

As Introduced

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S. B. No. 226

Senator LaRose

Cosponsors: Senators Burke, Balderson, Seitz, Hite, Patton

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A B I L L

To amend section 149.43 of the Revised Code to exempt 1
from disclosure under the Public Records Act any 2
videotape or other visual media taken by law 3
enforcement personnel that shows the killing of a 4
peace officer, except under certain circumstances. 5

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

Section 1. That section 149.43 of the Revised Code be amended 6
to read as follows: 7

Sec. 149.43. (A) As used in this section: 8

(1) "Public record" means records kept by any public office, 9
including, but not limited to, state, county, city, village, 10
township, and school district units, and records pertaining to the 11
delivery of educational services by an alternative school in this 12
state kept by the nonprofit or for-profit entity operating the 13
alternative school pursuant to section 3313.533 of the Revised 14
Code. "Public record" does not mean any of the following: 15

(a) Medical records; 16

(b) Records pertaining to probation and parole proceedings or 17
to proceedings related to the imposition of community control 18

sanctions and post-release control sanctions;	19
(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;	20 21 22
(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;	23 24 25
(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;	26 27 28 29 30 31
(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;	32 33 34
(g) Trial preparation records;	35
(h) Confidential law enforcement investigatory records;	36
(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;	37 38
(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;	39 40
(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;	41 42 43 44
(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;	45 46 47 48

(m) Intellectual property records;	49
(n) Donor profile records;	50
(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;	51 52
(p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information;	53 54 55 56 57
(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 constitutes a trade secret, as defined in section 1333.61 of the Revised Code;	58 59 60 61 62
(r) Information pertaining to the recreational activities of a person under the age of eighteen;	63 64
(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, and child fatality review data submitted by the child fatality review board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;	65 66 67 68 69 70 71 72
(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;	73 74 75 76
(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that	77 78

the board of examiners of nursing home administrators administers	79
under section 4751.04 of the Revised Code or contracts under that	80
section with a private or government entity to administer;	81
(v) Records the release of which is prohibited by state or	82
federal law;	83
(w) Proprietary information of or relating to any person that	84
is submitted to or compiled by the Ohio venture capital authority	85
created under section 150.01 of the Revised Code;	86
(x) Information reported and evaluations conducted pursuant	87
to section 3701.072 of the Revised Code;	88
(y) Financial statements and data any person submits for any	89
purpose to the Ohio housing finance agency or the controlling	90
board in connection with applying for, receiving, or accounting	91
for financial assistance from the agency, and information that	92
identifies any individual who benefits directly or indirectly from	93
financial assistance from the agency;	94
(z) Records listed in section 5101.29 of the Revised Code;	95
(aa) Discharges recorded with a county recorder under section	96
317.24 of the Revised Code, as specified in division (B)(2) of	97
that section;	98
(bb) Usage information including names and addresses of	99
specific residential and commercial customers of a municipally	100
owned or operated public utility.	101
(2) "Confidential law enforcement investigatory record" means	102
any <u>either of the following:</u>	103
<u>(a) Any</u> record that pertains to a law enforcement matter of a	104
criminal, quasi-criminal, civil, or administrative nature, but	105
only to the extent that the release of the record would create a	106
high probability of disclosure of any of the following:	107
(a) <u>(i)</u> The identity of a suspect who has not been charged	108

with the offense to which the record pertains, or of an 109
information source or witness to whom confidentiality has been 110
reasonably promised; 111

~~(b)(ii)~~ Information provided by an information source or 112
witness to whom confidentiality has been reasonably promised, 113
which information would reasonably tend to disclose the source's 114
or witness's identity; 115

~~(e)(iii)~~ Specific confidential investigatory techniques or 116
procedures or specific investigatory work product; 117

~~(d)(iv)~~ Information that would endanger the life or physical 118
safety of law enforcement personnel, a crime victim, a witness, or 119
a confidential information source. 120

