed to carry its burden of proof.

{¶ 12} The special master issued a report and recommendation on August 26, 2025, recommending that the court order the House to produce the report drafts but not the interview notes. The special master concluded the documents could be records of the House, because the House delegated its authority to investigate the Cherry and Forhan matters to Perez Morris. The special master determined that Forhan had the burden to establish the interview notes were public records, and found Forhan failed to carry his burden. The special master further found that the drafts were public records and that the House had the burden to prove the drafts satisfied any exception to production. The special master concluded the House failed to carry its burden to establish the drafts were either trial preparation records or materials protected by the attorney-client privilege.

{¶ 13} The House and Forhan both filed objections to the special master's report and recommendation. On October 2, 2025, the court issued a decision and entry overruling the parties' objections and adopting the special master's report and recommendation.

II. Assignments of Error

{¶ 14} The House appeals, assigning the following errors for our review:

[I.] The Court of Claims erred in concluding that preliminary drafts of investigation reports prepared and used only by outside counsel are public records under R.C. 149.011(G).

[II.] The Court of Claims erred in concluding that the drafts are not exempt as trial preparation records or attorney work product.

[III.] The Court of Claims erred in concluding that the drafts are not protected by attorney-client privilege.

{¶ 15} Forhan has filed a cross-appeal, assigning the following errors for our review:

I. The court below erred as a matter of law in omitting to recognize that no personal-notes exception applies if the notes are required to be maintained.

II. The court below erred as a matter of law in omitting to recognize that no personal-notes exception applies if other officials had access to the notes.

III. The court below erred as a matter of law in omitting to recognize that no personal-notes exception applies if (A) the requester and the public did and do not have access to the transaction or occurrence to which the notes related and (B)

the requester and the public would lose information as a result of so applying.

IV. The court below erred as a matter of law in omitting to recognize that no personal-notes exception may be asserted to conceal the note-taker's cooperation with wrongdoing.

V. The court below erred as a matter of law in finding that Requester bore the burden of proving the non-application of any personal-notes exception.

VI. The court below erred in finding that Requester did not provide any evidence that the interview documentation were created for any purpose other than the convenience of the documenters.

VII. The court below erred in denying Requester's request that the court order the House to produce the Requester the interview documentation are public records.

VIII. The court below erred in denying Requester's request that the court order the House to produce to Requester the interview documentation.

III. Standard of Review

{¶ 16} Ohio's Public Records Act, codified at R.C. 149.43, mandates that requestors have full access to public records, unless the requested records fall within one of the exceptions specifically enumerated in the statute. *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Commerce, Div. of Fire*, 2019-Ohio-4009, ¶ 84 (10th Dist.). See R.C. 149.43(B)(1) (stating that "[u]pon request by any person . . . all public records responsive to the request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business hours"). The Public Records Act "reflects the state's policy that 'open government serves the public interest and our democratic system.'" *State ex rel. Morgan v. New Lexington*, 2006-Ohio-6365, ¶ 28, quoting *State ex rel. Dann v. Taft*, 2006-Ohio-1825, ¶ 20. See *Kish v. Akron*, 2006-Ohio-1244, ¶ 16 (noting that "[p]ublic records are one portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance"). Consistent with this policy, courts construe the Public Records Act liberally

in favor of broad access, and resolve any doubts in favor of disclosure. *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.*, 2018-Ohio-5133, ¶ 12.

{¶ 17} The Act defines a “public record” as any “record kept by a public office.” R.C. 149.43(A)(1). The House is a public office. *See* R.C. 149.011(A). The Act defines a “record” as “any document, device, or item, regardless of physical form or characteristic” that is “created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” R.C. 149.011(G).

{¶ 18} A person allegedly aggrieved by a denial of access to public records in violation of R.C. 149.43(B) may file either a complaint in mandamus pursuant to R.C. 149.43(C) or a public records access complaint pursuant to R.C. 2743.75. *White v. Ross Corr. Inst.*, 2026-Ohio-1002, ¶ 17 (10th Dist.). *See Welsh-Huggins v. Jefferson Cty. Prosecutor’s Office*, 2020-Ohio-5371, ¶ 11 (explaining that prior to the 2016 enactment of R.C. 2743.75, “an action in mandamus under R.C. 149.43(C) was the remedy to compel compliance with R.C. 149.43”); *Law Office of Josh Brown, L.L.C. v. Ohio Secy. of State*, 2025-Ohio-2130, ¶ 9 (10th Dist.) (explaining that R.C. 2743.75 “lays out a streamlined litigation procedure” to resolve public records disputes). The standards applicable to proceedings under R.C. 2743.75 are consistent with the standards applicable to mandamus enforcement actions. *Welsh-Huggins* at ¶ 32.

{¶ 19} Whether material qualifies as a record under R.C. 149.011(G), and/or whether a public record is statutorily exempt from disclosure, both present mixed questions of law and fact. *Doe v. Ohio State Univ.*, 2024-Ohio-5891, ¶ 19 (10th Dist.); *Welsh-Huggins* at ¶ 37. *See Schaffer v. Ohio State Univ.*, 2025-Ohio-5647, ¶ 8 (10th Dist.) (noting that “[r]equests for public records generally involve both legal questions regarding the meaning of provisions within the Public Records Act, R.C. 149.43, as well as factual questions regarding the context underlying a specific request”). “When an issue presents such a mixed question of law and fact, a reviewing court will independently review the legal question de novo but will defer to the trial court’s underlying factual findings, reviewing them only for clear error.” *Welsh-Huggins* at ¶ 37.

IV. Forhan's Cross-Appeal

{¶ 20} For ease of analysis, we address Forhan's cross-appeal first and address his assignments of error out of order. In his cross-appeal, Forhan generally asserts the trial court erred by finding that the interview notes were not public records.

