Ohio Coalition for Open Government

OPEN GOVERNMENT REPORT

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Cincinnati ordered to pay Enquirer legal fees in body camera lawsuit

From Court News Ohio

The city of Cincinnati did not act in good faith when it delayed releasing to the Cincinnati Enquirer body-camera footage of police officers using Tasers to subdue two men during an August 2017 arrest, the Ohio Supreme Court ruled (on September 26).

In a unanimous opinion, the Supreme Court denied the newspaper's request for a writ of mandamus, which would have forced the city to turn over 19 videos, because the city provided redacted copies of those videos after the Enquirer's request was filed. However, the Court ruled that the Enquirer is entitled to have its attorney fees and court costs paid by the city because a 2016 public records law permits an award of attorney fees when a public office or official acts in bad faith when voluntarily providing records after a suit has been filed.

(see **Enquirer lawsuit,** *page 3)*

Auditor Keith Faber meets with reporters during Sunshine Week, March 10-16, an annual nationwide celebration of access to public information. During the meeting Faber discussed the increase in public record compliance audits by his office and possibly expanding the state's Court of Claims public records mediation process to cover open-meeting violations. For more on the Court of Claims public records mediation process, see pages 3 and 8.

Ohio Supreme Court rules village council's secret ballot vote was illegal

From The Plain Dealer

Bratenahl village council members broke state law in 2015 when they used a secret ballot to elect a council member to a leadership position, the Ohio Supreme Court unanimously ruled on (August 14).

The court ruled in favor of Pat Meade, a community journalist. She sued in 2016 over how village council chose its president pro tempore, who fills in for the mayor when the mayor is unable to perform their duties.

The ruling, written by Justice Pat DeWine, overturns two decisions in lower courts that ruled in the village's favor. Meade's attorneys said while vote was over a relatively insignificant matter, the ruling has broader implications by telling government officials their public votes must be held transparently. The court ordered the village to pay a $500 civil forfeiture and attorney fees.

"The act is not satisfied simply because the doors of a council meeting are open to the public," DeWine wrote. "Rather, an open meeting requires that the public have meaningful access to the deliberations that take place among members of the public body, and that includes being able to determine how participants vote."

(see **Ohio Supreme Court** *page 3)*

Inside This Issue

Ohio Coalition for Open Government

1335 Dublin Rd., Suite 216-B
Columbus, Ohio 43215
Phone: (614) 486-6677

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Positive movement on protected speech and open meeting issues

By Monica Nieporte, OCOG President

Nieporte

We've had a busy 2019 so far - we've had a few victories and are looking forward to a few more before the year winds down.

Foremost is getting the Ohio Citizens Participation Act re-introduced during this general assembly. Known as an "anti-SLAPP" law, it will be a benefit to all Ohio citizens who would like to speak out in public settings without fear of being the subject of a meritless defamation or libel suit that could cost tens of thousands of dollars while the case drags on.

This law would not change defamation or libel laws – those who are actually defamed or libeled still have all the current remedies available. However, what it does do is provide an expedited process for someone in the event they are falsely accused of making defamatory statements. In several recent cases, people have sued others for exercising their First Amendment rights only to create a chilling effect on others.

We expect Sen. Matt Huffman (R-Lima) to reintroduce the bill later this month.

The bill has been modified to remove the portions pertaining to anonymous commenters. We have decided that is a topic we can champion another day and that our paramount goal was to get something in place for citizens and journalists alike that would protect them from a "strategic lawsuit against public participation (SLAPP)". More than half of the other states in the country already have something in place.

Another development we're excited about is the possibility of adding open meetings violations to the already existing Ohio Court of Claims process for allegations of public record violations. Ohio State Auditor Keith Faber talked about this during Sunshine Week and we've met with Senate President Larry Obhoff about moving this forward. While the remedy isn't as clear cut as it is with public records violation, sometimes just getting a neutral decider of facts to say "yes this was a violation" goes a long way in preventing recurrent violations.

Faber's office will also be moving forward with rolling out a public records compliance "grade card" during its audit process. We are eager to see our friends in government rewarded when they're faithfully executing the law and we think making this a part of the process will provide an incentive for others who may not be as compliant to improve their score the next time.

Attorney General David Yost's Chief Legal Counsel, Mark Altier, has also let us know that he will be monitoring public records issues and cases in the state as open government is an important issue to Yost's office.

We look forward to working with them on these issues during their tenure and we're heartened to see our state officials take this level of interest in a topic that is so near and dear to our hearts. Public information and government transparency are things that many Ohio citizens don't have much first-hand experience with – or they don't recognize that some of the things they take for granted could be jeopardized without proper checks and balances.

We'd like to see more citizens take an interest and get involved and part of our mission for 2020 will be to help educate people about why they should and get OCOG on their radar.

***Monica Nieporte** is the president and executive director of the Ohio News Media Association and president of the Ohio Coalition for Open Government. Prior to joining ONMA and OCOG Nieporte served as the president and publisher of the APG Ohio media group in Athens.*

Ohio Supreme Court rules Bratenahl village council's secret ballot vote was illegal

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Curt Hartman, a Cincinnati-area lawyer who represented Meade, said in a statement he and his colleagues are "pleased that the "principles of governmental openness, transparency and accountability were once again vindicated by the Ohio Supreme Court."

"Nonetheless, it is surprising in this day and age that certain governmental officials still think that they can and should hide governmental operations from the taxpayers," he said. "Today's decision will undoubtedly continue the progress of promoting and advancing governmental openness, transparency and accountability."

Reached by phone, Bratenahl Mayor John Licastro referred comment to the city's attorney, David Matty.

Matty said: "The Supreme Court has set the definition of 'open' for the first time in this type of manner. The village of Bratenahl will abide from it, and we'll go from there."

Meade is a Bratenahl resident who works in marketing and design. In her free time, she runs MORE Bratenahl, a quarterly newspaper she said she's in the process of converting to a digital format. She sued in 2016 after she said she was unable to convince the village the secret ballots were illegal.

"I had watched them vote by secret ballot multiple times, and when I saw that based on what I read in Ohio sunshine laws and the [state attorney general] opinion from 2011, it seemed to me that they shouldn't be doing it," she said in an interview. "I would raise the question and each time, I was told it was legal, and I was dismissed."

Meade sued, and after she lost at the local and appellate court levels, her case was picked up by Hartman and other attorneys at Finney Law Firm, which specializes in open-government advocacy work. Several media organizations, including the Ohio Coalition for Open Government, filed "friend of the court briefs" on behalf of Meade's case.

Village attorneys argued the secret ballot was legal, since state law doesn't spell out voting rules for local governments, and since the winner of the vote was announced in an open meeting.

The Supreme Court disagreed.

Meade has lived in Bratenahl since 1995. She said she has attended "95%" of village meetings since she started MORE Bratenahl in 2008, which she said translates to an average of six to eight hours a week.

She's also running for mayor in November, a decision she said she made before she knew whether the Supreme Court would rule in her case, which she originally considered to be a remote chance.

"It's kind of that underdog story. You can't fight City Hall," Meade said. "Well, you can. But you have to be committed to go the distance."

Spreadsheet tracks hundreds of public records mediation decisions by Ohio Court of Claims

Each year hundreds of public records requests are made by Ohio citizens and media outlets to different state and local government entities. Many of these requests are promptly granted, as required under the state's open government and public records laws.

