

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**H. B. No. 256**

**Representative Wagoner**

**Cosponsors: Representatives Oelslager, Dyer, McGregor, J., Seitz, Bulp,  
McGregor, R., Combs, Fessler, Hite, Stebelton**

—

**A B I L L**

To amend sections 121.22 and 149.43 and to enact 1  
sections 2743.31, 2743.32, 2743.33, and 2743.34 of 2  
the Revised Code to establish the office of Public 3  
Access Counselor in the Court of Claims to receive 4  
complaints and issue advisory opinions concerning 5  
the Public Records Law and Open Meetings Law. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 121.22 and 149.43 be amended and 7  
sections 2743.31, 2743.32, 2743.33, and 2743.34 of the Revised 8  
Code be enacted to read as follows: 9

**Sec. 121.22.** (A) This section shall be liberally construed to 10  
require public officials to take official action and to conduct 11  
all deliberations upon official business only in open meetings 12  
unless the subject matter is specifically excepted by law. 13

(B) As used in this section: 14

(1) "Public body" means any of the following: 15

(a) Any board, commission, committee, council, or similar 16  
decision-making body of a state agency, institution, or authority, 17

and any legislative authority or board, commission, committee, 18  
council, agency, authority, or similar decision-making body of any 19  
county, township, municipal corporation, school district, or other 20  
political subdivision or local public institution; 21

(b) Any committee or subcommittee of a body described in 22  
division (B)(1)(a) of this section; 23

(c) A court of jurisdiction of a sanitary district organized 24  
wholly for the purpose of providing a water supply for domestic, 25  
municipal, and public use when meeting for the purpose of the 26  
appointment, removal, or reappointment of a member of the board of 27  
directors of such a district pursuant to section 6115.10 of the 28  
Revised Code, if applicable, or for any other matter related to 29  
such a district other than litigation involving the district. As 30  
used in division (B)(1)(c) of this section, "court of 31  
jurisdiction" has the same meaning as "court" in section 6115.01 32  
of the Revised Code. 33

(2) "Meeting" means any prearranged discussion of the public 34  
business of the public body by a majority of its members. 35

(3) "Regulated individual" means either of the following: 36

(a) A student in a state or local public educational 37  
institution; 38

(b) A person who is, voluntarily or involuntarily, an inmate, 39  
patient, or resident of a state or local institution because of 40  
criminal behavior, mental illness or retardation, disease, 41  
disability, age, or other condition requiring custodial care. 42

(4) "Public office" has the same meaning as in section 43  
149.011 of the Revised Code. 44

(C) All meetings of any public body are declared to be public 45  
meetings open to the public at all times. A member of a public 46  
body shall be present in person at a meeting open to the public to 47

be considered present or to vote at the meeting and for purposes 48  
of determining whether a quorum is present at the meeting. 49

The minutes of a regular or special meeting of any public 50  
body shall be promptly prepared, filed, and maintained and shall 51  
be open to public inspection. The minutes need only reflect the 52  
general subject matter of discussions in executive sessions 53  
authorized under division (G) or (J) of this section. 54

(D) This section does not apply to any of the following: 55

(1) A grand jury; 56

(2) An audit conference conducted by the auditor of state or 57  
independent certified public accountants with officials of the 58  
public office that is the subject of the audit; 59

(3) The adult parole authority when its hearings are 60  
conducted at a correctional institution for the sole purpose of 61  
interviewing inmates to determine parole or pardon; 62

(4) The organized crime investigations commission established 63  
under section 177.01 of the Revised Code; 64

(5) Meetings of a child fatality review board established 65  
under section 307.621 of the Revised Code and meetings conducted 66  
pursuant to sections 5153.171 to 5153.173 of the Revised Code; 67

(6) The state medical board when determining whether to 68  
suspend a certificate without a prior hearing pursuant to division 69  
(G) of either section 4730.25 or 4731.22 of the Revised Code; 70

(7) The board of nursing when determining whether to suspend 71  
a license or certificate without a prior hearing pursuant to 72  
division (B) of section 4723.281 of the Revised Code; 73

(8) The state board of pharmacy when determining whether to 74  
suspend a license without a prior hearing pursuant to division (D) 75  
of section 4729.16 of the Revised Code; 76

(9) The state chiropractic board when determining whether to 77

suspend a license without a hearing pursuant to section 4734.37 of 78  
the Revised Code. 79

(10) The executive committee of the emergency response 80  
commission when determining whether to issue an enforcement order 81  
or request that a civil action, civil penalty action, or criminal 82  
action be brought to enforce Chapter 3750. of the Revised Code. 83

(E) The controlling board, the development financing advisory 84  
council, the industrial technology and enterprise advisory 85  
council, the tax credit authority, or the minority development 86  
financing advisory board, when meeting to consider granting 87  
assistance pursuant to Chapter 122. or 166. of the Revised Code, 88  
in order to protect the interest of the applicant or the possible 89  
investment of public funds, by unanimous vote of all board, 90  
council, or authority members present, may close the meeting 91  
during consideration of the following information confidentially 92  
received by the authority, council, or board from the applicant: 93

(1) Marketing plans; 94

(2) Specific business strategy; 95

(3) Production techniques and trade secrets; 96

(4) Financial projections; 97

(5) Personal financial statements of the applicant or members 98  
of the applicant's immediate family, including, but not limited 99  
to, tax records or other similar information not open to public 100  
inspection. 101

The vote by the authority, council, or board to accept or 102  
reject the application, as well as all proceedings of the 103  
authority, council, or board not subject to this division, shall 104  
be open to the public and governed by this section. 105

(F) Every public body, by rule, shall establish a reasonable 106  
method whereby any person may determine the time and place of all 107

regularly scheduled meetings and the time, place, and purpose of 108  
all special meetings. A public body shall not hold a special 109  
meeting unless it gives at least twenty-four hours' advance notice 110  
to the news media that have requested notification, except in the 111  
event of an emergency requiring immediate official action. In the 112  
event of an emergency, the member or members calling the meeting 113  
shall notify the news media that have requested notification 114  
immediately of the time, place, and purpose of the meeting. 115

The rule shall provide that any person, upon request and 116  
payment of a reasonable fee, may obtain reasonable advance 117  
notification of all meetings at which any specific type of public 118  
business is to be discussed. Provisions for advance notification 119  
may include, but are not limited to, mailing the agenda of 120  
meetings to all subscribers on a mailing list or mailing notices 121  
in self-addressed, stamped envelopes provided by the person. 122

(G) Except as provided in division (J) of this section, the 123  
members of a public body may hold an executive session only after 124  
a majority of a quorum of the public body determines, by a roll 125  
call vote, to hold an executive session and only at a regular or 126  
special meeting for the sole purpose of the consideration of any 127  
of the following matters: 128

(1) To consider the appointment, employment, dismissal, 129  
discipline, promotion, demotion, or compensation of a public 130  
employee or official, or the investigation of charges or 131  
complaints against a public employee, official, licensee, or 132  
regulated individual, unless the public employee, official, 133  
licensee, or regulated individual requests a public hearing. 134  
Except as otherwise provided by law, no public body shall hold an 135  
executive session for the discipline of an elected official for 136  
conduct related to the performance of the elected official's 137  
official duties or for the elected official's removal from office. 138  
If a public body holds an executive session pursuant to division 139

