
PUBLIC RECORD AND OPEN MEETING PROVISIONS

Public records changes

Automated license plate recognition systems

- Exempts images and data captured by an automated license plate recognition system that are maintained in a law enforcement database from the Public Records Law.

Specific investigatory work product

- Modifies the definition of specific investigatory work product that is protected from public records request disclosure.

Attorney work product records

- Creates an exemption under the Public Records Law for attorney work product records.

Trial preparation records

- Clarifies that trial preparation records are exempt from the Public Records Law until after the conclusion of all direct appeals or, if no appeal is filed, at the expiration of the time during which an appeal may be filed.
- Specifies that a trial preparation record is any record that is not a confidential law enforcement investigatory record or attorney work product record.

Inmate records

- Restates that records pertaining to inmates committed to DRC and persons under Adult Parole Authority supervision are not public records, unless specifically exempted.

Victim statements

- Specifies that written and oral statements provided by victim or victim's representative to DRC in connection with the pendency of any pardon, commutation, or parole are confidential and privileged statements, are not public records, and are not subject to subpoena or discovery.
- Prohibits the victim statements specified above from being admissible as evidence in any action.

Personal notes

- Exempts the personal notes of a public official or a public employee, or of an attorney acting in an official capacity on behalf of the official or employee.

Assisted devices or applications

- Exempts a record created using an assistive device or application, when the record is used, maintained, and accessible only to the individual creating the record or causing the record to be created.

Video public records

- Authorizes a prosecuting attorney's office to assess certain charges for preparing a video public record.
- Prohibits a state or local law enforcement agency or a prosecuting attorney's office from charging a victim a fee for a video public record.

ABLE account records

- Exempts from Public Records Law any record of the Treasurer of State indicating ABLE account beneficiaries, balances, and activity on ABLE accounts.

Procurement law and public records

- Clarifies that all documents related to a competitive selection (including competitive sealed bidding, competitive sealed proposals, reverse auctions, and electronic procurement) are not public records until after the contract has been awarded.
- Eliminates law that specifies such documents are public records after a competitive selection is cancelled.

Notice of open meeting on public body's website

- Changes the requirement that a public body must establish, by rule, a reasonable method to provide notice to the public of the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings to instead require the method to be on the public body's website.
- Specifies that any advance notification may include electronically mailing the agenda of meetings to all subscribers on an electronic mailing list.
- Removes the reference of making an advance notification using self-addressed, stamped envelopes provided by a person requesting an advanced notice.

Public records changes

The bill includes a number of new or revised exceptions to the Public Records Law. Although some are discussed in context of larger provisions above, several are addressed in this chapter together.

Automated license plate recognition systems

(R.C. 149.43)

The bill exempts images and data captured by an automated license plate recognition systems (ALPRS) that are maintained in a law enforcement database from the Public Records Law. ALPRS are typically used by law enforcement agencies to capture an image of a vehicle's license plate as the vehicle passes by. The license plate image is then translated into letters and numbers using specialized software. The software assists law enforcement in identifying stolen vehicles or persons of interest.

Specific investigatory work product

(R.C. 149.43)

The bill defines “specific investigatory work product” as that term pertains to the Public Records Law to mean information assembled by law enforcement officials in connection with a probable or pending criminal proceeding.

Under continuing law, “confidential law enforcement investigatory records” are not considered public records. A record is a “confidential law enforcement investigatory record” if it pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of certain types of information, including “specific investigatory work product.”

Attorney work product record

(R.C. 149.43)

The bill creates an exemption under the Public Records Law for attorney work product record. Attorney work product record is defined as “a record created by or for an attorney in anticipation of or for litigation, trial, or administrative proceedings, when acting in an official capacity on behalf of the state, a political subdivision of the state, a state agency, a public official, or a public employee.” The bill specifies that the exemption includes records that document “the independent thought processes, mental impressions, legal theories, strategies, analysis, or reasoning of or for an attorney.”

Trial preparation records

(R.C. 149.43)

Continuing law exempts trial preparation records under the Public Records Law. The bill clarifies that these records are exempt until after the conclusion of all direct appeals or, if no appeal is filed, at the expiration of the time during which an appeal may be filed. Additionally, the bill specifies that the exemption is any record that is not a confidential law enforcement investigatory record or attorney work product record and that contains *factual* information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, “by or for another party or by or for that other party’s representative,” instead of “including the independent thought processes and personal trial preparation of an attorney,” as under existing law.

