



# Ohio Coalition for Open Government

## OPEN GOVERNMENT REPORT

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### Special coverage of the 2014 Ohio Public Records Audit

## Public records compliance improving in Ohio but problems remain

By Andrew Welsh-Huggins, Associated Press

Public employees asked to provide common records during a statewide test of Ohio's open records laws in April followed the law in nine of every 10 requests, according to audit results that found much higher compliance than a similar survey a decade ago.

Records requested included meeting minutes, restaurant inspections, birth records, a mayor's expense report, school superintendents' pay, police chief pay and police incident reports.

"It's a meaningful improvement over what was found 10 years ago," said Dennis Hetzel, executive director of the Ohio Newspaper

Association.

The audit was sponsored by the Ohio Coalition for Open Government of ONA. It began April 21 and, in most counties, was completed within days.

Newspaper, television and radio reporters served as auditors in all 88 Ohio counties. Auditors didn't identify themselves as reporters when making requests to ensure the same experience as a typical citizen seeking public records.

Overall, 90 percent of requests were granted either immediately, over time or with some conditions, compared with 70 percent a decade ago, according to audit results. The improvement was illustrated by requests for

(see RECORDS COMPLIANCE, page 4)

## Public records are yours; know how to ask for them

By Randy Ludlow, The Columbus Dispatch

Every day, public records allow Ohioans to make educated decisions about their lifestyles, their pocketbooks and the effectiveness of their government.

Government at all levels merely is the custodian of the people's records — not the owner. The law states that the records belong to all Ohioans. Don't hesitate to exercise your public-records rights. It's your government and your money, and they're your records. Here's a primer on making requests under Ohio's Public Records Act in section 149.43 of the Revised Code.

Know the law, because some government officials don't. Download a copy of the "Yellow Book" manual of Sunshine laws from the website of Attorney General Mike DeWine ([www.ohioattorneygeneral.gov/sunshine](http://www.ohioattorneygeneral.gov/sunshine)) and familiarize yourself with the law. It can be

complex.

It's best to request routine records verbally. You need not identify yourself or explain the reason for your interest. Written requests can be seen as adversarial and result in lawyers being dragged in to delay your request. However, if your request is complex or could generate push-back, file a written request to bring clarity to the matter and to document your request should trouble ensue.

Know that asking to inspect records in person should allow you to see them more quickly — and without cost. Requesting copies gives government more time to provide them. You also are entitled to receive records in the form they are kept (electronic, database, etc.), and they must be delivered in the manner you prefer — email, CD, fax or in-person pick-up. If you ask for records

(see RECORDS ARE YOURS page 4)

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**Ohio Coalition for  
Open Government**

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

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# Lessons from the public records audit: 10 years after

By Dennis Hetzel, OCOG President



**Hetzel**

There's good news for Ohio citizens in the results of a statewide, county-by-county public records audit that was conducted by more than 60 Ohio media outlets in April under the auspices of the Ohio Coalition for Open Government.

But you shouldn't get too excited. Problems with open records in Ohio are deeper and more complicated than ever. Let me explain why.

Why were this year's results so much better? I suspect the main reason is greater awareness by government officials — and it also suggests that, stereotypes to the contrary, local newspapers continue to keep local officials on their toes. The training of local officials on the importance and requirements of Ohio's records laws is far broader and more consistent than it was in 2004, the last time such an audit was conducted.

However, keep the results in perspective. This is all the audit showed: When you request a record from local government, and there's no doubt it's a public record, the chances of obtaining the record in the correct manner are quite good.

Emphasize that phrase "no doubt." Attorneys who are experts on Ohio laws checked our requests in advance. Records such as meeting minutes, salary information and expense reports, are unquestionably public records.

The problem is this: A string of court decisions and legislative changes over the past 10 years have closed more records than ever and shifted the burden of proof strongly against citizens when there is any ambiguity.

In other words, when a government official wants to say "no," unless it is 99 percent clear that the record is open, it is getting harder and harder to win. Even if you do, the Ohio Supreme Court has taken what legislators made difficult and now made it nearly impossible to collect attorney fees. This means only the wealthiest can afford to pursue these cases, giving government a tremendous tactical advantage. Unlike most states, there is no way to fight a state agency and the majority of local governmental denials in Ohio without hiring a lawyer and going to the time and expense of litigation.

Consider the 2012 case, *Zidonis v. Columbus State*, a wrongful discharge action. The Supreme Court gave governmental agencies new latitude to claim records requests are "overly broad." Today the standard appears to be that "overly broad" is whatever government says it is.

While we were told that the *Zidonis* case involved narrow facts and wouldn't apply to many situations, it is popping up in cases as arguments in favor of keeping records secret. That was the same argument made in another noteworthy case in which the Cincinnati school board did an end-run around the open records law by using a post office box and a search firm to hide the names of school superintendent applicants. And, guess what? Lawyers for Kent State University cited the Cincinnati case to keep names of candidates secret in KSU's recent presidential search.

Meanwhile, exceptions are ever-growing. Ten years ago, there were far fewer in the law. They've now run out of single letters to attach exceptions to Ohio Revised Code 149.43 — the open records law. We're at exception "bb" now. Hundreds of other exceptions are peppered in the statutes. One of the most abused exceptions is the "trade secrets" exemption. Meanwhile, legislators and courts have made it harder to get information about tax-dependent organizations such as JobsOhio, charter schools and privatized prisons.

Then there is Ohio's actual definition of public records. Before a court will even consider if something is open, it must fit the definition of an actual government record. It can't be an open record if it isn't a public record. We need a broader definition that the courts will support.

Finally, consider the sheer volume of content that government is creating, just like the rest of us. It takes time and expense to review hundreds of documents. I agree with government groups that this is a genuine issue. We're not unsympathetic, but maybe if we had fewer exceptions and ambiguities, those searches would go a lot faster.

So, let's be grateful for the progress that the audit showed but keep our focus on fixing the big problems that remain so Ohio citizens have the access to information they deserve.

*Dennis Hetzel is executive director of the Ohio Newspaper Association and president of OCOG. Send email to [dhetzel@ohionews.org](mailto:dhetzel@ohionews.org).*

# Special coverage of the 2014 Ohio Public Records Audit

## Electronic records requests get varied response in Ohio

By Vanessa McCray, The Toledo Blade

Electronic requests for public records held by local governments are sometimes much further than a few clicks away.

A public records audit conducted by journalists in each county of the state found local governments have a scattershot approach to electronic requests. Some auditors found websites to school districts, cities and counties with email addresses or online contact forms. Others had difficulty sussing out officials' email addresses or sent multiple emails requesting information but received no response.

This year's audit by the Ohio Coalition for Open Government, a follow-up to a 2004 statewide audit, included electronic records requests in addition to in-person requests.

The results exposed digital holes.

The website for the Harrison County village of Cadiz listed email addresses, though some were rejected when an auditor tried to use them. The auditor called the office asking for an email address, but the person on the phone refused to provide one.

A Paulding County clerk apologetically fulfilled a records request after checking her junk email folder and finding a series of week-old email requests along with "hundreds of other junk mail."

Others responded to emails with lightning-quick efficiency. In Cincinnati, a city official wrote back in just over an hour with links to a website where the documents were posted.

About a year ago, Washington County implemented an online record request service. Many requests are fulfilled electronically the same or next day, said Rick Peoples, clerk for the county commissioners.

"We think it's very critical that we serve the public, and it was important to us to make it as easy as possible for people to request those documents," he said.

Local governments have the same responsibility to respond to an electronic request as they do to those made by another method, said David Marburger, a Cleveland-based media attorney.

### More records open

A decade ago, journalists audited those who maintain public records to determine whether officials were abiding by the state's Public Records law. In April, 65 newspaper, television, radio and online journalists visited all 88 counties to gauge how things have changed. The verdict: While there has been improvement, the public's ability to obtain information is not without challenges.

#### GRANTED

2004 | TOTAL GRANTED: 343



2014 | TOTAL GRANTED: 476



#### DENIED

2004 | TOTAL DENIED: 148



2014 | TOTAL DENIED: 52



### A breakdown of public-records requests

COUNTY MINUTES	2004	2014	EXECUTIVE EXPENSE	2004	2014	POLICE CHIEF PAY	2004	2014
Granted	70	84	Granted	33	45	Granted	53	50
Granted conditionally/partially	10	3	Granted next day	1	21	Granted next day	1	24
GRANTED TOTAL	80	87	Granted conditionally/partially	13	7	Granted conditionally/partially	14	5
DENIED	7	1	GRANTED TOTAL	47	73	GRANTED TOTAL	68	79
			DENIED	17	15	DENIED	17	9
<b>SUPERINTENDENT COMPENSATION</b>			<b>POLICE INCIDENT REPORTS</b>			<b>TREASURER PHONE BILL</b>		
Granted	19	46	Granted	50	50	Granted	21	41
Granted next day	5	24	Granted next day	2	13	Granted next day	4	28
Granted conditionally/partially	19	12	Granted conditionally/partially	11	12	Granted conditionally/partially	17	11
GRANTED TOTAL	43	82	GRANTED TOTAL	63	75	GRANTED TOTAL	42	80
DENIED	39	6	DENIED	23	13	DENIED	43	8

Source: Ohio Coalition for Open Government

THE COLUMBUS DISPATCH

Damian Sikora, Constitutional Offices Section chief at the Ohio Attorney General's office, said he's not aware of an effort to require agencies to accept record requests electronically, but added "it's getting more and more likely that governmental entities are moving to some sort of digital mechanism."

Even if the agency has working email, a citizen may encounter problems when using it to obtain a record. The request could end up in the spam folder, or it could be sent to the wrong person, delaying the response.

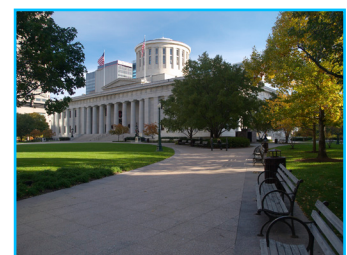
Sikora recommends citizens reach out by phone to make sure they send an email to the right person. He suggests government officials instruct all employees to forward requests to the appropriate person.

