

	<u>Public Records Policy</u>	<u>Amended:</u> April 12, 2016 August 23, 2016
	<u>Policy Number:</u> 07-3	
	<u>Adopted:</u> September 24, 2007	<u>Related Form(s) and Policy(ies):</u> • Request for Public Information Form

INTRODUCTION

It is the policy of the Board of Trustees of Jackson Township, Stark County, Ohio, that openness leads to a better informed citizenry, which leads to more transparent government and sounder public policy. It is our policy to strictly adhere to the state’s Public Records Act as well as other state and federal laws.

Ohio’s Public Records Act imposes two primary obligations upon public offices:

1. Provide prompt inspection of public records (ORC Section 149.43(B)(1)); and
2. Provide copies of public records within a reasonable period of time. (ORC Section 149.43 (B)(2)).

The Public Records Act evolved from the principle that Ohio’s citizens are entitled to access the records of their government. We agree that to advance that principle, the Public Records Act should be interpreted liberally in favor of disclosure.

Section 1. Public Records

Under Ohio law, a public office may only create records that are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency’s activities. (ORC Section 149.40).

In accordance with the Ohio Revised Code and court rulings, “records” are defined as those items that meet all of the following:

1. any document, device, or item, regardless of physical form or characteristic, including an electronic record (which includes but is not limited to e-mail or other record created, generated, sent, communicated, received, or stored by electronic means);
2. that is created or received by, or coming under the jurisdiction of a public office; and
3. that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (ORC Section 149.011(G)).

The determination of whether a specific item constitutes a “record” will depend on the facts and circumstances surrounding the particular item requested. The Ohio Supreme Court has imposed an actual use standard in defining a “record,” which means that an item is not automatically a “record” simply because the public office could (but did not) use a document it received to carry out its duties and responsibilities.

Furthermore, a public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.

Section 1.1

It is the policy of the Board of Trustees of Jackson Township, Stark County, Ohio, that, as required by Ohio law, records will be organized and maintained so that they are made available for inspection to any person at all reasonable times during regular business hours. (ORC Section 149.43(B)(1)).

Copies will be made available upon request within a reasonable period of time. (ORC Section

149.43(B)(1)).

A current record retention schedule will be readily available to the public upon request. (ORC Section 149.43(B)(2)).

Section 1.2

Not all of Jackson Township's records are "public records." Certain records are exempt from the Public Records Act. Exempt records include records:

1. the release of which is prohibited by state or federal law, or
2. that are subject to an express exception set forth in Ohio's Public Records Act, which may be released only if the Board of Trustees of Jackson Township decides to waive the express exception.

Examples of records, the release of which is prohibited by state or federal law, include, but are not limited to, the following:

- Attorney-client privileged information;
- Records of a Certified Public Accountant or public accountant in the performance of an audit of a public office (ORC Section 4701.19(B));
- Federal tax returns (26 U.S.C. 6103(a));
- Criminal background information and other law enforcement information on the LEADS/CCH/NCIC computer database (42 U.S.C. 3789g);
- Records that have been sealed pursuant to a statutorily authorized court order (i.e. ORC Section 2953.52);
- Peace officer's home address during the pendency of a criminal case in which the officer is a witness or arresting officer (ORC Section 2921.24(A)); and
- Employees' and their family members records that were created for purposes of the Family Medical Leave Act or the Americans with Disabilities Act (29 CFR 825.500(e) and 1630.14(c)(1)).

Examples of records that are subject to an express exception set forth in Ohio's Public Records Act, which may be released only if the Board of Trustees of Jackson Township decides to waive the express exception include, but are not limited to, the following:

- Peace Officer, firefighter, EMT, prosecutor, assistant prosecutor, children's services worker, or corrections officer, Residential and Familial Information (ORC Section 149.43(A)(7));
- Records that pertain to a patient's medical history, diagnosis, prognosis, or medical condition and that were general and maintained in the process of medical treatment (ORC Section 149.43 (A)(1)(a));
- Records that contain information that was specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding (ORC Section 149.43(A)(1)(g)); and
- Records that pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature and that, if released, would create a high probability of disclosing any of the following:

1. the identity of an uncharged suspect;
2. the identity of a confidential source;
3. specific confidential investigatory techniques or procedures;
4. specific investigative work product; or
5. information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential source (ORC Section 149.43(A)(2)).