However, for many decades if a records request wasn't granted the only option for citizens was to file a possibly time-consuming and expensive lawsuit. But a new law passed in 2016 changed that, allowing the Ohio Court of Claims to manage a mediation process when public records requests are denied.

The cost to appeal the denial of access to a public record is only $25. In addition, the decision has the force of law, and does not require that you have an attorney to succeed.

Since 2016 the Ohio Court of Claims has handled nearly 300 public records mediations, with a large percentage of the claims being resolved in favor of releasing the requested public records. The Court of Claims has esitmated that nearly 70 percent of the cases they receive have been resolved through this mediation.

Attorney Jack Greiner of Graydon Law has compiled a spreadsheet of nearly three hundred cases decided by the Ohio Court of Claims. The spreadsheet shows the types of records sought, the reason the government entity said it shouldn't release the records, and the decision on the case by the court's special master.

To download the spreadsheet, go to www.ohionews.org/aws/ONA/asset_manager/get_file/376746.

With the success of public records mediation, Ohio Auditor Keith Faber, who championed the bill creating the process while President of the Ohio Senate, has called for expanding the mediation process so it also applies to complaints of open-meeting violations.

Enquirer lawsuit

continued from page 1

The city's initial refusal to provide the videos to an Enquirer reporter stated the footage was exempt under the "confidential law enforcement investigatory records (CLEIRS)" exception to the state public records law. Writing for the Court, Justice Patrick F. Fischer stated the city's position "raises a question of whether the city even reviewed the videos before asserting that exception."

Jack Greiner Open Government Commentary

Ohio police department's inability to take a joke may cost it

By Jack Greiner

The Parma Ohio Police Department's overreaction to a Facebook parody site may prove to be a costly miscalculation. A federal district court recently ruled that the parody site's creator may proceed with a First Amendment retaliation claim against the cops.

The case arose on March 2, 2016, when Anthony Novak anonymously created a Facebook parody page to poke fun at the Parma Police Department.

The page contained press releases that satirized the department's racial sensitivity and civil rights practices. One release, for example, announced the adoption of a new "temporary law" introduced by the department forbidding "residence [sic] of Parma from giving ANY HOMELESS person food, money or shelter in our city" as "an attempt to have the homeless population eventually leave our city due to starvation."

The Facebook Page displayed a logo stating "We no [intentional misspelling of "know"] crime." and was designated as a "community" forum instead of the official designations used in official police department pages. The department's official Facebook account remained fully accessible on March 2, 2016. The parody site was live for 12 hours and attracted less than 100 followers.

None of that deterred the Parma Police from storming into action. The same day Novak posted the Facebook page, the department posted a notice on its official Facebook page warning the public about the parody Facebook page and informing them that the department was investigating it. The department also issued a press release to news outlets announcing the criminal investigation. Once Novak became aware of the department's threats of criminal investigation, he took down the Facebook page.

But all of that was just the tip of the iceberg. Based solely on the Facebook page's content, the Parma PD opened a criminal investigation.

An assigned officer spent two days monitoring Facebook and drafting a preliminary investigative report. The report contains no allegation or evidence that any police services were disrupted by the Facebook page.

He also prepared a search warrant and affidavit against Facebook under Ohio Rev. Code § 2909.04(B). This statute criminalizes the use of the internet to "disrupt, interrupt, or impair the functions of" the police. Neither the warrant nor the affidavit identified a single police function or service disrupted by Novak's Facebook page.

The department ultimately received nearly 3,000 pages of records from Facebook in response to the warrant. These records identified Novak.

The department consulted the City's law director and decided to pursue criminal charges. The complaint charging Novak with a single felony count of violating § 2909.04(B) was filed that same day.

The department then applied for and obtained an arrest warrant from a Parma Municipal Court magistrate. The warrant application stated only that Novak created a fake Facebook account, purporting to be a legitimate department page. It did not mention any disruption in police operations.

Novak was arrested on March 25, 2016 and spent four days in the Cuyahoga County jail.

On March 25, 2016, the day of Novak's arrest, the department submitted a warrant application to search his apartment. The application was based solely on the assigned officer's assertions that the Facebook page's fake posts were disrupting police functions. The department's SWAT team executed the warrant on Plaintiff's apartment, that same day.

The SWAT team seized every electronic device in Novak's residence. They found nothing incriminating.

A grand jury returned a one-count indictment against Novak. The only evidence of disruption presented by Cuyahoga County prosecutors at trial was phone calls made by Parma residents complaining about the Facebook page's affront to its officers, notifying the department that the Facebook page existed, or inquiring whether the department authorized the Facebook page. These calls made up twelve minutes of total call time and were documented on April 5, 2016, over a week after the plaintiff was arrested and all the warrants had been executed.

Greiner

The jury acquitted Novak on August 11, 2016.

Novak filed his civil suit for retaliation thereafter. The department moved to dismiss the suit, arguing that since Novak had no First Amendment right to create a Facebook page, the department had done nothing to violate his constitutional rights.

The court was unimpressed. In creating the parody site, Novak was absolutely engaging in constitutionally protected speech.

And in unleashing the full court press, the department was reacting to that protected speech. The alleged disruption – 12 minutes of phone calls – hardly justifies the department's conduct. As the court noted, "[p]laintiff alleges facts, which if proven, show that the Officer Defendants abused their police power to punish Plaintiff for exercising his First Amendment rights."

The department's judgment in this episode has been questionable to put it mildly. At this point, it might make sense to call off the dogs and get this case resolved. Overreaction is rarely a winning strategy.

Jack Greiner Open Government Commentary

How the Ohio Supreme Court's Bratenahl ruling lets the sun shine on public meetings

By Jack Greiner

A recent ruling by the Ohio Supreme Court bolstered the case for government transparency when it ruled Bratenahl Village Council near Cleveland could not elect a president pro tempore by secret ballot in a meeting otherwise open to the public.

As the Supreme Court described it, here are the pertinent facts:

In January 2015, the council gathered for its first meeting of the year. Among the business that day was the election of a president pro tempore – someone to serve as the acting mayor when the mayor is absent or unable to perform his or her duties.

After two members were nominated for the position, the following exchange occurred:

> **Mayor Licastro** – Do you want to do a show of hands? Do you want to do a secret ballot?
>
> – Let's do secret ballot. We've always done that.
>
> **Licastro** – Secret Ballot. Mr. Matty?
>
> – Is that legal?
>
> – Yes, it is legal.
>
> ...
>
> **Councilmember Bacci** – I thought I saw something in the Sunshine Law of the (Ohio Revised Code) that you can't have a secret ballot.

Spoiler alert: They should have listened to Councilmember Bacci. Ultimately, without announcing who voted for whom, the council declared Councilmember Jim Puffenberger would be the new president pro tempore.

A community news publication called MORE Bratenahl filed a lawsuit contending the council violated Ohio's Open Meetings Act by conducting the ballot in secret. The trial court and appellate court disagreed and ruled in favor of the village. The Ohio Supreme Court, however, saw it differently.

Writing for the court, Justice Pat DeWine noted that the Open Meetings Act begins with this pronouncement:

"This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law."

The court noted the law directs that "[a]ll meetings of any public body are declared to be public meetings open to the public at all times" and provides "[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body."

