"Record – 3 Part Test"

"...any document, device, or item, regardless of physical form or characteristic, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

created or received by, or coming under the jurisdiction of, any public office of the state or its political subdivisions,
Public Record

- Records *kept by* a public office
  - Only records that currently exist
  - Assumed to be public unless
    - 31 specifically listed exemptions
    - Any other state or federal exemptions

*When in doubt, give it out.*

Ohio has a Public Records Act

- Complete documents
  - No unrecorded or dispersed information

- Only currently existing documents
  - No future records

- Manner in which they are organized
  - Organizing records to retrieve for office functions takes priority over citizen access
  - Requestor must request the records based on the manner the office organizes them

- Don’t have to recreate or make a new compilation of existing information

- Actual use – record actually is used, not just could be used
GENERAL PROVISIONS

Public Offices
- **Organize** and maintain public records in a manner that they can be made available
- 2 methods of requests
  - **Prompt Inspection**
  - **Copies** – through most any means
- **Cannot**
  - Require a name or identity
  - Require a reason
  - Charge for time
- **Provide legal citations** for all redactions
- **Respond in “reasonable” time**

Requestors
- Any person
- **Identify records with reasonable specificity**
  - Within the manner the office maintains
    - Use of retention schedules
- **Requestor can choose**
  - Medium upon which copies are provided
  - Method of transmission

PROMPT AND REASONABLE: DEFINED…KIND OF

- **Tasks that play a role in response time:**
  - Identification of responsive records
  - Location and retrieval
  - Review, analysis, redaction
  - Preparation
  - Delivery

"The Ohio Supreme Court has held that no 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 or obtain a copy of public records within a reasonable time."
DISPOSITION OUTSIDE OF RETENTION SCHEDULES

All records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law.

• Persons who can prove harm from illegal destruction of records can:
  – Injunctive relief to compel compliance
  – $1000/document (up to $10,000)
  – Reasonable attorney’s fees
  – 5 year statute of limitations

IT SEEMED THAT AGENCIES DID NOT CARE
SETTING THE SCENE FOR CHANGE

• In April 2004, the Ohio Coalition for Open Government, formed by the Ohio Newspaper Association (now the Ohio News Media Association), decided to gauge access to public records.

• 90+ people representing (not to be recognized as area journalists)
  – 42 Ohio newspapers
  – 2 radio stations
  – The Associated Press
  – The University of Dayton
  – Ohio University

• Mission: make public records requests for records that are known to clearly be public, such as minutes.
  – 3 independent public records attorneys agreed that the selected record series were definitely public.

• The “auditors” as they were called, were briefed to make sure they
  – Understood their rights and the government’s rights under Ohio’s public records laws
  – Were taught to act in a consistent manner
  – Did not to use their journalist credentials

• They all made their requests to local governments of all levels on or around April 21.

SUNDAY, JUNE 13, 2004 – CHANGE IS SPARKED

Workers often ignore open-records law
Public employees not always informed despite available training
Monday, June 14, 2004
Kaye Spader
Plain Dealer Reporter
SUNDAY, JUNE 13, 2004 – CHANGE IS SPARKED

Audit: Open records often not so open

Citizens have right to public records

Records really do matter

Plain Dealer reporters recount how public offices handled records requests
NOT EVERY GOVERNMENT FAILED THE TEST

Local records more accessible than state average

SOME KNOW THE LAW AND FOLLOW IT CHEERFULLY

THE CALL TO ACTION WAS SWIFT

Officials call for action
Greater awareness sought on law regarding public records
THE IMMEDIATE AFTERMATH…

- **2004** Attorney General’s Office conducts 14 state-wide trainings open to officials and the public
  - Recognized importance of Records Management to public records processes
  - Invited state’s Local Government Records Archivist to be recognized at each training

- **2007** Overhaul of Public Records Act (took 2 2-year general assemblies to pass)
  - Mandatory training for elected officials once per term
    - Developed and certified by the Attorney General’s Office
  - AG’s Office develops model public records policy
    - All public offices must adopt a public records policy
    - Auditor of State remains the only other certified institution to provide training
    - Requirement that public records policy be posted anywhere records can be requested
    - Requirement that retention schedules are available for public to use in "negotiating" requests
    - State Auditor will audit annually for compliance
    - Redactions to be plainly visible and legal citation provided

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**Overly Broad/Ambiguous Request**

- Lacks clarity to ascertain what the requestor is seeking or where to look
  - Vague
  - Subject to interpretation

- So inclusive that the office is unable to identify records sought based on manner the records are organized
  - All records containing a name or keyword
  - Complete duplication

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**Negotiation**

- Requestor has right to revise or refine request

- Office must inform requestor as to the organization of the records
  - Retention schedules

- Office can ask for identity, purpose, or a written request
  - If they make it clear that it is optional
  - Explain that it might help the office identify and locate records
PUBLIC’S RECOURSE

- File a mandamus action at any level of Ohio court
  - Reasonable attorney’s fees
  - 2007
    - Court Costs
    - Statutory damages at $100/day from filing, up to $1000 (not a penalty, but compensation for loss of use of records)
  - Problem: Tax payers pay twice
    - They pay their own legal fees, hoping to recover them
    - Their tax dollars pay the government’s legal fees to fight them

PUBLIC’S RECOURSE - 2016

- Cost $25
- No attorney required
- Fast turnaround
  - Mediation first
  - Review and decision by special master if mediation fails
  - 40 days