(b) Any videotape or other visual media taken by law 121
enforcement personnel that shows the killing of a peace officer, 122
except that such videotape or other visual media shall be released 123
in the following situations: 124

(i) In accordance with a subpoena, search warrant, or other 125
court order; 126

(ii) To a law enforcement officer who is acting in the scope 127
of the officer's law enforcement duties and who is investigating a 128
matter involving the killing of the peace officer; 129

(iii) To any other person who requests such videotape or 130
other visual media under division (B) of this section, but the 131
videotape or other visual media may only be inspected by that 132
person in the public office and in the presence of the person who 133
is responsible for the videotape or other visual media, and no 134
copy of the videotape or other visual media shall be made for or 135
provided to the person requesting it. 136

(3) "Medical record" means any document or combination of 137
documents, except births, deaths, and the fact of admission to or 138

discharge from a hospital, that pertains to the medical history, 139
diagnosis, prognosis, or medical condition of a patient and that 140
is generated and maintained in the process of medical treatment. 141

(4) "Trial preparation record" means any record that contains 142
information that is specifically compiled in reasonable 143
anticipation of, or in defense of, a civil or criminal action or 144
proceeding, including the independent thought processes and 145
personal trial preparation of an attorney. 146

(5) "Intellectual property record" means a record, other than 147
a financial or administrative record, that is produced or 148
collected by or for faculty or staff of a state institution of 149
higher learning in the conduct of or as a result of study or 150
research on an educational, commercial, scientific, artistic, 151
technical, or scholarly issue, regardless of whether the study or 152
research was sponsored by the institution alone or in conjunction 153
with a governmental body or private concern, and that has not been 154
publicly released, published, or patented. 155

(6) "Donor profile record" means all records about donors or 156
potential donors to a public institution of higher education 157
except the names and reported addresses of the actual donors and 158
the date, amount, and conditions of the actual donation. 159

(7) "Peace officer, parole officer, probation officer, 160
bailiff, prosecuting attorney, assistant prosecuting attorney, 161
correctional employee, youth services employee, firefighter, EMT, 162
or investigator of the bureau of criminal identification and 163
investigation residential and familial information" means any 164
information that discloses any of the following about a peace 165
officer, parole officer, probation officer, bailiff, prosecuting 166
attorney, assistant prosecuting attorney, correctional employee, 167
youth services employee, firefighter, EMT, or investigator of the 168
bureau of criminal identification and investigation: 169

(a) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or an investigator of the bureau of criminal identification and investigation, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation resides;

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

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer;

(e) The identity and amount of any charitable or employment

benefit deduction made by the peace officer's, parole officer's, 202
probation officer's, bailiff's, prosecuting attorney's, assistant 203
prosecuting attorney's, correctional employee's, youth services 204
employee's, firefighter's, EMT's, or investigator of the bureau of 205
criminal identification and investigation's employer from the 206
peace officer's, parole officer's, probation officer's, bailiff's, 207
prosecuting attorney's, assistant prosecuting attorney's, 208
correctional employee's, youth services employee's, firefighter's, 209
EMT's, or investigator of the bureau of criminal identification 210
and investigation's compensation unless the amount of the 211
deduction is required by state or federal law; 212

(f) The name, the residential address, the name of the 213
employer, the address of the employer, the social security number, 214
the residential telephone number, any bank account, debit card, 215
charge card, or credit card number, or the emergency telephone 216
number of the spouse, a former spouse, or any child of a peace 217
officer, parole officer, probation officer, bailiff, prosecuting 218
attorney, assistant prosecuting attorney, correctional employee, 219
youth services employee, firefighter, EMT, or investigator of the 220
bureau of criminal identification and investigation; 221

(g) A photograph of a peace officer who holds a position or 222
has an assignment that may include undercover or plain clothes 223
positions or assignments as determined by the peace officer's 224
appointing authority. 225

