

PUBLIC RECORDS POLICY

SECTION 29

EFFECTIVE: 03/09/2023

This policy is not intended to be legal advice. The policy contains a general template for addressing the requirements imposed by the Ohio Public Records Act requiring each public office to have a public records policy located: (1) at every location in which the public may access the public office's records; (2) in the public office's policies and procedures manual; and (3) with each of the public office's records custodians. The policy does not include legal authority for denying specific public records requests. Incorporation of these types of disclosure exemptions should be reviewed by legal counsel before implementation. Additionally, the template requires further explanation to make the policy administratively and operationally effective for the public office.

As noted in the *Ohio Sunshine Laws Manual*, "[t]here is no set, predetermined time period for responding to a public records request. Instead, the requirement to provide 'prompt' production of records for inspection has been interpreted by the courts as being 'without delay' and 'with reasonable speed.'" *Ohio Sunshine Laws 2022: An open Government Resource Manual*, at 14. "Public offices are required to provide copies of requested records in a 'reasonable period of time.' The reasonableness of the time taken depends on the facts and circumstances of the particular request." *Id.* "These terms do not mean 'immediately,' or 'without a moment's delay,' but the courts will find a violation of this requirement when an office cannot show that the time taken was reasonable." *Id.*

For instance, "time spent on the following response tasks may contribute to the calculation of what is 'prompt' or 'reasonable' in a given circumstance:"

Identification of Responsive Records (e.g. needing a request clarified or revised, or to identify records.)

Location and Retrieval (e.g. having to locate records and/or retrieve records from a storage location (e.g., file cabinet, or branch office, or off-site storage facility)).

Review, Analysis, and Redaction (e.g. needing to examine all materials for possible release, perform necessary legal review, or the need to consult with knowledgeable parties; needing to redact exempt materials; providing an explanation and legal authority for all redactions and/or denials.)

Preparation (e.g. obtaining the requester's choice of medium, and making copies.)

Delivery (e.g. waiting for advance payment of costs; delivering copies or scheduling an inspection of the requested records.)

Id. (As also noted in *Ohio Sunshine Laws 2022: An Open Resource Manual*, "[t]he Ohio Supreme Court has held that '[n]o pleading of too much expense, or too much time involved, or too much interference with normal duties, can be used by the [public office] to evade the public's right to inspect and obtain a copy of public records within a reasonable time.'" *Id.*)

I. Purpose:

The Portage County Auditor acknowledges that it maintains many records that are used in the administration and operation of its' Departments. In accordance with state law and the Portage County Records Commission, the Portage County Auditor has adopted Schedules of Records Retention and Disposition that identify these records (RC.-2). These schedules identify records that are stored on a fixed medium (paper, computer, film, etc.); that are created, received, or sent under the jurisdiction of the Portage County Auditor and document the organization, functions, policies, decisions, procedures, operations, or other activities of the Auditor's office. (R.C. 149.011(G); R.C. 149.43(A)(1)). The records maintained by the Auditor's office and the ability to access them are a means to provide trust between the public and the Auditor's Departments.

II. Scope:

- A. Each department that maintains records has a designated employee who serves as the custodian of records maintained by the office and department.
 - 1. Each record custodian has a copy of the Auditor's public records policy. (R.C. 149.43(E)(2)).
 - 2. The supervisor of each department will be the custodian and therefore responsible for that department's log of public records.
- B. The Auditor's public record policy, and the Portage County Schedule of Records Retention and Disposition (RC-2) (Board of Commissioners and General Records of the Board of Commissioners) are located on the auditor's web site.
- C. The Auditor's public records policy is also included as part of the Auditor's policies and procedures manual.
- D. If/when a department of the Auditor receives a request it cannot fulfil and that department is aware of who maintains the records, the department will forward the request immediately to the department that maintains the requested records.

III. Fees:

PUBLIC RECORDS POLICY

SECTION 29

EFFECTIVE: 03/09/2023

- A. The Portage County Auditor, in accordance with Section 149.43 of the Revised Code, has established the following fees for providing copies or reproductions of public records maintained by the Auditors' Departments.
1. For photocopies of either letter or legal size documents, the fees shall be five cents (5 cents) per photocopy, with the first five (5) copies free of charge. Advance payment is not required before any copies are prepared. Two sided photocopies shall be charged at a rate of five cents (5 cents) per side.
 2. For video tapes, CD's, cassette tapes or for any other type of media, the fee shall be the replacement cost or the reproduction (copying) cost. Reproduction costs may only be charged if a commercial or professional service is contracted to provide the copy.
 3. Established costs/fees under this policy shall be clearly posted and visible for the public at all locations authorized to provide copies of public records.