Overall results of this year's audit showed improvement in government responsiveness, but Dennis Hetzel,

executive director of the Ohio Newspaper Association, said government units should improve their online presence.

At a minimum, even the smallest government units should have a general email account and check it a couple of times a day.

"I hope that the governmental bodies that are not making it easy for people to contact them via the Internet will take a look at that and learn something from what happened in the audit," he said.





## Special coverage of the 2014 Ohio Public Records Audit

### Public records compliance improving in Ohio but problems remain continued from page 1

superintendents' salaries, with compliance rising from about one of every two requests to nine of every 10 requests this year.

An "impressive compliance with the law," reported an auditor who received the salary of the Medina police chief almost immediately, along with an explanation of how it was calculated. It was "probably one of the easiest times I've ever had obtaining public records from a government agency that wasn't familiar with me," the auditor noted.

"Cooperative and flexible," reported another auditor of a secretary at Ashland schools who, while initially confused by the request for the superintendent's salary, quickly provided it on further explanation.

Not every encounter went smoothly. A clerk filled a request for county commissioners' meeting minutes in Clinton County but summoned a sheriff's deputy after the auditor declined to give his name. Several school districts required auditors to fill out a public records request form, a violation of Ohio law which does not require a written request, identification or the reason for

the request.

The attorney general's office, which conducts mandatory three-hour public records training for Ohio elected officials, regularly reminds officials of the law regarding requests, said Damian Sikora, chief of the office's Constitutional Offices Section.

"Sometimes there's a little bit of a disconnect between some of the people taking the request and the office holders themselves," he said.

State Auditor David Yost, whose office randomly samples municipalities' open records compliance, said he was troubled not to see 100 percent compliance with requests for things such as a superintendent's compensation or police chief's pay.

"Those are just things that there's really no excuse not to be promptly responsive to," Yost said.

The audit turned up some problems with the delivery of information electronically, with many auditors having trouble finding useable email addresses in rural counties.

The website for the Harrison County village of Cadiz listed email addresses,

though some were rejected when an auditor tried to use them. Other offices responded to emails quickly.

The audit follows a decade of uneven developments for advocates of open records.

Ohio's 2004 concealed weapons law, for example, shielded the names of permit holders but contained a generous provision for reporters. Lawmakers later restricted the law to allow reporters to view the records but not make copies.

In 2005, the Ohio Supreme Court ruled that state employees' home addresses may be kept private because they don't meet the definition of a record under state open records laws.

The following year, a divided court said that private organizations are not subject to open records laws without clear evidence they are equivalent to a public office. The case involved a Summit County halfway house that receives most of its funding from taxpayers.

More recently, lawsuits have challenged Gov. John Kasich's creation of the state development department with JobsOhio, a privatized job creation office not subject to the open records laws.

### Public records are yours; know how to ask for them

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to be mailed, the government can ask you to pre-pay postage costs.

Ohio is among only a handful of states that doesn't set a deadline for government to provide records. The legal standard is "prompt." Court rulings have signaled, though, that waits of more than two weeks likely are unreasonable.

Outside of minimal copying costs — such as 5 cents a page for paper copies or \$1 for a CD containing digital records — the government cannot charge you for records. Charges for employee time or other "costs" related to providing records are not allowed.

"Overly broad" has become government's new mantra in denying records. Be very specific in describing the records you seek. Do not use words such as "any" and "all." Provide names,

date ranges and topics and describe the records you seek in full detail. If your request is confusing or denied, the government is required to work with you to clarify your request so that records can be provided.

If your request is denied, or information is redacted, an explanation must be provided in writing. A government that denies records or blacks out information is required to cite specific public-records exemptions or other sections of law that it believes allows the records to be withheld. Again, consult the law and evaluate the reasons for denial; appeal and argue if the excuse is iffy.

If dealing with a local government or school district that denies your request or is slow to respond, ask for help through the public-records mediation program of

the attorney general's office. Lawyers who know Sunshine laws could help shake your records loose.

*Randy Ludlow is a senior reporter for The Columbus Dispatch, where he writes on public records, open meetings and free-speech issues. He is also on the board of trustees for the Ohio Coalition for Open Government.*



# Records sought in audit were easy pickings. Meanwhile ...

By Randy Ludlow, The Columbus Dispatch

Yes, it's delightful to learn that average Ohioans generally can walk into local government offices and emerge with what they came after — their public records.

A statewide public-records compliance audit by Ohio journalists, who did not disclose their occupations, found that public employees turned over records nine out of 10 times as compared to seven in 10 times during a 2004 audit.

That's welcome progress. But, it was easy pickings. The records sought were no-brainers, the type that should be readily available with little notice and little fight.

The bad news: Behind the curtain, politicians and bureaucrats continue to fight requests for records of a more-complex and controversial nature, including those filed by the news media.

If journalists with expertise in open-records laws and lawyers on call have trouble getting records, what chance do John and Jane Ohioan have?

With lawmakers and courts of increasingly little help, the answer rests in a more-honest embrace of the Sunshine law's requirement that it be liberally

## How the 2014 Ohio Public Records Audit was conducted

Ohio news organizations and the Ohio Coalition for Open Government collaborated on an audit to gauge access to public records in Ohio. The goal was to replicate an audit the coalition conducted 10 years ago to see if compliance with public records requests had improved.

Journalists from newspaper, television and radio stations throughout the state were recruited to serve as auditors in all 88 Ohio counties. The audit began April 21 and, in most counties, was completed within several days.

To ensure consistency, journalists were trained in how to phrase records requests and how to record their findings. The auditors were assigned to locations where they would not be recognized, and they did not identify themselves as journalists when making requests so they would have the same experience as a typical citizen seeking public records.

They made in-person requests for many of the same records that had been sought in the earlier audit. But this year's audit added a variety documents that were requested by email, in order to gauge the growing trend toward electronic access to public records.

Media lawyers reviewed the records requests to ensure that they were clearly in the public domain.

The auditors were recruited from media outlets that are members of the Ohio Newspaper Association and the Ohio Association of Broadcasters. The audit was overseen by the E.W. Scripps School of Journalism at Ohio University.

construed in favor of disclosure and doubts resolved in favor of handing over records.

A philosophy of openness and a

mindset of transparency on the part of our government officials would help check the trend toward denial and secrecy.

## Crawford, Scioto, Montgomery, and Greene officials among the worst for giving info

By Vanessa McCray, The Toledo Blade

Crawford, Scioto, Montgomery, and Greene counties were among the worst offenders in pockets of the state where participants in an Ohio-wide public-records audit were denied public information from local government agencies.

In April, journalists from numerous news outlets tested Ohio's public-records laws by requesting to inspect the same set of city, county, school district, and police records from local governments in each of the state's counties.

The audit, sponsored by the Ohio Newspaper Association's Ohio Coalition for Open Government, revealed record-seekers may run into trouble, especially when seeking financial or salary information about public employees.

In Bucyrus, the county seat of Crawford County, an auditor's request to review the city budget document listing the police chief's salary and the mayor's most recent expense report went unfilled. An employee asked for the record requester's email to send the records

electronically, but the requester hadn't received them by the end of the week.

Similarly, at Colonel Crawford Local Schools in Crawford County, record requests for the superintendent's salary and the treasurer's most recent expense reimbursement form were promised to be sent but not received that week, according to the auditor.

In Dayton in Montgomery County, the auditor failed to receive records that week. The record keeper told the auditor she was busy working someone else's job while that person was out.

"She was very helpful and courteous, but said she would likely not be able to get to the request within a few days. She requested my email address to send them to me at a later date," the auditor reported.

At Dayton Public Schools, the auditor was asked why she wanted to inspect the document listing the superintendent's salary and the treasurer's most recent expense reimbursement form. The auditor was eventually told it would take several days to gather the information, left an email address, but did not receive

a response that week.

An auditor also did not obtain requested financial and salary records from the city of Portsmouth in Scioto County or Portsmouth schools within the week.

At Xenia Community Schools in Greene County, an auditor was told by a woman behind the secretary's desk that she didn't know who in the district had "that kind of information" and didn't know who to send the auditor to in order to find it.

A records request to review the Xenia Police Department's incident reports from the shift of officers that most recently filed them was also met with resistance.

Two Toledo requests were not met.

A Toledo police employee told an auditor to request a specific report or else she couldn't help.

An employee in the Toledo mayor's office asked the auditor to send an email requesting the records in question, but instead of providing the budget document listing the police chief's salary, the assistant replied by stating how much the chief is paid.