As used in divisions (A)(2), (A)(7), and (B)(9) of this 226
section, "peace officer" has the same meaning as in section 109.71 227
of the Revised Code and also includes the superintendent and 228
troopers of the state highway patrol; it does not include the 229
sheriff of a county or a supervisory employee who, in the absence 230
of the sheriff, is authorized to stand in for, exercise the 231
authority of, and perform the duties of the sheriff. 232

As used in divisions (A)(7) and (B)(5) of this section, 233

"correctional employee" means any employee of the department of 234
rehabilitation and correction who in the course of performing the 235
employee's job duties has or has had contact with inmates and 236
persons under supervision. 237

As used in divisions (A)(7) and (B)(5) of this section, 238
"youth services employee" means any employee of the department of 239
youth services who in the course of performing the employee's job 240
duties has or has had contact with children committed to the 241
custody of the department of youth services. 242

As used in divisions (A)(7) and (B)(9) of this section, 243
"firefighter" means any regular, paid or volunteer, member of a 244
lawfully constituted fire department of a municipal corporation, 245
township, fire district, or village. 246

As used in divisions (A)(7) and (B)(9) of this section, "EMT" 247
means EMTs-basic, EMTs-I, and paramedics that provide emergency 248
medical services for a public emergency medical service 249
organization. "Emergency medical service organization," 250
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as in 251
section 4765.01 of the Revised Code. 252

As used in divisions (A)(7) and (B)(9) of this section, 253
"investigator of the bureau of criminal identification and 254
investigation" has the meaning defined in section 2903.11 of the 255
Revised Code. 256

(8) "Information pertaining to the recreational activities of 257
a person under the age of eighteen" means information that is kept 258
in the ordinary course of business by a public office, that 259
pertains to the recreational activities of a person under the age 260
of eighteen years, and that discloses any of the following: 261

(a) The address or telephone number of a person under the age 262
of eighteen or the address or telephone number of that person's 263
parent, guardian, custodian, or emergency contact person; 264

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;	265 266
(c) Any medical record, history, or information pertaining to a person under the age of eighteen;	267 268
(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.	269 270 271 272 273 274
(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	275 276
(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.	277 278
(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.	279 280 281 282
(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.	283 284
(B)(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within	285 286 287 288 289 290 291 292 293 294 295

the public record that is not exempt. When making that public 296
record available for public inspection or copying that public 297
record, the public office or the person responsible for the public 298
record shall notify the requester of any redaction or make the 299
redaction plainly visible. A redaction shall be deemed a denial of 300
a request to inspect or copy the redacted information, except if 301
federal or state law authorizes or requires a public office to 302
make the redaction. 303

(2) To facilitate broader access to public records, a public 304
office or the person responsible for public records shall organize 305
and maintain public records in a manner that they can be made 306
available for inspection or copying in accordance with division 307
(B) of this section. A public office also shall have available a 308
copy of its current records retention schedule at a location 309
readily available to the public. If a requester makes an ambiguous 310
or overly broad request or has difficulty in making a request for 311
copies or inspection of public records under this section such 312
that the public office or the person responsible for the requested 313
public record cannot reasonably identify what public records are 314
being requested, the public office or the person responsible for 315
the requested public record may deny the request but shall provide 316
the requester with an opportunity to revise the request by 317
informing the requester of the manner in which records are 318
maintained by the public office and accessed in the ordinary 319
course of the public office's or person's duties. 320

(3) If a request is ultimately denied, in part or in whole, 321
the public office or the person responsible for the requested 322
public record shall provide the requester with an explanation, 323
including legal authority, setting forth why the request was 324
denied. If the initial request was provided in writing, the 325
explanation also shall be provided to the requester in writing. 326
The explanation shall not preclude the public office or the person 327

responsible for the requested public record from relying upon 328
additional reasons or legal authority in defending an action 329
commenced under division (C) of this section. 330

