Bill Analysis

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(As Passed by the House)

Reps. Oelslager, Flowers, Buehrer, White, Trakas, Aslanides, Beatty, Blessing, Book, Carano, Cassell, Chandler, Collier, DeBose, Domenick, C. Evans, D. Evans, Fende, Fessler, Garrison, Hagan, Hartnett, Harwood, Healy, Key, Law, Mason, R. McGregor, Otterman, T. Patton, Peterson, Redfern, Reidelbach, Sayre, Schneider, Seitz, Setzer, Skindell, Willamowski, Williams, Woodard, Yuko

BILL SUMMARY

- Expands the definition of "record" to include a record that documents the depletion, expenditure, or depreciation of the resources of the public office, even if unauthorized by that office.

- Specifies that "public record" includes records kept by any governmental or quasi-governmental entity that receives any governmental housing subsidy.

- Requires the Attorney General to develop, provide, and certify, and requires all elected officials or their designees to attend, training programs and seminars about the Public Records Law.

- Requires the Attorney General to develop and provide to all public offices a model public records policy, and requires all public offices to adopt a public records policy, for responding to public records requests in compliance with the Public Records Law.

- Requires the State Auditor, in the course of the audit of a public office, to audit the public office for compliance with the bill's training and public records policy provisions.

- Requires a public office, when making a public record available that includes information exempt from public inspection or copying, to notify the person seeking to inspect or copy the record regarding any redaction or to make the redaction plainly visible and specifies that a redaction is a

denial of a request to inspect or copy the redacted information except if federal or state law authorizes or requires the redaction.

- Generally requires payment in advance of the cost of making copies of the requested public record.

- Provides that a public office may deny a request for public records when the requester makes an ambiguous request or the public office cannot reasonably identify the public records being requested, but must provide the requester an opportunity to revise the request.

- If a request for public records is ultimately denied, requires a public office to provide the requester an explanation of the reasons for the denial, including legal authority.

- Generally precludes a public office from limiting or conditioning the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested record.

- Allows a public office to ask that a request be made in writing, ask for the requester's identity, and ask about the intended use of the requested information only if the public office discloses to the requester that compliance is not required and when a written request or disclosure of the identity or intended use would enhance the ability to comply with the request.

- Authorizes a public office to require advance payment of the cost of providing a copy of the requested public record in accordance with the requester's choice of the medium in which the copy is duplicated.

- Provides that the transmission of copies of requested public records may be by mail (existing law) or any other means of delivery or transmission and repeals the provision that a public office generally may limit the number of records requested to be transmitted by mail to ten per month.

- Specifies that a person allegedly aggrieved by a failure of a public office to comply with the Public Records Law may file either a mandamus action (existing law) or a formal or informal complaint with the Public Access Counselor, but the person may not file such complaint with the Counselor with respect to the same public record request that is the subject of the mandamus action.

- Provides that an aggrieved person who files a mandamus action against a public office may recover statutory damages and court costs, upon certain findings made by the court, for failure to comply with the Public Records Law.

- Specifies certain circumstances in which a court must award reasonable attorney's fees to the aggrieved person in a mandamus action, and certain circumstances in which a court may reduce or deny an award of attorney's fees to the aggrieved person.

- Makes other changes in the Public Records Law.

- Establishes in the Court of Claims the Office of the Public Access Counselor under the supervision of a Public Access Counselor appointed by the Chief Justice of the Supreme Court.

- Provides that the Public Access Counselor's duties include receiving any informal complaint or formal complaint filed by any person alleging a public entity's denial of the person's rights under the public access laws (Public Records Law and Open Meetings Law), engaging in dispute resolution to encourage the parties in an informal complaint to reach an agreement, and investigating the allegations and issuing an advisory opinion in a formal complaint.

- Sets forth the procedures for an informal complaint and a formal complaint, provides that no person is required to file either complaint with the Public Access Counselor before filing a court action under the public access laws, and provides that any informal or formal complaint filed does not toll the running of the limitations period for filing an action in court.

- Modifies the statutes governing county records commissions, municipal records commissions, school district and educational service center records commissions, and township records commissions generally to require the appropriate commission to send approved applications for one-time disposal of obsolete records or records retention and disposition schedules to the Ohio Historical Society for review and require the Society to forward the applications and schedules to the State Auditor for approval or disapproval.

- Creates library records commissions and special taxing district records commissions and specifies their functions, including reviewing applications for one-time disposal of obsolete records or records retention and disposition schedules and sending approved applications or schedules to the Ohio Historical Society for review, and requires the Society to forward the applications and schedules to the State Auditor for approval or disapproval.

- Repeals the provision in the Accountants Law that provides that, generally, statements, records, schedules, working papers, and memoranda made by a public accountant or certified public accountant incident to or in the course of an audit of a public office or private entity are not a public record, and makes that repeal applicable to audits commenced on or after the act's effective date.

- Prohibits a sheriff who is otherwise required to disclose to a journalist the name, county of residence, and date of birth of persons to whom the sheriff has issued a valid license, replacement license, temporary emergency license, or replacement temporary emergency license to carry a concealed handgun from disclosing that information to a journalist if the person with a valid license to carry a concealed handgun either notifies the sheriff, in writing, that the person does not want that information disclosed to a journalist or has indicated on the person's application for a license or for renewal of a license that the person does not want that information disclosed to a journalist.

- Requires that the application for a license to carry a concealed weapon or for the renewal of a license of that nature contain a provision that allows an applicant to opt out of release of the applicant's name, county of residence, and date of birth to a journalist.

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CONTENT AND OPERATION

Overview of the Public Records Law

The Public Records Law (R.C. 149.43) generally requires every public office to prepare promptly all public records and make them available for inspection at all reasonable times during regular business hours. Upon request and within a reasonable period of time, a public office or person responsible for public records generally must make copies available at cost. (R.C. 149.43(B)(1).)