## 2004 County-Level Results, Ohio Public Records Audit

County	Granted			Granted conditionally/ partially	Total Denials	Total	n/a	% denied
	Same day	Next day	Total					
Adams	2		2		3	5	1	60%
Allen	5		5	1	1	6		17%
Ashland	3		3		2	5	1	40%
Ashtabula	3		3	1	3	6		50%
Athens	4		4	2	2	6		33%
Auglaize	5		5		0	5	1	0%
Belmont	3		3	1	3	6		50%
Brown	4		4	2	2	6		33%
Butler	4		4	1	2	6		33%
Carroll	3		3	2	2	5	1	40%
Champaign	1		1	2	5	6		83%
Clark	3		3	2	3	6		50%
Clermont	4		4	2	2	6		33%
Clinton	2		2		3	5	1	60%
Columbiana	3		3		2	5	1	40%
Coshocton	2		2		2	4	2	50%
Crawford	4		4		2	6		33%
Cuyahoga	1		1		5	6		83%
Darke	4		4	2	2	6		33%
Defiance	1		1	2	5	6		83%
Delaware	3		3		2	5	1	40%
Erie	2		2	2	4	6		67%
Fairfield	1		1	1	4	5	1	80%
Fayette	4		4	2	2	6		33%
Franklin	3		3	1	2	5	1	40%
Fulton	3	2	5	1	1	6		17%
Gallia	2		2	3	4	6		67%
Geauga	4		4	2	2	6		33%
Greene	4		4		2	6		33%
Guernsey	2		2	4	4	6		67%
Hamilton	1		1		5	6		83%
Hancock	3		3		2	5	1	40%
Hardin	4		4	1	1	5	1	20%
Harrison	3		3		2	5	1	40%
Henry	5		5		1	6		17%
Highland	4		4		2	6		33%
Hocking			0		0	0	6	####
Holmes	4		4		1	5	1	20%
Huron	2		2	1	2	4	2	50%
Jackson	2	2	4		2	6		33%
Jefferson	2		2	2	4	6		67%
Knox	3		3		3	6		50%
Lake	1		1	1	5	6		83%
Lawrence	1		1		5	6		83%
Licking	4		4	2	2	6		33%
Logan	3		3	2	3	6		50%
Lorain	3		3		3	6		50%
Lucas	1		1	2	5	6		83%
Madison	2	1	3	2	3	6		50%
Mahoning	3		3	1	1	4	2	25%
Marion	5		5		1	6		17%
Medina	3		3		3	6		50%
Meigs	1		1	3	5	6		83%
Mercer	6		6		0	6		0%
Miami	1		1	1	5	6		83%
Monroe			0	1	5	5	1	100%
Montgomery	1	3	4		2	6		33%
Morgan	2		2	2	4	6		67%
Morrow	5		5		0	5	1	0%
Muskingum	5		5		1	6		17%
Noble	1	2	3	1	2	5	1	40%
Ottawa	6		6		0	6		0%
Paulding	2		2		3	5	1	60%
Perry	1		1	1	4	5	1	80%
Pickaway	2		2	1	3	5	1	60%
Pike	3		3	3	3	6		50%
Portage	2		2	2	4	6		67%
Preble	2		2	1	3	5	1	60%
Putnam	3		3		2	5	1	40%
Richland	4		4	2	2	6		33%
Ross	4		4	2	2	6		33%
Sandusky	5		5		0	5	1	0%
Scioto	3		3		2	5	1	40%
Seneca	4		4		2	6		33%
Shelby	4		4		2	6		33%
Stark	3		3	1	3	6		50%
Summit	3		3	1	3	6		50%
Trumbull	3		3		2	5	1	40%
Tuscarawas	4		4	2	2	6		33%
Union	4		4		2	6		33%
Van Wert	4	1	5		1	6		17%
Vinton	1		1		4	5	1	80%
Warren	2		2	3	4	6		67%
Washington		1	1	2	5	6		83%
Wayne		1	1	1	5	6		83%
Williams	1		1	2	5	6		83%
Wood	5		5	1	1	6		17%
Wyandot	1		1	1	5	6		83%
	246	13	259	84	232	491	37	47%

## 2014 County-Level Results, Ohio Public Records Audit

County	Granted			Granted conditionally/partially	Total Denials	Total	n/a	% denied
	Same day	Next day	Total					
Adams	5		5	1		6		0%
Allen	6		6			6		0%
Ashland	4	2	6			6		0%
Ashtabula	5		5			6		17%
Athens	2		2	2	2	6		33%
Auglaize	3		3	3		6		0%
Belmont	3	1	4		2	6		33%
Brown	6		6			6		0%
Butler	1	5	6			6		0%
Carroll	6		6			6		0%
Champaign	3	2	5		1	6		17%
Clark	5		5	1		6		0%
Clermont	4		4		2	6		33%
Clinton	4	2	6			6		0%
Columbiana	5		5			5	1	0%
Coshocton	3	2	5	1		6		0%
Crawford	2		2		4	6		67%
Cuyahoga	1	2	3		2	5	1	40%
Darke	4	2	6			6		0%
Defiance	4	2	6			6		0%
Delaware	4	2	6			6		0%
Erie	4	2	6			6		0%
Fairfield	4	2	6			6		0%
Fayette	1	4	5	1		6		0%
Franklin	3	1	4	2		6		0%
Fulton	4	2	6			6		0%
Gallia	3	3	6			6		0%
Geauga	4	2	6			6		0%
Greene	2		2		3	5	1	60%
Guernsey	6		6			6		0%
Hamilton	2	2	4		2	6		33%
Hancock	4		4	2		6		0%
Hardin	4	2	6			6		0%
Harrison	6		6			6		0%
Henry	3	3	6			6		0%
Highland	2	4	6			6		0%
Hocking	2		2	2	2	6		33%
Holmes	6		6			6		0%
Huron	1	5	6			6		0%
Jackson	2	3	5		1	6		17%
Jefferson	4		4	2		6		0%
Knox	3		3	3		6		0%
Lake	2	2	4	1	1	6		17%
Lawrence	3	3	6			6		0%
Licking	6		6			6		0%
Logan	5		5	1		6		0%
Lorain	3		4	1		5	1	0%
Lucas	1	2	3		2	5	1	40%
Madison	3	3	6			6		0%
Mahoning	4	2	6			6		0%
Marion	4		4	1		5	1	0%
Medina	2	3	5	1		6		0%
Meigs	2	4	6			6		0%
Mercer	4		4	2		6		0%
Miami	4		4	2		6		0%
Monroe	4	1	5	1		6		0%
Montgomery	2		2		4	6		67%
Morgan	4	1	5		1	6		17%
Morrow	3	2	5		1	6		17%
Muskingum	6		6			6		0%
Noble	5		5		1	6		17%
Ottawa	2	2	4	2		6		0%
Paulding	1		1	5		6		0%
Perry	2	4	6			6		0%
Pickaway	4	1	5	1		6		0%
Pike	4	1	5			5	1	0%
Portage	3	1	4	2		6		0%
Preble	5		5		1	6		17%
Putnam	5	1	6			6		0%
Richland	2	3	5		1	6		17%
Ross	2	2	4	2		6		0%
Sandusky	1	2	3	1	2	6		33%
Scioto	2		2		4	6		67%
Seneca	4		4	2		6		0%
Shelby	4	2	6			6		0%
Stark	4	2	6			6		0%
Summit	4		4		2	6		33%
Trumbull	6		6			6		0%
Tuscarawas	6		6			6		0%
Union	4	2	6			6		0%
Van Wert	5		5	1		6		0%
Vinton	3		3	3	1	7		14%
Warren	2	4	6			6		0%
Washington	1	5	6			6		0%
Wayne	2	3	5			5	1	0%
Williams	3	2	5	1		6		0%
Wood	4		4	1	1	6		17%
Wyandot	5	1	6			6		0%
	307	119	426	51	44	521	8	8%

## Special coverage of the 2014 Ohio Public Records Audit

### Editorial: Sunshine grew brighter

#### Ohio's governments do better in providing access to records

##### Editorial from The Columbus Dispatch

Ohioans rely on easy access to public records to keep tabs on their government — as in, did the city council's meeting minutes show it will fight a liquor-license renewal for a crime-ridden corner carryout?

And to keep government honest and defend themselves from abuses of power, such as when people are released from prison after public records reveal misconduct by the government officials who helped convict them.

More often, however, people seek public records to take care of everyday business: getting a birth certificate for a passport, checking a restaurant's health-department inspection or scouring police reports for neighborhood crime.

So it is good news that local governments are obeying open-records law at a much higher rate than they did a decade ago, as reported by The Dispatch on Wednesday.

Public employees asked to provide common records did so 9 out of 10 times, according to a new survey by the Ohio Coalition for Open Government of the Ohio Newspaper Association. The group

last canvassed the state in 2004, when just 7 out of 10 requests were fulfilled in substantial compliance with the law.

A 70 percent response rate was unacceptable. And though 90 percent is much better, it's not perfect. Public employees should follow the state law 100 percent of the time.

The 10 percent noncompliance rate is particularly notable because the requests were for documents and information that should be at hand, such as meeting minutes, birth records, mayors' expense reports and superintendents' pay.

The television, radio and newspaper reporters who served as auditors for the April survey didn't reveal their press credentials to make sure they were receiving the same treatment as any other member of the public.

A weakness of Ohio's open-records law is its lack of strong sanctions against government entities that illegally withhold public records. Penalties for noncompliance are capped at \$1,000, and those who sue for access to records can only recoup \$10,000 in attorney fees — insufficient for a long fight. In recent years, Ohio's legislature and courts also have chipped away at access to public records.

Public servants should remember that they are the custodians, not the owners,

of government records. Their job is to make them available.

In this, the coalition's survey is invaluable.

But others still learn the law. ONA auditors' requests were sometimes followed by impermissible questions, such as a demand to know the person's name or to submit requests in writing, neither required by the law.

The audit also exposed "digital holes": Email addresses on websites didn't work, requests landed in junk-mail folders and some websites failed to list a contact through which to obtain public records, leaving users to guess.

At minimum, said Dennis Hetzel, ONA's executive director, even the smallest county should have a general email account and check it throughout the day.

The Internet should make it easier for local governments to post public records to better serve their taxpayers and to save staff time filling public-records requests.

With 1 in 10 records requests denied, Ohio still has a problem. Ohioans should arm themselves with knowledge of the law and hold their employees accountable.

To see the state's records laws and explanations of them, go to [www.ohioattorneygeneral.gov/sunshine](http://www.ohioattorneygeneral.gov/sunshine).

### Editorial: Public records are Ohioans' records; they exist for you

#### By Therese D. Hayt GateHouse Ohio Executive Editor

On (June 11), news organizations across Ohio published the results of a public records audit that was organized by the Ohio Newspaper Association. The purpose of the audit was to measure how well public employees provided common records requested during a statewide test of Ohio's public records law.

As was reported by The Associated Press, The Repository, The Independent and The Times-Reporter, public offices did a much better job of complying with requests than they did a decade ago. This is great news, but there is still room for improvement.

While the audit results are far more positive than they were in 2004, they must be kept in perspective. The results show that specific items that are inarguably public records are easier to access, but that's all they show.