{¶ 21} In *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439 (1993), the Supreme Court of Ohio addressed whether personal notes taken by public officials constitute records under the Public Records Act. In the case, a criminal defendant made a public records request for handwritten notes taken by a judge during the defendant's criminal trial. The court explained that, while R.C. 149.43(A)(1) defines a public record as a record kept by "any public office," the statute does not define a public record as "any piece of paper on which a public officer writes something." *Id.* at 440. The court observed that the judge's notes were "simply personal papers kept for the judge's own convenience and not official records," there was "[n]o law or regulation requir[ing] such notes," and that no "other court officials had access to or used the notes." *Id.* As such, the court held that the judge's personal notes were not public records. *Id.* at 439.¹

{¶ 22} The Supreme Court addressed personal notes again in *State ex rel. Cranford v. Cleveland*, 2004-Ohio-4884, *superseded by statute on other grounds*. The relator in *Cranford* sought a writ of mandamus to compel the city of Cleveland to produce notes taken by the city's planning commission director (the "director") during a pre-disciplinary conference. The court observed that the director's notes "were kept for his own convenience to recall events and were not kept as part of the city's or the planning commission's official records." *Id.* at ¶ 18. The court also found no evidence indicating that "other city officials

¹ The *Steffen* court noted that federal courts had also found that "personal uncirculated handwritten notes reflecting an employee's impression of substantive discussions and agency business meetings [were] not 'agency records' " under the Freedom of Information Act. *Id.* at 440. *See Sibille v. Fed. Reserve Bank*, 770 F.Supp. 134, 136-37 (S.D.N.Y. 1991) (stating that, when determining whether personal papers constitute agency records, federal courts "focus[] on whether the documents were used solely by the employee who created them, or were available to other agency employees, as well"); *Am. Fedn. of Govt. Emp. Local 2782 v. United States Dept. of Commerce*, 632 F.Supp. 1272, 1277 (D.D.C. 1986) (explaining that an employee's "handwritten 'logs' " created on the employee's "own initiative and for her own personal convenience" were not public records because "personal notes which are not intended for distribution through normal agency channels and which cannot be said to be within the 'control or dominion' of an agency are ordinarily considered to be beyond the scope of [the Freedom of Information Act]"); *British Airports Auth. v. Civ. Aeronautics Bd.*, 531 F.Supp. 408, 415-16 (D.D.C. 1982) (finding a public employee's handwritten notes were not agency records due to the "personal nature of these documents: Mr. Chesen need not have created them, intended them to be temporary, not permanent, and kept them within his own personal files with no intent to distribute them through normal agency channels").

had access to or used the notes.” *Id.* at ¶ 18. As such, the court held that the director’s “personal notes” from the pre-disciplinary conference were “not public records subject to disclosure under R.C. 149.43.” *Id.* at ¶ 21. *See also State ex rel. Carr v. Akron*, 2006-Ohio-6714, ¶ 56 (finding an assessor’s “personal notes” from a promotional examination for firefighters and medics “[were] not public records”); *State ex rel. Murray v. Netting*, 1998 Ohio App. LEXIS 4719, *2-3 (5th Dist. Sept. 18, 1998) (observing that handwritten notes taken by city officials interviewing candidates for the position of police chief “[were] not public records as defined by R.C. 149.43,” because the interviewer’s notes were the “personal papers of the interviewers”); *Vindicator Printing Co. v. Julian*, 1994 Ohio App. LEXIS 3362, *6 (7th Dist. July 26, 1994).

{¶ 23} In *State ex rel. Summers v. Fox*, 2020-Ohio-5585, the Supreme Court held that a prosecutor’s personal notes were not public records. The relator in the case argued that the prosecutor’s notes were “subject to disclosure if they contain[ed] exonerating information not in a public report.” *Id.* at ¶ 65. The court rejected this argument. The court explained that “[p]ersonal notes fall outside the scope of the Public Records Act due to the circumstances of their creation: when the notes are taken by an official for his own personal convenience and are not required to be maintained, they are not records of the *office*.” (Emphasis in original.) *Id.* at ¶ 66. The court noted that this characteristic of personal notes “distinguish[ed] the personal-notes exception from other exceptions (for example, the attorney-client privilege) that depend for their existence on the substance of the information contained in the record.” *Id.* at ¶ 66.

{¶ 24} Effective September 30, 2025, the General Assembly amended R.C. 149.011(G) in 2025 H.B. No. 96 to clarify that “records” do not include “personal notes or any document, device, or item, . . . of a public official, or of the official’s attorney, employee, or agent, that is used, maintained, and accessed solely by the individual who creates it or causes its creation.” R.C. 149.011(G). Thus, under the current definition of “records,” any note or document created by the House’s attorney that was used, maintained, and accessed solely by the attorney would not qualify as a record. Because the H.B. No. 96 amendment to R.C. 149.011(G) became effective after Forhan made his public records requests, the amendment does not apply in the present case. *See State ex rel. McDougald v. Greene*, 2020-Ohio-3686, ¶ 14, fn. 2 (explaining that “[p]ublic-records requests are

governed by the version of R.C. 149.43 that was in effect at the time that the request was made”); *State ex rel. Fraley v. Dept. of Rehab. & Corr.*, 2026-Ohio-1156, ¶ 10. Nevertheless, the amendment essentially codifies the Supreme Court’s holdings from *Steffen*, *Cranford*, and *Summers*, which this court is bound to follow. See *State ex rel. Kelsey-Hayes Co. v. Heinlen*, 2006-Ohio-428, ¶ 4 (10th Dist.).

{¶ 25} Thus, when a public official writes a note for their own personal convenience, the public official was not required to create or maintain the note, and the note was not accessed or used by others, the note is not a record of the public office. *Steffen* at 440; *Cranford* at ¶ 18; *Summers* at ¶ 66. Forhan claims Ohio courts have “found that notes are public records,” but the cases Forhan relies on are distinguishable. (Forhan’s Cross-Appellant’s Brief at 23.)

{¶ 26} For instance, Forhan relies on *State ex rel. Verhovec v. Marietta*, 2013-Ohio-5415 (4th Dist.), where the court found handwritten notes taken by the Marietta Clerk of Council during Marietta City Council meeting were not personal notes. The clerk would use their handwritten notes to type the official council meeting minutes and would then discard the notes. The court concluded the handwritten notes “were not merely personal notes taken solely for [the clerk’s] convenience,” because the notes documented the decisions, operations, and activities of city council. *Id.* at ¶ 30. However, the court never addressed whether the clerk was required to create or maintain the handwritten notes or whether anyone besides the clerk accessed or used the notes. Moreover, the court’s conclusion that the handwritten notes were not personal notes was dicta. See *Gissiner v. Cincinnati*, 2008-Ohio-3161, ¶ 15 (1st Dist.). The requestor in *Verhovec* filed a civil forfeiture action seeking to recover funds under the Public Records Act for every note that had been destroyed, and the court determined that the requestor failed to demonstrate she was an “aggrieved” party under the statute. *Id.* at ¶ 31. See R.C. 149.351(B)(2). As such, the appellate court affirmed the trial court’s conclusion that the requestor was not entitled to recover forfeiture damages. *Id.* at ¶ 31. Thus, the *Verhovec* court’s conclusion that the clerk’s handwritten notes were not personal notes was unnecessary to the court’s resolution of the civil forfeiture issue. The remaining cases Forhan relies on concerned instances where the notes were not personal notes. See *State ex rel. Gannett Satellite Information Network, Inc. v. Petro*, 1997-Ohio-319 (holding that “audits, audit drafts, and working

papers and notes relating to audits of public offices are public records,” and implying that such audit “notes” would be official records of the audit rather than personal notes); *Hurt v. Liberty Twp.*, 2017-Ohio-7820, ¶ 74-75 (5th Dist.) (concluding that interview notes taken by an attorney pursuant to a delegated public duty might be public records because the attorney’s billing statements demonstrated he “‘debriefed with clients’ after conducting each investigatory interview,” thereby indicating the attorney shared his notes with the board of trustees).

