



9.4 Public Records

Development recognizes that access to public information enables citizens to be better informed about the operation of state agencies which, in turn, leads to better government and better public policy. Development has adopted this policy to facilitate its compliance with the public records law. Development procedures for organizing and maintaining its records and responding to public record requests will be consistent with this policy.

ORGANIZATION AND MAINTENANCE OF DEVELOPMENT RECORDS

Agency Record Officer. The Development Director will designate an Agency Record Officer who will have the authority and responsibilities of agency record officers as set forth in Ohio Administrative Code Chapter 149:1-1. The Agency Record Officer will also act as a resource for Record Coordinators regarding organization and maintenance of Development records and will review and approve retention schedules proposed by Record Coordinators.

Organization and Maintenance. Each division or office of Development will be responsible for the organization and maintenance of its respective records so as to enable the efficient operations of the division or office, respectively, and to make public records readily available for inspection and copying when requested in accordance with the public record law. Each division or office of Development will designate at least one Record Coordinator and one back-up Record Coordinator. A division director may determine that the responsibility of the Record Coordinator should be allocated among various offices within the division. In that case, the division director may assign a Record Coordinator and a back-up Record Coordinator for each office within the division.

Record Coordinators. Each Record Coordinator, assisted by the back-up Record Coordinator, will have the following responsibilities with respect to the records of his/her respective division or office:

- Creating retention schedules and reviewing existing retention schedules periodically, but in no event less than once each year, to verify that the existing schedules are appropriate for the nature of the records to be kept by the division or office, as the case may be;
- Ensuring that records are maintained in accordance with applicable retention schedules;
- Sending records to offsite storage in accordance with applicable retention schedules;
- Requesting destruction or archival review of records as the applicable review date occurs; and
- Assisting with the compilation of records in response to public record requests as further described in this policy.

PUBLIC RECORD REQUESTS

Development may receive public records requests in any form, written or oral, and by any delivery method including telephone, e-mail, fax, mail or in person. Consistent with Ohio's public record law, Development will not require any person who requests public records to submit the request in a particular form or to a specific Development employee.

Form of the Request. As a general rule, Development may not require a person making a public record request to:

- Make the request in writing;
- Identify himself or herself; or
- Explain the reason for the request.

In some cases, however, such information could enhance Development's ability to identify, locate, and/or deliver public records responsive to the request.

If any Development employee receives a public record request and determines in his/her reasonable judgment that additional information would enhance Development's ability to identify, locate and/or deliver responsive records, the employee may ask the requestor to: (i) put the request in writing, (ii) provide his/her name and address, and/or (iii) explain the purpose of the request or intended use of the information provided that the employee also tells the requestor that a written request is not mandatory and that the requestor may decline to reveal his or her identity, address and the intended use of the records.

Clarity and Specificity of the Request. By law, and as a practical matter, public record requests must be sufficiently specific and clear so as to allow Development to identify responsive records. In the event any person makes a public record request that is ambiguous or overly broad, or states a public record request in such a way that Development cannot reasonably identify what public records are being requested, Development may respond by denying the public record request as stated and giving the requestor an opportunity to clarify the public record request. The Legal Office, in consultation with the division or office most likely to have responsive records, will determine whether or not a public record request is sufficiently clear and specific. If the requestor declines to clarify his/her request so as to make it sufficiently clear and specific, Development may issue a final response denying the public record request and providing the legal basis for the denial.

Organization of Department Records. In some cases, a public record request may seek records that cannot be readily identified and retrieved from Development's record storage systems. In those cases, Development will inform the requestor of the manner in which potentially responsive records are maintained and accessed in the ordinary course of Development business. Development may deny the public record request as initially stated, but will give the requestor an opportunity to restate the public record request in a manner that takes account of Development's organization and maintenance of its records. The Legal Office, in consultation with the division or office most likely to have responsive records, will determine whether responsive records can be identified and retrieved from Development records storage systems.

RESPONSES TO PUBLIC RECORD REQUESTS

Responses to public record requests must be provided promptly, and responsive records must be made available for inspection during regular business hours within a reasonable amount of time. A requestor may choose to have copies of public records made instead of, or in addition to, reviewing records at Development. When requested, copies of public records must be made available within a reasonable amount of time. Accordingly, Development will respond to public record requests as follows:

Notice to Legal Office. All public record requests will be referred promptly, but in no event more than three (3) working days, to the Legal Office. The Legal Office will assist in organizing the response to all public record requests. Development offices that receive regular, routine requests for public records may arrange with the Legal Office a procedure for responding to such requests that does not require individual reporting of routine requests.

Identification of Record Custodians. The Legal Office, in consultation with the division or office most likely to have records responsive to a public record request, will identify the likely record custodian(s). If records responsive to a public record request are in the possession or control of more than one record custodian in any division or office, the director or manager of the respective division or office will designate an individual to coordinate the identification and collection of responsive records for such division or office.