#### DOOR FOR SECRECY

Ohio public records law contains 29 exceptions, which creates ambiguity. Where there is ambiguity, there is opportunity for interpretations that are counter to the intent of open records law.

The combination of growing exceptions and troubling court rulings has made it harder than ever to access information.

A perfect example is the latest Ohio Supreme Court ruling against ProgressOhio, a nonprofit dedicated to working on liberal causes in Ohio. The group sought to stop JobsOhio, the private job-creation corporation created by Gov. John Kasich, from selling bonds backed by future state liquor profits. The lawsuit alleged that JobsOhio violated the Ohio Constitution by turning over state dollars to a private institution.

You will never know how that money is being spent because JobsOhio is a private corporation. This is a slippery slope — a private company funded with

(see **OHIOANS' RECORDS** page 9)



# Editorial: Public records laws cannot be ignored by county officials

By Joe Higgins, Editor  
The Athens Messenger

Among the most basic aspects of being a journalist are the ability to ask questions and seek information, and public records are an important tool.

What is a public record, you ask? Well, you wouldn't be the only one unsure, as a recent audit found that officeholders and their employees across Ohio routinely broke the law when it came to providing access to public records.

In Wednesday's edition of The Messenger, a story was published that explored the compliance of public records laws within all 88 counties of the state.

The Ohio Coalition for Open Government, which is part of the Ohio Newspaper Association Foundation, held a retreat last summer and decided to organize the audit. Monica Nieporte, both president of the OCOG board and publisher of The Messenger, said that a decade had passed since the last audit and it was time to see whether compliance had increased. Journalists from print and broadcast outlets and the Scripps School of Journalism at Ohio University played a major role in setting up the parameters of the audit.

I was happy to participate, although my assignment was not Athens County given my familiarity with the sources the audit targeted.

I visited two other counties in everyday attire with the goal of simply asking for certain records that — by law — are required to be produced when requested by a member of the public. According to the Ohio Revised Code, "public records are records kept by any public office including but not limited to state, county, city, village, township, and school district units..." There are exceptions to the rule, but that's the gist of what records are public — a lot.

Some of the public employees I encountered were excellent in both demeanor and compliance. I asked and they showed me the requested documents. I wasn't asked who I was or the reason I wanted the records. It was just straight up compliance — in accordance with the law.

Others, not so much.

In one police department, I asked to see the most recent completed police reports. I was first asked who I was. I declined to say. I was then asked

why I wanted them. Again, I declined to say, answering that I just wanted to see them. The employee walked away before returning and saying there were no reports. Giving them another chance, I asked for any police reports they had on file. Again, I was told there were none. So, apparently, this city's police department has never had a call and no officer working there had ever investigated a crime or completed an incident report. Maybe I should move there!

Throughout the state 10 percent of the records requested were denied or ignored. This is unacceptable. I spoke with the auditor who was in Athens and was surprised by the response received from some of the agencies visited and not so surprised by others.

To be fair, most offices I've dealt with in my career will comply with public records requests without incident. Most local journalists don't have a problem gathering basic information from offices because they know us, they see us and hear from us all the time and it becomes the norm. But that shouldn't matter. The compliance we often receive should be extended to all members of the public, and you are not required to say who you are and why you want the record in order to get access to that record.

The perception is there that information is power and many public officials want to control that power as much as possible. Our country is set up the way it is and has the laws it has so that no one has too much power. When you try to control all the information, that's when trouble starts.

Athens County has had no shortage in corrupt officials over the years and The Messenger has been there to report on those happenings. There are officials right now in the county who are afraid to say too much or sometimes anything at all because of the way something might look or the way someone in another office might take their comments. The problem with that approach, rather than being honest and forthright, is that the more you try to control information, the more will slip through as rumor and the real facts can become distorted.

Denying access to public records adds to the problem.

In the media, we're often accused of having some sort of agenda. I can't speak for other outlets, but The Messenger

has no agenda. We are charged with being the watchdogs of officials. We quickly and accurately deliver the news in addition to the best sports coverage in the county as well as features that can inspire pride, tears and smiles. That's our job and having access to public records is not only imperative to doing our job, it's also imperative in keeping corruption from taking over society.



## Ohioans' Records continued from page 8

state money that has survived two legal challenges.

### ENACTED FOR YOU

Public record laws were enacted for the public, not the media. It would be a mistake to toss off the results of the public records audit as benefiting only news organizations. Yes, it's true that news organizations make liberal use of public records, but only to report on information to which you're entitled.

Public records law helps to keep you informed about where and how your tax dollars and other state money are being spent and who is benefiting. The problem arises when government agencies decide that public money can and should be used for projects they want to shield from public view.

As the recent audit proved, those government agencies that we polled followed public records law, but this audit polled only a small minority of all government offices in Ohio. It is incumbent on all government officials and offices to understand and abide by the public records laws; these laws protect your right to know.

## Open Government Editorials from Ohio Newspapers

# Safeguard the right to know; Strongsville teacher case seeks to ensure public's ability to monitor schools

**Editorial from  
The Columbus Dispatch**

Access to public records is a cornerstone of good government, and one that has increasingly been eroded in Ohio. Shielding the names of public-school teachers hired as replacements during a strike would be another blow to the state's once-exemplary openness. It also would deny taxpayers, parents and the press the right to know who is being paid with public funds to teach Ohio's children.

A case before the Ohio Supreme Court should decide this issue. The suit centers on the Strongsville school system in northeastern Ohio, which refused to release the names of 372 substitute teachers when these names were requested by David Quolke, president of Cleveland Teachers Union Local 279.

Quolke sued when Strongsville declined, citing concerns for the safety of the replacement teachers in the midst of a contentious teachers' strike. The 8th Ohio District Court of Appeals in Cuyahoga County sided with Quolke, and the school district appealed the decision to the Supreme Court.

The Ohio Coalition for Open Government and others have joined in a friend-of-the-court filing, asking the court to require release of the records.

"Such a vast expansion of the 'privacy' exemption ... would deal a crushing blow to Ohioans' right to access information pertinent to issues of public importance," wrote lawyers Fred Gittes and David Marburger.

This is a case where many might sympathize with the district and the substitute teachers, who were taunted by picketing strikers. In at least one case, a substitute's car windshield was smashed.

But if officials are allowed to pick and choose when they release public records based on who's asking and other factors — or worse yet, if they establish that such records always are shielded — that does lasting harm to open, accountable government.

Creating another new permanent class of people who are exempted from public-records laws is not a good remedy for this situation. Enforcing existing laws against intimidation, vandalism and assault is the proper response to such concerns.

And whenever parts of the government

are closed to public scrutiny, regardless of the rationale, those inaccessible areas are where corruption can take root.

When Ohio's original sunshine law was passed a half-century ago, it was considered a model for other states. The only things exempted were medical records; every other document relating to entities funded by and employees paid with taxpayer money was considered an open record.

Over the years, that openness has been eroded. One of the favorite rationales is that allowing public access to information about public employees puts them at risk.

This claim is accepted by lawmakers and judges with no substantial evidence of danger.

The result has been an ever-growing list of government workers who are exempted from open-records rules, including police officers, firefighters, prosecuting attorneys, youth-services workers and emergency-medical technicians.

But shielding information about them also makes it harder to keep tabs on their performance. With each exemption, it gets easier for bad behavior to occur and harder for the public to find out.

## More evidence that charter schools need tighter oversight

**Editorial from The Plain Dealer**

Ohio Auditor Dave Yost has come up with yet another example of why state lawmakers and Ohio Department of Education officials must clamp down on how publicly funded, privately operated charter schools are policed. It should not have to fall to the state auditor, long after the fact, to uncover misspent funds and missing dollars.

In some cases, especially after a school closes, the officials themselves may be hard to find.

Plain Dealer reporter Patrick O'Donnell, for instance, could not locate two of the individuals identified in Yost's latest audit: David Schneider, who was the treasurer of now-closed Elite Academy of the Arts on East 93rd Street in Cleveland, and who was ordered to repay \$18,100 in the audit since he authorized the expenditures; and

Elijah Scott, the school's superintendent, who owned the firm to which the school paid management fees. Yost determined that there were overpayments of \$25,197 that Scott must repay, along with \$1,716 in duplicate payments.

Yost called the missing money and undocumented expenses at Elite "theft from children" in a written statement (on April 1).

"It turns out the 'Elite' in their name refers to their personal tastes when spending public money intended for education," Yost added.

The findings on Elite pale beside more than half a million dollars that Yost determined in 2012 Scott and his firm, Greater Educational Service Center, misspent at another now-closed Cleveland charter.

The findings underscore the lack of adequate oversight of charter schools in Ohio. The schools are answerable not to a state regulatory body but to a "sponsor"

that may not be motivated to exercise independent oversight. In some cases, as with Scott's reported role at Elite, there may be family and inside deals that muddy the water. And many of the most poorly run charters also fail to offer adequate education to their students. Elite was closed in 2012 not because of financial irregularities, but because it was in academic emergency — effectively, an "F."

A separate inquiry by a consortium of professional news outlets and journalism students in Youngstown and Akron recently found that a majority of the state's nearly 300 existing charters failed to provide governance information readily over the phone — or at all, in many cases.

That is simply unacceptable. Ohio's charters are paid with taxpayer dollars; the oversight should be ironclad and so should their responsiveness to the public that pays their bills.

## A flawed JobsOhio ruling that ducks the real issues

### Editorial from The Plain Dealer

The Ohio Supreme Court (in June) shamefully and wrongly ducked a question about JobsOhio — Gov. John Kasich's signature economic development program — that somebody needs to answer: whether, in dissenting Democratic Justice William O'Neill's words, "hundreds of millions of taxpayer dollars are being spent in violation of the Ohio Constitution."

What's more, the high court's 5-2 ruling spurned a precedent that strongly suggests JobsOhio's challengers have the right not only to question JobsOhio's legal foundation, but also the right to get those questions answered without being sent to yet another courtroom.