{¶ 27} In his fifth cross-assignment of error, Forhan asserts the trial court erred by concluding that he bore the burden of proving the personal notes exception did not apply to the interview notes. In *Welsh-Huggins*, 2020-Ohio-5371, the Supreme Court addressed “the respective burden or burdens of proof that the parties bear in proceedings to enforce the Public Records Act” under R.C. 2743.75. *Welsh-Huggins* at ¶ 19. The court noted that a party’s “burden of proof” in any situation is “a composite burden that ‘encompasses two different aspects of proof: the burden of going forward with evidence (or burden of production) and the burden of persuasion.’ ” *Welsh-Huggins* at ¶ 20, quoting *Chari v. Vore*, 2001-Ohio-49, ¶ 13. In a proceeding under R.C. 2743.75, “the complainant’s ‘burden of production’ is to plead and prove facts showing that the requester sought an identifiable public record pursuant to R.C. 149.43(B)(1) and that the public office or records custodian did not make the record available.” *Welsh-Huggins* at ¶ 33. The complainant’s burden of persuasion is to establish their entitlement to relief by clear and convincing evidence. *Welsh-Huggins* at ¶ 34.

{¶ 28} If the claimant satisfies their burden of proof, and the public office or person responsible for public records “refuses to release the requested record on the basis of a statutory exemption, its ‘burden of production’ in the R.C. 2743.75 proceeding is to plead and prove facts establishing that the requested record falls squarely within the exemption.” *Welsh-Huggins* at ¶ 35. See *State ex rel. Besser v. Ohio State Univ.*, 2000-Ohio-207 (stating that “[e]xceptions to disclosure must be strictly construed against the public records custodian, and the custodian bears the burden to establish the applicability of an exception”). If the exemption is not “obviously apparent and manifest just from the content of the record itself,” the records custodian must produce “competent, admissible evidence to support the asserted exemption.” *Welsh-Huggins* at ¶ 35, 77. “Conclusory statements

in an affidavit that are not supported by evidence are not sufficient evidence to establish the exemption's applicability." *Welsh-Huggins* at ¶ 30, citing *Besser*.

{¶ 29} Thus, Forhan had the initial burden to establish by clear and convincing evidence that he sought identifiable public records. Forhan contends that, because the Supreme Court referred to personal notes as the "personal-notes exception" in *Summers*, 2020-Ohio-5585, at ¶ 66, courts treat personal notes "in the same way as any statutory exception (or exemption)." (Forhan's Cross-Appellant's Brief at 19.) As such, Forhan claims the House had the burden to establish the interview notes fell squarely within the personal-notes exception. However, *Steffen*, *Cranford*, and *Summers*, as well as the recent amendment to R.C. 149.011(G), all demonstrate that personal notes are not records of a public office. Thus, personal notes are not public records that satisfy a statutory exception to production; rather, personal notes simply do not qualify as public records from the time of their creation.²

{¶ 30} The trial court did not err by finding Forhan bore the burden to establish that the interview notes were identifiable public records and not personal notes. Based on the foregoing, we overrule Forhan's fifth cross-assignment of error.

² Forhan also asserts that the reasons identified by the Supreme Court for placing the burden of proof on the records custodian to establish a statutory exception apply equally "when a records custodian refuses to release a requested record based on any personal-notes exception." (Appellant's Brief at 18.) In *State ex rel. Natl. Broadcasting Co. v. Cleveland*, 38 Ohio St.3d 79 (1988), the court noted the following "cogent reasons" for placing the burden on the government to establish that withheld records fall within a statutory exception to production: (1) the "custodian of the record has knowledge of the contents of the record" while the requestor does not; (2) placing the burden on the government is consistent with the general rule that a person "asserting an exception is required to prove the facts warranting such an exception," and (3) placing the burden on the government is consistent with the Supreme Court's approach of strictly construing R.C. 149.43 in favor of disclosure. *Natl. Broadcasting* at 83. We agree with Forhan that the first reason arguably applies to personal notes, because the records custodian will likely have possession of the notes while the requester will not. The second and third reasons, however, arguably do not apply to personal notes, because personal notes are not records and therefore are not subject to the requirements of the Public Records Act. Nevertheless, it seems reasonable to this court to require the records custodian, who has possession of the requested record, to demonstrate that the document satisfies the elements of a personal note. Placing the burden of proof on the requestor who does not have access to the document and may not know the circumstances of its creation would appear to place the requestor at a distinct disadvantage. Yet, in *Steffen*, *Cranford*, and *Summers*, the Supreme Court held that personal notes do not qualify as public records, and in *Welsh-Huggins*, the court held that requestors have the initial burden to establish requested records are identifiable public records. As an appellate court in this state, "we are bound to follow the decisions of the Supreme Court of Ohio, which are the prevailing law unless and until reversed or overruled." *Kelsey-Hayes Co.*, 2006-Ohio-428, at ¶ 4 (10th Dist.), citing *State v. Tinker*, 2005-Ohio-2289 (10th Dist.). Accordingly, while it may be logical to place the burden of proof on the records custodian to demonstrate a document is a personal note, that currently is not the law in Ohio.

{¶ 31} Forhan next takes issue with various aspects of the court’s ruling that he failed to carry his burden to demonstrate the interview notes were public records. In his sixth cross-assignment of error, Forhan contends the trial court erred by failing to find that the interview notes were created for a purpose other than the convenience of the individual notetaker. Forhan claims the applicable retention agreements “required Perez Morris to create the Interview [Notes].” (Forhan’s Cross-Appellant’s Brief at 25-26.)

{¶ 32} The House asked the Attorney General to appoint special counsel to investigate and report on both the Cherry and Forhan matters. The Attorney General retained Perez Morris to serve as special counsel on both matters and executed retention agreements with Perez Morris for each assignment. The retention agreements obligated Perez Morris to perform its work as special counsel “in a manner consistent with accepted standards of practice in the legal profession.” (Forhan’s Aug. 4, 2025 Response, Ex. I-D at 2; Forhan’s Submission of Evidence, Ex. P, at 2.) Forhan notes that Prof.Cond.R. 1.1 required the Perez Morris attorneys to “use methods and procedures meeting the standards of competent practitioners.” (Forhan’s Cross-Appellant’s Brief at 27.) *See* Prof.Cond.R. 1.1 (stating that “[a] lawyer shall provide competent representation to a client,” and explaining that competent representation “requires the legal knowledge, skill, thoroughness, and preparation *reasonably* necessary for the representation”). (Emphasis in original.)