(4) Unless specifically required or authorized by state or 331
federal law or in accordance with division (B) of this section, no 332
public office or person responsible for public records may limit 333
or condition the availability of public records by requiring 334
disclosure of the requester's identity or the intended use of the 335
requested public record. Any requirement that the requester 336
disclose the requestor's identity or the intended use of the 337
requested public record constitutes a denial of the request. 338

(5) A public office or person responsible for public records 339
may ask a requester to make the request in writing, may ask for 340
the requester's identity, and may inquire about the intended use 341
of the information requested, but may do so only after disclosing 342
to the requester that a written request is not mandatory and that 343
the requester may decline to reveal the requester's identity or 344
the intended use and when a written request or disclosure of the 345
identity or intended use would benefit the requester by enhancing 346
the ability of the public office or person responsible for public 347
records to identify, locate, or deliver the public records sought 348
by the requester. 349

(6) If any person chooses to obtain a copy of a public record 350
in accordance with division (B) of this section, the public office 351
or person responsible for the public record may require that 352
person to pay in advance the cost involved in providing the copy 353
of the public record in accordance with the choice made by the 354
person seeking the copy under this division. The public office or 355
the person responsible for the public record shall permit that 356
person to choose to have the public record duplicated upon paper, 357
upon the same medium upon which the public office or person 358
responsible for the public record keeps it, or upon any other 359

medium upon which the public office or person responsible for the 360
public record determines that it reasonably can be duplicated as 361
an integral part of the normal operations of the public office or 362
person responsible for the public record. When the person seeking 363
the copy makes a choice under this division, the public office or 364
person responsible for the public record shall provide a copy of 365
it in accordance with the choice made by the person seeking the 366
copy. Nothing in this section requires a public office or person 367
responsible for the public record to allow the person seeking a 368
copy of the public record to make the copies of the public record. 369

(7) Upon a request made in accordance with division (B) of 370
this section and subject to division (B)(6) of this section, a 371
public office or person responsible for public records shall 372
transmit a copy of a public record to any person by United States 373
mail or by any other means of delivery or transmission within a 374
reasonable period of time after receiving the request for the 375
copy. The public office or person responsible for the public 376
record may require the person making the request to pay in advance 377
the cost of postage if the copy is transmitted by United States 378
mail or the cost of delivery if the copy is transmitted other than 379
by United States mail, and to pay in advance the costs incurred 380
for other supplies used in the mailing, delivery, or transmission. 381

Any public office may adopt a policy and procedures that it 382
will follow in transmitting, within a reasonable period of time 383
after receiving a request, copies of public records by United 384
States mail or by any other means of delivery or transmission 385
pursuant to this division. A public office that adopts a policy 386
and procedures under this division shall comply with them in 387
performing its duties under this division. 388

In any policy and procedures adopted under this division, a 389
public office may limit the number of records requested by a 390
person that the office will transmit by United States mail to ten 391

per month, unless the person certifies to the office in writing 392
that the person does not intend to use or forward the requested 393
records, or the information contained in them, for commercial 394
purposes. For purposes of this division, "commercial" shall be 395
narrowly construed and does not include reporting or gathering 396
news, reporting or gathering information to assist citizen 397
oversight or understanding of the operation or activities of 398
government, or nonprofit educational research. 399

(8) A public office or person responsible for public records 400
is not required to permit a person who is incarcerated pursuant to 401
a criminal conviction or a juvenile adjudication to inspect or to 402
obtain a copy of any public record concerning a criminal 403
investigation or prosecution or concerning what would be a 404
criminal investigation or prosecution if the subject of the 405
investigation or prosecution were an adult, unless the request to 406
inspect or to obtain a copy of the record is for the purpose of 407
acquiring information that is subject to release as a public 408
record under this section and the judge who imposed the sentence 409
or made the adjudication with respect to the person, or the 410
judge's successor in office, finds that the information sought in 411
the public record is necessary to support what appears to be a 412
justiciable claim of the person. 413