Starting from this presumption, the court easily dismissed the village's arguments. The village essentially argued that so long as the meeting itself was open to the public, it could adopt any method for voting it chose. It cited an Ohio Revised Code provision that allowed cities and villages to determine their own rules for how to conduct a vote. The village took a minimalist view of the term "open." In its view, if the doors are open, all is good.

The Supreme Court took a more nuanced stance. In its view, openness had to mean more. It discussed the issue this way: "a meeting is not open if the members communicate in whispers, concealing their deliberations from the public. ... Nor do we think it would be open if the members spoke only in Latin, or placed a screen between themselves and the audience, or took any of numerous other actions that would limit the public's ability to access their deliberations. The act may not prescribe any particular voting procedure – and a council may adopt its own rules – but none of this alters the fundamental requirement that the public have meaningful access to what takes place at the meeting."

From that perspective, the question was pretty easy. Do the people attending the meeting know who voted for whom? A show of hands or a roll call vote conveys that information. That's open. A secret ballot – which shields from the public who voted for whom – isn't open. Case closed.

Ohio's "Sunshine Laws," as they are sometimes called, broadly call for government transparency to ensure an informed public. Hair-splitting along the lines of the Bratenahl position has no place in the analysis. The Ohio Supreme Court got this one right.

***Jack Greiner** is a partner with Graydon Law in Cincinnati.He practices in the areas of First Amendment law and commercial litigation.*

Open Government Editorials

Editorial: Keep public information public

Editorial from The Blade

Journalists gather information and report on their findings.

When a couple of South Dakota reporters were interested in the $65 billion-a-year federal food stamps program, they asked the federal government for information on the Supplemental Nutrition Assistance Program. They only got a fraction of what they wanted.

Now, eight years later, the Argus Leader newspaper of Sioux Falls is making news in addition to reporting it. Its battle for information has reached the U.S. Supreme Court. *(Note: See page 15 for the Supreme Court's decision in this case.)*

In an article on its own case, Argus Leader News Director Cory Myers, who directs a staff of 18, said getting the information is about "knowing how our government is operating" and "knowing what government is doing with our tax money."

Legal pundits are speculating about the nation's highest court and it's decision: It could be narrow, or it could significantly impact interpretation of the law that grants the public access to government records: the Freedom of Information Act.

On behalf of citizens everywhere, we hope for the latter. And more.

Newspapers and people everywhere attempt to use the FOIA to gain access to public records but find themselves waiting, often months and years, for the information to which they are entitled. And that's just one problem with FOIA. In the Argus Leader case, there is an issue as to the scope of the information the newspaper is entitled to receive. The case was argued on April 22, and questions from the justices hinted that the ruling on the scope of the information may go against the paper, which is owned by Gannett.

Created in 1967, the FOIA allows the public access to records from federal agencies. There are exemptions that relate to national security, law enforcement, and personal privacy. And while agencies must acknowledge within 20 days receipt of a request, actually receiving the information can take years.

It is understandable that a boilerplate deadline for production of federal documents may not be reasonable. But more can be done to facilitate access to federal information.

Many government agencies do not have the staff in place to respond to public records requests. And while President Barack Obama signed the FOIA Improvement Act of 2016, promising there would be greater levels of transparency, no new resources were committed for implementing improvements.

This is not a matter to be dismissed lightly. Withholding information from the public — whether intentionally or by default — is a disenfranchisement of the public. Information is power. As Thomas Jefferson is believed to have opined: An informed citizenry is the bulwark of a democracy.

Editorial: Officials must learn, follow sunshine laws

Editorial from The Tribune Chronicle

It is incumbent on all elected officials, local and statewide, to be educated and fully understand the ins and outs of Ohio sunshine laws.

Instead, though, we are seeing more examples that this is increasingly further from reality.

Take, for example, a special Newton Falls Council meeting called March 29. It is clear now the meeting was being called for the intended purpose of adjourning into executive session to consider ending the village's contract with its law director, Joseph Fritz.

But the special meeting notice sent to the media and notifying the public of the purpose instead referred only vaguely to the topic as "personnel." That falls short of Ohio law, and the Newton Falls village charter requiring specific reasons be listed on special meeting notices.

The incident led to Councilman John Baryak, who, it appears, was unaware of the intricacies of open meeting laws, to request a legal explanation of why he was not permitted to adjourn to executive session. In what can only be described as an awkward chain of events, Fritz — whose future with the village is in question — responded by issuing a lengthy written report outlining the open meeting section of the Newton Falls village charter, Ohio Revised Code's open meeting laws and the Ohio Attorney General's 2019 Sunshine Law Manual layman's interpretation of the law.

The special meeting then was rescheduled as an "emergency meeting," this time utilizing a publicized meeting notice that met open meeting law requirements.

That Newton Falls Council emergency meeting had been set for Wednesday, but suddenly was canceled without explanation just hours before the meeting was to begin. The meeting has not been rescheduled again.

In an unrelated Sunshine Law incident, (we recently wrote in our paper) about an email sent by Robert Faulkner, chairman of the Trumbull County Transit Board, to his fellow board members that also was a clear Sunshine Law violation.

In the email, Faulkner offered in great detail his opinion about a particular board discussion and sought the input from his fellow board members as well. The attempted exchange out of the public eye was a clear violation of open meeting laws.

Board member Marlene Rhodes responded appropriately to Faulkner's unsolicited email, saying: "It is inappropriate for any of us to comment on this memo," then noted "Sunshine Law violation" in parenthesis.

Even then, Faulkner responded with yet another email disputing Rhodes' assessment.

But he was wrong. A 2016 Ohio Supreme Court case law clearly states that discussion of public business in any format — in person or via telephone, social media posts or email — violates Ohio Revised Code.

These two examples demonstrating public officials' unawareness of the laws that govern their public duties are disappointing. It should make us all wonder if this ignorance of the law is commonplace among all our public officials.

Shame on both of these public officials — either for their ignorance or, if they were aware of the law, then for choosing to ignore it.

Indeed, it is every public official's responsibility to become educated and to understand the laws that govern their duties and the activities of all public bodies.

Open Government Editorials

Editorial: Government glows amid full 'sunshine'

Editorial from The Repository

Ohio's "sunshine laws" — the right to obtain public records and the requirement that meetings of public bodies be announced in advance, then held openly — are considered among the best in the nation.

All citizens are entitled to ask for and receive public documents and information, as well as feel confident public officials are conducting business with full transparency and not behind closed doors.

Still, there is room for improvement in our state.

For example, areas exist where electronic filing of information and digital access to it remains years behind the curve. This lack of progress tempers our enthusiasm for what otherwise would be seen as a positive step in Ohio: the ability to resolve disputes related to public records through the Ohio Court of Claims.

In 2016, the state created a program through which anyone can challenge the denial of releasing what the complainant believes is a public record. The cost: a fair and modest $25 filing fee. The drawback: The fee must be in the form of a check or money order and mailed to Columbus.

Granted, the "old way" of contesting such a denial was a costly and lengthy civil court procedure, so the recent law came as a huge improvement. More than 230 claims have been filed and resolved in the roughly 2½ years of the program. More progress will be achieved when electronic payment expedite the process further.

Until then, it's another few days' delay when delaying tactics are common.

The Canton Repository faced such an issue this "Sunshine Week" in Ohio. The newspaper asked for the names of the individuals who have applied to fill the position of superintendent of Canton City Schools. That request was denied, without full explanation. Any explanation, really, other than the Ohio School Boards Association preferred to wait.