"Public office" includes any state agency,[1] public institution, political subdivision, or other organized body, office, agency, institution, or entity established by Ohio law for the exercise of any function of government (R.C. 149.011(A)).

Definition of "records"

The current Records Law (R.C. Chapter 149.) defines "records" as including any document, device, or item, regardless of physical form or characteristic, *including an electronic record as defined in R.C. 1306.01*, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. The bill modifies the above definition of "records" by removing the clause *including an electronic record as defined in R.C. 1306.01*. The bill also expands the definition of "records" to include any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions that documents the depletion, expenditure, or depreciation of the resources of a public office, even if unauthorized by that office. (R.C. 149.011(G).)

Definition of "public record"

Under current law, "public record" generally means records that are kept by any public office, including but not limited to, state, county, city, village, township, and school district units and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for-

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[1] *"State agency" includes every department, bureau, board, commission, office, or other organized body established by the Constitution and laws of Ohio for the exercise of any function of state government, including any state-supported institution of higher education, the General Assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision (R.C. 149.011(B)).*

profit entity operating the alternative school pursuant to R.C. 3313.533. The Public Records Law contains a list of types of records that are not within the definition of "public records." (R.C. 149.43(A)(1).)

The bill modifies the definition of "public record" by including any records kept by any governmental or quasi-governmental entity that receives any governmental housing subsidy or assistance, including, but not limited to, the names and addresses of the owners of property involved in any housing program operated by the entity (R.C. 149.43(A)(1)).

Training for public officials and employees regarding the Public Records Law

The bill provides that to ensure that all employees of public offices are appropriately educated about a public office's obligations to make public records available for public inspection and copying, all *elected officials* or their appropriate *designees* shall attend training approved by the Attorney General (R.C. 149.43(E)(1)). (See "***Definitions for purposes of training***," below, for the definitions of the italicized terms.

Duties and functions of Attorney General

The bill requires the Attorney General (AG) to develop, provide, and certify training programs and seminars for all elected officials or their appropriate designees in order to enhance the officials' knowledge of the duty to provide access to public records as required by the Public Records Law. The training must be three hours for every term of office for which the elected official was appointed or elected to the public office involved. The training must provide elected officials or their appropriate designees with guidance in developing and updating their offices' policies as required by the bill (see "***Adoption of a public records policy by each public office***," below). The successful completion by an elected official or by an elected official's appropriate designee of the training requirements established by the AG will satisfy the education requirements that the bill imposes on elected officials or their appropriate designees. Prior to providing the training programs and seminars to satisfy those education requirements, the AG must ensure that the training programs and seminars are accredited by the Commission on Continuing Legal Education established by the Supreme Court.

The bill provides that the AG cannot charge any elected official or the appropriate designee of any elected official any fee for attending the training programs and seminars that the AG conducts. The AG may allow the attendance of any other interested persons at any of the training programs or seminars that the AG conducts and cannot charge the person any fee for attending the training program or seminar. (R.C. 109.43(C).)

In addition to requiring the AG to develop, provide, and certify training programs, the bill authorizes the AG to contract with one or more other state agencies, political subdivisions, or other public or private entities to conduct the training programs and seminars for elected officials or their appropriate designees. The contract may provide for the attendance of any other interested persons at any of the training programs or seminars conducted by the contracting state agency, political subdivision, or other public or private entity. The contracting state agency, political subdivision, or other public or private entity may charge an elected official, an elected official's appropriate designee, or an interested person a registration fee for attending the training program or seminar conducted by that contracting agency, political subdivision, or entity pursuant to a contract entered into under this provision. The AG must determine a reasonable amount for the registration fee based on the actual and necessary expenses associated with the training programs and seminars. (R.C. 109.43(D).)

The AG may provide any other appropriate training or educational programs about Ohio's "Sunshine Laws," R.C. 121.22 and 149.43, as may be developed and offered by the AG or by the AG in collaboration with one or more other state agencies, political subdivisions, or other public or private entities (R.C. 109.43(F)).

Adoption of a public records policy by each public office

The bill requires the AG to develop and provide to all public offices a model public records policy for responding to public records requests in compliance with the Public Records Law in order to provide guidance to public offices in developing their own public record policies for responding to public records requests in compliance with that section (R.C. 109.43(E)).

The bill requires all public offices to adopt a public records policy in compliance with the Public Records Law for responding to public records requests. In adopting a public records policy, a public office may obtain guidance from the model public records policy developed and provided to the public office by the AG as described in the preceding paragraph. Except as otherwise provided in the Public Records Law, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours. (R.C. 149.43(E)(1).)

The public office must distribute the public records policy adopted by the public office to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public

office must require that employee to acknowledge receipt of the copy of the public records policy. The bill requires a public office to create a poster that describes its public records policy and post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the Internet web site of the public office if the public office maintains an Internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office must include the public records policy of the public office in the manual or handbook. (R.C. 149.43(E)(2).)

Audit for compliance

The bill requires the State Auditor, in the course of an annual or biennial audit of a public office pursuant to R.C. Chapter 117., to audit the public office for compliance with the bill's provisions regarding training and public records policy as described above (R.C. 109.43(G)).

Definitions for purposes of training

The bill defines the following terms for purposes of the training and public records policy provisions described above (R.C. 109.43(A) and 149.43(A)(12)):

"Elected official" means an official elected to a local or statewide office. "Elected official" does not include the Chief Justice or a justice of the Supreme Court, a judge of a court of appeals, court of common pleas, municipal court, or county court, or a clerk of any of those courts.

"Designee" means a designee of the elected official in the public office if that elected official is the only elected official in the public office involved or a designee of all of the elected officials in the public office if the public office involved includes more than one elected official.