(9)(a) Upon written request made and signed by a journalist 414
on or after December 16, 1999, a public office, or person 415
responsible for public records, having custody of the records of 416
the agency employing a specified peace officer, parole officer, 417
probation officer, bailiff, prosecuting attorney, assistant 418
prosecuting attorney, correctional employee, youth services 419
employee, firefighter, EMT, or investigator of the bureau of 420
criminal identification and investigation shall disclose to the 421
journalist the address of the actual personal residence of the 422
peace officer, parole officer, probation officer, bailiff, 423

prosecuting attorney, assistant prosecuting attorney, correctional 424
employee, youth services employee, firefighter, EMT, or 425
investigator of the bureau of criminal identification and 426
investigation and, if the peace officer's, parole officer's, 427
probation officer's, bailiff's, prosecuting attorney's, assistant 428
prosecuting attorney's, correctional employee's, youth services 429
employee's, firefighter's, EMT's, or investigator of the bureau of 430
criminal identification and investigation's spouse, former spouse, 431
or child is employed by a public office, the name and address of 432
the employer of the peace officer's, parole officer's, probation 433
officer's, bailiff's, prosecuting attorney's, assistant 434
prosecuting attorney's, correctional employee's, youth services 435
employee's, firefighter's, EMT's, or investigator of the bureau of 436
criminal identification and investigation's spouse, former spouse, 437
or child. The request shall include the journalist's name and 438
title and the name and address of the journalist's employer and 439
shall state that disclosure of the information sought would be in 440
the public interest. 441

(b) Division (B)(9)(a) of this section also applies to 442
journalist requests for customer information maintained by a 443
municipally owned or operated public utility, other than social 444
security numbers and any private financial information such as 445
credit reports, payment methods, credit card numbers, and bank 446
account information. 447

(c) As used in division (B)(9) of this section, "journalist" 448
means a person engaged in, connected with, or employed by any news 449
medium, including a newspaper, magazine, press association, news 450
agency, or wire service, a radio or television station, or a 451
similar medium, for the purpose of gathering, processing, 452
transmitting, compiling, editing, or disseminating information for 453
the general public. 454

(C)(1) If a person allegedly is aggrieved by the failure of a 455

public office or the person responsible for public records to 456
promptly prepare a public record and to make it available to the 457
person for inspection in accordance with division (B) of this 458
section or by any other failure of a public office or the person 459
responsible for public records to comply with an obligation in 460
accordance with division (B) of this section, the person allegedly 461
aggrieved may commence a mandamus action to obtain a judgment that 462
orders the public office or the person responsible for the public 463
record to comply with division (B) of this section, that awards 464
court costs and reasonable attorney's fees to the person that 465
instituted the mandamus action, and, if applicable, that includes 466
an order fixing statutory damages under division (C)(1) of this 467
section. The mandamus action may be commenced in the court of 468
common pleas of the county in which division (B) of this section 469
allegedly was not complied with, in the supreme court pursuant to 470
its original jurisdiction under Section 2 of Article IV, Ohio 471
Constitution, or in the court of appeals for the appellate 472
district in which division (B) of this section allegedly was not 473
complied with pursuant to its original jurisdiction under Section 474
3 of Article IV, Ohio Constitution. 475

If a requestor transmits a written request by hand delivery 476
or certified mail to inspect or receive copies of any public 477
record in a manner that fairly describes the public record or 478
class of public records to the public office or person responsible 479
for the requested public records, except as otherwise provided in 480
this section, the requestor shall be entitled to recover the 481
amount of statutory damages set forth in this division if a court 482
determines that the public office or the person responsible for 483
public records failed to comply with an obligation in accordance 484
with division (B) of this section. 485

The amount of statutory damages shall be fixed at one hundred 486
dollars for each business day during which the public office or 487

person responsible for the requested public records failed to 488
comply with an obligation in accordance with division (B) of this 489
section, beginning with the day on which the requester files a 490
mandamus action to recover statutory damages, up to a maximum of 491
one thousand dollars. The award of statutory damages shall not be 492
construed as a penalty, but as compensation for injury arising 493
from lost use of the requested information. The existence of this 494
injury shall be conclusively presumed. The award of statutory 495
damages shall be in addition to all other remedies authorized by 496
this section. 497

