

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 451

Representative Retherford

Cosponsors: Representatives Thompson, Seitz, Johnson, Carfagna, DeVitis, Hill, Ryan, Becker, Householder, Butler, Edwards, Sprague, Wiggam, Young, Arndt, Brinkman, Patton, Schaffer, Romanchuk, Dean, Greenspan, Hambley, Riedel, Koehler, Lanese, Blessing, Dever, Anielski, Smith, R., Reineke, LaTourette, Hood, Manning, Gavarone, Merrin, Rezabek, Perales, Zeltwanger, Stein, Cupp, Hagan, Scherer, Roegner, Green, Brenner, Keller, Ginter, Lipps, Huffman, Sweeney, Cera, Sykes, Kick, Kelly, Henne, Gonzales, Celebrezze, Strahorn, Fedor, Patterson, Galonski, Lepore-Hagan, Schuring, Howse, Boyd, Ashford, Barnes, Rogers, Boggs

A BILL

To amend section 149.43 of the Revised Code to 1
exclude from the definition of public record 2
under the Public Records Law any depiction by 3
photograph, film, videotape, or digital, visual, 4
or printed material of victims of crime under 5
specified circumstances dealing with the 6
victims' bodily privacy. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 149.43 of the Revised Code be 8
amended to read as follows: 9

Sec. 149.43. (A) As used in this section: 10

(1) "Public record" means records kept by any public 11
office, including, but not limited to, state, county, city, 12

village, township, and school district units, and records 13
pertaining to the delivery of educational services by an 14
alternative school in this state kept by the nonprofit or for- 15
profit entity operating the alternative school pursuant to 16
section 3313.533 of the Revised Code. "Public record" does not 17
mean any of the following: 18

(a) Medical records; 19

(b) Records pertaining to probation and parole proceedings 20
or to proceedings related to the imposition of community control 21
sanctions and post-release control sanctions; 22

(c) Records pertaining to actions under section 2151.85 23
and division (C) of section 2919.121 of the Revised Code and to 24
appeals of actions arising under those sections; 25

(d) Records pertaining to adoption proceedings, including 26
the contents of an adoption file maintained by the department of 27
health under sections 3705.12 to 3705.124 of the Revised Code; 28

(e) Information in a record contained in the putative 29
father registry established by section 3107.062 of the Revised 30
Code, regardless of whether the information is held by the 31
department of job and family services or, pursuant to section 32
3111.69 of the Revised Code, the office of child support in the 33
department or a child support enforcement agency; 34

(f) Records specified in division (A) of section 3107.52 35
of the Revised Code; 36

(g) Trial preparation records; 37

(h) Confidential law enforcement investigatory records; 38

(i) Records containing information that is confidential 39
under section 2710.03 or 4112.05 of the Revised Code; 40

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;	41 42
(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;	43 44 45 46
(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;	47 48 49 50
(m) Intellectual property records;	51
(n) Donor profile records;	52
(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;	53 54
(p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information;	55 56 57 58 59 60 61
(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;	62 63 64 65 66
(r) Information pertaining to the recreational activities of a person under the age of eighteen;	67 68

(s) In the case of a child fatality review board acting 69
under sections 307.621 to 307.629 of the Revised Code or a 70
review conducted pursuant to guidelines established by the 71
director of health under section 3701.70 of the Revised Code, 72
records provided to the board or director, statements made by 73
board members during meetings of the board or by persons 74
participating in the director's review, and all work products of 75
the board or director, and in the case of a child fatality 76
review board, child fatality review data submitted by the board 77
to the department of health or a national child death review 78
database, other than the report prepared pursuant to division 79
(A) of section 307.626 of the Revised Code; 80

(t) Records provided to and statements made by the 81
executive director of a public children services agency or a 82
prosecuting attorney acting pursuant to section 5153.171 of the 83
Revised Code other than the information released under that 84
section; 85

(u) Test materials, examinations, or evaluation tools used 86
in an examination for licensure as a nursing home administrator 87
that the board of executives of long-term services and supports 88
administers under section 4751.04 of the Revised Code or 89
contracts under that section with a private or government entity 90
to administer; 91