The exemptions to the Public Records Act will be narrowly construed by this office in the favor of disclosure. This office may seek a legal review prior to determining whether or not an exception applies.

Section 2. Record Requests

Each request for public records should be evaluated for a response using the following guidelines:

Section 2.1

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow this office to identify, retrieve, and review the records. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that this office cannot reasonably identify what public records are being requested, then this office may deny the request. In such case, this office will provide the requester with an opportunity to revise the request by informing him/her of the manner in which records are maintained by the office and accessed in the ordinary course of this office's duties. (ORC Section 149.43(B)(2)).

Section 2.2

The requester does not have to put a records request in writing, and does not have to provide his/her identity or the intended use of the requested public record. However, the records custodian may ask for a written request and may ask for the requester's identity and/or intended use of the information requested if:

1. it would benefit the requester by helping the public office identify, locate or deliver the records being sought, and
2. the requester is informed that a written request and the requester's identity and intended use of the information requested are not required. (ORC Section 149.43(B)(5)).

Section 2.2.1

This office will permit a requester to choose to have the public record duplicated upon paper, upon the same medium which this office keeps it, or upon any other medium which this office determines that it reasonably can be duplicated as an integral part of the normal operations of this office. This office is not required to allow the requester to make the copies of the public record. (ORC Section 149.43(B)(6)).

Section 2.3

Public records should be available for inspection at all reasonable times during regular business hours. Public records should be made available for inspection promptly. (ORC Section 149.43(B)(1)). To the extent that an office may operate 24-hours-a-day, the records of that office will be made available for inspection during normal administrative hours.

Copies of public records should be made available within a reasonable period of time. (ORC Section 149.43(B)(1)).

The determination of the terms "prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

Section 2.4

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately if feasible to do so. Routine requests include, but are not limited to, meeting minutes, resolutions, budgets, etc.

Section 2.5

Upon request, this office will provide copies of public records to a requester by United States mail or by any other delivery means or transmission that this office deems reasonable. (ORC Section 149.43(B)(7)).

This office will limit to ten the number of copies of public records provided per month to a requester by United States Mail, unless the requester certifies in writing that he/she does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. (The word "commercial" should be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research). (ORC Section 149.43(B)(7)).

Section 2.6

By Ohio law, this office is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation if the subject of the investigation or prosecution were an adult, unless the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justifiable claim of the person. (ORC Section 149.43(B)(8)).

Section 2.7

This office, in response to a written request made and signed by a journalist, which must include the journalist's name and title and the name and address of the journalist's employer and which states that the disclosure of the information sought would be in the public interest, will provide the address of the actual personal residence of anyone employed by this office as a peace officer, firefighter, EMT, prosecutor, assistant prosecutor, children's services worker, or corrections officer, and, if such employee's spouse, former spouse, or child is employed by a public office, the name and address of that public office. (ORC Section 149.43(B)(9)).

Section 2.8

Any denial of public records requested, in part or in whole, should include an explanation, including legal authority, as to why the request was denied. If the initial request was provided in writing, the explanation for denial will be provided to the requester in writing. (ORC Section 149.43(B)(3)).

If portions of a record are public and portions are exempt, the exempt portions should be redacted and the rest released. If there are redactions, the office will notify the requester of any redaction or make the redaction plainly visible. Each redaction should be accompanied by a supporting explanation, including legal authority, as to why the redaction was made. (ORC Section 149.43(B)(1) and (2)).

