

PUBLIC RECORDS REQUEST POLICY

SUMMIT COUNTY BOARD OF ELECTIONS

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INTRODUCTION

This Public Records Policy is adopted by the members of the Summit County Board of Elections in accordance with the applicable provisions of House Bill 9 (126th General Assembly), primary authority being Ohio Revised Code Chapter 149. **This policy is not intended to be legal advice.** It is the policy of the County of Summit to strictly adhere to the State's Public Records Act as well as other state and federal laws.

The Public Records Act evolved from the principal that Ohio's citizens are entitled to access the records of their Government. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, as outlined in the Ohio Revised Code (ORC). If the request is in writing, the explanation must also be in writing.

O.R.C. Section 149.43(B)(3)

RECORDS DEFINITION

"Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. All records of the County of Summit are public unless they are specifically exempt from disclosure under Ohio and Federal Law.

O.R.C. Section 149.011(G)

E-MAIL

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. E-mail is to be treated in the same fashion as records in other formats and should follow the same retention schedules.

O.R.C. Section 149.011(G)

O.R.C. Section 1306.01(G)

PUBLIC E-MAIL

Records in public e-mail accounts used to conduct public business are subject to disclosure , and all officials, employees, or other representatives of the Board of Elections are instructed to retain such e-mails that relate to public business in accordance with the Office/ Department's records retention schedule (RC-2).

Records in Board of Elections e-mail accounts that do not document public business are not public records and are not subject to disclosure. The policy of the Board of Elections is that electronic mail is used for business related purposes.

State ex rel. Wilson-Simmons v. Lake County Sheriff's Dept. (1998), 82 Ohio St.3d 37

PRIVATE E-MAIL

Records in private e-mail accounts used to conduct public business on public property (i.e. using Board of Elections computers) may be subject to disclosure, and all officials, employees, or other representatives of this office are instructed to retain their e-mails that relate to public business.

Note: Case law is undecided as to private e-mail use on County property. Therefore, employees are cautioned against using private e-mail accounts for public business, particularly when such e-mail is created from County computer usage.

AVAILABILITY OF RECORDS

It is the policy of the Board of Elections that records, as required by Ohio law, will be organized and maintained so that they are promptly available for inspection and copying, except if the legal review and/or redaction are required then the records shall be provided within a reasonable period of time thereafter.

O.R.C. Section 149.43(B)(2)

NECESSARY RECORDS

The Board of Elections shall make only such records as are necessary to document the organization, functions, policies, decisions, procedures, and essential transactions of the Board of Elections and to protect the legal and financial rights of the Board of Elections and persons directly affected.

O.R.C. Section 149.40

DISPOSAL OF OR DAMAGE TO RECORDS

All records are the property of the Board of Elections and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except by the Summit County Records Commission.

O.R.C. Section 149.351(A)

RECORDS REQUESTS

No specific language is required to make a records request. However, the requester must at least identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records. If it is not clear what records are being requested, the records custodian must ask the requester for clarification, and shall assist the requester in revising the request by informing the requester of the manner in which records are maintained by the office.

O.R.C. Section 149.43(B)(2)

RECEIVEING REQUEST

No specific language is required to make a request, but the requester must identify records with sufficient clarity to allow the office to identify, retrieve, and review the records. If it is not clear what records are being sought, the Board of Elections staff should ask the requester for clarification and assist the requester in revising the request informing them of the manner in which this office maintains and accesses its records. The requester need not put a request in writing, or provide his or her identity or the intended use of the requested records. It is this office's general policy that this information should not be requested.

AMBIGUOUS OR OVERLY BROAD REQUEST

If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that the public office cannot reasonably identify what records are being requested, the public office may deny the request.

However, the Board of Elections shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office.

O.R.C. Section 149.43(B)(2)

LIMITATIONS OF RECORDS REQUESTS

The Board of Elections may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight (8) hours.

O.R.C. Section 149.43(E)(1)

However, the Board of Elections may limit the number of records requested by a person that the office will transmit by United States mail to ten (10) per month, unless the person

certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

The scope of the word “commercial” should be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

O.R.C. Section 149.43(B)(7); and Section 109.03 of the Codified Ordinances of the County of Summit.