A representative of the OSBA, which is assisting the district in its search, said (on March 13) the list would be made available when the application deadline closes at midnight (March 15). It should be noted this was not his position when he emailed a district employee (the previous) week.

"I would like to allow my meeting with the board on March 19 to vet the candidates until it all becomes public. It would be wonderful if they went with the names of the people being interviewed," he wrote, with "they" meaning the newspaper.

When contacted by an editor at the newspaper (on March 13), the OSBA representative affirmed a complete list of all applicants would be made available early Monday morning — a day before the Board of Education meeting.

A small victory for the public — and for the open records statute.

(In March) state Auditor Keith Faber said Senate President Larry Obhof, R-Medina, has agreed to push for legislation that would permit the Ohio Court of Claims program to expand and take complaints about possible open meetings violations.

"We're ready to move to the next level" and allow Ohioans an easy means to seek a binding ruling when they believe a city council, school board or other entity has met illegally or improperly retreated behind closed doors for deliberations on public business, Faber said.

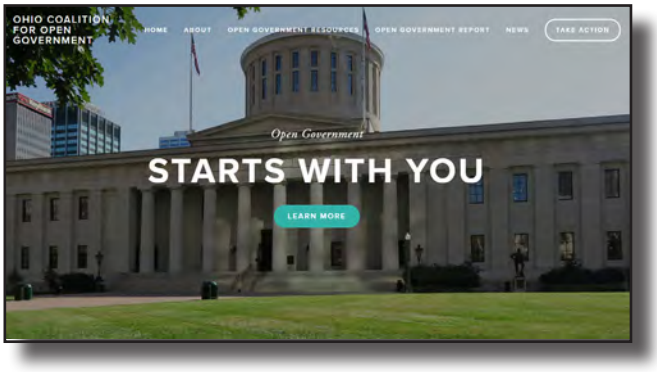
In another positive step, state Sen. Michael Rulli, R-Salem, introduced a bill that would allow local candidates for elected office to file campaign finance reports electronically with county boards of elections. At present, all documentation is filed on paper, making it cumbersome for both the candidate and the general public seeking to review the records.

Good government requires informed citizens. We all must demand our elected officials operate in the sunshine.

Support OCOG by becoming a member today

Benefits include access to the OCOG legal hotline and more

The need for the Ohio Coalition of Open Government (OCOG) has never been greater. The need for your support of OCOG has also never been more urgent. Don't take a chance that open government issues in Ohio could be curtailed or harmed. Join OCOG today!



Along with supporting fights to preserve Ohio's open government, members also receive access to the OCOG legal hotline, which can provide basic assistance on open government and sunshine law issues you may be facing. Other benefits include regularly updated information on pending legislation in the Ohio General Assembly which could impact open government issues in the state.

To join OCOG, see the membership information on the back cover of this issue of the Open Government Report. You can also go to www.ohioopengov.com for more information and to apply. And don't forget that OCOG's website is continually updated with news and information about Ohio open government issues.

How to file a public records complaint through the Ohio Court of Claims

Ohio's new public records mediation process, which went into effect in 2016, continues to be a success. A large number of open government cases have been favorably settled in the last few years, with the mediation process offering Ohio citizens a low-cost and timely process to seek the release of public records when government entities deny their initial request.

To use the public records mediation process, follow the chart below.

To receive this illustration as a free 8.5 x 11 size print copy or PDF, email OCOG's Jason Sanford at jsanford@ohionews.org.

START HERE

Go to www.ohiocourtofclaims.gov/public-records.php

Ohio Coalition for Open Government

Working to strengthen and support open government and public access

JobsOhio plans to seek equity in businesses

Editor's Note: *During Governor Mike DeWine's first year in office he has pushed to make JobsOhio more open and transparent, a significant change from his predecessor.*

JobsOhio had previously been criticized by some state officials and the media for a lack of transparency, which included being exempted from Ohio's public records laws and not being subject to audit by the state auditor's office. However, under DeWine the nonprofit corporation has begun live-streaming its board meetings while the new JobsOhio president, J.P. Nauseef, has pledged to create the organization's first set of transparency guidelines.

The article below updates recent information about JobsOhio.

From Gongwer

The state's private economic development arm will reconsider the type of companies it focuses on and the tools it uses to further projects under an updated strategy.

JobsOhio's Board of Directors on (September 30) approved a plan that Chairman Robert Smith referred to as "JobsOhio Strategy 2.0" at its meeting at the University of Northwestern Ohio in Lima.

The entity's president, J.P. Nauseef, said since JobsOhio was established in 2011, it has primarily focused on companies over three years old with at least $1 million in revenue. He said the tools the entity used were primarily loans and grants.

"We are currently, based on all the input, revisiting both the stage of development of the company and the type of investment beyond loans and grants," he said. "We're looking at equity, we're looking at convertible debt and we're also looking at investing earlier stage."

Mr. Nauseef said JobsOhio also will add federal installations to the nine industry sectors it already focused on, such as advanced manufacturing, automotive and technology.

"We believe JobsOhio can play a role in supporting the retention, expansion and attraction of federal missions and jobs such as expansion of military missions and research missions for places like Wright-Patterson Air Force Base," he said.

Another area of focus for the entity going forward will be working to improve "quality of air service" and airport infrastructure, Mr. Nauseef said. "That was something we heard consistently from both deals that we lost … and from existing companies in the state."

The JobsOhio president said the strategy also proposes continued collaboration with Gov. Mike DeWine's administration on efforts to expand broadband connectivity statewide.

The updated plan calls on the entity to help address the state's workforce issues by "seeding the development of knowledge-based workers." Mr. Nauseef said JobsOhio would look to encourage the completion of certain high-demand four-year degrees and technical certificates.

"We're also going to scale up our talent matchmaking services, where we work specifically with companies that we are working with to expand or attract," he said.

The strategy also calls for increased investment in planning, site preparation, commercial development and infrastructure grants.

Work on the revised plan for JobsOhio began about 18 months ago, when the board hired McKinsey & Co. to conduct an analysis of the entity and its strategy.

Before implementing any recommendations, Mr. Nauseef said opinions were sought from JobsOhio staff, and a regional listening tour was conducted.

Mr. Smith said the theme of the listening tour was "Can JobsOhio do more?" He called the new strategy "JobsOhio's plan to do more."

More disclosure needed of 'dark money' funders of campaign ads, open-government groups say

From The Columbus Dispatch

Greater disclosure from "dark money" groups is needed to tamp down "fear mongering" political rhetoric such as the ads from one group fighting a potential referendum on Ohio's nuclear-power bailout bill, two advocates of open government said (Sept. 19).

The League of Women Voters and Common Cause Ohio are calling on state lawmakers to adopt new campaign finance rules that would shed more light on the sources of funding for dark-money interests.

Representatives of the two groups said during a press conference that they are concerned about an aggressive campaign by Ohioans for Energy Security, which supports Ohio's relief package for First Energy Solutions' nuclear-power plants. In mailers and television ads, the group has tried to link opponents to China and called on people to report the location of those collecting signatures for a ballot initiative to repeal the new law.

The group's television ad also falsely claimed that Chinese companies are buying Ohio's power plants.

"In general, we think it would be less inflammatory if we could know who these individuals (contributing to the campaign) are," said Jen Miller, executive director of the League of Women Voters of Ohio.