Quibbles over "standing" and "jurisdiction" are just that — quibbles. "Catch-22" is a great novel. It can't be a legal principle.

JobsOhio is a centerpiece of Kasich's quest to kick-start what had been Ohio's sluggish state economic development efforts. JobsOhio is a corporation authorized by the General Assembly. The profits of Ohio's liquor monopoly, profits that constitute public funds, underpin JobsOhio. Hairsplitting aside, that means JobsOhio is an entity in which all

Ohioans, through their legislature and governor, are investors.

In terms of Ohio's government, JobsOhio is a new species. There's nothing quite like it. So the fact that ideology or politics may prompt challenges to JobsOhio doesn't mean those challengers deserve to be ignored. Without quite saying so, that's what the Supreme Court's majority hinted in its opinion, written by Justice Judith French, a Republican whom Kasich named to the court.

The kernel of the majority's opinion was that the trio of plaintiffs — ProgressOhio.org, state Sen. Michael Skindell of Lakewood and former state Rep. Dennis Murray of Sandusky — lack "standing," because they don't have a personal stake in the outcome of a challenge to JobsOhio. The court majority also rejected another kind of standing, "public-right standing," recognized in a 1999 decision: In seeking "the enforcement or protection of a public right," someone going to court need only be "an Ohio citizen and, as such, interested in the execution of the laws of this state."

In (the June 10) JobsOhio ruling, though, the high court's majority found a Catch-22: "The public-right doctrine cannot save [ProgressOhio, Skindell and Murray], as it does not apply to actions

brought in Common Pleas courts." That's akin to the "right church, wrong pew" pettifoggery that at times has disenfranchised Ohio voters.

Legalese aside, the issues raised in the JobsOhio challenge seemingly are at least as grave as those the court cited in 1999 in recognizing "public right" standing: "The issues sought to be litigated in this [1999] case are of such a high order of public concern as to justify allowing this action as a public action."

French wrote that people challenging JobsOhio still have avenues to pursue, a claim that O'Neill's fellow dissenter, Republican Justice Paul E. Pfeifer, rejected: "Today, this court ends all doubt about when it will determine the constitutionality of the JobsOhio legislation, essentially responding, 'Not ever.' Not here. Not now. Not ever."

Taxpayers have to hope Pfeifer, however eloquent, was incorrect. Because Ohio's judiciary, some way, some day, must make it clear whether JobsOhio comports with the state's constitution. Unfortunately, by ducking a ruling on the merits in this case, the state's high court appears to be trying to shut the door on any and all such challenges going forward.

## Ohio Supreme Court decision on attorney fee awards is a ruling for secrecy

### Editorial from The Toledo Blade

A decision by the Ohio Supreme Court to deny attorney fees to a citizen who waged a long and successful battle to obtain public records will make government less transparent and discourage public scrutiny.

If the high court doesn't reconsider its decision — and it probably won't — lawmakers should clarify state open-records law to make collecting such legal fees easier. The law needs to state, even more clearly, that a court order to a government body to release public documents isn't necessary to award legal fees to the person who seeks them.

The Cleveland suburb of South Euclid denied Emilie DiFranco access to public records, some concerning the financing of a playground, for as long as eight months. She had to hire a lawyer and an accountant to show that the city had records that municipal officials initially said did not exist. Such legal battles can

cost tens of thousands of dollars or more — far beyond the means of most citizen.

The Supreme Court found the delay unreasonable and ruled that Ms. DiFranco was entitled, under Ohio law, to recover damages of as much as \$1,000. But in a misguided 6-1 ruling, justices skirted the intent of state law by ruling she was not entitled to attorney's fees, because city officials finally coughed up the records before a court ordered them to do so.

The ruling defies logic: The city clearly produced the records because of a complaint Ms. DiFranco filed in court. As Justice Sharon Kennedy rightly wrote in her dissent: "If no fees could be awarded unless the court had ordered a party to produce records, it would allow a public office to sit on a public-records request until a ... case was filed, and then turn over the records before the court had a chance to issue an order."

Ohio citizens have no binding way, other than going to court, to get public

records that officials withhold. Many other states have ombudsman offices, public records councils, or other intermediaries to settle such disputes without costly and protracted legal action.

"If you don't have a reasonable hope of recovering legal fees, then only the wealthy, or someone who can find an attorney to work free or nearly free, will pursue these cases," said Dennis Hetzel, the executive director of the Ohio Newspaper Association. "It gives a blank check to local governments that want to delay, delay, delay."

The Supreme Court's damaging decision affects far more than media outlets, which have no greater right to government records than the general public does. Such records belong to every citizen. In creating another barrier to challenging government secrecy, the ruling undermines the ability of citizens to find out what public officials are up to.

The Supreme Court got it wrong. It's up to Ohio lawmakers to make it right.





## OHIO ROUNDUP

Unless indicated, all articles excerpted from state and national news sources. For continually updated open government news, go to [www.ohioopengov.com](http://www.ohioopengov.com).

### New report: Ohio receives F for spending transparency

From The Washington Post

Want to know how much Indiana Gov. Mike Pence's office spent last year from postage accounts? Easy: \$4,357.87.

Last year, for the first time ever, every state in the nation had a website detailing its expenditures, and Indiana's was the most transparent, according to a new report. The Hoosier State earned a 94 grade from U.S. PIRG Education Fund's fifth annual ranking of state spending websites. Seven others got As, 20 earned Bs, 10 earned Cs and 9 earned Ds. Idaho, Alaska and California earned failing grades of 44, 43 and 34, respectively.

(Note: Ohio received a grade of 51.)

Such sites track billions of dollars in contracts, subsidies and other state expenditures. All 50 offer so-called "checkbook level" spending details — those that identify each company from which goods and services are purchased. All but four let you search by recipient, while all but seven offer keyword search. Thirty eight also offer checkbook detail on subsidies intended for economic development. Other factors considered in grading included clarity about what was left out, the ability for bulk data downloads and whether information was available on quasi-public agency spending.

### Getting local budgeting data online gains traction among Ohio legislators

From The Columbus Dispatch

After many months of debate, Ohio lawmakers might start moving closer to a world where local-government

budgeting data are shared in a useful, transparent way.

Known as the DataOhio Initiative, supporters say it would create a first step toward producing online, searchable financial information from Ohio's counties, cities and townships that can be used to improve planning, make apples-to-apples comparisons and create a better-informed public.

"I anticipate there will be some growing pains, but it's the foundation of something Ohio is desperately in need of," said Greg Lawson, policy analyst with the Buckeye Institute for Public Policy Solutions, which created a searchable database of public-employee salaries in 2010.

"People need to know what's being spent, how it's being spent, and understand how their community compares to other communities. That has been very challenging for people to get."

Supporters of the four-bill package that a House committee passed (the last week of May) say that trying to do budgeting comparisons among local governments in Ohio can be an exercise in futility. Although some statistics are available in places such as the state auditor's website, the information is not reader-friendly, searchable or categorized in the same way.

The DataOhio Initiative seeks to standardize online data reporting and catalog it through a state website that would not house the data but would make it so people do not have to visit 900 sites to find information. The program would be voluntary but would provide \$10,000 grants to local governments as an incentive to implement the online reporting system.

### Records in campus rape flier case ordered unsealed

From The Columbus Dispatch

The Ohio Supreme Court awarded The Cincinnati Enquirer a victory in one battle (June 5) but denied it a larger win in its fight to inspect improperly sealed court records.

In a 5-2 ruling, the justices overturned the order of a Butler County judge sealing

records about a Miami University student who was charged with distributing fliers advocating the rape of women.

However, the court declined to unseal other criminal-case records that Judge Robert Lyons admittedly sealed for 14 years, ruling the newspaper did not sufficiently identify the records that were improperly sealed.

The Enquirer argued that the sealed records, largely involving students at the public university in Oxford, remained public because Lyons did not follow state law in removing the records from public view.

### Columbus school board admits to illegal meetings, settles 'Dispatch' lawsuit

From The Columbus Dispatch

The Columbus Board of Education has agreed that it cannot hold private sessions to meet with an attorney to discuss its data scandal unless it is to discuss pending court action involving the district.

The board illegally closed a series of meetings last year to discuss the district's data scandal, in violation of the state Open Meetings Act. The Dispatch filed a lawsuit in support of the public's right to attend meetings of public bodies.

A settlement signed (February 20) by Franklin County Common Pleas Judge Julie M. Lynch restricts the board from using a broad claim of attorney-client privilege to keep the public out of meetings about the data scandal. Board members had claimed such a privilege when they met in private with Robert "Buzz" Trafford, a lawyer they hired to advise them on the data scandal in 2012.

"The Columbus Board of Education has taken another important step in moving the school district forward," board President Gary Baker said in a statement. "Settling this litigation and putting it behind us allows us to focus on our priorities."

The board has spent or authorized more than \$300,000 so far to defend itself in the case, even as the district faces \$50 million in cuts and has placed seven schools on the chopping block.



The board also agreed to pay The Dispatch's legal fees, totaling \$170,000, but the newspaper waived them "for the benefit of the public and the community," according to the settlement document.

## What law did the Toledo Blade break? The Army won't say

From Columbia Journalism Review

After military police detained two journalists (in March) outside a military manufacturing plant, an Army spokesman said the journalists had violated "Federal law and Army Regulations" by photographing the facility.

But which law, and which regulations? The Army didn't say at the time — and it won't say now.

All of this stems from a March 28 incident at the Joint Systems Manufacturing Center (JSMC) in Lima, where Blade photographer Jetta Fraser reportedly took photos of the center while standing in a small roadway between the public street and the guard hut at the facility's entrance. When she tried to leave, with Blade reporter Tyrel Linkhorn, military police detained and questioned them — and confiscated their cameras and deleted digital photos, according to a report in The Blade. Notably, the journalists have not been charged with trespassing.