(G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law	171
or regulations or state statutes;	172
(6) Details relative to the security arrangements and	173
emergency response protocols for a public body or a public office,	174
if disclosure of the matters discussed could reasonably be	175
expected to jeopardize the security of the public body or public	176
office;	177
(7) In the case of a county hospital operated pursuant to	178
Chapter 339. of the Revised Code or a municipal hospital operated	179
pursuant to Chapter 749. of the Revised Code, to consider trade	180
secrets, as defined in section 1333.61 of the Revised Code.	181
If a public body holds an executive session to consider any	182
of the matters listed in divisions (G)(2) to (7) of this section,	183
the motion and vote to hold that executive session shall state	184
which one or more of the approved matters listed in those	185
divisions are to be considered at the executive session.	186
A public body specified in division (B)(1)(c) of this section	187
shall not hold an executive session when meeting for the purposes	188
specified in that division.	189
(H) A resolution, rule, or formal action of any kind is	190
invalid unless adopted in an open meeting of the public body. A	191
resolution, rule, or formal action adopted in an open meeting that	192
results from deliberations in a meeting not open to the public is	193
invalid unless the deliberations were for a purpose specifically	194
authorized in division (G) or (J) of this section and conducted at	195
an executive session held in compliance with this section. A	196
resolution, rule, or formal action adopted in an open meeting is	197
invalid if the public body that adopted the resolution, rule, or	198
formal action violated division (F) of this section.	199
(I)(1) Any person may bring an action to enforce this	200
section. An action under division (I)(1) of this section shall be	201

brought within two years after the date of the alleged violation 202  
or threatened violation. Upon proof of a violation or threatened 203  
violation of this section in an action brought by any person, the 204  
court of common pleas shall issue an injunction to compel the 205  
members of the public body to comply with its provisions. 206

(2)(a) If the court of common pleas issues an injunction 207  
pursuant to division (I)(1) of this section, the court shall order 208  
the public body that it enjoins to pay a civil forfeiture of five 209  
hundred dollars to the party that sought the injunction and shall 210  
award to that party all court costs and, subject to reduction as 211  
described in division (I)(2) of this section, reasonable 212  
attorney's fees. The court, in its discretion, may reduce an award 213  
of attorney's fees to the party that sought the injunction or not 214  
award attorney's fees to that party if the court determines both 215  
of the following: 216

(i) That, based on the ordinary application of statutory law 217  
and case law as it existed at the time of violation or threatened 218  
violation that was the basis of the injunction, a well-informed 219  
public body reasonably would believe that the public body was not 220  
violating or threatening to violate this section; 221

(ii) That a well-informed public body reasonably would 222  
believe that the conduct or threatened conduct that was the basis 223  
of the injunction would serve the public policy that underlies the 224  
authority that is asserted as permitting that conduct or 225  
threatened conduct. 226

(b) If the court of common pleas does not issue an injunction 227  
pursuant to division (I)(1) of this section and the court 228  
determines at that time that the bringing of the action was 229  
frivolous conduct, as defined in division (A) of section 2323.51 230  
of the Revised Code, the court shall award to the public body all 231  
court costs and reasonable attorney's fees, as determined by the 232  
court. 233



(3) Irreparable harm and prejudice to the party that sought 234  
the injunction shall be conclusively and irrebuttably presumed 235  
upon proof of a violation or threatened violation of this section. 236

(4) A member of a public body who knowingly violates an 237  
injunction issued pursuant to division (I)(1) of this section may 238  
be removed from office by an action brought in the court of common 239  
pleas for that purpose by the prosecuting attorney or the attorney 240  
general. 241

(J)(1) Pursuant to division (C) of section 5901.09 of the 242  
Revised Code, a veterans service commission shall hold an 243  
executive session for one or more of the following purposes unless 244  
an applicant requests a public hearing: 245

(a) Interviewing an applicant for financial assistance under 246  
sections 5901.01 to 5901.15 of the Revised Code; 247

(b) Discussing applications, statements, and other documents 248  
described in division (B) of section 5901.09 of the Revised Code; 249

(c) Reviewing matters relating to an applicant's request for 250  
financial assistance under sections 5901.01 to 5901.15 of the 251  
Revised Code. 252

(2) A veterans service commission shall not exclude an 253  
applicant for, recipient of, or former recipient of financial 254  
assistance under sections 5901.01 to 5901.15 of the Revised Code, 255  
and shall not exclude representatives selected by the applicant, 256  
recipient, or former recipient, from a meeting that the commission 257  
conducts as an executive session that pertains to the applicant's, 258  
recipient's, or former recipient's application for financial 259  
assistance. 260

(3) A veterans service commission shall vote on the grant or 261  
denial of financial assistance under sections 5901.01 to 5901.15 262  
of the Revised Code only in an open meeting of the commission. The 263  
minutes of the meeting shall indicate the name, address, and 264

occupation of the applicant, whether the assistance was granted or 265  
denied, the amount of the assistance if assistance is granted, and 266  
the votes for and against the granting of assistance. 267

(K) Any person that is denied any of the person's rights 268  
under this section may file an informal complaint or a formal 269  
complaint with the public access counselor under section 2743.33 270  
of the Revised Code. 271

**Sec. 149.43.** (A) As used in this section: 272

(1) "Public record" means records kept by any public office, 273  
including, but not limited to, state, county, city, village, 274  
township, and school district units, and records pertaining to the 275  
delivery of educational services by an alternative school in this 276  
state kept by the nonprofit or for-profit entity operating the 277  
alternative school pursuant to section 3313.533 of the Revised 278  
Code. "Public record" does not mean any of the following: 279

(a) Medical records; 280

(b) Records pertaining to probation and parole proceedings or 281  
to proceedings related to the imposition of community control 282  
sanctions and post-release control sanctions; 283

(c) Records pertaining to actions under section 2151.85 and 284  
division (C) of section 2919.121 of the Revised Code and to 285  
appeals of actions arising under those sections; 286

(d) Records pertaining to adoption proceedings, including the 287  
contents of an adoption file maintained by the department of 288  
health under section 3705.12 of the Revised Code; 289

(e) Information in a record contained in the putative father 290  
registry established by section 3107.062 of the Revised Code, 291  
regardless of whether the information is held by the department of 292  
job and family services or, pursuant to section 3111.69 of the 293  
Revised Code, the office of child support in the department or a 294

child support enforcement agency;	295
(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;	296 297 298
(g) Trial preparation records;	299
(h) Confidential law enforcement investigatory records;	300
(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;	301 302
(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;	303 304
(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;	305 306 307 308
(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;	309 310 311 312
(m) Intellectual property records;	313
(n) Donor profile records;	314
(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;	315 316
(p) Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information;	317 318 319 320
(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that	321 322 323

constitutes a trade secret, as defined in section 1333.61 of the Revised Code;	324 325
(r) Information pertaining to the recreational activities of a person under the age of eighteen;	326 327
(s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, other than the report prepared pursuant to section 307.626 of the Revised Code;	328 329 330 331 332
(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;	333 334 335 336
(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;	337 338 339 340 341
(v) Records the release of which is prohibited by state or federal law;	342 343
(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;	344 345 346
(x) Information reported and evaluations conducted pursuant to section 3701.072 of the Revised Code;	347 348
(y) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from	349 350 351 352 353

financial assistance from the agency. 354

(2) "Confidential law enforcement investigatory record" means 355  
any record that pertains to a law enforcement matter of a 356  
criminal, quasi-criminal, civil, or administrative nature, but 357  
only to the extent that the release of the record would create a 358  
high probability of disclosure of any of the following: 359