(v) Records the release of which is prohibited by state or 92
federal law; 93

(w) Proprietary information of or relating to any person 94
that is submitted to or compiled by the Ohio venture capital 95
authority created under section 150.01 of the Revised Code; 96

(x) Financial statements and data any person submits for 97

any purpose to the Ohio housing finance agency or the	98
controlling board in connection with applying for, receiving, or	99
accounting for financial assistance from the agency, and	100
information that identifies any individual who benefits directly	101
or indirectly from financial assistance from the agency;	102
(y) Records listed in section 5101.29 of the Revised Code;	103
(z) Discharges recorded with a county recorder under	104
section 317.24 of the Revised Code, as specified in division (B)	105
(2) of that section;	106
(aa) Usage information including names and addresses of	107
specific residential and commercial customers of a municipally	108
owned or operated public utility;	109
(bb) Records described in division (C) of section 187.04	110
of the Revised Code that are not designated to be made available	111
to the public as provided in that division;	112
(cc) Information and records that are made confidential,	113
privileged, and not subject to disclosure under divisions (B)	114
and (C) of section 2949.221 of the Revised Code;	115
(dd) Personal information, as defined in section 149.45 of	116
the Revised Code;	117
(ee) The confidential name, address, and other personally	118
identifiable information of a program participant in the address	119
confidentiality program established under sections 111.41 to	120
111.47 of the Revised Code, including the contents of any	121
application for absent voter's ballots, absent voter's ballot	122
identification envelope statement of voter, or provisional	123
ballot affirmation completed by a program participant who has a	124
confidential voter registration record, and records or portions	125
of records pertaining to that program that identify the number	126

of program participants that reside within a precinct, ward, 127
township, municipal corporation, county, or any other geographic 128
area smaller than the state. As used in this division, 129
"confidential address" and "program participant" have the 130
meaning defined in section 111.41 of the Revised Code. 131

(ff) Orders for active military service of an individual 132
serving or with previous service in the armed forces of the 133
United States, including a reserve component, or the Ohio 134
organized militia, except that, such order becomes a public 135
record on the day that is fifteen years after the published date 136
or effective date of the call to order; 137

(gg) Any depiction by photograph, film, videotape, digital 138
image, or visual or printed material under either of the 139
following circumstances: 140

(i) The depiction is that of a victim of an offense the 141
release of which would be, to a reasonable person of ordinary 142
sensibilities, an offensive and objectionable intrusion into the 143
victim's expectation of bodily privacy and integrity. 144

(ii) The depiction captures or depicts the victim of a 145
sexually oriented offense, as defined in section 2950.01 of the 146
Revised Code, at the actual occurrence of that offense. 147

(2) "Confidential law enforcement investigatory record" 148
means any record that pertains to a law enforcement matter of a 149
criminal, quasi-criminal, civil, or administrative nature, but 150
only to the extent that the release of the record would create a 151
high probability of disclosure of any of the following: 152

(a) The identity of a suspect who has not been charged 153
with the offense to which the record pertains, or of an 154
information source or witness to whom confidentiality has been 155

reasonably promised;	156
(b) Information provided by an information source or	157
witness to whom confidentiality has been reasonably promised,	158
which information would reasonably tend to disclose the source's	159
or witness's identity;	160
(c) Specific confidential investigatory techniques or	161
procedures or specific investigatory work product;	162
(d) Information that would endanger the life or physical	163
safety of law enforcement personnel, a crime victim, a witness,	164
or a confidential information source.	165
(3) "Medical record" means any document or combination of	166
documents, except births, deaths, and the fact of admission to	167
or discharge from a hospital, that pertains to the medical	168
history, diagnosis, prognosis, or medical condition of a patient	169
and that is generated and maintained in the process of medical	170
treatment.	171
(4) "Trial preparation record" means any record that	172
contains information that is specifically compiled in reasonable	173
anticipation of, or in defense of, a civil or criminal action or	174
proceeding, including the independent thought processes and	175
personal trial preparation of an attorney.	176
(5) "Intellectual property record" means a record, other	177
than a financial or administrative record, that is produced or	178
collected by or for faculty or staff of a state institution of	179
higher learning in the conduct of or as a result of study or	180
research on an educational, commercial, scientific, artistic,	181
technical, or scholarly issue, regardless of whether the study	182
or research was sponsored by the institution alone or in	183
conjunction with a governmental body or private concern, and	184

that has not been publicly released, published, or patented. 185

(6) "Donor profile record" means all records about donors 186
or potential donors to a public institution of higher education 187
except the names and reported addresses of the actual donors and 188
the date, amount, and conditions of the actual donation. 189