RESPONSE TIME

For purposes of a response to a records request, “prompt” and “reasonable” take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested and redaction of exempt information.

O.R.C. Section 149.93(B)(1)

INSPECTION OF RECORDS

Public records are to be available for inspection during regular business hours, with the exception of holidays, weekends or other days the offices are closed. Public records must be made available for inspection promptly.

O.R.C. Section 149.43(B)(1)

CREATING RECORDS

The Board of Elections is not required to create new records by searching for and compiling information for existing records and any compilation of the information sought must already exist.

State ex rel. White v. Goldsberry (1999), 85 Ohio St.3d 153

RESEARCHING RECORDS

The Board of Elections is not required to do research for a requester when the requester can inspect the records themselves.

O.R.C. Section 149.43(B)(1)

COPYING OF RECORDS

Copies of public records must be made available within a reasonable period of time. “Prompt” and “reasonable” take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested and redaction of exempt information.

O.R.C. Section 149.43(B)(1)

COPYING OF RECORDS (& REQUESTER)

A requester seeking copies of public records is not permitted to make their own copies of the requested records by any means. This measure is to protect the integrity of the original document.

O.R.C. Section 149.43(B)(3)

DENIAL OF RECORDS

Any denial of public records requested must include an explanation, including legal authority, setting forth why the request was denied. If the initial request was in writing, the explanation shall also be in writing.

O.R.C. Section 149.43(B)(3)

EXEMPTIONS

Generally, the confidential nature of certain types of information or records precludes their release. Federal and Ohio law, however, provide numerous exceptions to the general rule that the disclosure of public records is mandatory. However, most of the exceptions do not, by themselves, prohibit the release of the prescribed records. Rather, these records merely are excluded from the general rule of mandatory disclosure.

Unless the Board of Elections can identify an exemption which clearly requires or permits withholding a requested record, it must disclose the record.

If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released.

REDACTION

“Redaction” means obscuring or deleting information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a “Record” pursuant to O.R.C. Section 149.022.

O.R.C. Section 149.43(A)(11)

The employee of the Board of Elections must notify the requester of any redactions made, or should make the redactions plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if Federal or Ohio law authorizes or requires a public office to make the redaction. (See “Denial of Records”).

O.R.C. Section 149.43(B)(1)

MEDIUM

The requester may choose to have the public record duplicated upon paper, or upon any other medium, which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record.

O.R.C. Section 149.43(B)(6)

COSTS FOR COPYING PUBLIC RECORDS

Those seeking public records will be charged only the actual cost of making copies. Neither costs of paper, ink, etc., nor the time used for gathering, reviewing or physically copying the records may be charged to the requester.

There is no charge for documents e-mailed as no actual cost was incurred.

O.R.C. Section 149.43(B)(7); and Section 109.02 of the Codified Ordinance of Summit County.

MEANS OF DELIVERY

Requesters may ask that documents be mailed by U.S. Mail or by any other means. Requesters will be charged the actual cost of the postage and mailing supplies.

O.R.C. Section 149.43(B)(6)

PAYMENT IN ADVANCE

If records requests are responded to by U.S. Mail or by any other means, the Board of Elections may require the requester to pay in advance the cost of postage, delivery fees, and for supplies used mailing and/or delivery of records.

O.R.C. Section 149.43(B)(7)

REQUESTS BY INCARCERATED PERSONS

Under Ohio law, an incarcerated person may receive public records, but only if the records concern a criminal investigation. The incarcerated person must also follow strict guidelines.

- The records must be “public records” which are not subject to an exemption from disclosure.
- The incarcerated person must have secured a finding from the Judge who imposed the sentence of incarceration (or that Judge’s successor) that the information sought in the public record is necessary to support a justifiable claim of the person.

Courts have denied the public records requests of inmates because this procedure was not followed.

O.R.C. Section 149.43(B)(8)

FAILURE TO RESPOND TO A PUBLIC RECORDS REQUEST

The Board of Elections recognizes that the failure to respond to a public records request not only causes distrust in government but may also lead to legal consequences.