The bill defines "public office" in the same manner as in existing law and defines "public record" in the same manner as in existing law as modified by the bill (see "***Overview of the Public Records Law***," and "***Definition of "public record"***," above).

Request for public records

Inspection and copying of public records; redaction

Current law generally requires that all public records be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Current law also generally requires that upon request, a public office or person responsible for public records must make copies available

at cost, within a reasonable period of time. The bill generally requires that, *upon request*, all public records *responsive to the request* be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. The bill generally requires that upon request *and payment in advance of the cost of making copies of the requested public record under this section*, a public office or person responsible for public records must make copies available at cost, within a reasonable period of time. (R.C. 149.43(B)(1).)

The bill provides that if a public record contains information that is exempt from the duty to permit public inspection or copying, the public office must make available all of the information within the public record that is not exempt. When making that information available for public inspection or copying, the public office must notify the requester of any redaction or make the redaction plainly visible. A redaction is deemed a denial of a request to inspect or copy the redacted information except if federal or state law authorizes or requires a public office to make the redaction. (R.C. 149.43(B)(1).) The bill defines "redaction" to mean 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 "record" contained in the Public Records Law (R.C. 149.43(A)(11)).

Organization and availability of public records; records retention schedule; ambiguous request

Current law provides that in order to facilitate broader access to public records, public offices must maintain public records in a manner so that they can be made available for inspection under the Public Records Law (R.C. 149.43(B)(1)). The bill provides that in order to facilitate broader access to public records, a public office must organize and maintain public records in a manner that they can be made available for inspection *or copying* under the Public Records Law. The bill further requires a public office also to have available a copy of its current records retention schedule at a location readily available to the public. Under the bill, if a requester makes an ambiguous request or has difficulty in making a request for copies or inspection of public records such that the public office cannot reasonably identify what public records are being requested, the public office may deny the request but must provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's duties. (R.C. 149.43(B)(2).)

Explanation for denial of request

The bill provides that if a request is ultimately denied, in part or in whole, the public office must provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was

provided in writing, the explanation also must be provided to the requester in writing. The explanation does not preclude the public office from relying upon additional reasons or legal authority in defending a mandamus action commenced under current law to require inspection or copying of the records in question. If a request is ultimately denied, in part or in whole, the public office may provide the requester information on how to contact the Office of the Public Access Counselor established by the bill and the procedures for filing an informal complaint or a formal complaint with the Public Access Counselor as described below in "***Public Access Counselor***." (R.C. 149.43(B)(3).)

Requester's identity and intended use of requested records

The bill provides that unless specifically required by state or federal law or in accordance with the Public Records Law, no public office may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any such requirement constitutes a denial of the request. (R.C. 149.43(B)(4).)

On the other hand, the bill allows a public office or person responsible for public records to ask a requester to make the request in writing, to ask for the requester's identity, and to inquire about the intended use of the information requested, but only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester. (R.C. 149.43(B)(5).)

Student directory information

Current School Law prohibits any person from releasing, or permitting access to, the names or other personally identifiable information concerning any students attending a public school to any person or group for use in a profit-making plan or activity. The bill prohibits any person from releasing, or permitting access to, the *directory information* (instead of *names or other personally identifiable information*) concerning any students attending a public school to any person or group for use in a profit-making plan or activity. It provides that notwithstanding the general prohibition in the Public Records Law, as modified by the bill, against requiring the disclosure of a requester's identity or the intended use of the requested public record (see first paragraph in "***Requester's identity and intended use of requested records***," above), a person may require disclosure of the requestor's identity or the intended use of the directory information concerning any students attending a public school to ascertain whether

the directory information is for use in a profit-making plan or activity. (R.C. 3319.321(A).)

Choice of duplicating medium

Under existing law, if any person chooses to obtain a copy of a public record in accordance with the Public Records Law, the public office or person responsible for the public record must permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. (R.C. 149.43(B)(2).)

Under the bill, if any person chooses to obtain a copy of a public record in accordance with the Public Records Law, the public office or person responsible for the public record *may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under existing law* (not changed by the bill) as described in the preceding paragraph (R.C. 149.43(B)(6)).

Transmission of copies

Existing law provides that upon a request made in accordance with the Public Records Law, a public office or person responsible for public records must transmit a copy of a public record to any person by United States mail within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage and other supplies used in the mailing. Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail. A public office that adopts such policy and procedures must comply with them in performing its duties under this provision.

Existing law provides that *in any such adopted policy and procedures, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.*

For purposes of this provision, "commercial" is narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research. (R.C. 149.43(B)(3).)

The bill provides that upon a request made in accordance with the Public Records Law *and subject to the provision described above in "**Choice of duplicating medium**,"* a public office or person responsible for public records must transmit a copy of a public record to any person by United States mail *or by any other means of delivery or transmission* within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage, *if the copy is transmitted by United States mail,* and other supplies used in the mailing*, delivery, or transmission*. Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail *or by any other means of delivery or transmission*. A public office that adopts such policy and procedures must comply with them in performing its duties under this provision. The bill repeals the provision in existing law described in the preceding paragraph that pertains to limiting the number of copies to be transmitted by United States mail. (R.C. 149.43(B)(7).)

Mandamus action

Under current law, if a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to the person for inspection in accordance with the Public Records Law, or if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a public office or the person responsible for the public record to make a copy available to the person allegedly aggrieved in accordance with that Law, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with the Public Records Law and that awards reasonable attorney's fees to the person that instituted the mandamus action. (R.C. 149.43(C).)