It has been nearly a decade since the state has talked about campaign-finance reforms, said Catherine Turcer, executive director of Common Cause Ohio. In 2010, Jon Husted, at the time a state senator and now the lieutenant governor, rallied bipartisan support in the Republican-controlled Senate to adopt reforms, but the effort failed in the House, where Democrats held the majority.

Requiring funders to attach their names to contributions probably would result in less aggressive campaign rhetoric, Turcer said. Any rules would apply to groups on all sides, she said, so they wouldn't target a single interest.

"It would be a debate about the issues. This is not a debate about the issues. It's just wrong," she said.

Miller said she's concerned that the Ohioans for Energy Security campaign could make it harder for the League of Women Voters and other groups to recruit volunteers to gather signatures for future ballot issues. The pro-bailout group's tactics are meant to inspire fear and could incite violence, she said.

"That's a line in the sand that we need to demarcate," Miller said.

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OHIO ROUNDUP

Texts by public officials are public documents in Ohio, court concludes in Enquirer case

From The Cincinnati Enquirer

When a public official in Ohio sends a text about official business on a phone, the text is a public record and can be requested under the state's Open Records Law, a state judge has ruled for the first time. The judge ruled such texts are public no matter if they are made on a personal, privately-paid device.

"The ruling makes it clear that the platform elected officials use to discuss official business makes no difference – a public record is a public record," said Beryl Love, executive editor of The Enquirer. "Text messaging can't be used to side-step accountability to the public."

Over the years, The Enquirer and other media outlets have sought emails from personal accounts that discuss city business, with the city routinely saying text messages and emails on private email accounts were not public records.

The issue came to the forefront in 2018 after five Cincinnati council members conducted illegal meetings via text message. The texts and additional emails among the council members drew lawsuits from The Enquirer and a private citizen aligned with the group Coalition Opposed to Additional Spending and Taxes (COAST).

In a ruling (on March 13), Court of Claims Judge Patrick McGrath noted that an arbitrator or special master had decided that The Enquirer's initial request for the texts was too broad, but also decided city officials failed to give The Enquirer a path to revise the request as required by Ohio law.

"The Court of Claims decision is significant because it establishes that text messages that discuss public business are public records under Ohio law," said Jack Greiner, a lawyer for The Enquirer. "Some public bodies have argued that they are not solely by virtue of their format. This case makes it clear that argument is incorrect.

OSU tries to avoid public records law with police records

From The Lantern

Ohio State violated Ohio public records law when it withheld names in a police report provided to The Lantern through a public records request, according to a report by a special master in the Ohio Court of Claims.

The special master also found in the report, issued (August 9), that the university took too long to provide the record.

Special Master Jeffrey Clark found that Ohio State failed to produce the requested records in a timely manner and was wrong in denying the release of the names of uncharged suspects in police reports based on an "unfounded assertion that the requested police reports did not include an existing initial incident report."

Clark also found that the issues of the case, redacting information in police reports, were likely to repeat in future requests for police reports.

"Failure to correct this policy and practice would create a perverse incentive for law enforcement agencies to litigate, wait, and belatedly disclose, if delay is the agency's objective," Clark wrote in the report.

University spokesperson Chris Davey said in an email that they are reviewing the special master's decision at this time.

Former Lantern Editor-in-Chief Edward Sutelan said he believes that Ohio State should be held to the same standard as other police departments in Ohio and around the country when producing public records.

"Ohio State, in my experience, has often got into a habit of providing redacted police reports and this was a relatively important police report that redacted information that I think was worth the public knowing even if charges weren't filed," Sutelan said. "In my experience, that's not a typical case with other police departments."

The initial records request was filed Sept. 26, 2018, and the redacted report was provided to The Lantern more than 18 weeks later on Feb. 4.

Sutelan filed the complaint Feb. 27, stating Ohio State improperly denied a request for public records by redacting the name of a suspect in a sexual assault reported at a campus dorm.

The suspect was later revealed to be former Ohio State football player Brian Snead.

Snead did not face criminal charges, but was found in violation of the student code of conduct and dismissed from the university Nov. 27.

Dispatch public records request discovers Ohio State's troubled sexual assault center failed to report 57 potential felonies

From The Columbus Dispatch

Ohio State's now-shuttered Sexual Civility and Empowerment center failed to report nearly 60 potential felonies as required by state law during its three-year existence, The Dispatch has learned.

The university announced in June 2018 that it was dissolving the unit, known as SCE, and firing four employees after an external review found it failed to properly document and report at least 20 sexual-assault complaints by students.

At that time, the university hired independent auditing specialists to review files at SCE, which opened in 2015. That audit identified 57 potential felonies that SCE should have reported to law enforcement but did not, the university said, revealing the review's findings for the first time in response to public records requests from The Dispatch. Given the nature of SCE's operations, it is likely that most, if not all, of the unreported crimes involved sexual assaults.

"This failure is unacceptable, which

is one of the reasons the university shut down the office and engaged nationally recognized experts to create a redesigned, best-in-class model to support victims of sexual assault," Ohio State spokesman Chris Davey said in an emailed response to the audit findings.

The university paid more than $1.1 million in legal fees to create the redesigned Title IX program and review the SCE cases, according to payment totals obtained by The Dispatch. Most of that went to Philadelphia law firm Cozen O'Connor, which helped Ohio State create the new program, followed by national auditing firm Margolis Healy, which reviewed whether SCE cases were properly reported.

Enquirer public records request uncovers ownership questions about two Ohio medical marijuana companies

From The Cincinnati Enquirer

Two companies are coming under fire for allegedly lying on their applications to sell medical marijuana in Ohio and violating rules for the state's highly regulated program.

The Ohio Board of Pharmacy, which oversees medical marijuana dispensaries, has concluded two companies violated state rules: Greenleaf Apothecaries LLC, which does business as The Botanist, and Harvest of Ohio LLC.

The board claims Greenleaf Apothecaries transferred ownership without state approval and/or misrepresented facts submitted with its dispensary application last year, according to portions of a board notice sent to the company obtained by The Enquirer through a public records request.

The company, which was awarded five dispensary licenses, announced in December 2018 it had a management agreement with big cannabis company Acreage Holdings, headquartered in New York. State rules prohibit ownership transfers until after one year of operation.

The board says Harvest of Ohio LLC does not meet the state's definition of an "economically disadvantaged group," as claimed on its application. The company was awarded three dispensary licenses and is an offshoot of Harvest Health and Recreation Inc., which operates in eight states.

The pharmacy board sent notices to both companies in early June, giving each the opportunity to make their case before the board at a future meeting.

Neither company will receive permission to open new dispensaries until the matter is resolved. Discipline from the board ranges from fines to revoking licenses.

Parents may not realize Ohio school safety plans are not public record

From WBNS

"I like to say that I know what's going on, but do I really, I don't know," said Amy Bush, a mother of two boys in the Olentangy School District.

She knows school safety is important, and she worries about bullying, but when it comes to her district's exact plans, she was unsure. And she likely is not alone.

Several people interviewed by 10TV were not aware of the plans in their local districts, including what is public record and what is not.

"We don't want the enemy to know, or the terrorists, or whatever you want to call them, to know who's carrying concealed weapons or whatever in the schools," said Morris Watkins, the grandparent of four children in the Worthington School District. "Personally I don't have to know as long as the person is qualified and trained to protect the students."

