



Ohio Coalition for Open Government

OPEN GOVERNMENT REPORT

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School bus bill signed by Kasich

By Dennis Hetzel, OCOG President

Journalists will continue to see names of minors in school-bus accident reports, though this information only will be made available upon request after Governor John Kasich signed House Bill 8 into law on June 29.

While an amendment supported by open government groups and the Ohio News Media Association was added to the bill, helping to improve it, HB8 still hinders public access to critical information.

In my role as director of the ONMA, I opposed this bill for nearly two years for two main reasons. First, the information on these reports is important and even critical for the public to have. Almost any school-bus accident is a matter of great public interest. Second, we were greatly concerned about setting a precedent to remove information from initial police incident reports. It is settled law that incident reports are open records with only specific exceptions such as Social Security numbers.

Supporters of HB8 testified that this information made children prey to pedophiles

(see school bus, page 3)

Justices refuse to reconsider Pike County autopsy secrecy ruling

From The Columbus Dispatch

The Ohio Supreme Court has declined to reconsider its decision holding that The Dispatch and The Cincinnati Enquirer are not entitled to copies of the full autopsy reports in the slayings of eight relatives in Pike County.

The court refused to again examine the case by a 5-2 vote, with Justices Terrence O'Donnell and Sharon Kennedy dissenting, in a ruling issued (on April 24).

The court voted 4-3 on Dec. 14 that much of the information in the autopsy reports of eight Pike County slaying victims is not yet public record and cannot be released since the case remains unsolved more than two years after the killings.

The county coroner, with the support of Attorney General Mike DeWine, refused to release unredacted copies of the autopsies, saying their release would harm the investigation. The newspapers had insisted that public records law contained no provisions shielding the complete autopsy reports from release. Officials had released heavily redacted copies two months after the legal actions were filed.

The legal fight stemmed from the April 22, 2016, shooting deaths of eight people in three trailers and a camper in Pike County.

The majority ruled that the unreleased portions of the autopsy reports could be withheld as confidential law enforcement investigatory documents.



Supreme Court to hear OCOG-supported case on secret ballot voting

The Ohio Supreme Court agreed in June to decide a case that argues public bodies shouldn't be able to vote by unsigned secret ballots. The lawsuit was filed by Patricia Meade, publisher of the MOREBratenahl community newsletter, and alleges the Bratenahl village council violated state law by using secret ballots to elect a president pro tempore.

The Ohio Coalition for Open Government (OCOG) filed an amicus ("friend of the court") brief in support of Meade's lawsuit, stating that secret ballot voting by public bodies is inconsistent with both open government practices and state law.

The Cuyahoga County Common Pleas Court and the Cuyahoga County Court of Appeals originally ruled against Meade's suit, deciding a secret ballot vote isn't secret if the public body keeps copies of the ballot slips. However, OCOG's brief argues that other case law disputes these rulings, including a 2011 opinion from the Ohio Attorney General stating that the "open meetings' requirement of R.C. 121.22 is not satisfied when members of a public body ... vote by secret ballot."

The Supreme Court declined to hear another aspect of the case, which involved the way the village handled its minutes.

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Dozens of sunshine bills still pending in Ohio Legislature

By Dennis Hetzel, OCOG President

Since the current, two-year legislative session began in 2017, OCOG has tracked at least 34 bills that would affect access to information and government transparency in Ohio.

Most of these bills involve open records. Only three of those bills have become law and 31 are pending, although three of the 31 are awaiting Gov. Kasich’s likely signature at this writing.

Some of these bills are fairly routine with minor language changes. Several involve a growing number of public employees – judges, for example – who want their job classifications to be added to the list of those who can have their identifying and family information redacted from public records. Ohio journalists can continue to see this information.

There also are several pending bills with the well-intentioned goal of giving offenders a second chance by making it easier to seal or expunge records. OCOG has consistently opposed expungement, because expungement eliminates accountability and any record of what happened in those cases. For example, in situations in which someone is wrongfully arrested, it is important to know why the government made a critical mistake. So far, no bills have passed that involve physical destruction of public records.

Here is a status report on the most significant bills. Bills that don’t make it to the finish line by Dec. 31 will die; backers must start over in the new session that begins in 2019.

Bills that became law

Accident reports (HB 8): Names of minors in school-bus accidents will be redacted from publicly available reports although journalists will retain access. (See related story.)

State budget (House Bill 49): Several concerning public records provisions were in the state budget bill such as restrictions on access to Ohio Lottery Commission audits. The Legislature repaired or eliminated most of those issues by the time the budget passed.



Hetzel

Mugshot sites (HB 6): Media outlets that engage in the extortion-like practice of publishing arrest “mugshots” and then charging people to have the photos removed now are in violation of a state law that makes it a crime to charge for removal of criminal record information.

Key bills awaiting Kasich signature

Public records cases (HB 312): This bill closes an important, outdated loophole in public records law. Under old language, if you won a public records case in court, you couldn’t collect fees unless you made the original request by certified mail or in person. Digital requests now will count as well.

Regional councils (SB 239): A scandal involving a regional government council’s practices that an audit uncovered resulted in this reform bill. The bill stops the absurdity of claiming that the names of members of a council can be redacted as trade secrets.

High-interest pending bills

Body cameras (HB 425): Police-worn body cameras create all sorts of privacy and transparency issues. This is thoughtful legislation in my opinion that preserves accountability while dealing with legitimate privacy concerns – far better than what some other states have done. As amended, the bill also covers dashboard-mounted cameras and has a good appeal process when the public interest might outweigh the desire for privacy. The bill has passed the House with some issues that still need addressing in the Senate.

(continued above, page 3)

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Ohio Citizen Participation Act (SB 206):

This bill mirrors Texas legislation closely that protects citizens when they get sued for the legitimate expression of their First Amendment rights on matters of public interest and concern. Plaintiffs file suits to harass citizens and discourage others from speaking out by engaging them in costly, complex litigation. The expedited court process disposes of such cases faster.

Data Ohio (HB 3): The bill would make public records much easier to download and use. For example, the practice of only making Excel documents available as PDF files would cease. Local governmental bodies also would have incentives to move to the same account charts, allowing for better, more accurate

comparisons. The bill pushes Ohio into the mainstream of how information should be handled in the 21st Century.

Ohio Checkbook (HB 40): The Ohio House has passed a bill that would require future state treasurers to continue the award-winning government spending website, www.ohiocheckbook.com.

Campaign finance (SB 44): Common sense here. Local campaign committees and others could file their finance statements electronically to the Secretary of State’s office. It should be mandatory.

Public disclosure (HB 139): The Ohio House has passed this bill of great interest to historians, genealogical researchers, archivists and anyone else interested in old records by making now-closed records presumptively open after 100 years. Note

that even CIA records and presidential papers become open eventually. However, there is some unintentionally bad language in the bill that could close access to some current public records that needs fixing.

Substance abuse (HB 427): This bill addressing the opioid epidemic would require counties to report monthly on overdose deaths in a public record.

Redistricting (HB 644): Requires public records and meetings of the Legislature and the Ohio Redistricting Commission to be generally open during that process.