Under the bill, if a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to the person for inspection in accordance with the Public Records Law, or by the *any other* failure of a public office *to comply with an obligation* in accordance with that Law, the person allegedly aggrieved may do either of the following: *(1) file either an informal complaint or a formal complaint with the Public Access Counselor* or (2) commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with the Public

Records Law, that awards *court costs and* reasonable attorney's fees to the person that instituted the mandamus action, *and, if applicable, that includes an order fixing statutory damages as described below. A person that commences a mandamus action may not file with respect to the same public record request that is the subject of the mandamus action an informal complaint or a formal complaint with the Public Access Counselor*. (R.C. 149.43(C)(1).)

Statutory damages

The bill provides that if a person makes a written request to inspect or copy any public record in a manner that fairly describes the public record or class of public records requested, the person is entitled to recover the amount of statutory damages set forth below if a court determines both of the following (R.C. 149.43(C)(2)):

(1) The person filed either an informal complaint or a formal complaint with the Public Access Counselor, regardless of whether or not the parties involved in the applicable complaint reached an agreement and regardless of whether or not the Public Access Counselor issued an advisory opinion.

(2) The public office or the person responsible for public records failed to comply with a person's public record request within ten business days after the person transmitted the request by hand delivery or certified mail to the public office or person responsible for the requested public records, or within any additional period of time for compliance by the public office or person responsible for the public records exercising due diligence if that public office or person asserts in good faith a reasonable belief that the additional period for compliance is necessary due to any of the following: (a) the age of the requested public records, (b) the volume of the requested public records if those records consist of more than 100 pages, (c) the need to examine the requested public records for any privileged information or any information that is exempt from inspection and copying under the Public Records Law or any section of the Revised Code, (d) the need to make any redaction of any information in the requested public records, or (e) the format of the requested public records being such that the records are no longer easily accessible.

The amount of statutory damages must be fixed at $100 for each business day during which the public office or person responsible for the requested public records failed to make one or more requested public records available, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of $1,000. The statutory damages are not to be construed as penalties, but as compensation for injury arising from lost use of the requested information; the existence of this injury is conclusively presumed. The

award of statutory damages is in addition to all other remedies authorized by the Public Records Law. (R.C. 149.43(C)(2).)

Court costs and attorney's fees to the relator

The bill provides that if the court renders a judgment that orders the public office or the person responsible for the public record to comply with the Public Records Law and determines that the circumstances described in paragraphs (1) and (2) under "***Statutory damages***," above, exist, the court must determine and award to the relator all court costs.

If the court renders a judgment that orders the public office or the person responsible for the public records to comply with the Public Records Law, the relator filed a formal complaint with the Public Access Counselor prior to filing the mandamus action, and the Counselor issued an advisory opinion declaring that the relator has the right to inspect or copy the public records that are the subject of the formal complaint, subject to the following paragraph, the court must determine and award to the relator reasonable attorney's fees subject to reduction as described in the second following paragraph. (R.C. 149.43(C)(3)(a) and (b).)

If the court renders a judgment that orders the public office or the person responsible for the public record to comply with the Public Records Law, in addition to any other provisions in that Law regarding an award of attorney's fees to the relator, the following apply: (1) the court must determine and award to the relator reasonable attorney's fees, subject to reduction as described in the following paragraph, if the public office or the person responsible for the public records did not respond affirmatively or negatively to the public records request within the applicable period of time described in paragraph (2) under "***Statutory damages***," above, or (2) the court must determine and award to the relator reasonable attorney's fees, subject to reduction as described below, if the public office or the person responsible for the public records promised to permit the relator to inspect or copy the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time. (R.C. 149.43(C)(3)(c).)

The bill provides that the awarded court costs and reasonable attorney's fees are to be construed as remedial and not punitive. Reasonable attorney's fees include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. The court may reduce an award of attorney's fees to the relator or not award attorney's fees to the relator if it determines both of the following (R.C. 149.43(C)(3)(d)):

(1) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or

person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with the Public Records Law and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with that Law;

(2) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in (1), above, would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

The bill provides that if the person who commences the mandamus action did not file an informal complaint or a formal complaint with the Public Access Counselor before filing the action, the court must not award to the person any statutory damages but must award to the person court costs and may award to the person reasonable attorney's fees, subject to reduction as described above (R.C. 149.43(C)(3)(e)).

Public Access Counselor

Office of the Public Access Counselor; appointment of Counselor

The bill establishes 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 is under the supervision of a Public Access Counselor (hereafter "Counselor") appointed by the Chief Justice of the Supreme Court. The Counselor must have been admitted to practice as an attorney at law, and must be engaged in the practice of law, in Ohio. The Chief Justice must appoint the Counselor for a term of four years and may remove the Counselor for cause. If a vacancy occurs in the office of Public Access Counselor, the Chief Justice must appoint a successor to serve the remainder of the Counselor's unexpired term. The successor appointed to fill a vacancy in that office must have been admitted to practice as an attorney at law, and must be engaged in the practice of law, in Ohio.

The bill prohibits the Counselor from engaging in any profession, occupation, practice, or business that may conflict with the Counselor's duties under the bill. The Counselor may appoint any employees necessary to carry out the duties and functions of that office. (R.C. 2743.31.)

Duties of Counselor

The bill provides the duties of the Public Access Counselor as follows (R.C. 2743.32(A)) (see "***Definitions***," below, for definitions of italicized terms):

(1) Assist the Attorney General in developing and providing training programs and seminars as described above in "***Duties and functions of Attorney General***."

(2) Receive any informal complaint filed by any person under the bill alleging a *public entity's* denial of any of the person's rights under the *public access laws* and engage in dispute resolution to encourage the parties to reach an agreement as described below in "***Informal complaint***" and "***Formal complaint***";

(3) Receive any formal complaint filed by any person under the bill alleging a public entity's denial of any of the person's rights under the public access laws, investigate the allegations in the formal complaint, and issue an advisory opinion regarding any of the person's rights that is the subject of the formal complaint;

(4) Make recommendations to the General Assembly and to the Supreme Court concerning ways to improve public access to *public records* and to ensure public attendance at *public meetings*.