(a) The identity of a suspect who has not been charged with 360  
the offense to which the record pertains, or of an information 361  
source or witness to whom confidentiality has been reasonably 362  
promised; 363

(b) Information provided by an information source or witness 364  
to whom confidentiality has been reasonably promised, which 365  
information would reasonably tend to disclose the source's or 366  
witness's identity; 367

(c) Specific confidential investigatory techniques or 368  
procedures or specific investigatory work product; 369

(d) Information that would endanger the life or physical 370  
safety of law enforcement personnel, a crime victim, a witness, or 371  
a confidential information source. 372

(3) "Medical record" means any document or combination of 373  
documents, except births, deaths, and the fact of admission to or 374  
discharge from a hospital, that pertains to the medical history, 375  
diagnosis, prognosis, or medical condition of a patient and that 376  
is generated and maintained in the process of medical treatment. 377

(4) "Trial preparation record" means any record that contains 378  
information that is specifically compiled in reasonable 379  
anticipation of, or in defense of, a civil or criminal action or 380  
proceeding, including the independent thought processes and 381  
personal trial preparation of an attorney. 382

(5) "Intellectual property record" means a record, other than 383

a financial or administrative record, that is produced or 384  
collected by or for faculty or staff of a state institution of 385  
higher learning in the conduct of or as a result of study or 386  
research on an educational, commercial, scientific, artistic, 387  
technical, or scholarly issue, regardless of whether the study or 388  
research was sponsored by the institution alone or in conjunction 389  
with a governmental body or private concern, and that has not been 390  
publicly released, published, or patented. 391

(6) "Donor profile record" means all records about donors or 392  
potential donors to a public institution of higher education 393  
except the names and reported addresses of the actual donors and 394  
the date, amount, and conditions of the actual donation. 395

(7) "Peace officer, parole officer, prosecuting attorney, 396  
assistant prosecuting attorney, correctional employee, youth 397  
services employee, firefighter, or EMT residential and familial 398  
information" means any information that discloses any of the 399  
following about a peace officer, parole officer, prosecuting 400  
attorney, assistant prosecuting attorney, correctional employee, 401  
youth services employee, firefighter, or EMT: 402

(a) The address of the actual personal residence of a peace 403  
officer, parole officer, assistant prosecuting attorney, 404  
correctional employee, youth services employee, firefighter, or 405  
EMT, except for the state or political subdivision in which the 406  
peace officer, parole officer, assistant prosecuting attorney, 407  
correctional employee, youth services employee, firefighter, or 408  
EMT resides; 409

(b) Information compiled from referral to or participation in 410  
an employee assistance program; 411

(c) The social security number, the residential telephone 412  
number, any bank account, debit card, charge card, or credit card 413  
number, or the emergency telephone number of, or any medical 414

information pertaining to, a peace officer, parole officer, 415  
prosecuting attorney, assistant prosecuting attorney, correctional 416  
employee, youth services employee, firefighter, or EMT; 417

(d) The name of any beneficiary of employment benefits, 418  
including, but not limited to, life insurance benefits, provided 419  
to a peace officer, parole officer, prosecuting attorney, 420  
assistant prosecuting attorney, correctional employee, youth 421  
services employee, firefighter, or EMT by the peace officer's, 422  
parole officer's, prosecuting attorney's, assistant prosecuting 423  
attorney's, correctional employee's, youth services employee's, 424  
firefighter's, or EMT's employer; 425

(e) The identity and amount of any charitable or employment 426  
benefit deduction made by the peace officer's, parole officer's, 427  
prosecuting attorney's, assistant prosecuting attorney's, 428  
correctional employee's, youth services employee's, firefighter's, 429  
or EMT's employer from the peace officer's, parole officer's, 430  
prosecuting attorney's, assistant prosecuting attorney's, 431  
correctional employee's, youth services employee's, firefighter's, 432  
or EMT's compensation unless the amount of the deduction is 433  
required by state or federal law; 434

(f) The name, the residential address, the name of the 435  
employer, the address of the employer, the social security number, 436  
the residential telephone number, any bank account, debit card, 437  
charge card, or credit card number, or the emergency telephone 438  
number of the spouse, a former spouse, or any child of a peace 439  
officer, parole officer, prosecuting attorney, assistant 440  
prosecuting attorney, correctional employee, youth services 441  
employee, firefighter, or EMT; 442

(g) A photograph of a peace officer who holds a position or 443  
has an assignment that may include undercover or plain clothes 444  
positions or assignments as determined by the peace officer's 445  
appointing authority. 446

As used in divisions (A)(7) and (B)(9) of this section, 447  
"peace officer" has the same meaning as in section 109.71 of the 448  
Revised Code and also includes the superintendent and troopers of 449  
the state highway patrol; it does not include the sheriff of a 450  
county or a supervisory employee who, in the absence of the 451  
sheriff, is authorized to stand in for, exercise the authority of, 452  
and perform the duties of the sheriff. 453

As used in divisions (A)(7) and (B)~~(5)~~(9) of this section, 454  
"correctional employee" means any employee of the department of 455  
rehabilitation and correction who in the course of performing the 456  
employee's job duties has or has had contact with inmates and 457  
persons under supervision. 458

As used in divisions (A)(7) and (B)~~(5)~~(9) of this section, 459  
"youth services employee" means any employee of the department of 460  
youth services who in the course of performing the employee's job 461  
duties has or has had contact with children committed to the 462  
custody of the department of youth services. 463

As used in divisions (A)(7) and (B)(9) of this section, 464  
"firefighter" means any regular, paid or volunteer, member of a 465  
lawfully constituted fire department of a municipal corporation, 466  
township, fire district, or village. 467

As used in divisions (A)(7) and (B)(9) of this section, "EMT" 468  
means EMTs-basic, EMTs-I, and paramedics that provide emergency 469  
medical services for a public emergency medical service 470  
organization. "Emergency medical service organization," 471  
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as in 472  
section 4765.01 of the Revised Code. 473

(8) "Information pertaining to the recreational activities of 474  
a person under the age of eighteen" means information that is kept 475  
in the ordinary course of business by a public office, that 476  
pertains to the recreational activities of a person under the age 477



of eighteen years, and that discloses any of the following: 478

(a) The address or telephone number of a person under the age 479  
of eighteen or the address or telephone number of that person's 480  
parent, guardian, custodian, or emergency contact person; 481

(b) The social security number, birth date, or photographic 482  
image of a person under the age of eighteen; 483