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School bus bill signed by Kasich

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or identity thieves. We tried to demonstrate that these claims were illogical and unsupported by any evidence. This was a difficult bill to fight, because every legislator’s initial response was to protect children and their privacy.

After the bill passed the House easily and our compromise ideas were rebuffed, we received consideration of two amendment suggestions in the Senate. One would have redacted the names only from Internet postings of the reports. The other was to create a “journalist exception” similar to other areas of the law. The

Senate opted for the latter, and it was this version that Kasich signed into law.

For journalists to obtain this information, the request must be made in writing and include the journalist’s name and title and the name and address of the journalist’s employer with a statement that disclosure of the information sought would be in the public interest.

Unfortunately, this law means we have two new exemptions to the open records law. The House also added an unrelated exemption to protect health care information held by certain quasi-governmental entities. We do not believe this exemption will affect newsgathering,

but it wasn’t needed. We argued that the concern already was covered by existing exemptions for medical information, and that the language was an inappropriate addition to the ever-growing list of exceptions. The bill takes the list of exemptions to our state’s open records law up to the letters “hh.”

OCOG files two amicus briefs

Continued from page 1

The case is [Meade v. Village of Bratenahl, Case No. 2018-0440](#).

OCOG supports Enquirer in police body camera footage case

OCOG also is supporting a case brought by the Cincinnati Enquirer against the Cincinnati Police Department. The Enquirer and other media organizations argue the department is improperly withholding police body camera footage from the public by the way it applied the confidential law enforcement investigatory records (“CLEIR”) exception to the state’s public records act.

The case involves an August 2017 incident in which two men became

combative with three Cincinnati police officers. Police recorded the altercation on their body cameras yet the city refused to release the footage, stating it is part of an investigation.

However, in its brief filed in April, OCOG argued the footage does not depict Cincinnati officers investigating any crime and is therefore subject to release under state law.

This is the second time in two years the Supreme Court has considered a police camera case, with the court ruling in 2016 that footage from police dashcams are public records with limited exceptions and should be released to the public upon request.

The case is [Cincinnati Enquirer v. City of Cincinnati Police Department, Case No. 2017-1618](#).

New OCOG board members

OCOG has two new members of the Board of Trustees. They are Michael Curtin, who held various executive roles with The Columbus Dispatch and is a former Ohio state representative, and Lou Colombo, retired general counsel for the Ohio News Media Association and one of Ohio’s leading sunshine law experts.

Curtin and Colombo replaced Catherine Turcer of Common Cause Ohio and Monica Dias of the Frost Brown Todd law firm in Cincinnati, who were term-limited.

“I’m really pleased by the addition of Mike and Lou to the OCOG board,” said OCOG president Dennis Hetzel. “They bring a ton of experience on open government issues to our board. I know I speak for all our trustees in thanking Catherine and Monica for their work on behalf of OCOG and for their strong dedication to open government.”

Open Government News and Commentary

Senate considers Ohio Citizen Participation Act

By Olivia Wile, ONMA intern

More than eight months since its initial appearance in front of the Senate, the much-anticipated second hearing for the Ohio Citizen Participation Act was held June 6 in the Ohio Senate.

As time is running out in the year, the pressure is greater than ever to get Senate Bill 206 passed. If the bill, along with hundreds of others, does not get passed by Dec. 31, it will die unless resurrected in 2019. Supporters say the bill would give Ohio the country's best "anti-SLAPP" law: one that would expedite court processes while also protecting First Amendment rights, even in the digital realm.

Ohio News Media Association Executive Director Dennis Hetzel testified about the importance of making this bill a law.

"These are constitutionally protected rights," said Hetzel in an interview. "We're spending a lot of time in this country talking about Second Amendment rights and how those need to be protected, and

I think we need to pay the same attention to protecting First Amendment rights."

Twenty-eight other states around the country, including Texas and California, have already established similar laws.

Following Hetzel was Bridget Mahoney, chair-elect of the Ohio Domestic Violence Network. During her testimony, Mahoney, a victim of domestic violence, explained how her life took another turn for worse when her ex-husband filed a strategic lawsuit against public participation, or SLAPP-suit.

"Because Ohio does not have an anti-SLAPP law, I was forced to endure nearly two years of painful proceedings, an agonizing discovery process and torturous depositions," stated Mahoney in front of the Senate. "After spending over \$100,000 in legal fees, I ran out of money defending the meritless lawsuit, so on the day of the trial, I had to regrettably bargain away some of my freedom of speech."

Joining Mahoney in testifying was Gary Daniels, chief Lobbyist at the ACLU of Ohio, as well as attorneys Jeff Nye

and John Greiner. Proponent testimony was provided by representatives from the Ohio Alliance to End Sexual Violence and Yelp.

Though unsure of the legislature's agenda, Hetzel feels that progress was made after the bill's second hearing.

"I was very pleased by the how the hearing went and the interest that the committee had, especially Sen. Huffman, the bill sponsor, and Sen. Coley, the committee chair," said Hetzel. "The problem is that the legislature has so much to do and so little time to do it."

The impetus for ONMA's support was a high-profile libel action against the Chagrin Falls newspaper for its coverage of a protest against Murray Energy Co. The newspaper eventually won the case, but only after the newspaper, citizens who also were sued and insurance companies spent thousands of dollars as Murray continued to appeal. An Ohio appellate court issued an opinion with the unusual comment that the case illustrated why Ohio needed an anti-SLAPP law.

'Bigfoot' lawsuit illustrates need for anti-SLAPP laws

By Jack Greiner

A Branson, Missouri attraction called "Bigfoot on the Strip" is suing a Kansas farmer and his daughter over an unflattering review the farmer posted on TripAdvisor. According to its website, Bigfoot on the Strip is an amusement park that a "variety of attractions, all themed around Bigfoot (as in Sasquatch)." It includes a working Scottish Highland Cattle Farm, through which patrons can ride on a Safari vehicle.

Randy Winchester and his daughter visited the attraction while in Branson. Upon returning home to Kansas, Mr. Winchester posted this review on TripAdvisor:

"We did the Bigfoot Safari tour as part of a large group. The \$10 price tag is about right for what we got. Basically a tour through some pretty rugged country on some pretty narrow roads. They promote the fact they have the largest herd of Highland cows in the Midwest. You spend about 5-10 minutes feeding them range cubes at the beginning of the tour,

and see maybe 10 of the cows. Then it's off into the hills you go with a guide telling some pretty fanciful tales along the way. All in all a decent experience but had we paid more than the \$10 I would have been disappointed.

All in all, not too bad. I don't have immediate plans to visit Branson, but if I did, this review wouldn't make me avoid Bigfoot on the Strip. (Although, I am more of Dinosaur Golf guy myself). But it appears the folk at Bigfoot have pretty thin skin. According to an updated review from Mr. Winchester, his original posting led to calls and e-mails from the Bigfoot folks:

"Since posting the above review, a person identifying himself as an owner of Bigfoot on the Strip has called my daughter on her cellphone repeatedly, has contacted my daughter by email, has tried to call my home phone at 8:30 p.m. on a Saturday, has attempted to contact me by email, and has contacted the person who coordinated our tour, to complain about my original review. The 'owner' has also advised my

daughter by email that he and his partners would likely be suing both of us.