{¶ 33} Forhan claims that, because the House hired Perez Morris to investigate each matter and Perez Morris interviewed various witnesses during its investigation, Prof.Cond.R. 1.1 required the Perez Morris attorneys to “document[] the content of the witness interviews.” (Forhan’s Cross-Appellant’s Brief at 27.) As such, Forhan contends the attorneys created their interview notes “as an operational matter necessity, not for personal convenience.” (Forhan’s Cross-Appellant’s Brief at 28.)

{¶ 34} While the House requested, and the Attorney General appointed, Perez Morris to serve as special counsel to investigate the Cherry and Forhan matters, the House and Attorney General left the manner and methods of each investigation to the discretion of the firm. Indeed, no provision in the assignment letters or retention agreements expressly required the Perez Morris attorneys to take notes during the witness interviews. The House filed Sarah Perez’s affidavit in the trial court, and Perez explained that during the interviews the “investigating attorneys took their own notes for their own personal use.”

(Perez Aff. at ¶ 13.) Perez stated the notes were “intended for personal use and the convenience of the individual interviewer,” and that the attorneys “used their own notes as needed to recall information from interviews.” (Perez Aff. at ¶ 14.)

{¶ 35} Thus, Perez’s affidavit demonstrated the Perez Morris attorneys took notes during the witness interviews for their own personal use to aid their ability to recall statements from the interviews. Arguably, an attorney with perfect memory would have had no need to create such notes. Forhan’s tenuous argument regarding the retention agreements and the rules of professional conduct did not amount to clear and convincing evidence establishing that the House or Attorney General required the Perez Morris attorneys to create the interview notes.

{¶ 36} Based on the foregoing, we overrule Forhan’s sixth cross-assignment of error.

{¶ 37} In his second cross-assignment of error, Forhan asserts the trial court erred by failing to recognize that the interview notes were not personal notes because other officials had access to the notes. Forhan bases his argument in this regard on the fact that the retention agreements required Perez Morris to turn certain documents over to the Attorney General and/or the House upon request.

{¶ 38} The retention agreements stated that all materials “commissioned or gathered by Special Counsel or in Special Counsel’s possession that fulfilled an obligation of this Retention Agreement shall be considered the property of the Attorney General and the [House] and must be turned over to the Attorney General or the [House] immediately upon request.” (Forhan’s Submission of Evidence, Ex. P at 5; Forhan’s Aug. 4, 2025 Resp., Ex. I-D at 5.) Forhan relies on his argument in his sixth cross-assignment of error to claim that the retention agreements required the Perez Morris attorneys to create the interview notes. However, we have already rejected that argument. Forhan points to no other evidence to establish that the interview notes were materials commissioned by, gathered by, or in the possession of the Perez Morris attorneys because they fulfilled an obligation of the retention agreements. As such, he fails to demonstrate that the retention agreements required the attorneys to turn their interview notes over to the House or Attorney General upon request. Moreover, nothing in the record indicates that the Attorney General or the House asked Perez Morris to produce the interview notes at any point prior to Forhan’s public records request.

{¶ 39} Forhan also claims it was “likely” that “other Perez Morris interviewers, had access to the Interview [notes].” (Forhan’s Cross-Appellant’s Brief at 11.) Perez explained in her affidavit that the attorney investigators each took their “own, separate notes related to the interviews [they] attended.” (Perez Aff. at ¶ 7.) Perez further stated that she did not “access or review” the other attorney’s notes and that, to her knowledge, the other attorneys “did not share their notes with anyone and did not access or rely upon each other’s notes.” (Perez Aff. at ¶ 7-8, 12-13.) Perez explained each attorney used their own interview notes “to draft the section of the report relaying the facts gathered in the interview,” and stated that “[b]ecause each attorney ha[d] their own personal notes from these interviews, there [was] not a reason to consult the notes of anyone else in the drafting process.” (Perez Aff. at ¶ 18.)

{¶ 40} Forhan contends that, because the House did not present affidavits from every Perez Morris attorney who worked on the Cherry and Forhan matters, the House did not dispel the possibility that another attorney besides Perez may have accessed other attorney’s interview notes. Forhan’s argument in this regard misconstrues who had the burden of proof on this issue. As noted, Forhan had the burden to establish the interview notes were public records and not personal notes. Thus, although it did not have the burden to do so, the House presented some evidence indicating that the Perez Morris attorneys did not access each other’s interview notes. Forhan, however, failed to present any evidence, let alone clear and convincing evidence, demonstrating that anyone besides the creator of each interview note accessed or used any given note. As such, the trial court did not err by finding that Forhan failed to carry his burden of proof on this issue.

{¶ 41} Based on the foregoing, we overrule Forhan’s second cross-assignment of error

{¶ 42} In his third cross-assignment of error, Forhan asserts the trial court erred by failing to recognize that no personal notes exception applies when the requester and the public do not have access to the information contained in the notes. In *Summers*, however, the Supreme Court specifically held that the content of a note is irrelevant to the document’s status as a personal note. The court explained that personal notes would not lose their exempt status “simply because they contain information that is not included in an official report.” *Summers*, 2020-Ohio-5585, at ¶ 66. Accordingly, even if the interview notes

contained information that was not otherwise publicly available, they would not lose their exempt status.

{¶ 43} Nevertheless, the information reflected in the interview notes was publicly available. The House stated that the Cherry and Forhan Reports both had “a ‘facts and conclusions’ version that [was] made publicly available.” (House’s Trial Brief at 3.) Perez explained how the attorneys used their interview notes “for the purpose of drafting the investigation reports,” and how the “[i]nformation in the notes [was] reflected in the reports.” (Perez Aff. at ¶ 14.) Thus, the substance of the information contained in the interview notes was reflected in the publicly available versions of each report.

{¶ 44} Based on the foregoing, we overrule Forhan’s third cross-assignment of error.

{¶ 45} In his first cross-assignment of error, Forhan asserts the trial court erred by finding that the Perez Morris attorneys were not required to maintain the interview notes. Forhan claims the retention agreements obligated Perez Morris to maintain the interview notes, because the retention agreements required the firm to “adhere to Ohio’s Public Records Act, ORC 149.43, and maintain all public records in accordance with state law, including any applicable record retention and destruction requirements.” (Forhan’s Submission of Evidence, Ex. P at 5; Forhan’s Aug. 4, 2025 Resp., Ex. I-D at 5.) However, the noted provision of the retention agreements only obligated Perez Morris to maintain public records. Because Forhan failed to establish that the interview notes were public records, he failed to demonstrate that the retention agreements required Perez Morris to maintain the interview notes.