(c) Any medical record, history, or information pertaining to 484  
a person under the age of eighteen; 485

(d) Any additional information sought or required about a 486  
person under the age of eighteen for the purpose of allowing that 487  
person to participate in any recreational activity conducted or 488  
sponsored by a public office or to use or obtain admission 489  
privileges to any recreational facility owned or operated by a 490  
public office. 491

(9) "Community control sanction" has the same meaning as in 492  
section 2929.01 of the Revised Code. 493

(10) "Post-release control sanction" has the same meaning as 494  
in section 2967.01 of the Revised Code. 495

(11) "Redaction" means obscuring or deleting any information 496  
that is exempt from the duty to permit public inspection or 497  
copying from an item that otherwise meets the definition of a 498  
"record" in section 149.011 of the Revised Code. 499

(12) "Designee" and "elected official" have the same meanings 500  
as in section 109.43 of the Revised Code. 501

(B)(1) Upon request and subject to division (B)(8) of this 502  
section, all public records responsive to the request shall be 503  
promptly prepared and made available for inspection to any person 504  
at all reasonable times during regular business hours. Subject to 505  
division (B)(8) of this section, upon request, a public office or 506  
person responsible for public records shall make copies of the 507

requested public record available at cost and within a reasonable 508  
period of time. If a public record contains information that is 509  
exempt from the duty to permit public inspection or to copy the 510  
public record, the public office or the person responsible for the 511  
public record shall make available all of the information within 512  
the public record that is not exempt. When making that public 513  
record available for public inspection or copying that public 514  
record, the public office or the person responsible for the public 515  
record shall notify the requester of any redaction or make the 516  
redaction plainly visible. A redaction shall be deemed a denial of 517  
a request to inspect or copy the redacted information, except if 518  
federal or state law authorizes or requires a public office to 519  
make the redaction. 520

(2) To facilitate broader access to public records, a public 521  
office or the person responsible for public records shall organize 522  
and maintain public records in a manner that they can be made 523  
available for inspection or copying in accordance with division 524  
(B) of this section. A public office also shall have available a 525  
copy of its current records retention schedule at a location 526  
readily available to the public. If a requester makes an ambiguous 527  
or overly broad request or has difficulty in making a request for 528  
copies or inspection of public records under this section such 529  
that the public office or the person responsible for the requested 530  
public record cannot reasonably identify what public records are 531  
being requested, the public office or the person responsible for 532  
the requested public record may deny the request but shall provide 533  
the requester with an opportunity to revise the request by 534  
informing the requester of the manner in which records are 535  
maintained by the public office and accessed in the ordinary 536  
course of the public office's or person's duties. 537

(3)(a) If a request is ultimately denied, in part or in 538  
whole, the public office or the person responsible for the 539

requested public record shall provide the requester with an 540  
explanation, including legal authority, setting forth why the 541  
request was denied. If the initial request was provided in 542  
writing, the explanation also shall be provided to the requester 543  
in writing. The explanation shall not preclude the public office 544  
or the person responsible for the requested public record from 545  
relying upon additional reasons or legal authority in defending an 546  
action commenced under division (C) of this section. 547

(b) If a request is ultimately denied, in part or in whole, 548  
the public office may provide the requester information on how to 549  
contact the office of the public access counselor established 550  
under section 2743.31 of the Revised Code and the procedures for 551  
filing an informal complaint or a formal complaint with the public 552  
access counselor under section 2743.33 of the Revised Code. 553

(4) Unless specifically required or authorized by state or 554  
federal law or in accordance with division (B) of this section, no 555  
public office or person responsible for public records may limit 556  
or condition the availability of public records by requiring 557  
disclosure of the requester's identity or the intended use of the 558  
requested public record. Any requirement that the requester 559  
disclose the ~~requester's~~ requester's identity or the intended use 560  
of the requested public record constitutes a denial of the 561  
request. 562

(5) A public office or person responsible for public records 563  
may ask a requester to make the request in writing, may ask for 564  
the requester's identity, and may inquire about the intended use 565  
of the information requested, but may do so only after disclosing 566  
to the requester that a written request is not mandatory and that 567  
the requester may decline to reveal the requester's identity or 568  
the intended use and when a written request or disclosure of the 569  
identity or intended use would benefit the requester by enhancing 570  
the ability of the public office or person responsible for public 571

records to identify, locate, or deliver the public records sought 572  
by the requester. 573

(6) If any person chooses to obtain a copy of a public record 574  
in accordance with division (B) of this section, the public office 575  
or person responsible for the public record may require that 576  
person to pay in advance the cost involved in providing the copy 577  
of the public record in accordance with the choice made by the 578  
person seeking the copy under this division. The public office or 579  
the person responsible for the public record shall permit that 580  
person to choose to have the public record duplicated upon paper, 581  
upon the same medium upon which the public office or person 582  
responsible for the public record keeps it, or upon any other 583  
medium upon which the public office or person responsible for the 584  
public record determines that it reasonably can be duplicated as 585  
an integral part of the normal operations of the public office or 586  
person responsible for the public record. When the person seeking 587  
the copy makes a choice under this division, the public office or 588  
person responsible for the public record shall provide a copy of 589  
it in accordance with the choice made by the person seeking the 590  
copy. Nothing in this section requires a public office or person 591  
responsible for the public record to allow the person seeking a 592  
copy of the public record to make the copies of the public record. 593

(7) Upon a request made in accordance with division (B) of 594  
this section and subject to division (B)(6) of this section, a 595  
public office or person responsible for public records shall 596  
transmit a copy of a public record to any person by United States 597  
mail or by any other means of delivery or transmission within a 598  
reasonable period of time after receiving the request for the 599  
copy. The public office or person responsible for the public 600  
record may require the person making the request to pay in advance 601  
the cost of postage if the copy is transmitted by United States 602  
mail or the cost of delivery if the copy is transmitted other than 603

by United States mail, and to pay in advance the costs incurred 604  
for other supplies used in the mailing, delivery, or transmission. 605

Any public office may adopt a policy and procedures that it 606  
will follow in transmitting, within a reasonable period of time 607  
after receiving a request, copies of public records by United 608  
States mail or by any other means of delivery or transmission 609  
pursuant to this division. A public office that adopts a policy 610  
and procedures under this division shall comply with them in 611  
performing its duties under this division. 612

In any policy and procedures adopted under this division, a 613  
public office may limit the number of records requested by a 614  
person that the office will transmit by United States mail to ten 615  
per month, unless the person certifies to the office in writing 616  
that the person does not intend to use or forward the requested 617  
records, or the information contained in them, for commercial 618  
purposes. For purposes of this division, "commercial" shall be 619  
narrowly construed and does not include reporting or gathering 620  
news, reporting or gathering information to assist citizen 621  
oversight or understanding of the operation or activities of 622  
government, or nonprofit educational research. 623