"I have significant reservations regarding any business run by someone who seems to think it is an acceptable business practice to contact family members and associates of a reviewer because they seem to be unhappy with a review. Consequently, I am changing my three-star review to one star."

Quite honestly, one star seems generous under the circumstances. But in keeping with their hyper sensitive approach, the Bigfoot folks have now filed a defamation lawsuit in Taney County, Missouri. It claims Winchester's review was a product of "evil motive" and exposed the park to "contempt and ridicule." The Bigfoot folks are making the mistake that a lot of defamation plaintiffs make – assuming that being mad about a review gives them a cause of action. It doesn't. And unless the Bigfoot folks can prove that

(see **bigfoot**, page 5)

Open Government Editorials and Commentary

Time to lift veil of secrecy from Ohio's jobs initiative

Editorial from The Vindicator

For seven years, JobsOhio, the state's privatized economic-development endeavor, has been shielded from public view, much to the displeasure of open-government advocates.

Indeed, the media have consistently challenged arguments presented by the proponents of secrecy and have demanded accountability and transparency on behalf of the taxpayers.

Not surprisingly, such demands have fallen on deaf ears.

But that could change if a proposal being pushed by Ohio Auditor David Yost, a Republican, is adopted by the GOP-controlled General Assembly and signed into law by Republican Gov. John R. Kasich.

Yost, a candidate for Ohio attorney general this year and a former journalist, is seeking a one-time performance audit of JobsOhio, which was created by statute in 2011 to replace the Ohio Department of Development.

Kasich and others contend that a private organization unencumbered by state laws governing public agencies is needed to spur job-creation in Ohio.

But without access to JobsOhio's records, the media and the public have no way of confirming the claims of success that have been made over the years.

We also have no insight into how much money is actually spent on salaries and benefits for the 81 employees.

As the Columbus Dispatch reported March 12, JobsOhio continues to lowball the amounts it pays employees, including 34 individuals who earn at least six-figure annual salaries.

Here's what the Dispatch wrote:

"In its 2017 filings with the state, Gov. John Kasich's privatized economic development agency again reported employees' taxable income – which does not include salary diverted to non-taxable retirement contributions and health insurance costs – instead of their gross income.

"State law requires the nonprofit to report 'total compensation.' But its practice of reporting only taxable income serves to understate employee earnings by thousands of dollars each.

"The filing for 2017 shows that John Minor Jr., JobsOhio's president and chief executive officer, received a raise of \$32,256, or 7 percent, last year to \$516,458.

"Yet, his actual compensation likely is significantly higher."

No names

There's another problem with JobsOhio's so-called disclosure of compensation. There are no names on the chart. The list reveals only the job title and salary for each position.

That is why state Auditor Yost's push for a performance audit is timely and necessary. The Republican majority in the General Assembly will stand accused of supporting secrecy in state government if it does not enact the necessary legislation.

"I really looked askance at its lack of accountability," Yost said of the JobsOhio program. It is exempt from open records and ethics laws, and its books are not publicly audited.

But officials involved in the program have long insisted the nonprofit adheres to the highest standard of accountability, transparency, ethical conduct and responsible business practices.

Yet, the day-to-day operations are conducted in darkness.

The proponents of privatization of Ohio's job-creation effort continue to argue that no public dollars are used for

the program. But as we have pointed out in previous editorials, Ohioans contribute millions of dollars in grants awarded to JobsOhio, and state liquor profits are used to attract private financing.

According to the Dispatch, the state auditor's desire to "check the numbers" is endorsed by the Ohio chapter of Americans for Prosperity, funded by the conservative billionaire Koch brothers.

The newspaper quoted the chapter's state director, Micah Derry, as saying, "Since most of JobsOhio's activities are shielded from public view, a performance audit is a welcome first step toward providing greater transparency for what we believe to be a flawed program."

We are well aware that economic development cannot always occur under the glare of public scrutiny and that secrecy is often demanded by prospective job creators.

But having a private organization operating under the umbrella of state government is bad public policy.

We opposed the creation of JobsOhio from the outset and that put us at odds with the Kasich administration.

The governor now has the chance to lift the veil of secrecy by supporting Yost's push for a performance audit.

The state auditor should be given the authority to seek requests for proposals from national auditing firms and then to select the one he believes would give Ohioans the best review of JobsOhio.

Bigfoot lawsuit

Continued from page 4

Winchester made a false statement of fact, as opposed to merely sharing an opinion, the big foot of the law is likely to boot their case out of court.

As well it should. But that isn't enough. The Bigfoot case is exactly the kind of pleading that anti-SLAPP legislation would help deter. Anti-SLAPP laws address SLAPP suits – "Strategic Litigation Against Public Participation." The law gives victims of defamation suits that get filed for no reason other than to shut down legitimate criticism a tool for getting the

case dismissed before the costs start escalating. And it gives the victim the right to recover the lawyer fees incurred in doing so.

Currently, the Ohio Senate is considering Senate Bill 206, which would give Ohio citizens this type of relief. The anti-SLAPP bill is well written and long overdue. If you happen to talk to a state legislator, urge them to pass it.

Jack Greiner is a lawyer with the Graydon law firm in Cincinnati. He represents Enquirer Media and other clients in First Amendment and media issues.

Open Government Editorials and Commentary

Let sun shine when doing the public's business

Editorial from the Columbus Dispatch

There is a difference between discussion, deliberation and decision — and the distinctions are especially important when it comes to government bodies doing the public's business.

We hope all manner of public officials in Ohio were paying attention in March when the use of closed sessions poisoned and upended a superintendent search for the Columbus City Schools.

The distinctions can be confusing when a government body — say the Columbus Board of Education — receives conflicting information from different sources, including a membership organization such as the Ohio School Boards Association, which board members and their legal counsel may rely on for advice specific to their responsibilities.

Differences between discussion, deliberation and decision were at the heart of problems that arose in the Columbus school board's initial search for a superintendent to succeed Dan Good, who retired at the end of December.

That search was scrapped after The Dispatch revealed and State Auditor Dave Yost challenged the board's use of private executive sessions to consider

and cull about two dozen candidates for the job to three finalists before taking official action in an open meeting. The board had announced 19 candidates publicly; and now we know four others were privately considered as well.

As the Columbus school board mounts a new search, we hope any lingering misunderstanding of what Ohio's Sunshine Laws require for the conduct of public business have now been resolved — and that other Ohio school boards that might have been following similar misguided practices are now on notice as to the law's demand for public decision-making.

The auditor had advised the school board — just before it planned to name the next superintendent — that decisions made illegally in closed sessions could subject board members to personal financial liability, making it clear the process was tainted.

Conversely, the school boards association had advised its members that weeding out candidates in closed sessions was fine. In fact, that process "is used by many of our members to narrow their lists of candidates," OSBA Chief Legal Counsel Sara Clark said in a letter to the state auditor, disputing his interpretation of the Sunshine Law restrictions on executive sessions.