{¶ 46} Based on the foregoing, we overrule Forhan’s first cross-assignment of error.

{¶ 47} In his fourth cross-assignment of error, Forhan contends the trial court failed to recognize that the personal notes exception may not be asserted to conceal the notetaker’s cooperation with wrongdoing. Forhan cites nothing to support this contention. As noted, in *Summers* the court explained that the content of a note is irrelevant to the document’s status as a personal note. *Id.* at ¶ 66. Indeed, it is the circumstances of the note’s creation, rather than its content, which determines whether a document is a personal note. *See also Sibille*, 770 F.Supp. at 137 (explaining that “personal use, without regard to content, may cause documents to be considered personal, not agency, records”). Thus,

while we find nothing in the notes related to wrongdoing, even if such statements existed, they would not alter the interview notes status as personal notes.

{¶ 48} Based on the foregoing, we overrule Forhan’s fourth cross-assignment of error.

{¶ 49} In his seventh cross-assignment of error, Forhan asserts the trial court erred by finding he failed to meet his burden to establish the interview notes were public records. In his eighth cross-assignment of error, Forhan contends the court erred by failing to order the House to produce the interview notes. The record demonstrates Forhan failed to present clear and convincing evidence to establish that the Perez Morris attorneys created the interview notes for any reason other than their own personal convenience, that anyone besides each individual notetaker accessed or used any of the interview notes, or that anything required the Perez Morris attorneys to maintain the interview notes. As such, Forhan failed to carry his burden to establish the interview notes were public records within the scope of the Public Records Act. The House therefore had no obligation to provide Forhan with copies of the interview notes under R.C. 149.43.

{¶ 50} Based on the foregoing, we overrule Forhan’s seventh and eighth cross-assignments of error.

V. House’s Appeal

A. First Assignment of Error – Drafts are Not Public Records

{¶ 51} In its first assignment of error, the House asserts the trial court erred by finding that the drafts of both reports were records under R.C. 149.011(G). The House initially asserts the drafts were not records of the House because the Perez Morris attorneys, rather than the House, created and maintained the drafts. The court found that, while the House did not create or maintain the drafts, the drafts were documents coming under the House’s jurisdiction. The court further found that Perez Morris attorneys only “created and maintained the Drafts because the House delegated its power to investigate personnel matters to the Firm.” (Oct. 2, 2025 Decision at 4.) As such, the court concluded that the drafts were public records of the House.

{¶ 52} To satisfy the definition of “records” in R.C. 149.011(G), a person requesting public records must demonstrate that the materials are: (1) documents, devices, or items; (2) created or received by or coming under the jurisdiction of a public office; and (3) which

serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. *Doe*, 2024-Ohio-5891, at ¶ 20 (10th Dist.), citing *State ex rel. Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 19. Thus, even if a public office does not “create” or “receive” a record, the record may nonetheless be “under the jurisdiction” of the public office for purposes of R.C. 149.011(G). *State ex rel. Armatas v. Plain Twp. Bd. of Trustees*, 2021-Ohio-1176, ¶ 14. See *State v. Hightower*, 1979 Ohio App. LEXIS 11490, *6 (4th Dist. Dec. 6. 1979) (noting that “[j]urisdiction is the power, authority, capacity or right to act”).

{¶ 53} The Supreme Court has held that a private entity is subject to R.C. 149.43 under a quasi-agency theory where the private entity (1) prepared the records in order to carry out a public office’s responsibilities, (2) the public office was able to monitor the private entity’s performance, and (3) the public office had access to the records for this purpose. *State ex rel. Cincinnati Enquirer v. Krings*, 2001-Ohio-1895; *Carr*, 2006-Ohio-6714, ¶ 36. See *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs*, 1997-Ohio-353, ¶ 15, citing *State ex rel. Gannett Satellite Info. Network v. Shirey*, 1997-Ohio-206 (noting that “[g]overnment entities cannot conceal public records by delegating a public duty to a private entity”). However, once the party requesting public records adequately establishes the “first prong of the quasi-agency test, the requester has met his burden: proof of a delegated public duty establishes that the documents relating to the delegated functions are public records.” *Armatas* at ¶ 16. Accord *State ex rel. Brown v. Columbiana Cty. Jail*, 2024-Ohio-4969, ¶ 19.

{¶ 54} Art. II, Sec. 6 of the Ohio Const., Art. II, § 6 provides that “[e]ach House may punish its members for disorderly conduct.” The Constitution also provides that each “House has all powers necessary to provide for its safety and the undisturbed transaction of its business,” and to obtain “information” with “reference to any alleged breach of its privileges or misconduct of its members.” Ohio Const. Art. II, § 6. Each House also has the authority to “determine its own rules of proceeding.” Art. II, § 7. The Rules of the 135th General Assembly required the Speaker of the House to “preserve order and decorum” and to see that “members conduct themselves in a civil and orderly manner.” Rule 9. (House’s Submission of Evidence at 1222.)

{¶ 55} The Forhan matter concerned allegations that Forhan engaged in erratic, aggressive, and violent behavior toward other members of the House and the public. The Cherry matter concerned informal complaints by a House employee alleging the House was conducting and documenting disciplinary actions in a discriminatory or retaliatory manner. Thus, both investigations essentially concerned House personnel issues. The House had the authority to investigate and report on both matters as part of its constitutional duty to provide for the undisturbed transaction of its business. With respect to Forhan, the House also had the authority to investigate his conduct, and the House's response to it, to preserve order and decorum in the House and to determine whether his actions rose to the level of misconduct. Accordingly, the Cherry and Forhan investigations were both matters under the House's jurisdiction.

{¶ 56} The House claims it did not delegate any public duty to Perez Morris because the Attorney General, rather than the House, hired Perez Morris to act as special counsel. The House's argument in this regard lacks merit. In its own brief, the House states that "[t]o be clear, the House [was] the client" of Perez Morris. (House's Appellant's Brief at 25.) Moreover, for both investigations, the House specifically asked the Attorney General to appoint a law firm to serve as special counsel for the House. Thus, while the Attorney General executed the respective retention agreements with Perez Morris, Perez Morris was acting as special counsel for the House when it conducted both the Cherry and Forhan investigations. Accordingly, the House delegated its duty to investigate and report on both matters to Perez Morris, and Perez Morris created the drafts pursuant to this delegated duty. As such, the drafts could be public records of the House. *Armatas*, 2021-Ohio-1176, at ¶ 16.