Section 2.9

The office has a number of departments which post records directly to the Township's web site. The Township's web site is fully available to the public, searchable and digital documents can be downloaded at no costs. In other instances, Ohio law permits particular Township departments to directly participate in state run programs (i.e. Ohio check book.com) which post records digitally to a state sponsored web site which are fully accessible by the public, searchable and permit downloading at all times, and no fees are associated with the use of these state web sites. Public record requests for records which can be found on these web sites will be limited to ten (10) pages per month, unless the requester certifies to the Township in writing that the requested records are not provided on the web site and unless the requester certifies to the Township in writing that the requester does not intend to use or forward the requested records, or information contained in

them, for commercial purposes.

Section 2.10

A public records request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available pursuant to a public records request (ORC 149.43), shall be considered a demand for discovery pursuant to the criminal rules of procedure relevant to the court of jurisdiction, except to the extent that the criminal rules plainly indicate a contrary intent.

Section 2.11

This office has no duty to provide records acquired after a request for records is complete.

Section 3. Costs for Public Records

Those seeking public records should be charged only the actual cost of making copies, unless the cost is otherwise set by statute. (ORC Section 149.43(B)(1)). Employee time should not be calculated into the charge for copying a public record. However, in the event that circumstances make it reasonable for this office to hire an outside contractor to make copies of requested records, the requester will be charged the actual cost paid to the outside contractor for the copying service. (ORC Section 149.43(F)(2)(a)). These circumstances may include but not be limited to a lack of in-house photocopying resources or labor.

This office has no duty to provide copies of public records free of charge to someone who indicates an inability or unwillingness to pay for them.

Section 3.1

The charge for paper copies is \$.10 cents per page. There is no charge for paper copies until the request is over \$1.00.

The charge for requests on CD or DVD is \$1.75.

Any request that is emailed will have no charge until the size reaches 25 mb. Requestors seeking documents in excess of 25 mb will have to choose between paper copies or a CD/DVD.

Section 3.2

This office may require a requester to pay in advance the cost involved in providing the copy of the public record, as requested. (ORC Section 149.43(B)(6)).

Section 3.3

Upon request, this office will provide copies of public records to a requester by United States mail or by any other delivery means or transmission that this office deems reasonable. This office may require such a requester to pay in advance the cost of postage or costs incurred for other supplies used in the mailing, delivery, or transmission. (ORC Section 149.43(B)(7)).

Section 3.4

There may be instances when this office may be able to provide copies made in-house without disrupting its normal functions, but only over an extended period of time. In that instance, this office may offer the requester the options of:

1. having the documents produced through a faster method by employing temporary personnel and equipment,
2. using an external private contractor, or
3. having the documents produced in-house by this public office's normal staff and equipment in a less efficient and more time consuming manner.

Section 4. Failure to Respond to a Public Records Request

This office recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, this office's failure to comply with a request may result in the requester commencing a mandamus action against this office in either the court of common pleas, in the court of appeals, or in the Supreme Court of Ohio. The court may order this office to comply with the Public Records Act, as well as order this office to pay statutory damages of one hundred dollars for each business day (beginning with the day the requester files the mandamus action) during which this public office failed to comply (up to a maximum of one thousand dollars), as well as court costs and the requester's reasonable attorney fees.



JACKSON TOWNSHIP
REQUEST FOR PUBLIC INFORMATION
(VOLUNTARY - THERE IS NO REQUIREMENT TO COMPLETE THIS FORM)

APPLICANT INFORMATION

Date: _____

Person to contact when information is ready for pickup: _____

Phone Number: _____ Age: _____

Information requested: _____

CHARGES

\$.10 per page. There is no charge for paper copies until the request is over \$1.00. The charge for requests on CD or DVD is \$1.75. Any request that is emailed will have no charge until the size reaches 25 mb. Requestors seeking documents in excess of 25 mb will have to choose between paper copies or a CD/DVD.

Request received by: _____

Date provided: _____

Total pages: _____ Cost: \$ _____