The association cited a 1985 case where Tiffin City Council considered candidates for a vacancy in private, then decided between two candidates in open session. Now, Clark said, "we are providing boards that utilize OSBA for their executive searches with information about the position the auditor has taken."

Cincinnati attorney John C. "Jack" Greiner, considered a Sunshine Law expert by the Ohio News Media Association, agrees that case does not support anything more than deliberation in executive sessions. And Webster's defines deliberation as "consideration and discussion of alternatives before reaching a decision."

These distinctions are important as the Columbus school board begins a new search for superintendent.

We hope the Groveport Madison Board of Education and the school board for Westerville City Schools are also paying attention. Groveport is seeking a new superintendent to succeed Bruce Hoover, who resigned in February. Westerville needs a new school treasurer with January's retirement of Bart Griffith. Thankfully, there has been no indication those districts made decisions in closed sessions.

The sun shines for everyone, not merely journalists

Editorial from The Chillicothe Gazette

Because journalists are the predominant users of public records laws, it's a common misconception that the rules only exist because of the media.

It's correct that this newspaper — and many like it in both our company and across the country — use them frequently to report on daily news and to reveal information that would often be kept hidden from the public. Journalists couldn't do a lot of what we do to bring sunlight to certain issues without the so-called Sunshine Laws.

But the rules are written into the Ohio Revised Code, the Open Meetings Act, and the Freedom of Information Act are for everyone.

Those examples and a myriad of others are the reason why your right to know is so important in Ohio and the United States.

It's about your right to know how people vote in the city council, board of commissioners, township trustee, and school board meetings. It's also about them discussing the public's business in front of you, not behind closed doors.

Your right to access public documents that help you understand how public money is spent, how public employees are performing their jobs and exactly how things are getting done in your area.

The fight to keep this openness is never-ending, and this year is shaping up to be another year of lobbying to

keep open government alive.

Think about it this way: Would you want your electric rates to go up without being notified? Would you like to remain ignorant of how much your government paid to buy a building or piece of property? Your right to know that information is protected by those laws

Openness in government is often like a car battery — you never realize how much you need it until it's gone. Sunshine Week exists to illustrate how much we — regardless of profession — need open government and public participation in government.

Open Government Editorials and Commentary

Police body cameras are here, law should catch up

Editorial from The Columbus Dispatch

The process of equipping all Columbus police officers with body cameras appears to be going relatively smoothly and ahead of schedule, and that’s a credit to the department and the officers.

Meanwhile, we hope the General Assembly will move as purposefully to pass legislation which aims to clarify that video from police body cameras is a public record, while establishing some exceptions.

Current law isn’t clear, and the Ohio Supreme Court is preparing to hear a case in which the Cincinnati Enquirer is challenging the city of Cincinnati’s refusal to release bodycam video from an Aug. 8 incident in which an officer used a Taser on a suspect.

We live in a world in which cameras are everywhere, and bystanders’ video has been the basis of numerous complaints of police brutality. Having an official video record from an officer’s perspective is a good insurance policy, both for the public and for officers.

City officials expected the full rollout of about 1,300 body-mounted cameras to take until the end of this year, but now they expect all of them to be in place by the end of June.

It isn’t a simple matter of clipping a camera onto each officer. The city had to buy server space to store the video and run fiber-optic cable to police substations so the video can be uploaded. To its credit, the city has budgeted for additional employees to handle requests from the public to see bodycam footage.

The primary benefit of body cameras is to afford the public a view of how police officers do their jobs. If there’s not an efficient system in place to make that happen, they’re far less valuable.

House Bill 425 states clearly that body-camera video is public and establishes a process for anyone who is denied access to body-camera video to file a mandamus action in the Ohio Supreme Court challenging the denial. Rep. Hearcel Craig, a Columbus Democrat, is a primary sponsor of the bipartisan legislation along with Rep. Niraj Antani, a Miamisburg Republican.

The bill, which has yet to receive a hearing, allows some exceptions, but they’re generally narrow and reasonable. Dennis Hetzel, executive director of the Ohio News Media Association and as such an advocate for transparency, said the bill is better than many other states’ laws regarding body-camera video.

Police officers deserve some credit for adapting to the cameras with minimal fuss.

Even though the cameras ultimately protect good cops by disproving any false claims of police misbehavior, getting accustomed to having one’s every public interaction recorded must be a challenge.

Officer Joseph Bogard learned that the hard way when he faced a public backlash and earned a written reprimand in September after body cameras recorded him talking big to other officers about how roughly he would have handled a difficult suspect who was just arrested.

In a report on the incident, a sergeant wrote that, while Bogard’s comments were insensitive, officers often use “crude humor and crass language to cope with the stress of being involved in dangerous and traumatic incidents such as this.”

Further, he said, “Officers are adjusting to the shrinking number of venues in which they can process and de-stress in an authentic and real manner.”

That shrinking is a price officers are paying for body cameras.

But for them and for the public, the transparency and fairness cameras offer are worth it.

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 and receive the OCOG legislative watchlist, 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 two 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

If staff attorney contact with the public agency doesn’t resolve the problem, your complaint will be referred for formal mediation. If mediation fails the court will make a ruling, with both sides retaining appeal rights.

8

Staff attorney will contact the public agency for an explanation of why your original records request was denied. This contact frequently resolves the problem.

7

If your complaint meets legal requirements, a court attorney will review your request and contact you.

6

1

Download the Public Records Access Formal Complaint form.

2

Complete the form, providing as much supporting information as possible.

3

Submit the form by either mail or online at www.ohiocourtofclaims.gov/efile.php and pay \$25 filing fee.

4

5

The Court of Claims staff will determine if your complaint meets minimum legal requirements. If complaint doesn’t meet minimum requirements, staff will either return it to you so you can correct any errors or summarily dismiss it.



Ohio Coalition for Open Government

Working to strengthen and support open government and public access

Open Government Editorials and Commentary

Public's right to government records is crucial

Editorial from The Hillsboro Times Gazette

The week of March 11-17 is designated Sunshine Week, as declared since 2005 by the American Society of News Editors. The week is dedicated to reminding the public of the press's invaluable role in ensuring open government.

The Times-Gazette's experience with local governments in seeking public records has been mostly positive. That experience was put to the test in 2014, when an audit sponsored by the Ohio Coalition for Open Government, organized by the Ohio Newspaper Association, found that in Highland County, local officials — including those with the county, the city of Hillsboro and Hillsboro City Schools — responded promptly to record requests.

But records requests are not always granted. Such was the case last year

when The Times-Gazette sought an audio recording of a Hillsboro City Council executive session, where it is believed that a discussion was held about the decision to continue paying a former safety and service director even after he had been dismissed. The city cited “attorney-client privilege” in keeping the recording out of the public realm, a decision with which this newspaper continues to disagree.

More recently, we demanded answers from federal officials about the decision to withhold grant funds for a previously-approved Rocky Fork Lake project. Some answers were eventually provided, but we are continuing to monitor the situation and will keep readers informed through future reporting on the subject.

Thomas Jefferson said, “Whenever the people are well informed, they can be trusted with their own government; that

whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.”