{¶ 57} The Supreme Court has held that "[e]ven if a record is not in final form, it may still constitute a 'record' for purposes of R.C. 149.43 if it documents the organization, policies, functions, decisions, procedures, operations, or other activities of a public office." *State ex rel. Calvary v. Upper Arlington*, 2000-Ohio-142, ¶ 16, citing *State ex rel. Wadd v. Cleveland*, 1998-Ohio-444. Thus, a "record" under R.C. 149.011(G) includes documents "whether in draft, compiled, raw, or refined form." *Kish*, 2006-Ohio-1244, at ¶ 2. In *Calvary*, the court held that the draft of a collective bargaining agreement between a union and the city of Upper Arlington was a "record for purposes of R.C. 149.43 because it

document[ed] the activities of respondents Upper Arlington and its officials, i.e., it represent[ed] the city's version of what it and the union agreed on during collective bargaining." *Id.* at 232.

{¶ 58} In *State ex rel. Dist. 1199, Health Care & Social Serv. Union, SEIU v. Gulyassy*, 107 Ohio App.3d 729 (10th Dist. 1995), this court found that drafts of proposed changes to R.C. Chapter 4117 constituted records of the Ohio Office of Collective Bargaining ("OCB"). We concluded the drafts were records under R.C. 149.011(G) because "OCB 'created or received' the drafts, which in this instance 'serve[d] to document' the office's 'policies, operations, and activities' in the legislative arena." *Id.* at 733, quoting R.C. 149.011(G). *See also State ex rel. Carr v. London Corr. Inst.*, 2015-Ohio-2363, ¶ 37 (noting that "a draft is not necessarily excluded from the definition of a public record," and stating that while the "differences between the various versions of the memo may be slight, but [there were] differences, and [the requester was] entitled to copies of all the public records he properly requested").

{¶ 59} The House contends the drafts were not records because, although distinguishable from the interview notes, the drafts had characteristics similar to personal notes. The House notes that the drafts were only used "internally" at Perez Morris "as part of the drafting process and for the investigating attorneys' personal convenience." (House's Appellant's Brief at 14.) The trial court recognized that the drafts were not similar to personal notes because "the House admitted that the Drafts were used by several of the Firm's employees to work on the investigations over time, not just the original drafter for their own convenience." (Oct. 2, 2025 Decision at 4.)

{¶ 60} As noted above, one of the defining characteristics of personal notes is that the note was accessed and used only by the individual who created the note. Perez explained that two attorneys worked on the Cherry Report and three attorneys worked on the Forhan Report. Perez stated the drafts "allow[ed] drafters to work on a particular report over time instead of creating a final version in one session," and she explained that the "editing and revision process" in each draft was "undertaken as a team." (Perez Aff. at ¶ 24, 27.) The House acknowledges that a "limited number of attorneys, 3 or less in both investigations, used the drafts." (House's Appellant's Brief at 14.)

{¶ 61} Thus, Perez’s statements and the House’s own admission demonstrate the drafts were not accessed solely by one individual. Rather, various attorneys accessed and worked on each draft collaboratively as a team. As such, the drafts were not similar to personal notes. *See Gulyassy*, 107 Ohio App.3d at 735-36 (rejecting OCB’s argument that the drafts in the case were similar to personal notes because the drafts were “circulated beyond the writer and outside OCB, and they were not maintained in a manner indicating a private purpose”).

{¶ 62} The drafts of the reports were “document[s] . . . coming under the jurisdiction of” the House, which served to document the operations and activities of the House with respect to the personnel matters at issue in the Cherry and Forhan situations. R.C. 149.011(G). Accordingly, the drafts were public records of the House. Because the drafts were public records, R.C. 149.43(B) obligated the House to produce the drafts to Forhan unless the drafts fell squarely within a statutory exception to production.

{¶ 63} Based on the foregoing, we overrule the House’s first assignment of error.

B. Second Assignment of Error – Trial Preparation Records

{¶ 64} In its second assignment of error, the House asserts the trial court erred by failing to find the drafts were exempt from disclosure as either trial preparation records or attorney work product records. R.C. 149.43(A)(1)(g) exempts “trial preparation records” from the requirements of the Public Records Act. The statute defines a “trial preparation record” as “any record created by or for another party or by or for that party’s representative, in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, . . . and that contains factual information that is specifically compiled for that civil or criminal action or proceeding.” R.C. 149.43(A)(4). The House had the burden to establish the drafts fell squarely within the R.C. 149.43(A)(1)(g) exception for trial preparation records. *Welsh-Huggins*, 2020-Ohio-5371, at ¶ 35.

{¶ 65} “ ‘[W]hen an investigation has multiple purposes, the records of that investigation cannot be said to be trial preparation records.’ ” *State ex rel. Cincinnati Enquirer v. Sage*, 2015-Ohio-974, ¶ 14, quoting *Franklin Cty. Sheriff’s Dept. v. State Emp. Relations Bd.*, 63 Ohio St.3d 498, 502 (1992). Thus, “general fact-finding investigations do not produce trial-preparation records” for purposes of R.C. 149.43(A)(1)(g) and (4), because “ ‘such investigations do not meet the “specifically compiled” requirement of the

statute.’ ” *Id.* at ¶ 14, quoting *State ex rel. Coleman v. Cincinnati*, 57 Ohio St.3d 83, 84 (1991), quoting R.C. 149.43(A)(4). *See id.* at ¶ 13, quoting R.C. 149.43(A)(4) (explaining that a 911 operator’s phone call did not constitute a trial preparation record because the operator placed the call “to assist the first responders and the victim, not to investigate a potential crime,” and nothing indicated the call was “ ‘specifically compiled in reasonable anticipation of . . . [a] criminal action or proceeding’ ”); *Summers*, 2020-Ohio-5585, ¶ 47, quoting *State ex rel. Carpenter v. Tubbs Jones*, 1995-Ohio-313, ¶ 2 (explaining it is “the nature of the record itself that determines its exempt or non-exempt status, and what would otherwise constitute non-exempt records ‘do not become “trial preparation records” simply because they are contained within a prosecutor’s file’ ”).

{¶ 66} In *Barton v. Shupe*, 37 Ohio St.3d 308 (1988), the relators made a public records request for an investigative report compiled by the city of Middletown addressing allegations of wrongdoing by the city’s police chief. The city claimed the report was a trial preparation record because the police chief was a member of the classified civil service and could have appealed his termination, had it occurred. The court rejected the city’s argument. The court noted that, “[w]hile any prudent public officer would be aware that this investigation might lead to litigation -- administrative, civil, or criminal -- the record resulting from the investigation was not ‘specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding.’ ” *Id.* at 309, quoting R.C. 149.43(A)(4). The court explained that the city conducted its investigation “to establish the accuracy of the accusations being made against the police chief and to assess the propriety of his conduct, whatever litigation might result. It was simply a lawful investigation of one public officer by another.” *Id.* *Accord State ex. rel. Natl. Broadcasting Co. v. Cleveland*, 38 Ohio St.3d 79, 84 (1988) (explaining that while “it may be reasonable for the city to anticipate civil litigation as a consequence of the use of deadly force by its police officers against its citizenry,” internal police records addressing these incidents were not trial preparation records because they were not “*specifically* compiled in anticipation of the litigation”) (emphasis in original); *Franklin Cty. Sheriff’s Dept.*, 63 Ohio St.3d at 503.