(8) A public office or person responsible for public records 624  
is not required to permit a person who is incarcerated pursuant to 625  
a criminal conviction or a juvenile adjudication to inspect or to 626  
obtain a copy of any public record concerning a criminal 627  
investigation or prosecution or concerning what would be a 628  
criminal investigation or prosecution if the subject of the 629  
investigation or prosecution were an adult, unless the request to 630  
inspect or to obtain a copy of the record is for the purpose of 631  
acquiring information that is subject to release as a public 632  
record under this section and the judge who imposed the sentence 633  
or made the adjudication with respect to the person, or the 634  
judge's successor in office, finds that the information sought in 635

the public record is necessary to support what appears to be a 636  
justiciable claim of the person. 637

(9) Upon written request made and signed by a journalist on 638  
or after December 16, 1999, a public office, or person responsible 639  
for public records, having custody of the records of the agency 640  
employing a specified peace officer, parole officer, prosecuting 641  
attorney, assistant prosecuting attorney, correctional employee, 642  
youth services employee, firefighter, or EMT shall disclose to the 643  
journalist the address of the actual personal residence of the 644  
peace officer, parole officer, prosecuting attorney, assistant 645  
prosecuting attorney, correctional employee, youth services 646  
employee, firefighter, or EMT and, if the peace officer's, parole 647  
officer's, prosecuting attorney's, assistant prosecuting 648  
attorney's, correctional employee's, youth services employee's, 649  
firefighter's, or EMT's spouse, former spouse, or child is 650  
employed by a public office, the name and address of the employer 651  
of the peace officer's, parole officer's, prosecuting attorney's, 652  
assistant prosecuting attorney's, correctional employee's, youth 653  
services employee's, firefighter's, or EMT's spouse, former 654  
spouse, or child. The request shall include the journalist's name 655  
and title and the name and address of the journalist's employer 656  
and shall state that disclosure of the information sought would be 657  
in the public interest. 658

As used in this division, "journalist" means a person engaged 659  
in, connected with, or employed by any news medium, including a 660  
newspaper, magazine, press association, news agency, or wire 661  
service, a radio or television station, or a similar medium, for 662  
the purpose of gathering, processing, transmitting, compiling, 663  
editing, or disseminating information for the general public. 664

(C)(1) If a person allegedly is aggrieved by the failure of a 665  
public office or the person responsible for public records to 666  
promptly prepare a public record and to make it available to the 667

person for inspection in accordance with division (B) of this 668  
section or by any other failure of a public office or the person 669  
responsible for public records to comply with an obligation in 670  
accordance with division (B) of this section, the person allegedly 671  
aggrieved may ~~commence~~ do either of the following: 672

(a) File either an informal complaint or a formal complaint 673  
with the public access counselor pursuant to section 2743.33 of 674  
the Revised Code; 675

(b) Commence a mandamus action to obtain a judgment that 676  
orders the public office or the person responsible for the public 677  
record to comply with division (B) of this section, that awards 678  
court costs and reasonable attorney's fees to the person that 679  
instituted the mandamus action, and, if applicable, that includes 680  
an order fixing statutory damages under division (C)~~(1)~~(2) of this 681  
section. The mandamus action may be commenced in the court of 682  
common pleas of the county in which division (B) of this section 683  
allegedly was not complied with, in the supreme court pursuant to 684  
its original jurisdiction under Section 2 of Article IV, Ohio 685  
Constitution, or in the court of appeals for the appellate 686  
district in which division (B) of this section allegedly was not 687  
complied with pursuant to its original jurisdiction under Section 688  
3 of Article IV, Ohio Constitution. A person that commences a 689  
mandamus action under division (C)(1)(b) of this section may not 690  
file with respect to the same public record request that is the 691  
subject of the mandamus action an informal complaint or a formal 692  
complaint with the public access counselor under section 2743.33 693  
of the Revised Code. 694

(2)(a) If a ~~requester~~ requester transmits a written request 695  
by hand delivery or certified mail to inspect or receive copies of 696  
any public record in a manner that fairly describes the public 697  
record or class of public records to the public office or person 698  
responsible for the requested public records, except as otherwise 699

provided in this section, the ~~requester~~ requester shall be 700  
entitled to recover the amount of statutory damages set forth in 701  
~~this division~~ divisions (C)(2)(b) and (c) of this section if a 702  
court determines ~~that the~~ both of the following: 703

(i) The person filed either an informal complaint or a formal 704  
complaint with the public access counselor pursuant to section 705  
2743.33 of the Revised Code, regardless of whether or not the 706  
parties involved in the applicable complaint reached an agreement 707  
under that section and regardless of whether or not the public 708  
access counselor issued an advisory opinion under that section. 709

(ii) The public office or the person responsible for public 710  
records failed to comply with an obligation in accordance with 711  
division (B) of this section. 712

(b) The amount of statutory damages under division (C)(2)(a) 713  
of this section shall be fixed at one hundred dollars for each 714  
business day during which the public office or person responsible 715  
for the requested public records failed to comply with an 716  
obligation in accordance with division (B) of this section, 717  
beginning with the day on which the requester files a mandamus 718  
action to recover statutory damages, up to a maximum of one 719  
thousand dollars. The award of statutory damages shall not be 720  
construed as a penalty, but as compensation for injury arising 721  
from lost use of the requested information. The existence of this 722  
injury shall be conclusively presumed. The award of statutory 723  
damages shall be in addition to all other remedies authorized by 724  
this section. 725

(c) The court may reduce an award of statutory damages or not 726  
award statutory damages under divisions (C)(2)(a) and (b) of this 727  
section if the court determines both of the following: 728

~~(a)~~(i) That, based on the ordinary application of statutory 729  
law and case law as it existed at the time of the conduct or 730



threatened conduct of the public office or person responsible for 731  
the requested public records that allegedly constitutes a failure 732  
to comply with an obligation in accordance with division (B) of 733  
this section and that was the basis of the mandamus action, a 734  
well-informed public office or person responsible for the 735  
requested public records reasonably would believe that the conduct 736  
or threatened conduct of the public office or person responsible 737  
for the requested public records did not constitute a failure to 738  
comply with an obligation in accordance with division (B) of this 739  
section; 740

~~(b)(ii)~~ That a well-informed public office or person 741  
responsible for the requested public records reasonably would 742  
believe that the conduct or threatened conduct of the public 743  
office or person responsible for the requested public records 744  
would serve the public policy that underlies the authority that is 745  
asserted as permitting that conduct or threatened conduct. 746

~~(2)(3)(a)~~ If the court issues a writ of mandamus that orders 747  
the public office or the person responsible for the public record 748  
to comply with division (B) of this section and determines that 749  
the circumstances described in division (C)~~(1)(2)(a)~~ of this 750  
section exist, the court shall determine and award to the relator 751  
all court costs. 752

(b) If the court renders a judgment that orders the public 753  
office or the person responsible for the public record to comply 754  
with division (B) of this section, the relator filed a formal 755  
complaint with the public access counselor under section 2743.33 756  
of the Revised Code prior to filing the mandamus action, and the 757  
public access counselor issued an advisory opinion under that 758  
section declaring that the relator has the right to inspect or 759  
copy the public records that are the subject of the formal 760  
complaint, the court may shall determine and award to the relator 761  
reasonable attorney's fees subject to reduction as described in 762

division (C)~~(2)~~(3)(c) of this section. The court shall award 763  
reasonable attorney's fees, subject to reduction as described in 764  
division (C)~~(2)~~(3)(c) of this section when either of the following 765  
applies: 766