Identification and Compilation of Responsive Records. Record custodians will respond to public records requests promptly and within a reasonable time in light of the operational needs of

Development. Each record custodian will undertake to identify all records potentially responsive to the public record request, compile responsive records and deliver them to the individual designated for collection of responsive records.

Review for Exempt Information. All potentially responsive public records must be sent to the Legal Office for review prior to release to a requestor. The Legal Office review will be for the purpose of determining if responsive records include information exempt from disclosure and taking appropriate steps to redact such information from public records before they are released.

Format of the Response. Development will permit the requestor to choose to have the public record duplicated on paper, in the same format in which Development keeps the record, or in other format in which Development determines that it reasonably can be duplicated as an integral part of the normal operations. When the requestor makes a choice of format for the delivery of records, Development will provide a copy of it in accordance with that choice, if feasible. If the requestor does not specify the format or the response, the Legal Office will determine the appropriate format. Responses to public record requests may be delivered to the requestor by the Legal Office or by another division or office of Development as determined by the Legal Office.

Responses to be Completed within a Reasonable Time. Responses to public record requests will be completed in a reasonable time taking into account the scope of the request, the ease or difficulty of identifying, compiling and reviewing potentially responsive records, the location of potentially responsive records, and the operational needs of Development.

Internal Tracking. The Legal Office will monitor the status of responses to public record requests. Periodically, the Legal Office will report to the Director, the Assistant Director and the Director of Strategy & Public Affairs about the status of pending public record requests and recently completed responses.

If a Development office has arranged with the Legal Office a procedure for the office to respond to regular, routine requests for public records that does not include review of individual responses by the Legal Office, the office processing such routine requests will monitor the status of responses to such public record requests. The Development office will report periodically to the Legal Office about public record requests received and the status of the responses.

GENERAL INFORMATION ABOUT PUBLIC RECORDS REQUESTS

Records about a Requestor.

- Personnel Files. The section "Responses to Public Records Requests" in this policy shall not apply to a request by a Development employee for a copy of records from his or her own personnel file. All such requests by employees for information from personnel files will be made to the Director of Human Resources or designee. The Director of Human Resources will establish a procedure for responding to such requests.
- Applications for Assistance. Any individual or entity that applies for financial assistance from Development may request a copy of his, her or its application and any related documents and reports submitted to Development by such person in connection with financial assistance provided from Development with which the application or report is filed. Upon verification that the person requesting the information is the individual applicant or authorized representative of the entity applicant, the office responsible for such application, documents or report, as the case may be, may provide the requested record directly to the requestor, and the section "Responses to Public Records Requests" in this policy will not apply to such response. If the office is unable to verify that the requestor is the individual applicant or authorized representative of an entity applicant, then such request will be handled as a normal public records request.

Statutory Exemptions from Public Disclosure. Ohio law specifically prohibits disclosure of certain records, including, for example, some information obtained from private individuals and companies that receive financial assistance from Development. The Legal Office, with the assistance of record custodians, will identify information exempt from disclosure and take appropriate steps to redact exempt information from records before they are released to the requestor.

Public Record Requests Limits. Development will limit the number of records requested by a person that Development will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. The definition of “commercial” will 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.

Denial of a Public Record Request. If a public record request is ultimately denied, in whole or in part, Development must provide an explanation for the denial, including legal authority. Therefore, no public record request may be denied without the prior review and approval of the Legal Office.

Costs. To offset the out-of-pocket costs incurred by Development to respond to public record requests, Development will seek payment for such expenses to the extent permitted by law, which may include copy costs, postage or other costs. Development may require payment of such expenses in advance to the extent permitted by law. If Development’s out-of-pocket expense is less than \$1.00 for any response, the costs will be waived for such response.

DEFINITIONS

- Public Record(s): Public record has the meaning set forth in Ohio Revised Code section 149.43. Generally, any record kept by a public office is a public record unless one of several statutory exemptions applies. Records created on personal devices related to Development’s business, including text messages and e-mail messages sent to or from personal e-mail accounts, may be subject to Ohio’s public record law.
- Public Record Request: Any request received by any employee of Development seeking public records of Development.
- Record: Record or records has the meaning set forth in Ohio Revised Code section 149.011 as follows: Record includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, 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.
- Record Custodian: Any employee of Development who may have possession or control of a public record responsive to a public record request. With respect to records of Development stored off-site or in the possession of a third-party, the record custodian is the Development employee responsible for placing or maintaining the record in off-site storage or the possession of the third-party.

AUTHORITY & REFERENCE

ORC 149.43
ORC 122.36
OAC Chapter 149:1-1

EFFECTIVE DATE:

Revised policy effective 07-1-2021:

- Expanded Public Records definition to include records on personal devices

Revised policy effective 01-2-2019:

- Previously 1.8 Public Records
- No substantive changes