Annual report

The Counselor must submit an annual report to the General Assembly and to the Supreme Court not later than June 30 of each year concerning the activities of the Counselor during the immediately preceding calendar year in regard to the matters listed below. The report must include all of the following information (R.C. 2743.32(C)):

(1) The total number of informal complaints and the total number of formal complaints received by the Office of the Public Access Counselor;

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

(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;

(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 the Open Meetings Law or the Public Records Law by each of the following: (a) public entities, other than political subdivisions or agencies of political subdivisions, (b) offices and agencies of counties, (c) offices and agencies of municipal corporations, (d) offices and agencies of townships, (e) boards of education, and (f) offices and agencies of other political subdivisions;

(5) The total number of advisory opinions that were issued by the Counselor.

Filing of informal complaint or formal complaint

The bill provides that no person is required to file an informal complaint or a formal complaint with the Counselor before filing an action in court under the public access laws. The procedures pertaining to informal complaints and formal complaints as set forth in the bill do not constitute an alternative remedy in the ordinary course of the law for purposes of seeking any judicial remedy authorized by any provision in the Revised Code or by any rule of court. A public entity must cooperate with the Counselor in any proceeding dealing with informal complaints and formal complaints. (R.C. 2743.33(A) and (B).)

Any person that alleges that the person's right to inspect or copy any public record under the Public Records Law has been denied in violation of that Law or any person that alleges that any of the person's rights under the Open Meetings Law has been denied in violation of that Law may file either an informal complaint or a formal complaint with the Counselor pursuant to the applicable procedures described below. No person described in the preceding sentence may file both an informal complaint and a formal complaint alleging that the person's right to inspect or copy any public record under the Public Records Law has been denied in violation of that Law or alleging that any of the person's rights under the Open Meetings Law has been denied in violation of that Law if the applicable allegations are based on the same facts. The Counselor must determine and prescribe the form of an informal complaint and the form of a formal complaint. (R.C. 2743.33(C), 121.22(K), and 149.43(G).)

Any person that chooses to file an informal complaint or a formal complaint with the Counselor must file the appropriate complaint not later than 30 days after the date of the alleged denial of the person's right to inspect or copy any public record under the Public Records Law or the alleged denial of any of the person's rights under the Open Meetings Law, whichever is applicable. The appropriate complaint is considered filed on the date it is received by the Counselor or on the date the mailed complaint is postmarked if the Counselor receives that mailed complaint more than 30 days after the date of the alleged denial of the person's rights as described in the preceding sentence. Upon receiving an informal complaint or a formal complaint, the Counselor immediately

must forward of copy of the appropriate complaint to the public entity that is the subject of the complaint. (R.C. 2743.33(D) and (E).)

Informal complaint

Upon receiving an informal complaint, the Counselor must engage in early intervention, mediation, conciliation, or any other form of dispute resolution or must facilitate discussion between the parties involved in the complaint in order to encourage them to reach an agreement on the issues raised in the complaint as soon as practicable (R.C. 2743.33(F)(1)).

Agreement. If the parties reach an agreement regarding the issues raised in the informal complaint, the Counselor must require the agreement to be in writing and signed by both parties within seven days after they reach the agreement. The agreement is enforceable in a court. A court that determines that a party has violated the agreement must 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 the Public Records Law, if an agreement is reached between the parties as described above, and if a court determines that the public office violated the agreement, the court must order the public office to pay statutory damages to the complainant in the amount of $100 per day of the violation up to a maximum of $1,000. If the informal complaint is based on an alleged denial by a public body of any of the complainant's rights under the Open Meetings Law, if an agreement is reached between the parties as described above, and if a court determines that the public body violated the agreement, the court must order the public body to pay a civil forfeiture of $500 to the complainant. (R.C. 2743.33(F)(2).)

Absence of agreement. If any early intervention, mediation, conciliation, or other form of dispute resolution in which the Counselor engages or any discussion between the parties does not result in any agreement between the parties on the issues raised in the informal complaint within 14 days after the date of filing of the complaint, the complainant may bring an action in court pursuant to the applicable public access law (R.C. 2743.33(F)(3)).

Formal complaint

Upon receiving a formal complaint, the Counselor must investigate the facts alleged in the complaint (R.C. 2743.33(G)(1)).

Agreement. The procedures described in this paragraph do not apply if the Counselor participated in or facilitated any discussion between the parties in reaching an agreement. If the parties in a formal complaint reach an agreement regarding the issues raised in the complaint either before or after an advisory

opinion is issued as described below, the Counselor must require the agreement to be in writing and signed by both parties within seven days after they reach the agreement. The agreement is enforceable in a court. A court that determines that a party has violated the agreement must order that party to pay the reasonable attorney's fees of the other party. If the formal complaint is based on an alleged denial by a public office of the complainant's right to inspect or copy any public record under the Public Records Law, if an agreement is reached between the parties as described in this paragraph, and if a court determines that the public office violated the agreement, the court must order the public office to pay statutory damages to the complainant in the amount of $100 per day of the violation up to the maximum of $1,000. If the formal complaint is based on an alleged denial by a public body of any of the complainant's rights under the Open Meetings Law, if an agreement is reached between the parties as described in this paragraph, and if a court determines that the public body violated the agreement, the court must order the public body to pay a civil forfeiture of $500 to the complainant. (R.C. 2743.33(G)(2).)