IV. Availability

Inspection

- A. All public records maintained by the Auditor's Departments shall be promptly prepared and made available for inspection to any person during regular business hours as well as a copy of the Portage County current records retention schedule(s). (R.C. 149.43(B)(1)). (Promptness is to be determined by the facts and circumstances of each public records request.)). Regular business hours for the Auditor's Office are Monday through Friday (except holidays), from 8:00 AM to 4:30 PM. However, if a request cannot be fulfilled within 10 working days, the requesting party should be notified of the approximate time it will take to fulfill the request within the 10 working days.
- B. For the purpose of enhancing the ability of the Auditor's Departments to identify, provide for prompt inspection as well as, provide copies or files of the requested items in a reasonable period of time, the Auditors' Office will provide to the requester the Auditors' *Public Records Request* form to the requester to complete.
1. Prompt inspection and copies of records within a reasonable amount of time contemplates the opportunity for legal review.
 2. Although the Auditors' Departments may ask the requestor to make the request in writing, for the requestor's identity, and may inquire about the intended use of the information requested, the requestor shall be advised that:
 - a. The requests are not mandatory; and
 - b. The requestor's refusal to complete the Auditors' *Public Records Request* form does not impair the requestor's right to inspect and/or receive copies of the public record. (R.C. 149.43(B)(5)).
 3. Any person, including corporations, individuals, and even governmental agencies, may request public records, and will be allowed prompt inspection of public records and copies within a reasonable amount of time upon request.
- C. In the event a request is made to inspect and/or obtain a copy of a record maintained by the Auditor's Departments whose release may be prohibited or exempted by either state or federal law, the request shall be forwarded to legal counsel for the Department for research and/or review. The person submitting the request shall be advised that their request is being reviewed by legal counsel to ensure that protected and/or exempted information is not improperly released by the Auditor.
- D. Records, whose release is prohibited or exempted by either state or federal law, or not considered public records as defined by R.C. 149.43(A)(1), shall NOT be subject to public inspection.

Public Records Request

- A. Mailed Requests for Public Records:
1. Upon receiving a written request for copies of a public record made in accordance with Section 149.43 of the Ohio Revised Code via the United States Postal Service, the Auditor's Departments shall promptly respond to the request.
 2. An authorized employee of the Department may contact the requestor and advise them that advance payment is required prior to providing copies of public records, and in addition the fee shall also include the cost of postage and the envelope. (R.C. 149.43(B)(6)(7)).
 3. When practical, the Auditor's Departments may forward copied records by any other means reasonably acceptable to the requestor.

PUBLIC RECORDS POLICY

SECTION 29

EFFECTIVE: 03/09/2023

- a. If a person requests a copy of a public record, the Auditor's Departments shall permit the requestor to choose to have the public record duplicated on paper or upon the same medium upon which the Department maintains the public record or upon any other medium on which the record can reasonably be duplicated as an integral part of the normal operations of the Department, or the responsible Auditor's employee for the public record. (R.C. 149.43(B)(6)).
 - b. Persons seeking copies of public records are not permitted to make their own copies of the requested records by any means. (R.C. 149.43(B)(6)).
- 4. In accordance with Section 149.43(B)(7) of the Ohio Revised Code, the Portage County Auditor may limit the number of requested public records, to be physically delivered by U.S. Mail or by another delivery service, to ten records per month, unless the requestor certifies to the office in writing that the person does not intend to use or forward the requested records or the information contained in them, for commercial purposes.
 - a. "Commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.
- 5. Authorized Auditor's Departmental employees shall comply with the following procedures upon receiving a valid public record request
 - a. Auditor's Departmental employees shall promptly process requests.
 - b. Requestors may be charged the postage fees and the cost of the envelope required to properly send the requested records through the mail.
- B. Written or verbal requests for copies made by the public records requestor or their designee shall be processed in the same manner as mailed requests.