O.R.C. Section 149.43(C)(1) and (2)(a) and (b)

If a requester feels that they have been improperly denied public records due to the inability to inspect or to receive a copy of a record, the requester shall be advised that they may contact the Board of Elections Director or Deputy Director.

If the requester is still not satisfied, they shall be advised that the Ohio Revised Code provides a legal means for addressing their complaint.

RECORD RETENTION SCHEDULES (RC-2)

Record retention schedules (RC-2s) are to be updated, when necessary and at the direction of the County of Summit Records Commission. The RC-2 needs to be easily understood by the public, who may have no knowledge of the public records.

Each public office shall have available a copy of its current records retention schedule (RC-2) at a location readily available to the public.

O.R.C. Section 149.38(B); and O.R.C. Section 149.43(B)(2)

RETENTION OF E-MAILS

E-mails shall be retained per approved record retention schedules (RC-2) and made available for inspection and copying in accordance with the Public Records Act.

ACKNOWLEDGEMENT

The Board of Elections shall distribute the public records policy to the employee of the Board of Elections who has custody of the records of the public office and shall require that employee to acknowledge receipt of the copy of the public records policy.

O.R.C. Section 149.43(E)(2)

POSTER REQUIRED

A poster that describes the Board of Elections public records request policy shall be posted in a conspicuous place in the Board of Elections and in all locations where the Board of Elections has branch offices.

O.R.C. Section 149.43(E)(2)

ELECTED OFFICIALS TRAINING

The County of Summit's elected officials or their appropriate designees shall attend public records law training for three (3) hours for every term of office. The training must be approved by the Ohio Attorney General.

O.R.C. Section 109.43(B)

AUDIT OF PUBLIC OFFICE

The Auditor of State, in the course of an audit of a public office, shall audit the public office for compliance of the public records law, including but not limited to, review of the policy, acknowledgement, poster requirement, and attendance of elected officials to required training.

O.R.C. Section 109.43; and O.R.C. Section 149.43 (E)

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Except as otherwise provided by state or federal law, records filed in this office of the board of elections are open to public inspection during normal office hours, pursuant to the following reasonable regulations (see below).

Whoever prohibits any from inspecting the public records of this board is subject to the penalties of section 3599.161 of the Ohio Revised Code.

RECORD REQUESTS

No specific language is required to make a request, but the requester must identify records with sufficient clarity to allow the office to identify, retrieve, and review the records. If it is not clear what records are being sought, the Board of Elections staff should ask the requester for clarification and assist the requester in revising the request informing them of the manner in which this office maintains and accesses its records. The requester need not put a request in writing, or provide his or her identity or the intended use of the requested records. It is this office's general policy that this information should not be requested.

VIEWING PUBLIC RECORDS

Inspection of public records must be made available promptly. Copies of public records must be made within a reasonable period of time. "Promptly" and "reasonable period of time" take into account the volume of records requested, where the records are stored, and time for any legal review and/ or redaction. Records prepared for inspection may be viewed during regular business hours (Monday-Friday, 8:00am-4:30pm), with the exception of published holidays.

MEDIUM OF RESPONSE & COST

The Board of Elections will provide copies of public records on paper, on the medium which they are kept, or on any other medium that the Board determines it reasonably can be copied as an integral part of the normal operations of the office

There is no cost for viewing (inspecting) public records. Copies of public records may be charged at the following rates (actual costs) and must be paid for in advance:

Photo Copies (per page)....\$.10

Public Records on CD.....\$1

Electronic Records E-mailed to requester... no charge

Records mailed to requester... postage/delivery fee charged to requester

DENIAL OF REQUEST OR FAILURE TO RESPOND

It is the policy of the Board of Elections to strictly adhere to the state's Public Records Act. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, as outlined in the O.R.C.

If a person believes this office has failed to comply with the Ohio Public Records Act, they may file a court petition in mandamus: 1.) to compel the office to comply with the request, 2.) to seek payment of statutory damages, 3.) for court costs, and 4.) to have the office pay the requester's attorney fees.

FOR A COPY OF THE FULL VERSION OF THE SUMMIT COUNTY BOARD OF ELECTIONS PUBLIC RECORDS REQUEST POLICY, PLEASE LOG ONTO www.summitcountyboe.com OR CALL 330-643-5200.