Abraham Lincoln noted, “Let the people know the facts, and the country will be safe.”

Ohio's own state Supreme Court justice, Maureen O'Connor, perhaps summed it up best in a 2006 decision in the case of *Kish V. City of Akron*: “A fundamental premise of American democratic theory is that government exists to serve the people... Public records are one portal through which the people observe their government, ensuring its accountability, integrity and equity while minimizing sovereign mischief and malfeasance.”

We concur, and we join other news media in our continued commitment to guaranteeing the public's right to be fully informed about government decisions and actions.

People in Lancaster deserved more transparency with regards to controversial Parks Board vote

Editorial from The Lancaster Eagle-Gazette

Were you surprised upon hearing the (Lancaster) Parks Board had narrowly voted to approve the lighting of Mount Pleasant? Join the crowd.

Would you have liked one more say on the matter? Too bad.

The board, which held a pair of public sessions last year to discuss the possible lighting of the Fairfield County icon, met March 14 and approved the idea. It's done.

Let's be clear: The board said, as early as late December, that they would likely vote in March. In that sense, they believed that was an ample warning of their decision — and it was a huge one for a lot of people inside, and outside, Lancaster.

But in a busy world with people filled with busy lives, we believe the Parks Board owed more to the community than just a “hey, we'll be making this decision later ... hope to see you then.”

Keep in mind the public's interest in this idea was at its apex in the late summer and early fall. In fact, Mount Pleasant was illuminated during the county fair in October, and that was the last formal mention of the matter. That's nearly six months.

So, with no particular nod to the citizens who voiced their opinions on the matter, the board voted. Reaction to that vote has been mixed. Some are upset at the decision, others are pleased. Still, others felt as if the board was less than transparent.

First, let's address what all public bodies have to do by law. The Ohio Revised Code is pretty clear. The law says, according to the Ohio Attorney General's Sunshine Law manual, “The public body's notice rule must provide for “notice that is consistent and actually reaches the public.” Further, it's stated that regular meetings must have a reasonable method to inform the public of their monthly meetings.

If you go to the city's website and search the agenda and minutes for “Parks Board,” you'll find none. In fact, go to the site and search the entire site for anything related to the Parks Board and you'll see merely a handful of items related to meetings, including a change of the February meeting, but no reference to the March meeting at all.

Finally, go to the website and search for the board meeting dates and times of future meetings and you still will not find them, because they are not posted. In fact, we can't find a single place where the March 14 meeting was published, nor could we see

a notice that the Mount Pleasant issue was up for a vote. Maybe it's on the Parks and Recreation Facebook page? Nope.

Does that comply with the law? Is the notification provided “consistent” and does it actually reach the public?

We argue that it falls short. So, if an intrepid Lancaster resident wanted to challenge the legality of the board's 2-1 decision on the lighting of Mount Pleasant, they might be able to do so because the meetings are not adequately publicized. Will it change the outcome? Probably not. Is it worth the effort? We believe all efforts to push the government to follow the rules are worthwhile.

Listen, this might not be a big deal to the board. It may not involve a significant expenditure of public money, but if the Parks Board and the city analyze this decision, they should admit they could have been much more transparent than they were before casting a vote. Mistrust follows a lack of transparency.

We're told the board meets the second Wednesday of each month. The next move is yours, Lancaster residents. Make your voices heard.



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OHIO ROUNDUP

Auditor: Public records citations fell 22 percent in 2017

From the AP

Public records-related citations across Ohio fell last year but some officials still need to work harder to comply with the law, Republican State Auditor Dave Yost said in releasing new statistics (on March 11).

"I can understand a bookkeeping error — mistakes happen — but there's no justification for violating the clear law of public records," Yost said in a statement.

Yost's office issued 321 public records-related citations against 267 public entities in 2017, according to the report. That's down 22 percent from the 414 citations issued in 2016 against 357 public entities.

Yost released his annual report to coincide with the kickoff of national Sunshine Week, a celebration of access to public information.

It showed that about 6 percent of 2017 audits included citations for noncompliance with Ohio's public records law, compared to 8 percent the previous year.

Nearly six in 10 of the violations were against villages and townships, with villages accounting for 29 percent of citations and townships accounting for another 27 percent. Another 7 percent of citations were issued against police, fire, EMS and ambulance districts.

The remaining citations were issued against cities (6.5 percent), school districts (5 percent), counties (4.7 percent) and community schools (4 percent).

Yost said most violations involved failure to attend state-required public records training, lacking a public records policy or failing to make one available to the public.

"Message to public officials: These are not your records. These are public records, and it is the law," he said. "You need to do whatever it takes to remind yourself to comply."

Consultants for Columbus Schools pledge to follow sunshine laws

From The Columbus Dispatch

The next superintendent of Columbus City Schools might be announced in mid-October and on the job by January, under a timeline the Columbus Board of Education set with its hired search firm on (June 18).

During a special meeting, representatives from Chicago-based B.W.P. & Associates advised board members that they need to broaden who they would consider for the job. ... The search consultants said they recognize that Ohio law requires that the names of superintendent applicants be made public. Hazard, Young, Attea & Associates, which conducted a search for Columbus superintendent earlier this year, kept some candidates secret.

"We understand the Sunshine Law and we're going to follow it ..." said B.W.P. representative Kevin Castner. "We're going to have to make sure that we do exactly what your legal counsel tells us for Ohio."

Supreme Court: FirstEnergy records improperly shielded from public

From The Columbus Dispatch

The Ohio Supreme Court has found that state utility regulators went too far in shielding documents from public view in a case dealing with FirstEnergy's purchases of renewable-energy credits.

Consumer and environmental advocates had pushed for release of the documents, saying they would help the

public understand why regulators found that FirstEnergy had overpaid by \$43 million for the credits in transactions that may have involved an affiliated company, FirstEnergy Solutions.

"If a utility is mispending customers' money, it should not be able to keep that a secret," said Madeline Fleisher, an attorney in the Columbus office of the Environmental Law and Policy Center, reacting to the decision released (January 24). Her group argued before the court that the documents should be public.

But this was a mixed result for consumers.

The court also found that FirstEnergy does not need to repay the \$43 million because of a precedent that bars retroactive changes to utility rates. This part of the decision rejects the Public Utilities Commission of Ohio's order to refund the money.

Environmental group claims ODNR illegally withholding records

From The Columbus Dispatch

The Ohio Department of Natural Resources is facing a lawsuit from an environmental group that alleges the department has illegally withheld public records.

The Athens-based Buckeye Environmental Network requested to view public records regarding oil and gas waste turned into a chemical product used by the Ohio Department of Transportation to deice roads, but its request was denied. The group says the chemicals are dangerous and harmful to the environment and that ODNR, which tests the chemical, would not allow the group to see the most recent tests on the product.

"We requested to review all records held by the agency in order to determine how and if the agency plans to take steps to remove this product from the consumer market. The product was found

to contain high levels of both Radium 226 and 228. And with the pending legislation (House Bill 393 and Senate Bill 165) on this product, we believe that the public has a right to know how much radiation they have been or may be exposed to if they use this product," executive director Teresa Mills said in a statement.