The newspaper filed a federal lawsuit April 4 against various government officials alleging, among other things, that military police had interfered with the journalists' lawful exercise of their First Amendment rights. Before and after the lawsuit was filed, Don Jarosz, deputy public affairs officer for the Army's TACOM Life Cycle Management Command, released a statement asserting the journalists had "taken unauthorized photographs of the installation" from "within the boundaries" of the facility.

## Ohio Attorney General releases informational videos on state's sunshine laws

From The Ohio Attorney General's website

**Editor's Note:** OCOG believes the information in these videos is essentially accurate and offers a good-faith presentation of Ohio's sunshine laws. However, as is always the case when court rulings are involved, some positions could be interpreted differently. Please let us know if you have questions or comments.

*We will share member feedback with the Attorney General's office, too.*

To assist and educate members of the public in understanding and accessing Ohio's Sunshine Laws, the Ohio Attorney General's Office has developed several informational videos on the topics about which we frequently receive questions, including:

- What is a "public office" and what is a "public record" under the Public Records Act?;
- How to make a public records request;
- How to apply the Confidential Law Enforcement Investigatory Records (CLEIRs) exemption;
- Who is a "public body" subject to the Open Meetings Act and what obligations does the Act impose upon a public body?;
- Determining when a public body may enter into executive session for the purpose of consulting with its legal counsel;
- Determining when a public body may enter into executive session for the purpose of discussing personnel matters;
- What remedies exist under Ohio's Sunshine Laws?

These videos are a supplement to the office's Sunshine Laws Manual, which can help answer additional questions about the Sunshine Laws. Because much of open government law comes from case law or the interpretation of statutes by the courts, we encourage local governments to seek guidance from their legal counsel when specific legal questions about these laws arise.

## Ohio Supreme Court hears political blog Plunderbund's fight to see records about threats to Kasich

From The Plain Dealer

The Ohio Supreme Court heard arguments (on May 27) from a political blog that sued the state after it refused to provide access to records of threats against the governor.

Plunderbund Media made a public records request to the Ohio Department of Public Safety in 2012 after the governor's office refused to release the Gov. John Kasich's daily schedules, citing security concerns. The Ohio State

Highway Patrol, which is part of the Ohio Department of Public Safety, handles security for the governor.

The department rejected the request, saying investigations of the threats are "security records," exempt from disclosure under the state's public records law. Plunderbund argues that some information in the threat investigations qualifies as a "routine offense and incident report."

In a brief to the court, Plunderbund's attorney argues that state law focuses on the "public office" but does not mention public officers, so it does not apply to individuals such as the governor.

The attorney also disputes that the governor has a right to privacy that allows the public safety department to withhold the records that have been requested. public-safety threat, he said.

## Ohio Attorney General says fees can't be charged for online records

From The Columbus Dispatch

County auditors cannot charge a fee to inspect public records posted online, according to the office of Ohio Attorney General Mike DeWine.

DeWine issued an advisory opinion on the topic (on March 4). The Dispatch reported last year that Monroe County Auditor Pandora Neuhart charged \$15 a month to inspect real estate records on her office's website.

Ohio public records law permits governmental offices to charge a fee for providing copies of records, but no fees can be charged for inspecting public records, DeWine's opinion said.

Posting public records online is the equivalent of making them available for inspection, the opinion says.

DeWine's office rejected the idea that saving an electronic copy of an online document on a computer and then printing it does not constitute providing a copy for which a fee can be charged.

DeWine issued the advisory opinion in response to a request from Ohio Auditor Dave Yost and Monroe County Prosecutor James Peters. Comment was being sought from Neuhart.



# OHIO ROUNDUP

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## Court rules attorney fees not mandatory

From The Columbus Dispatch

Open-government advocates are disturbed by a public-records ruling handed down by the Ohio Supreme Court (during the week of February 17).

The justices voted 6-1 to uphold a ruling against a South Euclid woman who was denied recovery of attorney fees in a case where the city did not turn over records she had sought until she went to court.

The woman maintained she was entitled to mandatory reimbursement of her legal fees. The court majority disagreed, ruling that a 2007 change in state law made payment of a plaintiff's attorney fees mandatory only if a court ordered the production of records.

After ignoring the woman's records request for two months, South Euclid finally turned over the records a couple of days after she filed a complaint in court.

Justice Sharon L. Kennedy was the lone dissenter. "If no fees could be awarded unless the court had ordered a party to produce records, it would allow a public office to sit on a public-records request until a case was filed and then turn over the records before the court had a chance to issue an order," she wrote.

## Findlay city officials quarreling about emails and public records policy review

From The Courier

Findlay administrators and city Auditor Jim Staschiak are quarreling again, this time over emails.

City administrators obtained certain auditor's office emails directly from the city's computer personnel, without consulting Staschiak. That prompted the auditor, an elected official, to call for a

public records policy review.

Obtaining information that way "scared the hell out of me," Staschiak told an informal "ad hoc" meeting of council members that he requested last week. Staschiak said some auditor's office records contain information that by law must be kept confidential, such as health care specifics and Social Security numbers.

The administration recently collected certain emails from Staschiak's and Deputy Auditor Ginger Sampson's accounts.

## Kent State shredded documents to hide information about presidential search, committee members say

From The Akron Beacon Journal

Kent State officials were so intent on keeping their search for a new president secret that they destroyed search committee notes and documents.

Search committee member Tom Janson, a music professor, said KSU shredded his notes and documents after he interviewed prospects.

"The notes are gone," said anthropology professor Owen Lovejoy, another search committee member. "Everything's been taken care of. We shredded anything with personal data."

When asked for comment about the reports of the shredding, KSU spokesman Eric Mansfield did not respond directly to the question.

He reiterated what he has in the past — that KSU has done nothing wrong.

"Kent State University neither has violated any public records laws nor has the university violated or failed to conform to any internal policy," he said in an email. "We have turned over all records that are relevant."

Meanwhile, the University of Akron and Youngstown State University have conducted open searches for new presidents, making it possible to know, for example, that former Ohio State University football coach and UA vice president Jim Tressel (was) a candidate at both institutions.

## Private cops being shielded from the public

From The Columbus Dispatch

More than 800 privately employed police officers in Ohio are authorized by the state to carry handguns, use deadly force and detain, search and arrest people.

Yet state law allows the officers and their private-sector employers to keep arrest and incident reports secret, even from those they arrest and crime victims.

And the public is not permitted to check the officers' background or conduct records, including their use-of-force and discipline histories.

The private police work for 39 employers, largely private universities and hospitals, which are exempt from the public-records laws that allow Ohioans to monitor 32,808 public-sector police officers and their government agencies.

Critics, including Ohio Attorney General Mike DeWine, say it is past time to demand the same accountability and transparency from private-sector police by making them subject to the state's public-records laws.

"The public policy is clear, that the state is giving them the same power as (public) police departments. For all other purposes, we should be treating them the same insofar as openness and giving the public information," DeWine said.

## Proposed Ohio legislation would require all private police forces to make records public

From The Student Press Law Center

Ohio legislators have introduced a second bill aimed at making public the records of privately employed police officers, whose incident reports, arrest logs and other records have long been kept secret.

The more than 800 privately employed police officers — those working at private colleges, universities and other private or non-profit institutions — in Ohio are authorized to uphold and enforce the

law, carry a gun and make arrests, but their records are not explicitly subject to public records law like all other sworn, commissioned officers' are.

The bill, introduced by Reps. Heather Bishoff, D-Blacklick, and Michael Henne, R-Clayton, is a broader approach to previously introduced House Bill 411, which would require most private school police forces to make their records public. The second bill would apply to all private police forces in the state.

HB 411, introduced (in December) by Rep. Bill Patmon, D-Cleveland, would only apply to private colleges and universities' police if they have an agreement with local law enforcement to patrol off-campus, although Patmon said his original intention was for it to apply to all private forces.

## OCOG files brief in Strongsville public records case

From The Columbus Dispatch

**A**re 372 replacement teachers hired during a strike by public-school educators entitled to secrecy due to fears they could be harassed or harmed if their names became known?

That's the central issue in a public-records case before the Ohio Supreme Court.

The Strongsville school district has refused to release records identifying teachers hired last year to replace striking classroom instructors, saying it would violate their constitutional right to privacy. School officials worry the replacement teachers could be targets for retaliation as evidenced by some ugly incidents during the strike in which no one was harmed.

The Eighth District Court of Appeals in Cuyahoga County later ruled that records identifying the replacement teachers were public and ordered them released. Strongsville school officials then appealed that ruling to the Ohio Supreme Court.

In a joint friend-of-the-court filing (on April 29), the Ohio Coalition for Open Government and the Ohio Employment Lawyers Association argued that the replacement teachers should not receive the same privacy protections afforded some police officers threatened by violent felons.

Parents should have the right to learn who is teaching their children and explore their backgrounds and teaching credentials, the filing argues.

## Ohio Auditor Dave Yost releases fraud reporting app

From The Plain Dealer

**O**hioans who witness government fraud can now report those acts through a new iPhone app unveiled January 8.

The free Ohio Stops Fraud app allows tipsters to call the fraud hotline in the Ohio Auditor Dave Yost's office or send a report using their phones.

App users can attach photo or video evidence of the fraud to the report in addition to naming the persons and agency involved and details of where the fraud occurred. All submissions are anonymous unless the tipster leaves his or her contact information.

Investigators in the state auditor's office follow up on tips sent through the app as they would with a report made over the phone or online.

Yost said the app was made "for anyone with eyes and an iPhone" and he envisions an army of citizen auditors reporting fraud to his office with a few swipes on their phones. A passerby who sees a county vehicle parked outside a bar on a Friday night could take a photo of the vehicle, tag the location and submit the report within minutes instead of writing down the license plate number and calling it in later.

"Now you've got an easy tool within just a few seconds to report it to someone who cares," Yost said.

Work on the app was created in-house and the office paid a \$99 developer fee. Yost said another could be created for Android phones in the future.

## School choice group sues Cincinnati, Springfield school districts over public records

From The Cincinnati Enquirer

**S**chool Choice Ohio has filed a public records lawsuit with the Ohio Supreme Court against the Cincinnati and Springfield school districts.