Advisory opinion. Except when the formal complaint is determined by the Counselor to have priority as described in the following sentence, the Counselor must issue an advisory opinion on the formal complaint not later than 14 days after the complaint is filed. If the Counselor determines that a formal complaint has priority, the Counselor must issue an advisory opinion on the complaint not later than seven days after the complaint is filed. The Counselor must adopt any necessary rules establishing criteria for formal complaints that have priority or any other rules necessary to implement the bill's provisions. (R.C. 2743.33(G)(3) and (4).)

If the Counselor issues an advisory opinion that declares that the complainant has the right to inspect or copy the public records that are the subject of the formal complaint or has that right under the Open Meetings Law that is the subject of the complaint, whichever is applicable, unless the parties reach an agreement as described above, the complainant may present the applicable advisory opinion to the public office involved in the formal complaint and request the public office to make those records available for inspection or copying by the complainant or may present the applicable advisory opinion to the public body involved and request the public body to comply with the Open Meetings Law with respect to the complainant's right that is the subject of the complaint. If the public office or the public body denies the applicable request, the complainant may bring an action in court pursuant to the applicable public access law. (R.C. 2743.33(G)(5).)

All advisory opinions issued by the Counselor must state the date of issuance of the opinion, name the parties to the formal complaint, summarize the

factual and legal issues involved, and set forth a reasoned rationale for the Counselor's conclusion, including citation to legal authority supporting that conclusion. Advisory opinions issued by the Counselor are public records under the Public Records Law. (R.C. 2743.33(G)(6).)

The Office of the Public Access Counselor may rely on past advisory opinions issued by the Counselor under the bill. Advisory opinions issued by the Counselor do not bind any court in interpreting or applying the Public Records Law or the Open Meetings Law, and no court may presume that the existence of an advisory opinion issued by the Counselor is evidence against or in favor of a reduction or denial of an award of reasonable attorney's fees to a litigant. (R.C. 2743.33(G)(7).)

Withdrawal of complaint

Any person who files an informal complaint or a formal complaint with the Counselor may withdraw the complaint at any time by notifying the Counselor in writing of the withdrawal. Upon withdrawing the complaint, that person may bring an action in court as authorized by the applicable public access law based upon the same facts that are the subject matter of the complaint that was withdrawn. (R.C. 2743.34(A).)

No tolling of statute of limitations

Any informal complaint or any formal complaint filed with the Counselor does not toll the running of the period of limitations for bringing an action under the Public Records Law or the Open Meetings Law concerning the subject matter of the informal complaint or formal complaint (R.C. 2743.34(B)).

Definitions

The bill defines the following terms for purposes of its provisions concerning the Public Access Counselor (R.C. 2743.31(A)):

"Counselor" means the Public Access Counselor appointed under the bill.

"Meeting" means any prearranged discussion of the public business of the public body by a majority of its members (by reference to R.C. 121.22(B)(2)).

"Public body" means any of the following: (1) any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution, (2) any committee or subcommittee of a body described in

(1), above, (3) a court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to R.C. 6115.10, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in this provision, "court of jurisdiction" has the same meaning as "court" in R.C. 6115.01. (By reference to R.C. 121.22(B)(1).)

"Public access laws" means R.C. 121.22 (Open Meetings Law) and R.C. 149.43 (Public Records Law).

"Public entity" means a public body for purposes of matters concerning the Open Meetings Law or a public office for purposes of matters concerning the Public Records Law.

"Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by Ohio laws for the exercise of any function of government (by reference to R.C. 149.011(A)).

"Public meeting" means a meeting that is open to the public under the Open Meetings Law.

"Public records" has the same meaning as in R.C. 149.43 in the bill.

State archives administration

Under existing law, the Ohio Historical Society (hereafter, Society), in addition to its statutory functions, also functions as the state archives administration for the state of Ohio and its political subdivisions. It is the function of the state archives to preserve government archives, documents, and records of historical value that may come into its possession from public or private sources.

The archives administration is headed by a trained archivist designated by the Society and designated as "state archivist." The archives administration must make its services available to county, *city*, township, and school district records commissions upon request. (R.C. 149.31(A).)

The bill modifies existing law by providing that it is the function of the state archives *administration* (added by the bill) to preserve government archives, documents, and records of historical value that may come into its possession from public or private sources. The archives administration must make its services available upon request to *library and special taxing district records commissions*, which the bill creates (see below). The bill replaces *city* records commission with *municipal* records commission. (R.C. 149.31(A).)

County records commission

Existing law

Under existing law, a county records commission in each county may employ an archivist to serve under its direction. The functions of the county records commission are to provide rules for retention and disposal of records of the county and to review applications for one-time records disposal and schedules of records retention and disposal submitted by county offices. Records may be disposed of by the commission pursuant to the procedure outlined below. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule subject to the commission's rules. (R.C. 149.38(A) and (B).)

When the county records commission has approved county records for disposal, a copy of a list of those records must be sent to the State Auditor. If the Auditor disapproves the action by the commission in whole or in part, the Auditor must so inform the commission within a period of 60 days, and those records must not be destroyed. Before public records are to be disposed of, the commission must inform the Ohio Historical Society and give the Society the opportunity for a period of 60 days to select for its custody such records as it considers to be of continuing historical value. When the Society is so informed that public records are to be disposed of, the county records commission also must notify the county historical society, and any public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the Ohio Historical Society has been so informed and may select records of continuing historical value, including records that may be distributed to any of the notified entities under R.C. 149.31 (State Archives Administration Law). (R.C. 149.38(C).)

Operation of the bill

The bill provides that a county records commission may employ an archivist *or records manager* to serve under its direction. It further modifies existing law in the following manner (modified and new language are in italics). The functions of the county records commission are to provide rules for retention and disposal of records of the county and to review applications for one-time disposal *of obsolete records* and schedules of records retention and *disposition* submitted by county offices. The commission may dispose of records pursuant to the procedure outlined below. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule, subject to the commission's rules. (R.C. 149.38(A) and (B).)