(i) The public office or the person responsible for the 767  
public records failed to respond affirmatively or negatively to 768  
the public records request in accordance with the time allowed 769  
under division (B) of this section. 770

(ii) The public office or the person responsible for the 771  
public records promised to permit the relator to inspect or 772  
receive copies of the public records requested within a specified 773  
period of time but failed to fulfill that promise within that 774  
specified period of time. 775

(c) Court costs and reasonable attorney's fees awarded under 776  
this section shall be construed as remedial and not punitive. 777  
Reasonable attorney's fees shall include reasonable fees incurred 778  
to produce proof of the reasonableness and amount of the fees and 779  
to otherwise litigate entitlement to the fees. The court may 780  
reduce an award of attorney's fees to the relator or not award 781  
attorney's fees to the relator if the court determines both of the 782  
following: 783

(i) That, based on the ordinary application of statutory law 784  
and case law as it existed at the time of the conduct or 785  
threatened conduct of the public office or person responsible for 786  
the requested public records that allegedly constitutes a failure 787  
to comply with an obligation in accordance with division (B) of 788  
this section and that was the basis of the mandamus action, a 789  
well-informed public office or person responsible for the 790  
requested public records reasonably would believe that the conduct 791  
or threatened conduct of the public office or person responsible 792  
for the requested public records did not constitute a failure to 793  
comply with an obligation in accordance with division (B) of this 794

section; 795

(ii) That a well-informed public office or person responsible 796  
for the requested public records reasonably would believe that the 797  
conduct or threatened conduct of the public office or person 798  
responsible for the requested public records as described in 799  
division (C)(2)(c)(i) of this section would serve the public 800  
policy that underlies the authority that is asserted as permitting 801  
that conduct or threatened conduct. 802

(d) If the person who commences the mandamus action under 803  
division (C)(1) of this section did not file an informal complaint 804  
or a formal complaint with the public access counselor pursuant to 805  
section 2743.33 of the Revised Code before filing the action, the 806  
court shall not award to the person any statutory damages but 807  
shall award to the person court costs and may award to the person 808  
reasonable attorney's fees, subject to reduction as described in 809  
division (C)(3)(c) of this section. 810

(D) Chapter 1347. of the Revised Code does not limit the 811  
provisions of this section. 812

(E)(1) To ensure that all employees of public offices are 813  
appropriately educated about a public office's obligations under 814  
division (B) of this section, all elected officials or their 815  
appropriate designees shall attend training approved by the 816  
attorney general as provided in section 109.43 of the Revised 817  
Code. In addition, all public offices shall adopt a public records 818  
policy in compliance with this section for responding to public 819  
records requests. In adopting a public records policy under this 820  
division, a public office may obtain guidance from the model 821  
public records policy developed and provided to the public office 822  
by the attorney general under section 109.43 of the Revised Code. 823  
Except as otherwise provided in this section, the policy may not 824  
limit the number of public records that the public office will 825  
make available to a single person, may not limit the number of 826

public records that it will make available during a fixed period 827  
of time, and may not establish a fixed period of time before it 828  
will respond to a request for inspection or copying of public 829  
records, unless that period is less than eight hours. 830

(2) The public office shall distribute the public records 831  
policy adopted by the public office under division (E)(1) of this 832  
section to the employee of the public office who is the records 833  
custodian or records manager or otherwise has custody of the 834  
records of that office. The public office shall require that 835  
employee to acknowledge receipt of the copy of the public records 836  
policy. The public office shall create a poster that describes its 837  
public records policy and shall post the poster in a conspicuous 838  
place in the public office and in all locations where the public 839  
office has branch offices. The public office may post its public 840  
records policy on the internet web site of the public office if 841  
the public office maintains an internet web site. A public office 842  
that has established a manual or handbook of its general policies 843  
and procedures for all employees of the public office shall 844  
include the public records policy of the public office in the 845  
manual or handbook. 846

(F)(1) The bureau of motor vehicles may adopt rules pursuant 847  
to Chapter 119. of the Revised Code to reasonably limit the number 848  
of bulk commercial special extraction requests made by a person 849  
for the same records or for updated records during a calendar 850  
year. The rules may include provisions for charges to be made for 851  
bulk commercial special extraction requests for the actual cost of 852  
the bureau, plus special extraction costs, plus ten per cent. The 853  
bureau may charge for expenses for redacting information, the 854  
release of which is prohibited by law. 855

(2) As used in division (F)(1) of this section: 856

(a) "Actual cost" means the cost of depleted supplies, 857  
records storage media costs, actual mailing and alternative 858

delivery costs, or other transmitting costs, and any direct 859  
equipment operating and maintenance costs, including actual costs 860  
paid to private contractors for copying services. 861

(b) "Bulk commercial special extraction request" means a 862  
request for copies of a record for information in a format other 863  
than the format already available, or information that cannot be 864  
extracted without examination of all items in a records series, 865  
class of records, or data base by a person who intends to use or 866  
forward the copies for surveys, marketing, solicitation, or resale 867  
for commercial purposes. "Bulk commercial special extraction 868  
request" does not include a request by a person who gives 869  
assurance to the bureau that the person making the request does 870  
not intend to use or forward the requested copies for surveys, 871  
marketing, solicitation, or resale for commercial purposes. 872

(c) "Commercial" means profit-seeking production, buying, or 873  
selling of any good, service, or other product. 874

(d) "Special extraction costs" means the cost of the time 875  
spent by the lowest paid employee competent to perform the task, 876  
the actual amount paid to outside private contractors employed by 877  
the bureau, or the actual cost incurred to create computer 878  
programs to make the special extraction. "Special extraction 879  
costs" include any charges paid to a public agency for computer or 880  
records services. 881

(3) For purposes of divisions (F)(1) and (2) of this section, 882  
"surveys, marketing, solicitation, or resale for commercial 883  
purposes" shall be narrowly construed and does not include 884  
reporting or gathering news, reporting or gathering information to 885  
assist citizen oversight or understanding of the operation or 886  
activities of government, or nonprofit educational research. 887

**Sec. 2743.31.** (A) As used in this section and sections 888  
2743.32, 2743.33, and 2743.34 of the Revised Code: 889

(1) "Counselor" and "public access counselor" mean the public access counselor appointed under this section. 890  
891

(2) "Meeting" and "public body" have the same meanings as in section 121.22 of the Revised Code. 892  
893

(3) "Public access laws" means sections 121.22 and 149.43 of the Revised Code. 894  
895

(4) "Public entity" means a public body for purposes of matters concerning section 121.22 of the Revised Code or a public office for purposes of matters concerning section 149.43 of the Revised Code. 896  
897  
898  
899

(5) "Public office" has the same meaning as in section 149.011 of the Revised Code. 900  
901

(6) "Public meeting" means a meeting that is open to the public under section 121.22 of the Revised Code. 902  
903

(7) "Public records" has the same meaning as in section 149.43 of the Revised Code. 904  
905