(7) "Peace officer, parole officer, probation officer, 190
bailiff, prosecuting attorney, assistant prosecuting attorney, 191
correctional employee, community-based correctional facility 192
employee, youth services employee, firefighter, EMT, 193
investigator of the bureau of criminal identification and 194
investigation, or federal law enforcement officer residential 195
and familial information" means any information that discloses 196
any of the following about a peace officer, parole officer, 197
probation officer, bailiff, prosecuting attorney, assistant 198
prosecuting attorney, correctional employee, community-based 199
correctional facility employee, youth services employee, 200
firefighter, EMT, investigator of the bureau of criminal 201
identification and investigation, or federal law enforcement 202
officer: 203

(a) The address of the actual personal residence of a 204
peace officer, parole officer, probation officer, bailiff, 205
assistant prosecuting attorney, correctional employee, 206
community-based correctional facility employee, youth services 207
employee, firefighter, EMT, an investigator of the bureau of 208
criminal identification and investigation, or federal law 209
enforcement officer, except for the state or political 210
subdivision in which the peace officer, parole officer, 211
probation officer, bailiff, assistant prosecuting attorney, 212
correctional employee, community-based correctional facility 213
employee, youth services employee, firefighter, EMT, 214

investigator of the bureau of criminal identification and	215
investigation, or federal law enforcement officer resides;	216
(b) Information compiled from referral to or participation	217
in an employee assistance program;	218
(c) The social security number, the residential telephone	219
number, any bank account, debit card, charge card, or credit	220
card number, or the emergency telephone number of, or any	221
medical information pertaining to, a peace officer, parole	222
officer, probation officer, bailiff, prosecuting attorney,	223
assistant prosecuting attorney, correctional employee,	224
community-based correctional facility employee, youth services	225
employee, firefighter, EMT, investigator of the bureau of	226
criminal identification and investigation, or federal law	227
enforcement officer;	228
(d) The name of any beneficiary of employment benefits,	229
including, but not limited to, life insurance benefits, provided	230
to a peace officer, parole officer, probation officer, bailiff,	231
prosecuting attorney, assistant prosecuting attorney,	232
correctional employee, community-based correctional facility	233
employee, youth services employee, firefighter, EMT,	234
investigator of the bureau of criminal identification and	235
investigation, or federal law enforcement officer by the peace	236
officer's, parole officer's, probation officer's, bailiff's,	237
prosecuting attorney's, assistant prosecuting attorney's,	238
correctional employee's, community-based correctional facility	239
employee's, youth services employee's, firefighter's, EMT's,	240
investigator of the bureau of criminal identification and	241
investigation's, or federal law enforcement officer's employer;	242
(e) The identity and amount of any charitable or	243
employment benefit deduction made by the peace officer's, parole	244

officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's compensation unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

As used in divisions (A) (7) and (B) (9) of this section,

"peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in divisions (A) (7) and (B) (9) of this section, "correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

As used in divisions (A) (7) and (B) (9) of this section, "youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

As used in divisions (A) (7) and (B) (9) of this section, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A) (7) and (B) (9) of this section, "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

As used in divisions (A) (7) and (B) (9) of this section, "investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the