The court may reduce an award of statutory damages or not 498
award statutory damages if the court determines both of the 499
following: 500

(a) That, based on the ordinary application of statutory law 501
and case law as it existed at the time of the conduct or 502
threatened conduct of the public office or person responsible for 503
the requested public records that allegedly constitutes a failure 504
to comply with an obligation in accordance with division (B) of 505
this section and that was the basis of the mandamus action, a 506
well-informed public office or person responsible for the 507
requested public records reasonably would believe that the conduct 508
or threatened conduct of the public office or person responsible 509
for the requested public records did not constitute a failure to 510
comply with an obligation in accordance with division (B) of this 511
section; 512

(b) That a well-informed public office or person responsible 513
for the requested public records reasonably would believe that the 514
conduct or threatened conduct of the public office or person 515
responsible for the requested public records would serve the 516
public policy that underlies the authority that is asserted as 517
permitting that conduct or threatened conduct. 518

(2)(a) If the court issues a writ of mandamus that orders the 519

public office or the person responsible for the public record to 520
comply with division (B) of this section and determines that the 521
circumstances described in division (C)(1) of this section exist, 522
the court shall determine and award to the relator all court 523
costs. 524

(b) If the court renders a judgment that orders the public 525
office or the person responsible for the public record to comply 526
with division (B) of this section, the court may award reasonable 527
attorney's fees subject to reduction as described in division 528
(C)(2)(c) of this section. The court shall award reasonable 529
attorney's fees, subject to reduction as described in division 530
(C)(2)(c) of this section when either of the following applies: 531

(i) The public office or the person responsible for the 532
public records failed to respond affirmatively or negatively to 533
the public records request in accordance with the time allowed 534
under division (B) of this section. 535

(ii) The public office or the person responsible for the 536
public records promised to permit the relator to inspect or 537
receive copies of the public records requested within a specified 538
period of time but failed to fulfill that promise within that 539
specified period of time. 540

(c) Court costs and reasonable attorney's fees awarded under 541
this section shall be construed as remedial and not punitive. 542
Reasonable attorney's fees shall include reasonable fees incurred 543
to produce proof of the reasonableness and amount of the fees and 544
to otherwise litigate entitlement to the fees. The court may 545
reduce an award of attorney's fees to the relator or not award 546
attorney's fees to the relator if the court determines both of the 547
following: 548

(i) That, based on the ordinary application of statutory law 549
and case law as it existed at the time of the conduct or 550

threatened conduct of the public office or person responsible for 551
the requested public records that allegedly constitutes a failure 552
to comply with an obligation in accordance with division (B) of 553
this section and that was the basis of the mandamus action, a 554
well-informed public office or person responsible for the 555
requested public records reasonably would believe that the conduct 556
or threatened conduct of the public office or person responsible 557
for the requested public records did not constitute a failure to 558
comply with an obligation in accordance with division (B) of this 559
section; 560

(ii) That a well-informed public office or person responsible 561
for the requested public records reasonably would believe that the 562
conduct or threatened conduct of the public office or person 563
responsible for the requested public records as described in 564
division (C)(2)(c)(i) of this section would serve the public 565
policy that underlies the authority that is asserted as permitting 566
that conduct or threatened conduct. 567

(D) Chapter 1347. of the Revised Code does not limit the 568
provisions of this section. 569