The issue is a bit complicated but boils down to the intersection of three laws -- school safety plans, concealed carry rules and allowing school districts to authorize having weapons on school grounds -- according to Van Keating, senior staff attorney with the Ohio School Boards Association.

By law, every school district in the state of Ohio is required to come up with a safety plan, but those plans are not public record.

"For school district safety plans to be most effective, as much as the public wants to know and parents have concerns, which is very valid, the more the plans are actually public, often the less effective they would be in the event of an emergency," Keating said.

When it comes to carrying firearms on campus, the issue is not so clear cut. Keating says school boards would have to vote on allowing weapons on school grounds in a public setting, but the names of those staff members actually carrying those firearms may not be revealed. Details beyond the actual decision to allow the weapons could fall under the scope of school safety plans, which again, are not public record.

Former attorney general and ex-TV reporter drop lawsuit after getting state-pension records

From The Plain Dealer

Former Ohio attorney general Marc Dann and an ex-TV reporter are dropping their public-records lawsuit against Ohio's largest public employee-pension system, saying they've gotten at least some of the records they wanted detailing one of the fund's investments.

Dann in a (July 3rd) filing with the Ohio Supreme Court said he and John Damschroder want to drop their lawsuit against the Ohio Public Employees Retirement System. The brief filing, without elaborating, says the pair "fully resolved" their lawsuit through a state mediation program designed to help settle public-records disputes.

"We have begun the process of receiving and verifying the accuracy of much of the information that Mr. Damschroder has requested and when that process is completed in the next 7-14 days we will be in position to share that information with the public," Dann said to cleveland.com in an email.

Dann and Damschroder, who's now a columnist for the Fremont News Messenger in Northwest Ohio, sued OPERS in February, seeking to force it to release details on $300 million it has invested with funds controlled by Glouston Capital Partners, a Boston-based investment company.

The lawsuit says that Damschroder filed public records requests last year asking OPERS to provide copies of its contract with Glouston and other private funds. The pension system responded with some documents, most of which were "heavily redacted," the lawsuit states. It also didn't respond to a request for detailed performance and accounting records, according to the lawsuit. A section describing "management fees" appears to have been entirely redacted.

In an initial response, Glouston said the redacted details were trade secrets, which are exempt from disclosure under state public records laws.

OHIO ROUNDUP

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Geauga County Park District accused of sunshine law violations

From The Geauga County Maple Leaf

The Geauga Park District Board of Commissioners has been accused of violating Ohio's Open Meetings Law by entering into executive session last year to discuss leasing the majority of the real property owned by the probate court-appointed Russell Township Park District.

At its Oct. 23, 2018, meeting, the GPD board approved a contract placing about 376 acres of township park property in the hands of the county park system.

(In June), Susan O. Scheutzow, of Cleveland-based Kohrman, Jackson & Krantz, which represents Protect Geauga Parks, a citizens' group dedicated to preservation and conservation of the county's park land, wrote to Todd Hicks, a lawyer representing the GPD board, explaining her client's position.

"Protect Geauga Parks is requesting that the Geauga Parks Board declare the action leasing the property from Russell Parks invalid, and if it chooses to revisit the issue, that it does so in a meeting that properly complies with Ohio's Open Meetings Law," Scheutzow wrote in her June 5 letter.

She added failure to correct this action or continued violation of the open meetings laws — or Sunshine Laws — could lead to a request for court intervention to invalidate the lease and to enjoin the GPD board from future violations.

"Litigationon this matter is not the first choice of Protect Geauga Parks," she wrote.

At their Oct. 23 meeting, park commissioners claimed their reason for entering into executive session was to discuss the acquisition of real property by leasing, which Scheutzow said is not a permissible reason for an executive session under the Ohio Revised Code.

The general rule is that all meetings of public bodies must be open to the public. If a public body wants to hold a closed session, it must specifically identify one of the seven-area exemptions.

"Leases and purchases are two distinct legal concepts with leases only providing the lessee with the right to use property, while purchase include transferring title and ownership of property to the purchaser," she wrote. "Had the legislature intended executive session to be extended to other types of acquisition of property it would have so stated."

Ohio auditor wants to make it easier to challenge illegal secret government meetings

From The Plain Dealer

Ohio's new state auditor wants to make it easier and cheaper to challenge government officials for illegally holding secret meetings.

Auditor Keith Faber is calling to expand the state's relatively new mediation system for public-records disputes so that it also applies to complaints of open-meeting violations. Faber referenced a recent lawsuit, filed by a conservative activist organization, that accused five Cincinnati City Council members of illegally texting about public business. City taxpayers there are expected to pay a $90,000 legal bill in connection with the case after a judged ruled against the city, according to the Cincinnati Enquirer.

"With an experience like you just had in Cincinnati, I think you can see the need to have a speedy, efficient and affordable process to resolve those kinds of claims," Faber said.

The public-records mediation system, which started in 2016, allows citizens to file complaints, paying only a $25 filing fee, if they think government officials are illegally withholding public records. The complaints are then routed directly to a mediator with the state Court of Claims, bypassing the typical lengthy and expensive legal process.

The mediation system has been used more than 200 times since it was created, including recently by cleveland.com and local media outlets to force local government officials to release records detailing Cleveland's failed bid to attract the Amazon HQ2 project.

Lakewood City Council considering update to public records request protocol

From The Plain Dealer

The Lakewood City Council has introduced an ordinance co-sponsored by Council members-at-Large Meghan George and Tristan Rader that, if passed, would create a chapter in Lakewood's code specifically dedicated to public records access.

George said open government leads to a more engaged and informed citizenry, with a technologically advanced platform easily accessible from the city's current website allowing for more access to public records.

"Our goal is to create an easy-to-use public records request web portal for the public to submit requests," George said. "Additionally, requests would need to be responded to within two days and then can be tracked by the requester."

Rader said the time has come for the city to revisit its public record request policy, which was last updated in 2008.

"Technology has got to a point where there are some advantages out there that allow for quick and easy submission for records request in one place," Rader said. "This new system would create a window into city government that we currently don't have."

Washington Local Schools cancels upcoming meetings after open government concerns raised

From The Blade

Washington Local officials opted to cancel two meetings (in early May) a day after open government experts raised concerns about at least one of those meetings violating state transparency laws.

School board President Mark Hughes released a statement (May 7) maintaining district officials did not violate open government laws, but that the district was canceling two special meetings.

His statement came after experts for the Ohio School Boards Association and the Ohio News Media Association, along with an attorney who represents The Blade in First Amendment and government transparency laws, suggested Washington Local school board members were violating open meetings statutes by not properly disclosing why they intended to meet behind closed doors Wednesday.

Ohio's Sunshine Laws — intended to ensure public bodies conduct public business in a transparent fashion — allow elected boards to enter executive session only to discuss a narrow range of matters, such as considering the employment and dismissal of a specific public employee or the investigation of charges or complaints.

In a series of meeting announcements and agendas, Washington Local officials did not specify exactly why they intended to enter executive session.

Cuyahoga County delays and refuses to release surveillance and body camera video from jail

From The Plain Dealer

Cuyahoga County has routinely denied records requests for surveillance and body camera video that would shed light on issues involving possible civil rights abuses at the county jail, including several cases that resulted in indictments against corrections officers.