ODNR says it attempted to work with the environmental group through the records request process, but the group decided to pursue a lawsuit in Franklin County Common Pleas Court.

Audit confirms improper no-bid contract scheme at DAS

From The Columbus Dispatch

It's old news, but state information technology officials ignored bidding requirements for years to hand out millions of dollars in no-bid consulting contracts, according to a "public interest report" by the office of Ohio Auditor Dave Yost.

The audit, prompted by an investigation by The Dispatch published in April 2017, confirmed the newspaper's finding of at least \$15 million in unbid work while noting that "numerous policy safeguards to prevent waste and abuse do not exist."

Controls over purchasing at the Department of Administrative Services were so weak that "it's impossible to verify whether the state overpaid for services" through the improper no-bid contracts, Yost's office said in its report released (June 7).

"Because key information and documentation is lacking, it's impossible to know exactly what happened in these contracts," Yost said in a statement. "One thing we do know is that the process at place at DAS is not even close to being considered a 'best practice.' They can, and must, do better."

The Dispatch reported last year that top state information technology officials improperly failed to seek bids or price quotes and sidestepped approval of the Controlling Board — a bipartisan spending watchdog panel — in routing unbid work costing more than \$200 an hour to two favored contractors. Lower-ranking state purchasing analysts, meanwhile, had warned that the contracts were improper and might be overpriced.

Bill would allow auditor to look over shoulder of JobsOhio

From The Columbus Dispatch

Although JobsOhio objects — and Gov. John Kasich is likely to do so as well — the Ohio Senate on (June 6) unanimously passed a measure sought by state Auditor Dave Yost that would authorize his office to look over the shoulder of the privatized economic-development entity.

An amendment incorporated into a bill (on June 6) would permit the auditor's office to play a role in outlining the scope of performance audits and give it access to the work papers produced by private accounting firms conducting the audits of the nonprofit.

Republican Yost long has lobbied for increased accountability from and oversight of JobsOhio. The entity was exempted from public-records laws and government oversight when it was created to supplant the state Development Department in 2015 and was granted a lease of the state's liquor-sales operation to finance its operations.

"JobsOhio is a quasi-public agency that exists to serve a public purpose for Ohioans," Yost said. "The people of Ohio deserve a seat at the table. This amendment ensures that any performance audit of JobsOhio is completely independent."

The language, which advances to the House for consideration, would require performance audits of JobsOhio every four years beginning in 2021 under written agreements to include the auditor's office.

Canton Repository uses public records to determine cost for new Hall of Fame stadium

From Ohio.com

Throughout its reconstruction, confusion has circulated about how Tom Benson Hall of Fame Stadium was paid for — mostly, about how much public money helped to finance the nearly \$139 million project.

The answer: \$15 million.

The rest of the stadium was paid through private donations and loans, according to financial documents The Canton Repository obtained through public records requests.

Comparatively, most football stadiums built in the past decade have relied on at

least 25 percent funding in public dollars, usually far higher percentages.

The stadium is the most visible component of the nearly \$1 billion Johnson Controls Hall of Fame Village planned for the campus around the Pro Football Hall of Fame. Several new youth fields also have been constructed, and a four-star hotel broke ground more than a year ago, with resumption expected this year.

Records scarce on sexual misconduct at Statehouse

From the AP

By now, citizens are familiar with the drill: Politician resigns to "spend more time with family," a cryptic apology or plea for privacy ensues, and, only days or weeks later do journalists unearth the documents, images or private posts that tell the full story.

This is what happened with a sexual harassment case last year against state Sen. Cliff Hite, a Findlay Republican, who left office after legislative investigators found that he had engaged in inappropriate conversations and physical contact with a female state worker.

Sexual misconduct allegations against state Rep. Wes Goodman, a Cardington Republican, also emerged in a spotty fashion following his resignation after House leaders discovered he'd engaged in a sexual encounter in his state office.

No centralized place existed for journalists to go to determine what they'd done. Such complaints can be lodged or investigated in half a dozen places, including by an employer, a law enforcement agency or the Ohio Civil Rights Commission.

Getting at the public records that detailed Hite's and Goodman's actions all but required members of the press to already know who did what when and to whom.

A 50-state review by The Associated Press found that the majority of state legislative chambers have no publicly available records of any sexual misconduct claims over the past decade. Those with no information to provide either said no complaints were made, no tally was kept or that they didn't legally have to disclose the information.

In Ohio, certain records on the Hite and Goodman cases - an investigative file on Hite, and suggestive social media exchanges revealing inappropriate behavior by Goodman - were released in response to public records requests submitted by the AP and others.



OHIO ROUNDUP

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Court: Park district violated open records law

From The Chagrin Valley Times

An Ohio court has been advised to rule that the Geauga Park District violated the state's open records law when it denied a Russell Township resident's request for a copy of a letter cited at an Aug. 8, 2017 park board meeting.

Jeffery W. Clark, serving as special master for the Ohio Court of Claims, recommended (in late March) that the court issue an order that Shelley Chernin's Aug. 14 request for the letter be honored and she be given the document. In addition, Mr. Clark ordered that the park district pay her costs associated with the eight-month fight to get the copy, including the \$25 filing fee Ms. Chernin paid to bring the case before the court of claims.

Lawsuit says 'cabal' held secret Cincinnati City Council meetings

From The Cincinnati Enquirer

A local government watchdog alleged in a court filing (April 9) that five members of Cincinnati City Council held illegal, secret meetings via text and e-mail to discuss their position on the mayor's request that the city manager resign.

Council Members P.G. Sittenfeld, Wendell Young, Chris Seelbach, Greg Landsman and Tamaya Dennard -- a majority of the nine council members -- talked in person and via text and email when issuing two press releases about their position on Mayor John Cranley's request that City Manager Harry Black resign.

The first release laid out a process for investigating the mayor's claims, which the lawsuit alleges is city business that must be done in a public manner.

"This action results from the conduct of a cabal of five rogue members of the Cincinnati City Council, whereby this cabal has conducted illegal meetings of a majority of (council), attempting to decide matters of great public import behind closed doors and in secret communications and subverting the public's right to know and understand the actions of its public officials," the lawsuit alleges.

The lawsuit was filed in Hamilton County Common Pleas Court by Mark Miller as a citizen. He is a treasurer for the Coalition Opposed to Additional Spending and Taxes (Coast) and is represented by Brian Shrive, of the Finney Law Firm. Chris Finney is a Coast founder. Shrive, in the last Council election, donated \$1,100 to Councilman Christopher Smitherman's campaign. Smitherman supports Black resigning with the larger settlement.

Cleveland Heights considers banning secret meetings

From The Plain Dealer

Cleveland Heights Councilman Kahlil Seren introduced legislation (March 19) that would do away with executive sessions called for reasons that fall outside Ohio's Open Meetings laws.

The City Charter has already withstood legal challenges to the longstanding policy of not taking minutes for "Committee of the Whole" meetings, when courts determined that "home rule" takes precedence over the "Sunshine Law."