(E)(1) To ensure that all employees of public offices are 570
appropriately educated about a public office's obligations under 571
division (B) of this section, all elected officials or their 572
appropriate designees shall attend training approved by the 573
attorney general as provided in section 109.43 of the Revised 574
Code. In addition, all public offices shall adopt a public records 575
policy in compliance with this section for responding to public 576
records requests. In adopting a public records policy under this 577
division, a public office may obtain guidance from the model 578
public records policy developed and provided to the public office 579
by the attorney general under section 109.43 of the Revised Code. 580
Except as otherwise provided in this section, the policy may not 581
limit the number of public records that the public office will 582

make available to a single person, may not limit the number of 583
public records that it will make available during a fixed period 584
of time, and may not establish a fixed period of time before it 585
will respond to a request for inspection or copying of public 586
records, unless that period is less than eight hours. 587

(2) The public office shall distribute the public records 588
policy adopted by the public office under division (E)(1) of this 589
section to the employee of the public office who is the records 590
custodian or records manager or otherwise has custody of the 591
records of that office. The public office shall require that 592
employee to acknowledge receipt of the copy of the public records 593
policy. The public office shall create a poster that describes its 594
public records policy and shall post the poster in a conspicuous 595
place in the public office and in all locations where the public 596
office has branch offices. The public office may post its public 597
records policy on the internet web site of the public office if 598
the public office maintains an internet web site. A public office 599
that has established a manual or handbook of its general policies 600
and procedures for all employees of the public office shall 601
include the public records policy of the public office in the 602
manual or handbook. 603

(F)(1) The bureau of motor vehicles may adopt rules pursuant 604
to Chapter 119. of the Revised Code to reasonably limit the number 605
of bulk commercial special extraction requests made by a person 606
for the same records or for updated records during a calendar 607
year. The rules may include provisions for charges to be made for 608
bulk commercial special extraction requests for the actual cost of 609
the bureau, plus special extraction costs, plus ten per cent. The 610
bureau may charge for expenses for redacting information, the 611
release of which is prohibited by law. 612

(2) As used in division (F)(1) of this section: 613

(a) "Actual cost" means the cost of depleted supplies, 614

records storage media costs, actual mailing and alternative 615
delivery costs, or other transmitting costs, and any direct 616
equipment operating and maintenance costs, including actual costs 617
paid to private contractors for copying services. 618

(b) "Bulk commercial special extraction request" means a 619
request for copies of a record for information in a format other 620
than the format already available, or information that cannot be 621
extracted without examination of all items in a records series, 622
class of records, or data base by a person who intends to use or 623
forward the copies for surveys, marketing, solicitation, or resale 624
for commercial purposes. "Bulk commercial special extraction 625
request" does not include a request by a person who gives 626
assurance to the bureau that the person making the request does 627
not intend to use or forward the requested copies for surveys, 628
marketing, solicitation, or resale for commercial purposes. 629

(c) "Commercial" means profit-seeking production, buying, or 630
selling of any good, service, or other product. 631

(d) "Special extraction costs" means the cost of the time 632
spent by the lowest paid employee competent to perform the task, 633
the actual amount paid to outside private contractors employed by 634
the bureau, or the actual cost incurred to create computer 635
programs to make the special extraction. "Special extraction 636
costs" include any charges paid to a public agency for computer or 637
records services. 638

(3) For purposes of divisions (F)(1) and (2) of this section, 639
"surveys, marketing, solicitation, or resale for commercial 640
purposes" shall be narrowly construed and does not include 641
reporting or gathering news, reporting or gathering information to 642
assist citizen oversight or understanding of the operation or 643
activities of government, or nonprofit educational research. 644

Section 2. That existing section 149.43 of the Revised Code 645

is hereby repealed. 646

Section 3. Section 149.43 of the Revised Code is presented in 647
this act as a composite of the section as amended by both Sub. 648
H.B. 64 and Am. Sub. H.B. 153 of the 129th General Assembly. The 649
General Assembly, applying the principle stated in division (B) of 650
section 1.52 of the Revised Code that amendments are to be 651
harmonized if reasonably capable of simultaneous operation, finds 652
that the composite is the resulting version of the section in 653
effect prior to the effective date of the section as presented in 654
this act. 655