Response and Denials

- A. Requests for inspection and/or copies of public records, which are not maintained by the Auditors' Departments shall be processed in the following manner:
 - 1. If the Department receives a request for a record that it does not maintain or the request is for a record which is no longer maintained, the requestor shall be so notified in writing utilizing the Auditor's *Public Records Request* form that one of the following applies:
 - a. Their request involves records that have never been maintained by the Department;
 - b. Their request involves records that are no longer maintained or have been disposed of or transferred pursuant to applicable Portage County Schedules of Record Retention and Disposition (RC-2);
 - c. Their request involves a record that has been disposed of pursuant to an Application of the One-time Records Disposal (RC-1);
 - d. If the record that is requested is not a record used or maintained by the Department, the requestor shall be notified that in accordance with Ohio Revised Code Section 149.40, that the Department is under no obligation to create records to meet public record requests.
- B. Ambiguous or Overly Broad Request for Public Records

If a requestor makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that the Department responsible for the requested public record cannot reasonably identify what public records are being requested.

 - 1. The Auditor may deny the request and;
 - 2. The Auditor shall provide the requestor with an opportunity to revise the request by informing the requestor of the manner in which records are maintained by the Auditor's Office in the ordinary course of business. (R.C. 149.43(B)(2)).
- C. Denial of a Record Maintained by the Portage County Auditor.

The Auditor may deny a request for a record maintained by the Auditor's Departments if:

 - 1. The record that is requested is prohibited from release due to applicable state or federal law.

PUBLIC RECORDS POLICY

SECTION 29
EFFECTIVE: 03/09/2023

- a. Employees of the Portage County Auditor shall consult legal counsel if they are unsure of whether the record requested should be withheld from disclosure.
 - i. Employees may check the appropriate box on the Auditor's *Public Records Request* form if they are simply applying the statutory exclusion.
 - ii. Otherwise, legal counsel will respond with the legal authority for a denial.
 - 2. As governed by R.C. 149.43(B)(3), if a request is ultimately denied, in part or in whole, the Portage County Auditor shall provide the requestor with an explanation, including legal authority, setting forth why the request was denied.
 - a. If the initial request was provided in writing the explanation also shall be provided to the requestor in writing.
 - b. The explanation shall not preclude the Portage County Auditor from relying upon additional reasons or legal authority in defending an action commenced pursuant to R.C. 149.43(C).
- D. Redacting Exempted Records/Procedure
- 1. "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in Section 149.011 of the Ohio Revised Code (R.C. 149.43)(A)(13));
 - a. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction. (R.C. 149.43(B)(1)).
 - b. If a request is ultimately denied, in part or in whole, the Auditor shall provide the requestor with an explanation, including legal authority, setting forth why the request was denied. (R.C. 149.43(B)(3)).
 - 2. If a public record contains certain information that is exempt from the duty to permit public inspection or to copy the public record, the Auditor shall make available all of the information within the public record that is not exempt. (R.C. 149.43(B)(1)).
 - 3. When making that public record available for public inspection or copying, the Auditor shall notify the requestor of any redaction or make the redaction plainly visible. (R.C. 149.43(B)(1)).
 - 4. The releasing employee shall then reproduce a copy of the page with the redactions; the resulting copy shall be the page that is released to the requester.
 - 5. The first reproduction page with the original redactions made by the employee is the work sheet. It shall be attached to the original record and maintained in accordance with the retention period established for the original document.

Remedy

- A. Grievances
- 1. If a person allegedly is aggrieved by the failure of the Auditor's Office or person responsible for public records to promptly prepare a public record and to make it available to the person for inspection, or by any other failure to comply with an obligation, the requestor shall be advised that they may do one of the following:
 - a. File a complaint with the Clerk of the Court of Claims or the Clerk of the Court of Common Pleas under Section 2743.75 of the Ohio Revised Code;
 - b. Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution. (R.C. 149.43 (C)(1).

PUBLIC RECORDS POLICY

SECTION 29

EFFECTIVE: 03/09/2023

V. Training and Education

The Portage County Auditor’s office continues to update and address all education, training, disclosure and policy requirements mandated by R.C. 109.43 and R.C. 149.43(E)(1)(2).