When the county records commission has approved *any* county *application* for *one-time* disposal of *obsolete* records *or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition* to the State Auditor *for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule* within a period of *not more than* 60 days *after receipt of it*. Before public records are to be disposed of, the commission must inform the Society *of the disposal through the submission of a certificate of records disposal* and *must* give the Society the opportunity for a period of *15 business days* (instead of *60 days*) to select for its custody *those* records *that* it considers to be of continuing historical value. *Upon the expiration of the 15-business-day period*, the county records commission also must notify the *public libraries*, county historical society, *state universities*, and *other* public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the *commission has informed the* Ohio Historical Society *of the records disposal* and *that the notified entities, upon written agreement with the Society pursuant to R.C. 149.31*, may select records of continuing historical value, including records that may be distributed to any of the notified entities under R.C. 149.31. (R.C. 149.38(C).)

Municipal records commission

Existing law

Under existing law, a municipal records commission in each municipal corporation may employ an archivist to serve under its direction. The functions of the commission are to provide rules for retention and disposal of records of the municipal corporation and to review applications for one-time records disposal and schedules of records retention and disposition submitted by municipal offices. Records may be disposed of by the commission pursuant to the procedure outlined below. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When municipal records have been approved for disposal, a list of such records must be sent to the State Auditor. If the Auditor disapproves of the action by the municipal commission, in whole or in part, the Auditor must so inform the commission within a period of 60 days and these records must not be destroyed. Before public records are disposed of, the Ohio Historical Society must be informed and given the opportunity for a period of 60 days to select for its custody

such public records as it considers to be of continuing historical value. (R.C. 149.39.)

Operation of the bill

The bill provides that a municipal records commission may employ an archivist *or records manager* to serve under its direction. It further modifies existing law in the following manner (modified and new language are in italics). The functions of the municipal records commission are to provide rules for retention and disposal of records of the municipal corporation and to review applications for one-time *disposal of obsolete* records and schedules of records retention and disposition submitted by municipal offices. The commission *may dispose of records* pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When *the* municipal records *commission has* approved *any application* for *one-time* disposal of *obsolete* records *or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition* to the State Auditor *for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule* within a period of *not more than* 60 days *after receipt of it*. Before public records are *to be* disposed of, the *commission must inform the* Ohio Historical Society *of the disposal through the submission of a certificate of records disposal and must give the Society* the opportunity for a period of *15 business days* (instead of *60 days*) to select for its custody *those* public records *that* it considers to be of continuing historical value. (R.C. 149.39.)

School district records commission; educational service center records commission

Existing law

Under existing law, the function of the school district records commission in each city and exempted village school district and the function of an educational service center records commission in each educational service center are to review applications for one-time records disposal and schedules of records retention and disposition submitted by any employee of the school district or educational service center. Records may be disposed of by the commission pursuant to the procedure

outlined below. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When school district or educational service center records have been approved for disposal, a list of such records must be sent to the State Auditor. If the Auditor disapproves the action by the commission, in whole or in part, the Auditor must so inform the commission within a period of 60 days and these records must not be destroyed. Before public records are disposed of, the Ohio Historical Society must be informed and given the opportunity for a period of 60 days to select for its custody such public records as it considers to be of continuing historical value. The Society may not review or select for its custody certain records containing personally identifiable information concerning any pupil attending a public school other than directory information, without the written consent of the parent, guardian, or custodian of each such pupil who is less than 18 years of age, or without the written consent of each such pupil who is 18 years of age or older, or records the release of which would, according to the "Family Educational Rights and Privacy Act of 1974," disqualify a school or other educational institution from receiving federal funds. (R.C. 149.41.)

Operation of the bill

The bill modifies existing law in the following manner (modified and new language are in italics). The function of the school district records commission and the educational service center records commission are to review applications for one-time *disposal of obsolete* records and schedules of records retention and disposition submitted by any employee of the school district or educational service center. The commission *may dispose of records* pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When the school district *records commission* or the educational service center records *commission has* approved *any application* for *one-time* disposal of *obsolete* records *or any schedule of records retention and disposition, the appropriate commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition* to the State Auditor *for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule* within a period of *not more than* 60 days *after receipt of it.* Before public records are *to be* disposed of, the *appropriate commission must inform the* Ohio Historical Society *of the disposal through the submission of a certificate of records disposal and must give the Society* the opportunity for a period of *15 business days* (instead of *60 days*) to

select for its custody *those* public records *that* it considers to be of continuing historical value. The Society may not review or select for its custody the records described in "***Existing law***," above. (R.C. 149.41.)

Township records commission

Existing law

Under existing law, the function of the township records commission in each township is to review applications for one-time records disposal and schedules of records retention and disposition submitted by township offices. Records may be disposed of by the commission pursuant to the procedure outlined below. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When township records have been approved for disposal, a list of such records must be sent to the State Auditor. If the Auditor disapproves the action by the commission, in whole or in part, the Auditor must so inform the commission within a period of 60 days, and these records must not be destroyed. Before public records are disposed of, the Ohio Historical Society must be informed and given the opportunity for a period of 60 days to select for its custody such public records as it considers to be of continuing historical value. (R.C. 149.42.)

Operation of the bill

The bill modifies existing law in the following manner (modified and new language are in italics). The function of the township commission in each township is to review applications for one-time *disposal of obsolete* records and schedules of records retention and disposition submitted by township offices. The commission *may dispose of records* pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When *the* township records *commission has* approved *any township application* for *one-time* disposal of *obsolete* records *or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition* to the State Auditor *for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule* within a period of *not more than* 60 days *after receipt of it*. Before public records are *to be* disposed of, the *commission must inform the* Society *of the disposal through the submission*

of a certificate of records disposal and must give the Society the opportunity for a period of *15 business days* (instead of *60 days*) to select for its custody *those* public records *that* it considers to be of continuing historical value. (R.C. 149.42.)