{¶ 67} In her affidavit, Perez stated that both investigations “involv[ed] situations where criminal, civil and/or administrative actions or proceedings were reasonably anticipated.” (Perez Aff. at ¶ 31.) The House also filed Blessing’s affidavit in the trial court,

and Blessing similarly averred that with respect to both matters “the House anticipated that civil, criminal and/or administrative actions were possible.” (Blessing Aff. at ¶ 7.) The special master reviewed the affidavits and determined the House had produced only “conclusory statements in affidavits that did not identify any particular proceedings or explain how the matters compiled in the investigations would be used in any case.” (Report & Recommendation at 11.) The trial court adopted the special master’s finding.

{¶ 68} We find no error in the trial court’s ruling. The affidavits of Blessing and Perez merely stated that the House believed litigation was possible in both matters, but neither identified any particular litigation the reports were created to address. The record demonstrates that the House, acting through Perez Morris, conducted the investigations to determine the accuracy of the allegations made by Cherry and the accuracy of the allegations levied against Forhan, and to assess the propriety of the House’s response to each situation. The fact that litigation was possible in both situations did not demonstrate that either report was specifically compiled in reasonable anticipation of a civil or criminal action.³

{¶ 69} Thus, the House had the burden to present competent evidence establishing that it specifically compiled the information in the drafts of the Cherry and Forhan Reports in reasonable anticipation of litigation. The conclusory statements in Perez’s and Blessing’s affidavits were insufficient to make this showing. Accordingly, the House failed to carry its burden to establish that the drafts were trial preparation records under R.C. 149.43(A)(1)(g).

{¶ 70} The House also asserts in its second assignment of error that the drafts were exempt from production under R.C. 149.43(A)(1)(zz) because they constituted attorney work product. The House did not raise this argument in the trial court. R.C. 149.43(A)(1)(zz), which excludes “attorney work product records” from the definition

³ The House also claims that the Forhan Report and drafts were specifically compiled in anticipation of litigation because Forhan “has litigation currently pending against the House related to the investigation and the circumstances underlying it.” (House’s Appellant’s Brief at 20.) Forhan did file civil actions against the House, Perez Morris, and various other entities in November 2024. (Cuyahoga C.P. No. CV-24-107178; Ct. of Cl. No. 2024-00798JD.) However, the mere fact that Forhan subsequently filed a lawsuit against the House does not demonstrate that the House compiled the information in the Forhan Report in reasonable anticipation of this lawsuit. Notably, in the lawsuits Forhan alleged claims of defamation based, in part, on statements contained in the Forhan Report. The Forhan Report did not even reference the possibility that Forhan would file a defamation claim based on statements contained in the report.

of public records, became effective on September 30, 2025 through 2025 H.B. No. 96. *See Summers*, 2020-Ohio-5585, ¶ 55 (noting, prior to H.B. No. 96, that the Public Records Act “contain[ed] no exception for attorney work product, except insofar as attorney work product constitutes trial-preparation records”). Accordingly, because R.C. 149.43(A)(1)(zz) was not part of the Public Records Act when Forhan made his public records request, the attorney work product exception was not applicable in the present case. *McDougald*, 2020-Ohio-3686, at ¶ 14, fn. 2.

{¶ 71} Based on the foregoing, we overrule the House’s second assignment of error.

C. Third Assignment of Error – Attorney-Client Privilege

{¶ 72} In its third assignment of error, the House asserts the trial court erred by failing to find the drafts were exempt from disclosure based on the attorney-client privilege. R.C. 149.43(A)(1)(v) exempts “[r]ecords the release of which is prohibited by state or federal law” from the Public Records Act. “The attorney-client privilege, which covers records of communications between attorneys and their government clients pertaining to the attorneys’ legal advice, is a state law prohibiting release of these records.” *State ex rel. Nix v. Cleveland*, 1998-Ohio-290, ¶ 19. Thus, a records custodian has no duty to provide access to records covered by the attorney-client privilege. *Morgan v. Butler*, 2017-Ohio-816, ¶ 12 (10th Dist.); *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 2011-Ohio-6009, ¶ 28.

{¶ 73} The purpose of the attorney-client privilege is to “ ‘encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.’ ” *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 2005-Ohio-1508, ¶ 20, quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). In Ohio, the privilege exists as both a testimonial privilege, under R.C. 2317.02(A), and a common-law privilege, which broadly shields from disclosure any information obtained in the confidential attorney-client relationship. *State ex rel. Platt v. Montgomery Cty. Bd. of Elections*, 2025-Ohio-2079, ¶ 19, citing *Dawson* at ¶ 27.

{¶ 74} The attorney-client privilege arises “ ‘(1) [w]here legal advice of any kind is sought[,] (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence[,] (5) by the client, (6) are at his instance permanently protected, (7) from disclosure by himself or by the legal adviser,

[and] (8) unless the protection is waived.’ ” *Leslie* at ¶ 21, quoting *Reed v. Baxter*, 134 F.3d 351, 355-56 (6th Cir. 1998). To determine whether communications are protected when an attorney is retained to conduct an investigation, “ ‘[t]he relevant question is not whether [an attorney] was retained to conduct an investigation, but rather, whether this investigation was “related to the rendition of legal services.” ’ ” *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth.*, 2009-Ohio-1767, ¶ 27, quoting *In re Allen*, 106 F.3d 582, 603 (4th Cir. 1997), quoting *Dunn v. State Farm Fire & Cas. Co.*, 927 F.2d 869, 875 (5th Cir. 1991). *See also Upjohn* at 395 (noting that the attorney-client privilege “only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney”); *Jacobs v. Equity Trust Co.*, 2020-Ohio-6882, ¶ 14 (9th Dist.), quoting *Alomari v. Ohio Dept. of Pub. Safety*, 2013 U.S. Dist. LEXIS 131270 (S.D. Ohio 2013) (noting that when “ ‘business and legal advice are intertwined, the legal advice must predominate for the communication to be protected’ ”).