Cleveland.com requested 11 videos from the county related to incidents at the jail. The longest outstanding request is more than a year old and involves a Feb. 5, 2018 incident where an inmate says he was beaten by corrections officers. That incident is at the heart of criminal charges filed (April 18) against the two guards.

The county has cited an exemption in Ohio's public records law that the cases are part of criminal investigations and not subject to release.

The Ohio Attorney General's Sunshine Law manual, created to help governments discern whether records are public, says that disciplinary records involving public employees are not allowed to be exempt from public disclosure even if there is a parallel criminal investigation.

Cleveland.com filed a claims in the Ohio Court of Claims for several of the videos and are awaiting the county's formal denials of several other video requests. County spokeswoman Mary Louise Madigan and Sheriff's spokesman John O'Brien have in multiple phone calls and emails said the videos will be denied.

Bazetta Township trustee admits to unlawful meeting

From The Tribune Chronicle

After a heated discussion at (an April 9) meeting, Bazetta trustees have made it clear they are striving for complete transparency.

Bazetta residents claimed trustees held an illegal special meeting March 30.

"There was information sent on March 29 at 12:45 p.m. to advertise the meeting on March 30 at 9:30 a.m. There was a meeting but it wasn't advertised because you didn't give them (the Tribune) 24 hours," said resident Cheryl Tennant. "You are not following the Sunshine Law."

The Ohio Revised Code states "a public body shall not hold a special meeting unless it gives at least 24 hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action."

The meeting was scheduled as a workshop regarding the Beaver Trail resurfacing project. Trustee Ted Webb admitted the meeting took place and apologized for it.

"There was an unlawful meeting and I was blindsided by it. When I walked into that meeting, every member from the Teamsters was in that meeting as well as the union representative as well as (trustee) Frank Parke," said Webb. "I did make a mistake. I should've said right then and there, I've got to leave."

Webb and Trustee Paul Hovis said they were unaware the notice went out to the media later than it should have and it will not happen again. There were no minutes from that meeting and although there was action taken, no motions were passed, Webb said.

Attorney General Dave Yost releases 2019 'Yellow Book'

From the Attorney General's office

Attorney General Dave Yost kicked off Sunshine Week (on March 11) by releasing the 2019 edition of the Sunshine Laws Manual, a one-stop resource for information on the Ohio Public Records and Open Meetings Acts.

The manual, also known as the "Yellow Book," reflects the past year's law changes and legal decisions affecting Ohio's open government laws. The Attorney General's Public Records Unit updates the manual annually to help citizens understand their rights and to help public servants understand their obligations under the laws.

"Most days, what happens at city hall or the county courthouse has much more impact on your life than the latest installment of outrage from Washington, D.C.," Yost said. "Our ability as a people to stay informed and hold local politicians accountable hinges on the freedom to access government information through public records and open meetings."

In addition to the manual, the Public Records Unit partners with the Ohio Auditor of State's Office throughout the year to offer free Sunshine Laws trainings at dozens of locations across the state. Public officials or their designees are required to complete training on Ohio's Public Records Act at least once per elected term. A full-length version of the training is available online as well.

The Unit also created a model public records policy for local governments to use as a guide when creating their own policies. These resources and more are available on the Attorney General's website at www.ohioattorneygeneral.gov/Sunshine.

Sunshine Week is a national initiative promoting government transparency and access to freedom of information resources. It is recognized annually in mid-March.

OHIO ROUNDUP

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Ohio court rules video of judge being shot not a public record

From The Associated Press

An Ohio appeals court says a video recorded by a courthouse security camera showing a county judge being shot and wounded is a security record and shouldn't be released to The Associated Press.

A three-judge panel with the Seventh District Court of Appeals in Youngstown ruled (in September) in an appeal filed by Jefferson County Prosecutor Jane Hanlin, who argued releasing the video could endanger lives of judges and their staffs.

The video shows Jefferson County Judge Joseph Bruzzese Jr. being shot outside a Steubenville courthouse in August 2017 and 51-year-old Nathaniel Richmond killed by a probation officer.

The Ohio Court of Claims previously ruled the video doesn't contain information used to protect a public office from "attack, interference or sabotage" and should be released.

Sealed records on Dayton gunman pit safety against privacy

From The Associated Press

Disturbing behavior that the Dayton gunman reportedly exhibited in his youth may be detailed in law enforcement and school files so far off limits to the public, records that could shed light on whether authorities properly handled early warning signs.

The measures used to shield 24-year-old shooter Connor Betts' school records and whatever is on his juvenile rap sheet were intended to protect people's privacy as they move from childhood into their adult lives.

But could erasing youthful bad behavior from the public record limit insights that could protect public safety? And might such measures also serve to insulate school officials from having their decisions questioned?

"Obviously, it's a very, very complex issue," said Rachael Strickland, co-chair of the Parent Coalition for Student Privacy.

Betts was killed by police after opening fire Aug. 4 in the city's crowded Oregon District entertainment area, killing nine, including his sister, and injuring dozens more.

High school classmates have since said Betts was suspended years ago for compiling a "hit list" of fellow students he wanted to harm. Two of the classmates said that followed an earlier suspension after Betts came to school with a list of female students he wanted to sexually assault.

Police investigators say they now know that Betts had a "history of obsession with violent ideations with mass shootings and expressed a desire to commit a mass shooting." The FBI said it uncovered evidence Betts "looked into violent ideologies."

On (August 15), the Montgomery County coroner said Betts had cocaine, alcohol and an antidepressant in his system and more cocaine on his body at the time of the shooting.

Authorities have yet to publicly identify a motive, and the shielded records could provide insights into Betts' previous activities both in and out of school. Dayton police said (August 13) that they're divided on one of the more vexing questions: whether Betts intended to kill his sister, Megan, or whether her death was inadvertent.

His school district, Bellbrook-Sugarcreek Local Schools, has denied media requests for access to Betts' high school files on the grounds that such "records are generally protected by both federal and state law." News organizations, including The Associated Press, CNN, The New York Times and others, have sued.

Likewise, his juvenile police record has been expunged, which makes it off limits to the public.

New 'transparent' setup for Medicaid drug purchase will be secret to public

From The Columbus Dispatch

Medicaid managed-care provider CareSource announced (in April) that it had inked a new contract with pharmacy-benefit giant Express Scripts that CareSource said would bring groundbreaking transparency to Ohio's billion-dollar Medicaid drug marketplace.

But the contract itself is secret.

That has some experts questioning whether there still will be room for the kinds of non-transparent behavior blamed for costing taxpayers billions nationwide.

The price of prescription drugs is the fastest-growing part of the health-care sector, and critics have blamed pharmacy middlemen such as Express Scripts, CVS Caremark and OptumRx for part of that rapid rise. The critics say the pharmacy benefit managers used secrecy to raise prices and boost profits while the PBMs say they're saving consumers money.

Last year, after a data analysis by The Dispatch, the department of Medicaid released its own that showed the PBMs working for managed-care organizations such as CareSource billed the plans — and ultimately taxpayers — $224 million more for drugs than they paid pharmacists. That total reflects three to six times the going rate, the Medicaid department's consultant found.

Issues surrounding PBMs have spread far beyond Ohio, with the U.S. Senate holding hearings into their practices and several states taking steps to investigate — and possibly eliminate managed care from their Medicaid pharmacy operations altogether. Some Ohio lawmakers want to return to a fee-for-service, a setup replaced by managed care under the administration of Gov. John Kasich.