The lawsuit claims the districts are illegally withholding the names and addresses of students eligible for Educational Choice scholarships.

The scholarships provide low-income families more than \$4,000 a year in tax money to send their children to private schools instead of public schools. The

supply of scholarships, however, far exceeds the demand. School Choice Ohio is trying to get the word out to parents that the scholarships are available.

Cincinnati Public Schools says it would be a violation of federal law to release students' contact information.

School Choice Ohio says the district "deliberately and systematically withheld public records" to avoid giving School Choice Ohio the information it needs.

Public schools lose state funding when students transfer to private schools. Although some private schools contact families individually, Ohio law does not require eligible families to be notified about the scholarship.

A win by School Choice Ohio could lead to drastic enrollment drops at some schools and could redefine student privacy rules.

At issue is how districts handle contact information for students — something federal law terms "directory information."

## Ohio lawsuit over online mug shots reaches settlement; suit one of several filed nationally

From The Plain Dealer

**A**n Ohio lawsuit that gained national attention over Internet sites that make money off jail booking photos has been settled, though a plaintiff's attorney says he continues to seek out the owner of a key player in the industry.

Three residents sued companies in U.S. District Court in Toledo, claiming the websites, including BustedMugshots.com and mugshots.com, post the photos and then charge people — in some cases hundreds of dollars — to take them down.

The lawsuit was one of several filed across the country involving the web sites and their use of the photos. Others have been filed in Florida, Illinois and Pennsylvania.

The notice of the settlement, filed Dec. 27, was signed by U.S. District Judge Jack Zouhary but does not go into any detail.

Joseph Centrich, an attorney for Citizens Information Associates LLC, said the agreement called for his client to pay \$7,500 and agree to stop charging for the removal of the photos, something he said the company already had done.





## OHIO ROUNDUP

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### ODNR pays to settle third public-records lawsuit

From The Columbus Dispatch

For the third time since 2012, the Ohio Department of Natural Resources has turned over documents and cash to settle a lawsuit contending the agency illegally withheld public records.

The settlement, in which the department agreed to pay \$1,000 to the Athens County Fracking Action Network, was filed (June 26) in the Franklin County Court of Appeals to resolve the group's lawsuit.

The group filed the action on March 19 after failing to receive public records it initially requested on Jan. 16.

The Athens County Fracking Action Network was seeking records as part of its now-dismissed appeal of a decision by the natural resources agency to grant a permit to K & H Partners to open a second fracking-waste injection well in Troy Township.

The department admitted no wrongdoing in settling the lawsuit. Comment was being sought from the agency.

Richard Sahli, the Columbus environmental-law attorney who represents the fracking-opposition group, said he received the requested records from ODNR shortly after the Ohio Oil and Gas Commission dismissed the group's appeal. He has filed a motion for reconsideration based on evidence found in the records.

"ODNR has the most-controversial program in the state, but is the worst in letting the public know what is happening," Sahli said. "Fracking is the least-transparent program I've encountered in 30 years."

### Ohio Democrats push for more government transparency

From The Columbus Dispatch

Ohio House Democrats (tried) to increase government transparency by inserting Sunshine law reforms in the legislation carrying Gov. John Kasich's proposed additions to the state budget

In a Statehouse press conference marking Sunshine Week, a group of Democrat lawmakers called for changes they said would increase governmental accessibility and accountability.

The Democrats proposed:

- Requiring state and local governments to provide public records within 20 days after they are requested. Current law has no deadline.
- Creating an independent public-records ombudsman to mediate public records disputes, including those involving state government.
- Allowing Ohioans to more easily recover appropriate attorney fees and damages when winning court cases seeking the release of public records.
- Mandating that all legislative committee hearings be broadcast live online. Committee chairmen now decide if meetings will be streamed online.
- Forcing JobsOhio, Kasich's privatized economic-development agency, to disclose corporate donations online within 30 days of receipt.

"State government should be open, accessible and accountable to its employers — the taxpayers," said Rep. Matt Lundy, D-Elyria.

Government officials have come to view access to public records and government proceedings as an "annoyance and privilege" rather than a public right, said Lundy, a former journalist.

### Lawyers want \$228,000 in secret meetings case

From The Cincinnati Enquirer

A Clearcreek Township man who sued trustees for holding secret meetings was awarded \$500 in damages.

But a Warren County judge said (May 21) it will take him some time to decide if he's going to force the township to pay up to \$228,000 in fees to the winning attorneys.

Chris Finney, who represented resident Jack Chrisman since the suit was filed in 2011, said he had scaled back the legal bill by at least \$20,000 and feels that it's fair because of the expertise his firm has in handling public interest cases.

"There aren't very many attorneys who do what we do," Finney testified at (the May 21st) hearing.

Clearcreek's attorney, John D. Smith, contended that Finney's hourly charge of \$415 was too high and questioned how Finney could charge for a dinner, as well as mileage he and associates traveled for depositions, court hearings and other meetings involving the case.

Taxpayers could get stuck paying the legal bill. A document obtained by The Enquirer shows that Clearcreek had by late January nearly reached its \$50,000 claim limit through the Ohio Township Association Risk Management Authority for insurance that protects the township in lawsuits.

Common Pleas Judge James Flannery ruled in January following a twoday trial that Clearcreek Township trustees had violated Ohio's Open Meetings Act on multiple occasions when they attended informal meetings in the township administrator's office prior to the public session to discuss agenda items and other matters.

Open meeting violations carry fines of up to \$500 for each violation, plus attorney fees. Flannery has discretion to reduce or throw out attorney fees if he finds trustees reasonably believed they were not violating the law or that their actions served public policy.





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## U.S. Supreme Court will allow constitutional challenge of Ohio law that bars campaign lies

From The Plain Dealer

The U.S. Supreme Court unanimously ruled (June 16) that an anti-abortion group can challenge the constitutionality of an Ohio law that bars lies about politicians during an election.

The Susan B. Anthony List in April told the Supreme Court that the law, which allows citizens to file complaints about untruthful statements with Ohio's Election Commission, chills free speech before elections.

"The threatened proceedings are of particular concern because of the burden they impose on electoral speech," said the decision authored by Justice Clarence Thomas. "Moreover, the target of a complaint may be forced to divert significant time and resources to hire legal counsel and respond to discovery requests in the crucial days before an election."

The case stemmed from an ad the group placed that accused former Cincinnati-area Democratic congressman Steve Driehaus of voting for "taxpayer-funded abortion" by backing the Affordable Care Act.

Driehaus said the group's allegation was false, since President Obama issued an executive order that said insurance plans in the exchanges would not use tax dollars to pay for abortions, except in cases of rape, incest, or to save the mother's life.

He withdrew an Ohio Election Commission complaint he filed about the claim after losing his re-election battle to Republican Steve Chabot, so the truth

of his complaint was never adjudicated, but the Susan B. Anthony List decided to challenge the law on free speech grounds.

Lower courts decided that the group couldn't challenge the law because it hadn't been found guilty of a violation, a stance that Ohio State Solicitor Eric Murphy argued was correct. He told the Supreme Court the state has a "compelling interest in policing fraudulent statements that can affect elections."

## Private schools: As public university boards become increasingly opaque, reporters try to fight back

From The Columbia Journalism Review

In Ohio, Kent State University recently conducted a presidential search that was so secretive that search committee members have admitted to shredding documents to cover their tracks. "The notes are gone," one committee member told staff writer Carol Biliczky of the Akron Beacon Journal. "Everything's been taken care of. We shredded anything with personal data."

Across the state line in Michigan, both Wayne State University and the University of Michigan have also conducted secret presidential search processes in the past year, announcing the final candidate only at the meeting where the hire was made. That's not all: At U-M, members of the Board of Regents deliberate on even minor matters in private before holding perfunctory votes in public.

The increasingly closed-door culture of some university boards has frustrated journalists in both states—but it's also energized them, judging from recent aggressive coverage from several publications that has called out opaque practices and potential legal violations. "They're starting to act like a corporate board," says David Jesse of the Detroit Free Press, who has catalogued a startling lack of transparency at U-M in particular. "You wouldn't have the same standards of scrutiny on a corporate board as on a public board of elected officials. But they are still elected officials of a public university, and there needs to be some public accountability for how they make decisions."

At Kent State, it's worth noting that it's the search process that's being criticized,

not the candidate who was ultimately selected. There appears to be widespread agreement that Beverly Warren, the provost of Virginia Commonwealth University, is well qualified for the job.

Still, the Beacon Journal is not letting the university's approach go unchallenged. Biliczky's excellent April 12 story points out that search committee members had to sign confidentiality agreements, and that the private search firm hired by the university had an addendum to its contract that gave it the power to decide what records to make public. The search cost \$250,000 of public money, and the university will explain only in general terms how it was spent. The revelations in her story spurred more than two dozen members of the school's journalism faculty to take out a full-page ad in the student paper saying they were "embarrassed" by the administration's stance.

## Senators push for major FOIA change

From Politico

Two senators are proposing the most significant reforms to the Freedom of Information Act in four decades, including altering a key exemption that government agencies frequently use to deny access to a vast swath of executive branch documents.

Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) and fellow panel member Sen. John Cornyn (R-Texas) introduced legislation (June 24) that would allow the press and other public requesters to pierce the deliberative process privilege, a broad protection the courts give to records detailing the policymaking process as well as virtually any action leading up to any kind of decision by agency officials. In recent years, the provision — known as Exemption 5 — has been ridiculed by transparency advocates as the "withhold it because you want to" exception to FOIA.

The legislation would also shut down that exemption after 25 years. Federal agencies have sometimes used it to withhold records created 40 years ago or more. However, with respect to presidential records, similar protection falls away after just 12 years unless a formal executive privilege claim is made.

## Open Government Commentary by David Marburger

# Court: Don't file suit too quickly when public record requests are delayed

By David Marburger

What may have seemed simple enough in the beginning turned into a real problem for a man seeking personnel records from a local fire district.