Revised Code.	304
As used in divisions (A) (7) and (B) (9) of this section,	305
"federal law enforcement officer" has the meaning defined in	306
section 9.88 of the Revised Code.	307
(8) "Information pertaining to the recreational activities	308
of a person under the age of eighteen" means information that is	309
kept in the ordinary course of business by a public office, that	310
pertains to the recreational activities of a person under the	311
age of eighteen years, and that discloses any of the following:	312
(a) The address or telephone number of a person under the	313
age of eighteen or the address or telephone number of that	314
person's parent, guardian, custodian, or emergency contact	315
person;	316
(b) The social security number, birth date, or	317
photographic image of a person under the age of eighteen;	318
(c) Any medical record, history, or information pertaining	319
to a person under the age of eighteen;	320
(d) Any additional information sought or required about a	321
person under the age of eighteen for the purpose of allowing	322
that person to participate in any recreational activity	323
conducted or sponsored by a public office or to use or obtain	324
admission privileges to any recreational facility owned or	325
operated by a public office.	326
(9) "Community control sanction" has the same meaning as	327
in section 2929.01 of the Revised Code.	328
(10) "Post-release control sanction" has the same meaning	329
as in section 2967.01 of the Revised Code.	330
(11) "Redaction" means obscuring or deleting any	331

information that is exempt from the duty to permit public 332
inspection or copying from an item that otherwise meets the 333
definition of a "record" in section 149.011 of the Revised Code. 334

(12) "Designee" and "elected official" have the same 335
meanings as in section 109.43 of the Revised Code. 336

(B) (1) Upon request and subject to division (B) (8) of this 337
section, all public records responsive to the request shall be 338
promptly prepared and made available for inspection to any 339
person at all reasonable times during regular business hours. 340
Subject to division (B) (8) of this section, upon request, a 341
public office or person responsible for public records shall 342
make copies of the requested public record available at cost and 343
within a reasonable period of time. If a public record contains 344
information that is exempt from the duty to permit public 345
inspection or to copy the public record, the public office or 346
the person responsible for the public record shall make 347
available all of the information within the public record that 348
is not exempt. When making that public record available for 349
public inspection or copying that public record, the public 350
office or the person responsible for the public record shall 351
notify the requester of any redaction or make the redaction 352
plainly visible. A redaction shall be deemed a denial of a 353
request to inspect or copy the redacted information, except if 354
federal or state law authorizes or requires a public office to 355
make the redaction. 356

(2) To facilitate broader access to public records, a 357
public office or the person responsible for public records shall 358
organize and maintain public records in a manner that they can 359
be made available for inspection or copying in accordance with 360
division (B) of this section. A public office also shall have 361

available a copy of its current records retention schedule at a 362
location readily available to the public. If a requester makes 363
an ambiguous or overly broad request or has difficulty in making 364
a request for copies or inspection of public records under this 365
section such that the public office or the person responsible 366
for the requested public record cannot reasonably identify what 367
public records are being requested, the public office or the 368
person responsible for the requested public record may deny the 369
request but shall provide the requester with an opportunity to 370
revise the request by informing the requester of the manner in 371
which records are maintained by the public office and accessed 372
in the ordinary course of the public office's or person's 373
duties. 374

(3) If a request is ultimately denied, in part or in 375
whole, the public office or the person responsible for the 376
requested public record shall provide the requester with an 377
explanation, including legal authority, setting forth why the 378
request was denied. If the initial request was provided in 379
writing, the explanation also shall be provided to the requester 380
in writing. The explanation shall not preclude the public office 381
or the person responsible for the requested public record from 382
relying upon additional reasons or legal authority in defending 383
an action commenced under division (C) of this section. 384

(4) Unless specifically required or authorized by state or 385
federal law or in accordance with division (B) of this section, 386
no public office or person responsible for public records may 387
limit or condition the availability of public records by 388
requiring disclosure of the requester's identity or the intended 389
use of the requested public record. Any requirement that the 390
requester disclose the requester's identity or the intended use 391
of the requested public record constitutes a denial of the 392

request. 393

(5) A public office or person responsible for public 394
records may ask a requester to make the request in writing, may 395
ask for the requester's identity, and may inquire about the 396
intended use of the information requested, but may do so only 397
after disclosing to the requester that a written request is not 398
mandatory and that the requester may decline to reveal the 399
requester's identity or the intended use and when a written 400
request or disclosure of the identity or intended use would 401
benefit the requester by enhancing the ability of the public 402
office or person responsible for public records to identify, 403
locate, or deliver the public records sought by the requester. 404