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Supreme Court limits access to government records in loss for Argus Leader

From USA Today

The Supreme Court limited public and media access to government records (on June 24) by expanding a federal law's definition of what can be deemed confidential.

At issue was whether confidentiality, as used in a section of the Freedom of Information Act, means anything intended to be kept secret or only information likely to cause harm if publicized. The high court adopted the broader definition.

Associate Justice Neil Gorsuch wrote the 6-3 decision, with Justices Stephen Breyer, Ruth Bader Ginsburg and Sonia Sotomayor dissenting.

A retailers trade group, the Food Marketing Institute, and the federal government had argued for a broad definition that would leave ample room to keep data from the public. Media organizations and public interest groups favored a more narrow definition requiring harm, which would make confidentiality apply to fewer FOIA requests.

In 2011, the case began with a request that the Argus Leader newspaper made under the Freedom of Information Act. The Sioux Falls, S.D., newsroom is part of the USA TODAY Network.

The Argus Leader asked the Department of Agriculture, which administers the Supplemental Nutrition Assistance Program, to release the annual amounts taxpayers paid to more than 320,000 retailers participating in the program. Data was requested as part of the newsroom's ongoing projects into food access deserts and fraud in the food stamp program.

The court's six-member majority rejected the request, overruling a lower court decision in the process. It said the requirement that releasing the information must cause harm stemmed from a faulty 1974 federal appeals court ruling.

"At least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' under the meaning of (FOIA)," Gorsuch wrote.

Breyer differed by noting that "the whole point of FOIA is to give the public access to information it cannot otherwise obtain."

"Given the temptation, common across the private and public sectors, to regard as secret all information that need not be disclosed, I fear the majority's reading will deprive the public of information for reasons no better than convenience, skittishness, or bureaucratic inertia," Breyer said.

The decision drew criticism from the Argus Leader, which fought for eight years to get the information, as well as from Gannett Co., which owns the paper.

Idaho launches OpenGov-designed transparency portal

From Government Technology

State Controller Brandon Woolf said Idaho residents deserve a user-friendly, searchable expenditure database to hold agencies accountable and to build trust. The portal adds a layer of detail not possible in previous efforts.

Nine months ago, Idaho embarked on a mission to create a user-friendly, searchable government expenditure database for residents.

Transparent Idaho, designed by OpenGov, features visual representations of agency spending, the ability to share findings on social media, a new desktop and mobile interface, and data that is updated nightly. OpenGov is included in the 2019 GovTech 100, an annual list that highlights companies focused on, making a difference in and selling to state and local government agencies. The OpenGov contract costs the State Controller's Office $125,000 annually.

State Controller Brandon Woolf, who's advocated for online transparency since taking office in 2013, said he'd still like to add more to the platform.

"It's the citizens' money and they have the right to know how that money is being spent. It goes back to helping build back that trust in government," Woolf said. "If you know someone is watching, am I going to make that expenditure as a state agency or as an employee now?"

Are photos and videos of a pirate ship public records?

From The Associated Press

A dispute involving the pirate Blackbeard's sunken ship is on deck for the Supreme Court's next term.

The justices said (in June) they will hear arguments in the fall in a copyright case involving the Queen Anne's Revenge, which was discovered off North Carolina's coast in 1996. The case pits the state of North Carolina against a company that has documented the ship's recovery.

The ship is the property of the state, but under an agreement, North Carolina-based Nautilus Productions has for nearly two decades documented the ship's salvage. In the process, the company copyrighted photos and videos of the ship.

In 2013, the state and Nautilus resolved one copyright dispute over photos the state posted on the website of the North Carolina Department of Natural and Cultural Resources, which oversees the ship's recovery and preservation.

The sides reached a settlement agreement in which neither side admitted wrongdoing. But Nautilus later sued after the state posted a handful of Nautilus videos on a state YouTube channel and used a photo in a newsletter. In 2015, state lawmakers passed a law that made shipwreck videos and photographs in the state's custody public records. In its lawsuit, Nautilus argued the law should be declared unconstitutional.

Ohio Coalition for Open Government

1335 Dublin Road, Suite 216-B, Columbus, Ohio 43215
Tel. (614) 486-6677 • Fax (614) 486-6373

The Ohio Coalition for Open Government (OCOG) is a tax-exempt 501 (c)(3) corporation established by the Ohio News Media Foundation in June 1992. The Coalition is operated for charitable and educational purposes by conducting and supporting activities to benefit those who seek compliance with public access laws. It is also affiliated with a national network of similar state coalitions.

The Coalition serves as a clearinghouse for media and citizen grievances that involve open meetings and open records, and offers guidance to reporters in local government situations. The activities of the Coalition include monitoring government officials for compliance, filing "amicus" briefs in lawsuits, litigation and public education.

Annual membership to OCOG entitles a group or individual the use of the FOI legal hotline, and subscription to the newsletter.

OCOG is funded by contributions from The Ohio News Media Foundation and other outside sources. Its seven-member board includes public trustees from organizations with an interest in freedom of information. For board members, please see the masthead on page 2.

OCOG needs your support!

OCOG's most public – and expensive – activity is supporting legal cases involving open government issues in Ohio. The Coalition receives multiple requests each year to provide "amicus" (friend of the court) briefs in pending cases. OCOG's experienced attorneys have helped plaintiffs achieve major wins at the Ohio Supreme Court. In recent years, cases OCOG supported resulted in the following rulings:

- Thanks to the efforts of courageous student journalists, police records kept by private college police forces utilizing sworn and commissioned officers are now subject to Ohio's open records law – meaning that these forces no longer can secretly arrest and detain people or investigate thefts, assaults and other campus incidents that should be open to scrutiny. (Schiffbauer v. Otterbein University)
- Public bodies cannot use email to discuss and deliberate in an effort to exclude other board members and end-run requirements of Ohio's open meetings law. OCOG supported a school board member who didn't like what he saw. (White v. Olentangy School District)
- Police can no longer indefinitely withhold entire files of closed cases just because someone could file a future action, thus providing access to those who may be able to prove they were wrongfully convicted. OCOG's support was critical in a multi-year battle to provide an avenue for the Innocence Project at the University of Cincinnati to evaluate these claims. (Caster v. City of Columbus)

The cost of such briefs is high – ranging from a minimum of $5,000 in most cases to $10,000 or considerably more with additional appeals adding more costs. Given OCOG's resources, only one or two cases a year can be considered.

These issues never go away. There is an urgent need for an organization such as OCOG to help fight these battles. The Coalition particularly seeks support to bolster the Hal Douthit Fund, named after OCOG's founding board chairman, and maintained to cover the expenses for legal work.

Donations to OCOG can be mailed to the address above. You can also submit donations online at www.ohioopengov.com.

Join OCOG

Any non-Ohio Newspapers Foundation member may submit an application for OCOG membership to the OCOG trustees for approval. Membership includes use of the OCOG hotline through the OCOG retainer to Baker & Hostetler and two issues of the OCOG newsletter. The cost of OCOG dues varies with the membership category the applicant falls under. The categories and dues prices are as follows:

Attorneys and Corporate Members	$70
Non-Profit Organizations	$50
Individual Membership	$35
College & University Students	$25
High School Students	$10

To download the OCOG application form, please go to www.ohioopengov.com.