(B) There is hereby established in the court of claims an office to be known as the office of the public access counselor. The office of the public access counselor shall be under the supervision of a public access counselor appointed by the chief justice of the supreme court. The public access counselor shall have been admitted to practice as an attorney at law in this state and shall be engaged in the practice of law in this state. The chief justice of the supreme court shall appoint the public access counselor for a term of four years. The chief justice may remove the public access counselor for cause. If a vacancy occurs in the office of public access counselor, the chief justice shall appoint a successor to serve the remainder of the unexpired term of the public access counselor. The successor appointed to fill a vacancy in the office of public access counselor shall have been admitted to practice as an attorney at law in this state and shall be 906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920

engaged in the practice of law in this state. 921

(C) The public access counselor shall not engage in any 922  
profession, occupation, practice, or business that may conflict 923  
with the duties of the public access counselor under section 924  
2743.32 or 2743.33 of the Revised Code. 925

(D) The public access counselor may appoint any employees 926  
necessary to carry out the duties and functions of the office of 927  
the public access counselor. 928

**Sec. 2743.32.** (A) The public access counselor appointed under 929  
section 2743.31 of the Revised Code shall do all of the following: 930  
931

(1) Assist the attorney general in developing and providing 932  
training programs and seminars under section 109.43 of the Revised 933  
Code; 934

(2) Receive any informal complaint filed by any person under 935  
section 2743.33 of the Revised Code alleging a public entity's 936  
denial of any of the person's rights under the public access laws 937  
and engage in dispute resolution to encourage the parties to the 938  
informal complaint to reach an agreement under that section; 939

(3) Receive any formal complaint filed by any person under 940  
section 2743.33 of the Revised Code alleging a public entity's 941  
denial of any of the person's rights under the public access laws, 942  
investigate the allegations in the complaint, and issue an 943  
advisory opinion regarding any of the person's rights that are the 944  
subject of the formal complaint; 945

(4) Make recommendations to the general assembly and to the 946  
supreme court concerning ways to improve public access to public 947  
records and to ensure public attendance at public meetings. 948

(B) The public access counselor shall submit an annual report 949  
to the general assembly and to the supreme court not later than 950

the thirtieth day of June of each year concerning the activities of the counselor during the immediately preceding calendar year in regard to divisions (B)(1) to (5) of this section. The report shall include all of the following information: 951  
952  
953  
954

(1) The total number of informal complaints and the total number of formal complaints received by the office of the public access counselor; 955  
956  
957

(2) The number of informal complaints and the number of formal complaints received from the media and received from the public in general; 958  
959  
960

(3) The total number of informal complaints that resulted in an agreement reached by the parties to the informal complaint and the total number of formal complaints that resulted in an agreement reached by the parties to the formal complaint; 961  
962  
963  
964

(4) The number of informal complaints and the number of formal complaints received in regard to the performance of duties by the applicable public entity under section 121.22 or 149.43 of the Revised Code by each of the following: 965  
966  
967  
968

(a) Public entities, other than political subdivisions or agencies of political subdivisions; 969  
970

(b) Offices and agencies of counties; 971

(c) Offices and agencies of municipal corporations; 972

(d) Offices and agencies of townships; 973

(e) Boards of education; 974

(f) Offices and agencies of other political subdivisions. 975

(5) The total number of advisory opinions that were issued by the public access counselor. 976  
977

**Sec. 2743.33.** (A) No person is required to file an informal complaint or a formal complaint with the public access counselor 978  
979



under this section before filing an action in court under the 980  
public access laws. The procedures set forth in this section do 981  
not constitute an alternative remedy in the ordinary course of the 982  
law for purposes of seeking any judicial remedy authorized by any 983  
provision in the Revised Code or by any rule of court. 984

(B) A public entity shall cooperate with the public access 985  
counselor in any proceeding under this section. 986

(C)(1) Any of the following may file an informal complaint 987  
with the public access counselor pursuant to the procedures 988  
prescribed in division (F) of this section or may file a formal 989  
complaint with the counselor pursuant to the procedures prescribed 990  
in division (G) of this section: 991

(a) Any person that alleges that the person's right to 992  
inspect or copy any public record under section 149.43 of the 993  
Revised Code has been denied in violation of that section; 994

(b) Any person that alleges that any of the person's rights 995  
under section 121.22 of the Revised Code has been denied in 996  
violation of that section. 997

(2)(a) No person described in division (C)(1)(a) of this 998  
section may file both an informal complaint and a formal complaint 999  
under this section alleging that the person's right to inspect or 1000  
copy any public record under section 149.43 of the Revised Code 1001  
has been denied in violation of that section if the allegations in 1002  
the informal complaint and the allegations in the formal complaint 1003  
are based on the same facts. 1004

(b) No person described in division (C)(1)(b) of this section 1005  
may file both an informal complaint and a formal complaint under 1006  
this section alleging that any of the person's rights under 1007  
section 121.22 of the Revised Code has been denied in violation of 1008  
that section if the allegations in the informal complaint and the 1009  
allegations in the formal complaint are based on the same facts. 1010

(3) The counselor shall determine and prescribe the form of an informal complaint and the form of a formal complaint filed under this section. 1011  
1012  
1013

(D)(1) Any person described in division (C)(1)(a) of this section that chooses to file an informal complaint or a formal complaint with the public access counselor shall file the appropriate complaint not later than thirty days after the date of the alleged denial of the person's right to inspect or copy any public record under section 149.43 of the Revised Code. Any person described in division (C)(1)(b) of this section that chooses to file an informal complaint or a formal complaint with the counselor shall file the appropriate complaint not later than thirty days after the date of the alleged denial of any of the person's rights under section 121.22 of the Revised Code. 1014  
1015  
1016  
1017  
1018  
1019  
1020  
1021  
1022  
1023  
1024

(2) An informal complaint or a formal complaint is considered filed on the date the appropriate complaint is received by the counselor or on the date the appropriate mailed complaint is postmarked if the counselor receives that mailed complaint more than thirty days after the applicable date specified in division (D)(1) of this section. 1025  
1026  
1027  
1028  
1029  
1030

(E) Upon receiving an informal complaint or a formal complaint under division (D)(2) of this section, the public access counselor immediately shall forward a copy of the appropriate complaint to the public entity that is the subject of that complaint. 1031  
1032  
1033  
1034  
1035

(F)(1) Upon receiving an informal complaint under division (D)(2) of this section, the public access counselor shall engage in early intervention, mediation, conciliation, or any other form of dispute resolution or shall facilitate discussion between the parties involved in the informal complaint in order to encourage those parties to reach an agreement on the issues raised in the informal complaint as soon as practicable. 1036  
1037  
1038  
1039  
1040  
1041  
1042

(2) If the parties involved in the informal complaint reach an agreement regarding the issues raised in that complaint, the counselor shall require that the agreement be in writing and signed by both parties within seven days after the parties reach the agreement. The agreement is enforceable in a court. A court that determines that a party has violated the agreement shall order that party to pay the reasonable attorney's fees of the other party. If the informal complaint is based on an alleged denial by a public office of the complainant's right to inspect or copy any public record under section 149.43 of the Revised Code, if an agreement is reached under this division between the complainant and the public office involved in that informal complaint, and, if a court determines that that public office violated the agreement, the court shall order the public office to pay statutory damages to the complainant in the amount specified in division (C)(2) of section 149.43 of the Revised Code. If the informal complaint is based on an alleged denial by a public body of any of the complainant's rights under section 121.22 of the Revised Code, if an agreement is reached under this division between the complainant and the public body involved in that informal complaint, and if a court determines that that public body violated the agreement, the court shall order the public body to pay the civil forfeiture to the complainant in the amount specified in division (I)(2)(a) of section 121.22 of the Revised Code.