The man, John Davis, is married to a woman who works for the West Licking Joint Fire District, who also sued the fire district in an employment dispute. He asked the fire district for copies of his wife's personnel records that would reflect her work performance. The fire district produced the records, and did not claim that there was anything unclear about his request and did not claim that the fire district's lawyer needed to review anything first.

Then, Davis made virtually identical requests for the same kinds of records in the fire district's personnel files for six other employees. Five days later, the district claimed that his requests were ambiguous, asked him to revise his request to make it clearer, and insisted that the fire district's lawyer would have to review the records before the district would produce any copies for Davis.

Davis sued that day in the court of appeals. Later that same day, not realizing that Davis had just sued, the fire district produced various records to Davis via e-mail.

The court of appeals ruled that the fire district's demand that Davis narrow his request was reasonable, as was the fire district's insistence on its lawyer reviewing the records before the fire district produced them—even though the fire district did not impose those obstacles when Davis had asked for the same kinds of records in his wife's personnel file.

The court of appeals declared Davis to be a "frivolous litigator" under an Ohio law, and ordered him to pay the fire district's attorneys' fees in responding to his suit. But the court of appeals dubbed his suit "frivolous" without first holding a hearing.

On Davis' appeal, the Ohio Supreme Court effectively agreed with the court of appeals, except that it ordered the court

of appeals to give Davis a hearing before declaring that his suit was frivolous. The high court nonetheless emphasized that Davis filed suit too quickly, should have either dismissed his suit when the fire district gave him copies of records, or amended his complaint to show that the fire district had not produced some records that he had requested. The court also ruled that the fire district acted prudently in requiring Davis to narrow his request and to wait for the fire district's lawyer to review the requested records.

### David Marburger

is a partner in the Cleveland office of Baker & Hostetler and an authority on legal issues arising from the content side of communications and around issues of constitutional law. Marburger is a member of the Ohio Coalition for Open Government committee and has represented many clients in Sunshine Law cases. He has also co-authored *Access with Attitude*, a 350-page "advocate's guide to freedom of information in Ohio," published by Ohio University Press.



Marburger

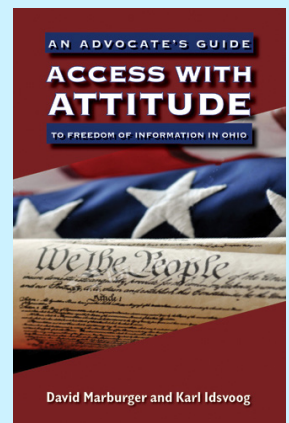
## Receive discount on open government reference book and support OCOG

David Marburger and Karl Idsvoog have written a book that should be in every Ohio newsroom. *Access with Attitude: An Advocate's Guide to Freedom of Information in Ohio* is an essential user's guide to navigating the complexities and occasional weirdness of Ohio's open records laws.

Now, Buckeye State journalists and open-record advocates have another reason to purchase this book: Marburger and Idsvoog are donating their proceeds from this book to the Ohio Coalition for Open Government.

Marburger, an attorney with Baker & Hostetler in Cleveland, is a member of the OCOG committee and has represented many Ohio Newspaper Association members in Sunshine Law cases. Idsvoog is a journalism professor at Kent State and an award-winning investigative reporter.

The retail price for the book is \$29.95, but Ohio University Press is offering OCOG supporters a 30 percent discount on orders between one to four copies. To get the discount, use discount code M1121 when ordering on the Ohio University Press website, [www.ohioswallow.com](http://www.ohioswallow.com). For a 40 percent discount on orders of five or more books, contact Ohio University Press's business manager, Kristi Goldsberry, at (740) 593-1156 or [goldsbek@ohio.edu](mailto:goldsbek@ohio.edu).



## Open Government Commentary by Jack Greiner

### An unfunny comedy of errors

By John C. Greiner

The Ohio Supreme Court recently decided a public access case that was part litigation and part comedy of errors. The problem is that the comedy wasn't funny and the Court's ultimate decision is in part a tragedy.

The official caption of the case is "State ex rel. Cincinnati Enquirer v. Lyons, Judge." But under that single caption, the Court decided two cases. The first case involved what has come to be known as the Miami University "rape flier." Back in 2012, someone posted fliers around campus telling people how to get away with a rape. The flier was in the format of a "top ten" list. It was crude and offensive, and not even sophomoric, as the perpetrator was apparently a freshman.

Butler County officials apparently found the person who posted the fliers. The culprit apparently was a student at Miami. The student was charged with disorderly conduct. This was the first of many errors in the case. Despite the sheer obnoxiousness of the flier, it wasn't a crime to post it. Even if it could be jammed into the legal definition of "disorderly conduct," the First Amendment would have precluded any prosecution.

However, despite those fairly critical facts, and in what must be record time, the student's lawyer appeared in Oxford Area Court, presided over by Judge Robert Lyons. The student pleaded to a minor misdemeanor and made a plea deal to secure an agreement with the prosecutor to seal the record of the case. The student paid his fine that day.

On the day the student's lawyer appeared in court to plead out, Area Court judge Lyons put on an order sealing the case, pursuant to the Revised Code statute that permits a record to be sealed after a non-conviction. So the entry was improper on its face. In addition, the court did not conduct a hearing as it is required to do, nor did it require the student to wait one year before applying for the sealing order, as required by statute. Judge Lyons contended that while the Revised Code requires a person convicted of a misdemeanor to wait a year before seeking a sealing order, there is no one-

year waiting period required for a minor misdemeanor.

As an aside, Area Court judges are permitted to maintain a private law practice. Judge Lyons is a principal in the firm of Lyons & Lyons, which touts as one of its specialties "criminal record sealing and expungements." This equates roughly with being both the pitcher and the umpire. But that is merely a sidelight to the main comedy.

The Cincinnati Enquirer requested a copy of the case record, on the theory that it should never have been sealed in the first place. The Enquirer contended that the entry sealing the record was facially invalid given that it referred to the wrong Revised Code section. Moreover, Judge Lyons never conducted a hearing on the issue of the sealing order, but rather allowed the prosecutor to agree to the sealing. That is unlawful.

Despite the overwhelming evidence, Judge Lyons refused to provide the record and The Enquirer filed a mandamus lawsuit in the Ohio Supreme Court. Shortly after The Enquirer filed its case, an assistant to Prosecutor Michael Gmoser and the defendant went back to Judge Lyons and withdrew the guilty plea, announced the prosecutor would not proceed with the case, and moved to seal the case under the statute allowing sealing after a non-conviction. Judge Lyons immediately held a "hearing" and ordered the record sealed.

This charade itself was unlawful. Under the Rules of Criminal Procedure, a defendant cannot withdraw his guilty plea once he has paid the fine.

The same Prosecutor's office, which was representing Judge Lyons in the mandamus case, then moved the Supreme Court to dismiss the case as moot, arguing that the shenanigans which led to the dismissal of the charges rendered the mandamus case moot. The Supreme Court fortunately refused to play along, and the case proceeded.

In the course of discovery The Enquirer deposed Judge Lyons who admitted that he'd had a long standing practice of sealing records of minor misdemeanors with no hearing and no waiting period. The Enquirer decided to ask for records of those proceedings going back five years. Judge Lyons

denied that request, and The Enquirer filed a suit on that issue, which the Supreme Court consolidated with the original suit.

In its ruling, the Supreme Court held that the records from the Miami rape case were improperly sealed and remain "subject to public access." The Court found that when a defendant requests that records be sealed, the judge must set a hearing in the future rather than conduct it immediately. It also found that minor misdemeanor convictions are subject to the one-year waiting period.

But on the other part of the case, the court denied the writ seeking production of all of the other improperly sealed records, finding that The Enquirer did not "sufficiently identify" the improperly sealed records. Of course, identifying those records with any more specificity is a task that would make Sisyphus envious. There is essentially no way to identify the records any more precisely than The Enquirer did in the mandamus suit. Once the records are sealed, the public cannot determine the case number or the parties' names.

By denying The Enquirer's writ, the Supreme Court permitted a Judge, who by his own admission flaunted the law for years, to get away with it. And that is a tragic ending to a comedy of errors.

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



To learn more **Greiner** about Graydon Head, visit [www.graydonhead.com](http://www.graydonhead.com).





# Ohio Coalition for Open Government

1335 Dublin Road, Suite 216-B, Columbus, Ohio 43215  
Tel. (614) 486-6677 • Fax (614) 486-4940

The Ohio Coalition for Open Government (OCOG) is a tax-exempt 501 (c)(3) corporation established by the Ohio Newspapers 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.

The annual memberships to OCOG, as approved by the board, entitle a group or individual the use of the FOI telephone hotline, handled directly by attorneys at Baker & Hostetler in Cleveland, and subscription to the newsletter.

OCOG is funded by contributions from The Ohio Newspapers 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.

## Please consider a donation to OCOG

OCOG represents a broad coalition of not only media people but also everyday citizens who support the cause of open government in Ohio through various means, including regular newsletters. OCOG sometimes is asked to do more. In 2011, for example, OCOG underwrote a “friend-of-the-court brief” to support an appeal in an Ohio case in which a government office

was charging thousands of dollars to provide a CD with public records. OCOG has also supported a number of other open government cases in the last two years.

**Donations to OCOG can be mailed to the address above. You can also submit donations online at [www.ohioopengov.com](http://www.ohioopengov.com).**

## Open Government Report and new OCOG website

The OCOG Open Government Report newsletter is emailed twice yearly. To be placed on the distribution list, send your email address to Jason Sanford, Manager of Communications and Content at the Ohio Newspaper Association, at [jsanford@ohionews.org](mailto:jsanford@ohionews.org).

You can also access continually updated OCOG information on the organization’s new website at [www.ohioopengov.com](http://www.ohioopengov.com).

If you have news or information relevant to OCOG, please email it to Jason Sanford at the address at left.



## 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](http://www.ohioopengov.com).