But even after winning in court, council and the administration recently decided to start recording those meetings, as well as to take "summary minutes" in an effort to provide more civic transparency.

Seren believes that another simple step toward that goal would be repealing the 1986 ordinance that allows council and other boards and commissions to

hold executive sessions "in retreat" to discuss "general plans for the future, or general issues before the city."

That differs from the Open Meetings law, which prescribes that only certain issues can to be discussed in closed session, such as litigation, personnel and property acquisition.

Cleveland says it needs more time on 764-day record request

From The Plain Dealer

More than two years ago, Jon Kozesky filed a public records request to learn the name of a Cleveland police officer who issued him a traffic ticket.

As part of his request, Kozesky included the officer's badge number, the time of the traffic stop and the police district he was traveling through.

Then he waited.

And he waited.

On (March 21), 764 days after he filed his request, he spoke for the first time with someone at the city about his request. The person told him this: It could take more time to dig up the information he sought.

Kozesky is the latest victim of the city of Cleveland's notorious failure to provide public records in a timely manner, as required by state law.

Attorney David Marburger, an expert on Ohio's public records law who co-authored a book on the subject in 2011, described the way the city handled Kozesky's request as "outrageous."

"What do they have, like 30 officers who all have the same badge number," Marburger said in an interview. "That's laughable. It's just too funny."

Law Director Barbara Langhenry, whose department handles requests for public records, was not immediately available for comment.

Ohio law requires that public records be "promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." Copies must be provided "within a

reasonable period of time.”

Attorney General releases updated ‘Yellow Book’ on state’s sunshine laws

From The Morgan County Herald

Ohio Attorney General Mike DeWine has released the 2018 edition of Ohio Sunshine Laws: An Open Government Resource Manual. The release of the manual, commonly referred to as the “Yellow Book,” coincided with the beginning of National Sunshine Week.

“By providing elected officials, public employees and Ohio citizens with information about public records and compliance, we help ensure accountability and transparency in the conduct of public business,” said Attorney General DeWine.

The Sunshine Laws Manual provides summaries of Revised Code provisions and case law regarding the Ohio Public Records Act and Open Meetings Act. The 2018 edition includes updates on recent open government legal decisions and law changes. The electronic edition, which can be accessed at www.OhioAttorneyGeneral.gov/YellowBook, includes clickable bookmarks to allow readers to quickly jump to the topic in which they are interested as well as hyperlinked court cases to allow readers to quickly access court decisions.

The Ohio Attorney General’s Public Records Unit also offers Online Sunshine Laws Training, which is available to the public and can be accessed at <https://SunshineLaw.OhioAttorneyGeneral.gov/>. The Online Sunshine Laws Training contains thirteen separate lessons plus an introduction video featuring the Attorney General.

Cleveland Police Dept. claims unlimited right to blur images of cops accused of crimes

From The Plain Dealer

Cleveland officials are taking the stance that the public does not have the right to see un-redacted video and images of police officers who are formally charged with committing crimes.

City law director Barbara Langhenry said in an email exchange with cleveland.com that the city will use an exemption

in the public records law in order to blur the faces of police officers in police body camera videos, even when those officers are off-duty and are formally charged with committing crimes.

Cleveland.com requested video on Feb. 16 of police officer Angelia Gaston, who is charged with obstructing justice after she drove away from a fellow police officer who was trying to tow her car because of some \$1,500 in parking tickets Gaston had accrued.

The city provided the video with Gaston’s face blurred. In contrast, videos of other criminals charged with crimes do not under go similar editing.

Langhenry’s office also uses the exemption to refuse the release mug shots when officers are booked into the city jail on criminal charges.

Langhenry did not respond to multiple messages seeking comment and clarification. City spokesman Dan Williams said in an email that Langhenry was consulting with attorneys at the law firm BakerHostetler and would provide an explanation.

Williams later responded on Langhenry’s behalf, saying that the city is going to stand by their “policy.”

The exemption the city cites is a provision in the Ohio Sunshine Laws that says photos of officers who are assigned to plain clothes or undercover work are protected from having their photos publicly released.

Langhenry said in an email that Safety Director Michael McGrath has said that “all Cleveland Police Officers may at any time be assigned undercover or plain clothes positions or assignments.”

The exemption would cover all officers, even ones that have never had an undercover assignment.

A public records attorney and an open government advocate both called the city’s reasoning “absurd.”

Court rules education board met lawfully before ECOT vote

From Gongwer

The State Board of Education didn’t commit a technical violation when it voted to claw back \$60 million from The Electronic Classroom of Tomorrow, an appeals court has ruled.

The Franklin County Court of Appeals upheld the July decision of a lower court

that the board didn’t break open meetings laws the day it accepted a hearing officer’s finding that ECOT was overpaid for the number of full-time students it served in the 2015-16 school year.

The shuttered e-school argued board members met illegally in June to come to a decision on the repayment prior to a vote.

Its attorney said at the time a violation was clear because members voted without discussion. He also criticized the meeting schedule and accused board president Tess Elshoff of polling members on their opinions prior to a vote.

Similarly, the board voted without discussion earlier this month to accept a hearing officer’s findings from ECOT’s 2016-17 school year attendance audit. Another \$19 million was deemed overpaid as a result of that review.

The three-judge appeals court found that because the board’s 2017 proceedings were quasi-judicial in nature, the Open Meetings Act cannot be violated.

Court orders Cuyahoga County to release video of corrections officer’s attack on naked inmate

From The Plain Dealer

An Ohio court has sided with cleveland.com and ordered Cuyahoga County to release body camera video of a jail supervisor using excessive force on a naked inmate.

Lawyers for Cuyahoga County Executive Armond Budish did not back up their claims that a video that led to the firing of Corporal Brendan Johnson should be exempt from release, Jeffrey Clark, a special master assigned by the Ohio Court of Claims to rule on the dispute, wrote in a 29-page decision handed down (January 17).

Clark did allow the county to blur images of the inmate’s breasts, underwear and computer screens and writings that detail her medical history, and to redact 14 seconds of audio from the video.

But Clark wrote that the redactions must be made in a way that does not obscure Johnson’s actions, rejecting the county’s claims that the entire video was not a public record.



OHIO ROUNDUP

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Enquirer calls out judge in buried baby case: ‘Total disregard for the law’

From The Cincinnati Enquirer

The Enquirer is challenging a judge’s order to strike information from a public court filing in the high-profile case of a teenager charged with purposefully killing, burning and burying her newborn baby girl in her family’s backyard.

(In early February) Warren County Judge Donald Oda responded to a motion from the teenager’s attorneys asking for a change of venue by calling it “inflammatory and prejudicial.”

He ordered pages of information, likely details that have not been released publicly, stricken from the record.

Enquirer Attorney Jack Greiner called Oda’s actions “impulsive” and said in a motion to an appeals court it shows the judge has a “total disregard for the law.”

Judge denies attempt by city of Alliance to dismiss public meeting lawsuit

From The Alliance Review

The city of Alliance’s attempt to have a public meetings lawsuit dismissed was denied by Stark County Common Pleas judge Taryn L. Heath on (January 23).