{¶ 75} The trial court determined the House failed to carry its burden to establish the drafts were protected by the attorney-client privilege. The special master noted that the application of the attorney-client privilege was not “obviously apparent and manifest just from the content of the Drafts themselves.” (Report & Recommendation at 12.) The special master found the House’s evidence “overly generalized” and noted the evidence did not “identify what information in the hundreds of pages of Drafts [were] supposedly privileged, let alone explain how those unidentified pieces of information ha[d] all the elements” of the attorney-client privilege. (Report & Recommendation at 12-13.) The court adopted the special master’s findings, noting the House failed to meet its “burden of proof for several of the elements, most notably, the legal advice and communications elements.” (Oct. 2, 2025 Decision at 6.)

{¶ 76} The House claims that as the drafts were being prepared, the Perez Morris “attorneys were communicating with the [House],” and that the “[r]evisions [in the drafts], in some instances, reflect communications with clients.” (House’s Appellant’s Brief at 26.) However, the House fails to identify any particular revision in the drafts that reflect an allegedly privileged communication. An attorney’s stylistic revision to a sentence, when the sentence does not otherwise relate to the rendition of legal advice, is not protected by the attorney-client privilege. *See Vidal v. Metro-North Commuter Ry. Co.*, 2014 U.S. Dist.

Lexis 13500, *17 (D.Conn. Feb. 4, 2014), citing *AIU Ins. Co. v. TIG Ins. Co.*, 2008 U.S. Dist. LEXIS 66370, *10 (S.D.N.Y. Aug. 28, 2008) (noting that if the “changes reflected on the draft documents [in an attorney’s file] appear to be stylistic and structural changes only, and do not provide or request legal advice, the documents are not privileged”); *Lindley v. Life Investors Ins. Co of Am.*, U.S. Dist. LEXIS 41798, *20 (N.D. Okla.2010) (stating that a “draft memorandum [was] not protected by attorney-client” privilege because the attorney’s notations on the memorandum were “simply proposed stylistic changes that [did] not contain any legal advice”).

{¶ 77} The House asserts that the Perez Morris attorneys provided it with a report containing “confidential and privileged advice,” and claims that this “advice started as the drafts at issue in this case.” (House’s Appellant’s Brief at 25-26.) The House explained there were two versions of each report: “a ‘facts and conclusions’ version that ha[d] been made publicly available and a ‘recommendation’ version that contain[ed] analysis and recommendations from Perez Morris and [was labeled as] attorney-client privileged.” (House’s Trial Brief at 3.) The public and non-public versions of each report are nearly identical except for the “recommendations” that appear at the end of the non-public version. Perez explained that, before the reports were separated into the two versions, the drafts started out “as a single outline and/or draft,” and she claimed that “revelation of drafts of the ‘Recommendations’ version of the report would reveal content from the final version, which [was] attorney-client privileged.” (Perez Aff. at ¶ 29-30.)

{¶ 78} While Perez alleged that the “recommendations” in the reports and drafts were privileged, Perez did not attempt to explain why the recommendations were privileged. As noted, conclusory statements in an affidavit are insufficient to demonstrate that a document satisfies a statutory exception. *Welsh-Huggins*, 2020-Ohio-5371, at ¶ 35. Simply labeling a document “privileged” does not invoke the attorney-client privilege. See *Bansal v. Mt. Carmel Health Sys.*, 2009-Ohio-6845, ¶ 14 (10th Dist.), quoting *Selby v. Fort Hamilton Hosp.*, 2008-Ohio-2413, ¶ 14 (12th Dist.) (noting that “ ‘[s]imply labeling a document “peer review,” “confidential,” or “privileged” does not invoke the statutory privilege’ ”).

{¶ 79} Furthermore, with respect to the Forhan Report and the drafts thereof, the House waived any privilege which might have applied to the recommendations by

producing the non-public version of the report to Forhan on June 3, 2024. The House “concedes that the privileged ‘recommendations’ version of the Forhan report [was] produced to Forhan.” (Reply at 17.) “[V]oluntary disclosure of privileged communications to a third party waives a claim of [the attorney-client] privilege with regard to communications on the same subject matter.” *MA Equip. Leasing I, L.L.C. v. Tilton*, 2012-Ohio-4668, ¶ 20 (10th Dist.), citing *Hollingsworth v. Time Warner Cable*, 2004-Ohio-3130, ¶ 65 (1st Dist.). See also *State ex rel. Hicks v. Fraley*, 2021-Ohio-2724, ¶ 15, quoting *State v. Post*, 32 Ohio St.3d 380, 385 (1987) (noting that a “client’s voluntary disclosure to a third party of communications protected by the common-law attorney-client privileges ‘breaches the confidentiality underlying the privilege, and constitutes a waiver thereof’ ”); *Mid-American Natl. Bank & Trust Co. v. Cincinnati Ins. Co.*, 74 Ohio App.3d 481, 489 (6th Dist. 1991) (noting that “a partial, voluntary disclosure of privileged communications can result in the loss of privilege for all other communications which deal with the same subject matter”). In the public records context, “[v]oluntarily disclosing the requested record can waive any right to claim an exemption to disclosure.” *State ex rel. Cincinnati Enquirer, Div., of Gannett Satellite Info. Network, Inc. v. Dupuis*, 2002-Ohio-7041, ¶ 22.

{¶ 80} The versions of the recommendations that appear in the drafts of the Forhan Report are on the “same subject matter” as the recommendations that appear in the final version of the report. As such, the House waived any attorney-client privilege that might have applied to the recommendations in the drafts by producing the non-public version of the Forhan Report to Forhan.⁴

{¶ 81} The drafts of the Cherry Report do not obviously reflect legal advice. As such, the House had the burden to produce competent, admissible evidence demonstrating that the drafts specifically contained communications protected by the attorney-client privilege. *Welsh-Huggins*, at ¶ 30, 35, 77. The House, however, failed to carry its burden. Indeed, the House did not present any evidence specifically demonstrating that the recommendations in the drafts of the Cherry Report reflected legal advice.

⁴ The House states that because its “production of the privileged Forhan report was inadvertent,” this court could “determine the extent of the waiver” pursuant to *Miles-McClellan Constr. Co. v. Westerville Bd. of Edn.*, 2006-Ohio-3439 (10th Dist.) However, *Miles-McClellan Constr. Co.* addressed the production of privileged materials during discovery, not in the public records context. Moreover, the hearing to determine the extent of the waiver detailed in *Miles-McClellan Constr. Co.* must be conducted in the trial court, not the appellate court.

{¶ 82} Accordingly, the House failed to carry its burden to demonstrate that any of the drafts were protected by the attorney-client privilege. Based on the foregoing, we overrule the House's third assignment of error.

VI. Conclusion

{¶ 83} Having overruled Forhan's first, second, third, fourth, fifth, sixth, seventh, and eighth cross-assignments of error, and having overruled the House's first, second, and third assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

DORRIAN and JAMISON, JJ., concur.