Library records commission

The bill creates in each county free public library, municipal free public library, township free public library, county library district, and regional library district a library records commission composed of the members and the clerk of the board of library trustees of the appropriate public library or library district. The commission must meet at least once every 12 months.

The functions of the commission are to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the library. The commission may dispose of records pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When the appropriate library records commission has approved any library application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the State Auditor for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule within a period of not more than 60 days after receipt of it. Before public records are to be disposed of, the commission must inform the Society of the disposal through the submission of a certificate of records disposal and must give the Society the opportunity for a period of 15 business days to select for its custody those public records that it considers to be of continuing historical value. The Society may not review or select for its custody any records pursuant to R.C. 149.432 (confidentiality of library records and patron information) (R.C. 149.411).

Special taxing district records commission

The bill creates in each special taxing district that is a public office as defined in R.C. 149.011 (see "***Overview of the Public Records Law***," above) and that is not specifically designated in any of the above described provisions pertaining to a county records commission, municipal records commission, school district records commission or educational service center records commission, township records commission, or library records commission, a special taxing

district records commission composed of, at a minimum, the chairperson, a fiscal representative, and a legal representative of the governing board of the special taxing district. The commission must meet at least once every 12 months and upon the call of the chairperson.

The functions of the commission are to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the special taxing district. The commission may dispose of records pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When the special taxing district records commission has approved any special taxing district application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the State Auditor for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule within a period of not more than 60 days after receipt of it. Before public records are to be disposed of, the commission must inform the Society of the disposal through the submission of a certificate of records disposal and must give the Society the opportunity for a period of 15 business days to select for its custody those public records that it considers to be of continuing historical value. (R.C. 149.412.)

Accountant's audit records

Under the existing Accountants Law, generally, the statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by the accountant remain the property of the accountant in the absence of an express agreement to the contrary. *The statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity, except reports submitted by the accountant to the client, are not a public record, as defined in the Public Records Law. Statements, records, schedules, working papers, and memoranda that are so made in an audit by a certified public accountant or public accountant and that are in the possession of the Auditor of State also are not a public record, as defined in the Public Records Law.* (R.C. 4701.19.)

The bill repeals the above italicized provision in existing law, and provides that the repeal of that provision applies to audits commenced on or after the bill's effective date (R.C. 4701.19(B) and Section 3).

Sheriff's concealed handgun licensure records--journalist access

General exemption from Public Records Law

Under existing law, notwithstanding the Public Records Law, except as described below in "***Journalist access exception***," the records that a sheriff keeps relative to the issuance, renewal, suspension, or revocation of a standard license or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun, including, but not limited to, completed applications for the issuance or renewal of a standard license, completed affidavits submitted regarding an application for a temporary emergency license, reports of criminal records checks and incompetency checks, and applicants' Social Security numbers and fingerprints are confidential and are not public records. Existing law prohibits any person, except as described below in "***Journalist access exception***," from releasing or otherwise disseminating records that are confidential as described in this paragraph unless required to do so pursuant to a court order. A person who violates this prohibition is guilty of the offense of illegal release of confidential concealed handgun license records, a felony of the fifth degree. In addition to any penalties imposed for the violation under the Criminal Sentencing Law, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender is subject to a civil fine of $1,000. Any person who is harmed by the violation has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney's fees related to the action. (R.C. 2923.129(B)(1) and (E).)

Journalist access exception

Under existing law, upon a written request made to a sheriff and signed by a "journalist" on or after April 8, 2004, the sheriff must disclose to the journalist the name, county of residence, and date of birth of each person to whom the sheriff has issued a standard license or replacement standard license to carry a concealed handgun, renewed a standard license to carry a concealed handgun, or issued a temporary emergency license or replacement temporary emergency license to carry a concealed handgun. The request must include the journalist's name and title, include the name and address of the journalist's employer, and state that the disclosure of the information sought would be in the public interest. A person who violates this prohibition is guilty of the offense of illegal release of confidential concealed handgun license records, a felony of the fifth degree. In addition to any penalties imposed for the violation under the Criminal Sentencing

Law, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender is subject to a civil fine of $1,000. Any person who is harmed by the violation has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney's fees related to the action.

As used in this provision, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public. (R.C. 2923.129(B)(2) and (E).)

The bill provides that a sheriff who otherwise is required to disclose to a journalist the name, county of residence, and date of birth of persons to whom the sheriff has issued a valid license, replacement license, temporary emergency license, or replacement temporary emergency license to carry a concealed handgun must not disclose that information to a journalist if the person with a valid license to carry a concealed handgun has either notified the sheriff, in writing, that the person does not want the person's name, county of residence, and date of birth disclosed to a journalist or has indicated on the person's application for a license or for renewal of a license that the person does not want the person's information disclosed to a journalist. A person who violates this prohibition is guilty of the offense of illegal release of confidential concealed handgun license records, a felony of the fifth degree. In addition to any penalties imposed for the violation under the Criminal Sentencing Law, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender is subject to a civil fine of $1,000. Any person who is harmed by the violation has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney's fees related to the action. (R.C. 2923.129(B)(2)(b) and (E)).

Application and license form for license to carry concealed handgun

Under existing law, the application for a license to carry a concealed handgun or for the renewal of a license of that nature must conform substantially to the form prescribed under R.C. 2923.1210. The bill requires that the form contain a provision that allows the applicant to opt out of release of the applicant's name, county of residence, and date of birth to a journalist. (R.C. 2923.1210.)

HISTORY

ACTION	DATE
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Reported, H. Civil and Commercial Law	03-15-06
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