Alliance requested a summary judgment — which seeks a ruling by a court without a trial — in a lawsuit filed by a city man, who contends an executive session in Alliance City Council was a violation of the Ohio Sunshine Law.

Heath noted in the five-page judgment entry that she “cannot, and will not, accept (the city’s) contention that a Court must blindly accept the meeting minutes of a public body because they have been

approved — particularly in the face of evidence that they are incorrect.”

In April 2017, days after city council’s regular meeting, attorney Steven Okey filed the court action on behalf of resident Leslie J. Young, citing public meetings law violations after council recessed into an executive session without giving the reason. The complaint alleged this violated the Ohio Revised Code rules, pointing to a video of the meeting posted by the Alliance Review on its YouTube channel.

“The video accurately records that no member of council cited any purpose (for the executive session),” Okey wrote in a 12-page memorandum Nov. 13 responding to the city’s motion for summary judgment against his case. “Yet the statutory purpose (personnel) conveniently appears in the minutes.”

Media questions prompt joint task force on Dayton schools to cancel meeting

From The Dayton Daily News

The new Facilities Task Force studying potential closure of Dayton Public Schools buildings canceled its initial meeting (on January 9) after the members had already arrived.

At issue was a disagreement between Task Force members and local media about whether the meeting was open to the public under Ohio’s open meetings law.

Reporters from the Dayton Daily News and WHIO-TV, plus local activist and blogger David Esrati, arrived early for the 9:30 a.m. meeting, and were allowed to set up cameras and tables.

But as the meeting was about to start, DPS spokeswoman Marcia Bonhart asked the media to leave, saying the event was not open to the public. A Dayton Daily News reporter immediately presented a letter suggesting the meeting qualified as an open meeting under Ohio law.

Acting DPS Superintendent Elizabeth Lolli, Dayton City Manager Shelley Dickstein and Task Force co-chairs Mohamed Al-Hamdani and Jeff Mims scanned the document, then told the

media they believed the meeting was closed to the public.

Charlie Russo, research professor of law at the University of Dayton, said the Task Force’s attempt to meet in private did not seem to fit the requirements of Ohio’s open meetings law.

“The spirit of the law, not just in Ohio but elsewhere, is that public business should be the business of the public. People should know what’s going on,” Russo said. He acknowledged that there are some exceptions allowing private meeting. “But none of those exceptions applied. I don’t believe they made the right call.”

Court to review lethal drug records Ohio wants to shield

From The News Tribune

Ohio’s prison system must produce records about lethal drugs it wants shielded from public view for justices on the state Supreme Court to review privately as part of an open records dispute, the court ruled.

At issue is a lawyer’s request for multiple records about Ohio’s lethal injection drugs, including who made them and when they expire, and whether a state secrecy law prohibits that information from release.

The high court ordered the Department of Rehabilitation and Correction on Dec. 29 to provide the records for justices to review within 10 days.

Among other disputed documents are correspondence related to Ohio’s efforts to obtain those drugs, and correspondence from the prison system to or from any manufacturers.

The open records complaint was brought on behalf of Elizabeth Ochs, a Denver lawyer whose firm, Hogan Lovells, previously represented a Virginia death row inmate challenging the constitutionality of that state’s lethal drugs. Killer Ricky Gray was executed in January 2017 for killing a family in 2006.



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Judge considers public access to opioid data

From The Herald Star

A federal judge in Ohio will consider whether to allow public access to government data detailing years of prescription opioid painkiller shipments.

The information is at the heart of lawsuits filed by hundreds of local governments against the companies that manufacture, distribute and sell the drugs, which are blamed for sparking an addiction and overdose crisis that killed more than 42,000 Americans in 2016 alone.

The federal government agreed earlier this year to share the data with the governments in cases overseen by Judge Dan Polster in U.S. District Court in Cleveland. The agreement came with tight limits allowing only the plaintiffs to see the information.

But journalists for The Washington Post and HD Media, which owns The Charleston Gazette-Mail in West Virginia, have made public records requests seeking the data. The Charleston newspaper reported in 2016 on a version of data that it obtained for West Virginia, finding that 780 million pills flowed into the state over a six-year period during which more than 1,700 residents died in overdoses from prescription opioids.

Meet the guys who tape Trump’s papers back together

From Politico

Solomon Lartey spent the first five months of the Trump administration

working in the Old Executive Office Building, standing over a desk with scraps of paper spread out in front of him.

Lartey, who earned an annual salary of \$65,969 as a records management analyst, was a career government official with close to 30 years under his belt. But he had never seen anything like this in any previous administration he had worked for. He had never had to tape the president’s papers back together again.

Armed with rolls of clear Scotch tape, Lartey and his colleagues would sift through large piles of shredded paper and put them back together, he said, “like a jigsaw puzzle.” Sometimes the papers would just be split down the middle, but other times they would be torn into pieces so small they looked like confetti.

It was a painstaking process that was the result of a clash between legal requirements to preserve White House records and President Donald Trump’s odd and enduring habit of ripping up papers when he’s done with them — what some people described as his unofficial “filing system.”

Under the Presidential Records Act, the White House must preserve all memos, letters, emails and papers that the president touches, sending them to the National Archives for safekeeping as historical records.

But White House aides realized early on that they were unable to stop Trump from ripping up paper after he was done with it and throwing it in the trash or on the floor, according to people familiar with the practice. Instead, they chose to clean it up for him, in order to make sure that the president wasn’t violating the law.

New York unveils freedom of information website

From Government Technology

Gov. Andrew Cuomo unveiled a new website that he says will make it easier for the public and the press to access records from various state entities under New York’s Freedom of Information Law.

The website, called [Open Foil NY](http://Open.Foil.NY), offers a centralized online location to file FOIL requests with 59 state agencies and public authorities and was lauded by Cuomo as offering, for the first time,

a uniform method to submit requests for government records through a single website.

In addition, Cuomo said the system will be the first of its kind in the nation that will provide an open-access records request “web form” that allows the requester to select multiple state agencies for a single records request.

In addition to providing a single point of access to request records from New York State agencies and authorities, Cuomo said Open FOIL NY offers many additional features and benefits including:

- An open-access online form to request records from up to three agencies simultaneously, leading the nation in providing easy public access to multiple state agencies;
- Direct access to a growing body of online information and resources, including agency reading rooms and Open Data NY.

In the next phase of Open FOIL NY, Cuomo said state agencies will be able to use software designed and built by the Office of Information Technology Services to process records requests more efficiently.

Florida officials indicted in public records scandal

From The Miami Herald

In a move that should send a chill down the spines of thousands of elected officials in Florida, former Martin County Commissioner Anne Scott, a retired judge originally from Chicago, and current Commissioner Ed Fielding were booked (in November) into the county jail after being indicted in a public records scandal that already cost taxpayers upward of \$25 million.

Scott, 69, who lives in Hobe Sound and lost her seat after one term in November, and Fielding, 73, were charged with two counts each of failure to permit inspection and copying of public records.

Each count is a misdemeanor that could, at worst for them although unlikely, see the elected officials spend up to a year in jail.



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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. Just in the past two 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.