(3) If any early intervention, mediation, conciliation, or other form of dispute resolution in which the counselor engages under division (F)(1) of this section or any discussion between the parties does not result in any agreement between the parties on the issues raised in the informal complaint within fourteen days after the date of the filing of the informal complaint, the complainant may bring an action in court pursuant to the applicable public access law.

(G)(1) Upon receiving a formal complaint under division 1076  
(D)(2) of this section, the public access counselor shall 1077  
investigate the facts alleged in the formal complaint. 1078

(2)(a) Except as provided in division (G)(2)(b) of this 1079  
section, if the parties involved in the formal complaint reach an 1080  
agreement regarding the issues raised in that complaint either 1081  
before or after an advisory opinion is issued under division 1082  
(G)(3) of this section, the counselor shall require that the 1083  
agreement be in writing and signed by both parties within seven 1084  
days after the parties reach the agreement. The agreement is 1085  
enforceable in a court. A court that determines that a party has 1086  
violated the agreement shall order that party to pay the 1087  
reasonable attorney's fees of the other party. If the formal 1088  
complaint is based on an alleged denial by a public office of the 1089  
complainant's right to inspect or copy any public record under 1090  
section 149.43 of the Revised Code, if an agreement is reached 1091  
under this division between the complainant and the public office 1092  
involved in that formal complaint, and if a court determines that 1093  
that public office violated the agreement, the court shall order 1094  
the public office to pay statutory damages to the complainant in 1095  
the amount specified in division (C)(2) of section 149.43 of the 1096  
Revised Code. If the formal complaint is based on an alleged 1097  
denial by a public body of any of the complainant's rights under 1098  
section 121.22 of the Revised Code, if an agreement is reached 1099  
under this division between the complainant and the public body 1100  
involved in that formal complaint, and if a court determines that 1101  
that public body violated the agreement, the court shall order the 1102  
public body to pay the civil forfeiture to the complainant in the 1103  
amount specified in division (I)(2)(a) of section 121.22 of the 1104  
Revised Code. 1105

(b) Division (G)(2)(a) of this section does not apply if the 1106  
counselor participated in or facilitated any discussion between 1107

the parties in reaching the agreement described in that division. 1108

(3)(a) Except as provided in division (G)(3)(b) of this 1109  
section, the counselor shall issue an advisory opinion on the 1110  
formal complaint not later than fourteen days after the complaint 1111  
is filed. 1112

(b) If the counselor determines that a formal complaint has 1113  
priority, the counselor shall issue an advisory opinion on the 1114  
complaint not later than seven days after the complaint is filed. 1115

(4) The counselor shall adopt any necessary rules 1116  
establishing criteria for formal complaints that have priority 1117  
under this section or any other rules necessary to implement the 1118  
provisions of this section. 1119

(5)(a) If the counselor issues an advisory opinion under 1120  
division (G)(3) of this section that declares that the complainant 1121  
has the right to inspect or copy the public records that are the 1122  
subject of the formal complaint, unless the parties involved in 1123  
the formal complaint reach an agreement under division (G)(2) of 1124  
this section, the complainant may present the advisory opinion to 1125  
the public office involved in the formal complaint and request the 1126  
public office to make those records available for inspection or 1127  
copying by the complainant pursuant to section 149.43 of the 1128  
Revised Code. If the public office denies that request or fails to 1129  
promptly comply with the request, the complainant may bring an 1130  
action in court pursuant to that section. 1131

(b) If the counselor issues an advisory opinion under 1132  
division (G)(3) of this section that declares that the complainant 1133  
has that right under section 121.22 of the Revised Code that is 1134  
the subject of the formal complaint, unless the parties involved 1135  
in the formal complaint reach an agreement under division (G)(2) 1136  
of this section, the complainant may present the advisory opinion 1137  
to the public body involved in the formal complaint and request 1138

the public body to comply with section 121.22 of the Revised Code 1139  
with respect to the complainant's right that is the subject of the 1140  
formal complaint. If the public body does not comply with section 1141  
121.22 of the Revised Code with respect to that right of the 1142  
complainant, the complainant may bring an action in court pursuant 1143  
to that section. 1144

(6) All advisory opinions issued by the counselor under 1145  
division (G)(3) of this section shall state the date of issuance 1146  
of the opinion, name the parties to the formal complaint, 1147  
summarize the factual and legal issues involved, and set forth a 1148  
reasoned rationale for the counselor's conclusion, including 1149  
citation to legal authority supporting that conclusion. Advisory 1150  
opinions issued by the counselor are public records under section 1151  
149.43 of the Revised Code. 1152

(7) The office of the public access counselor may rely on 1153  
past advisory opinions issued by the counselor under division 1154  
(G)(3) of this section as precedent for that office. Advisory 1155  
opinions issued by the counselor under that division do not bind 1156  
any court in interpreting or applying section 121.22 or 149.43 of 1157  
the Revised Code, and no court may presume that the existence of 1158  
an advisory opinion issued by the counselor is evidence against or 1159  
in favor of a reduction or denial of an award of reasonable 1160  
attorney's fees to a litigant. 1161

**Sec. 2743.34.** (A) Any person who files an informal complaint 1162  
or a formal complaint with the public access counselor under 1163  
section 2743.33 of the Revised Code may withdraw the complaint at 1164  
any time by notifying the counselor in writing of the withdrawal. 1165  
Upon withdrawing the complaint, that person may bring an action in 1166  
court as authorized by the applicable public access law based upon 1167  
the same facts that are the subject matter of the complaint that 1168  
was withdrawn. 1169

(B) Any informal complaint or any formal complaint filed with 1170  
the public access counselor under section 2743.33 of the Revised 1171  
Code does not toll the running of the period of limitations for 1172  
bringing an action under section 121.22 or 149.43 of the Revised 1173  
Code concerning the subject matter of the informal complaint or 1174  
the subject matter of the formal complaint. 1175

**Section 2.** That existing sections 121.22 and 149.43 of the 1176  
Revised Code are hereby repealed. 1177

**Section 3.** Sections 1 and 2 of this act take effect September 1178  
29, 2007. 1179

**Section 4.** Section 149.43 of the Revised Code is presented in 1180  
this act as a composite of the section as amended by both Sub. 1181  
H.B. 9 and Sub. H.B. 141 of the 126th General Assembly. The 1182  
General Assembly, applying the principle stated in division (B) of 1183  
section 1.52 of the Revised Code that amendments are to be 1184  
harmonized if reasonably capable of simultaneous operation, finds 1185  
that the composite is the resulting version of the section in 1186  
effect prior to the effective date of the section as presented in 1187  
this act. 1188