Inmate records

(R.C. 149.43 and 5120.21)

The bill states that records pertaining to inmates committed to the Department of Rehabilitation and Correction (DRC) and persons under Adult Parole Authority supervision are not public records, except for the following information:

1. Name;
2. Criminal convictions;
3. Photograph;

4. Supervision status, including current and past place of incarceration;
5. Disciplinary history.

Current law further provides that except as otherwise provided by state or U.S. law, these records are also confidential and accessible only to employees. The bill modifies this to instead provide that notwithstanding any other law of the state or the United States to the contrary, these records are confidential and must be accessible to employees only. The U.S. Constitution in Article IV, Clause 2 grants federal law supremacy in situations where state and federal law come into conflict. Because federal law is above state law, a state is not able to “notwithstanding” the laws of the United States. If challenged in the courts, the amendments in this provision are likely to be found unconstitutional under this principle.

Victim statements

(R.C. 149.43 and 2967.12)

The bill specifies that all written and oral statements provided by a victim or victim’s representative to DRC in connection with the pendency of any pardon, commutation, or parole are confidential and privileged and are not:

- Subject to subpoena or discovery;
- Admissible in evidence in any action;
- Public records.

Personal notes

(R.C. 149.43)

The bill exempts from inspection and copying under Public Records Law the personal notes of a public official or a public employee, or of an attorney when acting in an official capacity on behalf of the public official or public employee in that public official’s or public employee’s official capacity, which were created for reference and convenience and are used, maintained, and accessible only to the individual creating the record or causing the record to be created.

Assistive devices or applications

(R.C. 149.43)

The bill exempts from inspection and copying under Public Records Law a record created using an assistive device or application, when the record is used, maintained, and accessible only to the individual creating the record or causing the record to be created.

Video public records

(R.C. 149.43(B))

The bill authorizes a prosecuting attorney’s office to assess certain charges for preparing a video public record. Under continuing law, actual costs associated with preparing a video record for inspection or production may be charged, not to exceed \$75 per hour of video produced, nor \$750 total. Under current law, such fees only may be assessed by a state or local law enforcement agency.

The bill prohibits a state or local law enforcement agency or a prosecuting attorney's office from charging a fee for preparing a video record for inspection, or producing a copy of a video record, when the requester of the video record is a victim who reasonably asserts that the video recording relates to the act or omission that caused the harm or loss, or who is the legal counsel or insurer of the victim. Victim means a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act. Victim does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim (Section 10a, Article I, Ohio Constitution).

ABLE account records not public records

(R.C. 113.51)

The bill exempts any record of the Treasurer of State indicating the account beneficiaries and the balances and activity in ABLE accounts from the Public Records Law, meaning that these records are not available to the public, by request or otherwise.

Achieving a Better Life Experience ("ABLE") accounts are tax exempt accounts created by the IRS, and established by the state, for people with disabilities to pay the costs of qualified disability expenses.

Procurement law and public records

(R.C. 9.28, 125.071, and 125.11)

The bill clarifies that all documents related to a competitive selection (including competitive sealed bidding, competitive sealed proposals, reverse auctions, and electronic procurement) are not public records until after the contract has been awarded.

The bill eliminates law that specifies such documents are public records after a competitive selection is cancelled. Therefore, under the bill, if a solicitation is cancelled before the award of a contract, the related documents do not become public records.

Notice of open meeting on public body's website

(R.C. 121.22)

The bill changes the requirement that a public body must establish, by rule, a reasonable method to provide notice to the public of the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings to instead require the method to be on the public body's website. Additionally, the bill specifies that any advance notification may include electronically mailing the agenda of the meetings to all subscribers on an electronic mailing list and removes the reference of making an advance notification using self-addressed, stamped envelopes provided by a person requesting an advanced notice.

Under the continuing Open Meetings Law, public bodies generally are required to take official action and deliberate official business only in open meetings where the public may attend and observe. A public body is any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any

county, township, municipal corporation, school district, or other political subdivision or local public institution.