(6) If any person chooses to obtain a copy of a public 405
record in accordance with division (B) of this section, the 406
public office or person responsible for the public record may 407
require that person to pay in advance the cost involved in 408
providing the copy of the public record in accordance with the 409
choice made by the person seeking the copy under this division. 410
The public office or the person responsible for the public 411
record shall permit that person to choose to have the public 412
record duplicated upon paper, upon the same medium upon which 413
the public office or person responsible for the public record 414
keeps it, or upon any other medium upon which the public office 415
or person responsible for the public record determines that it 416
reasonably can be duplicated as an integral part of the normal 417
operations of the public office or person responsible for the 418
public record. When the person seeking the copy makes a choice 419
under this division, the public office or person responsible for 420
the public record shall provide a copy of it in accordance with 421
the choice made by the person seeking the copy. Nothing in this 422
section requires a public office or person responsible for the 423

public record to allow the person seeking a copy of the public 424
record to make the copies of the public record. 425

(7) (a) Upon a request made in accordance with division (B) 426
of this section and subject to division (B) (6) of this section, 427
a public office or person responsible for public records shall 428
transmit a copy of a public record to any person by United 429
States mail or by any other means of delivery or transmission 430
within a reasonable period of time after receiving the request 431
for the copy. The public office or person responsible for the 432
public record may require the person making the request to pay 433
in advance the cost of postage if the copy is transmitted by 434
United States mail or the cost of delivery if the copy is 435
transmitted other than by United States mail, and to pay in 436
advance the costs incurred for other supplies used in the 437
mailing, delivery, or transmission. 438

(b) Any public office may adopt a policy and procedures 439
that it will follow in transmitting, within a reasonable period 440
of time after receiving a request, copies of public records by 441
United States mail or by any other means of delivery or 442
transmission pursuant to division (B) (7) of this section. A 443
public office that adopts a policy and procedures under division 444
(B) (7) of this section shall comply with them in performing its 445
duties under that division. 446

(c) In any policy and procedures adopted under division 447
(B) (7) of this section: 448

(i) A public office may limit the number of records 449
requested by a person that the office will physically deliver by 450
United States mail or by another delivery service to ten per 451
month, unless the person certifies to the office in writing that 452
the person does not intend to use or forward the requested 453

records, or the information contained in them, for commercial 454
purposes; 455

(ii) A public office that chooses to provide some or all 456
of its public records on a web site that is fully accessible to 457
and searchable by members of the public at all times, other than 458
during acts of God outside the public office's control or 459
maintenance, and that charges no fee to search, access, 460
download, or otherwise receive records provided on the web site, 461
may limit to ten per month the number of records requested by a 462
person that the office will deliver in a digital format, unless 463
the requested records are not provided on the web site and 464
unless the person certifies to the office in writing that the 465
person does not intend to use or forward the requested records, 466
or the information contained in them, for commercial purposes. 467

(iii) For purposes of division (B)(7) of this section, 468
"commercial" shall be narrowly construed and does not include 469
reporting or gathering news, reporting or gathering information 470
to assist citizen oversight or understanding of the operation or 471
activities of government, or nonprofit educational research. 472

(8) A public office or person responsible for public 473
records is not required to permit a person who is incarcerated 474
pursuant to a criminal conviction or a juvenile adjudication to 475
inspect or to obtain a copy of any public record concerning a 476
criminal investigation or prosecution or concerning what would 477
be a criminal investigation or prosecution if the subject of the 478
investigation or prosecution were an adult, unless the request 479
to inspect or to obtain a copy of the record is for the purpose 480
of acquiring information that is subject to release as a public 481
record under this section and the judge who imposed the sentence 482
or made the adjudication with respect to the person, or the 483

judge's successor in office, finds that the information sought 484
in the public record is necessary to support what appears to be 485
a justiciable claim of the person. 486

(9) (a) Upon written request made and signed by a 487
journalist on or after December 16, 1999, a public office, or 488
person responsible for public records, having custody of the 489
records of the agency employing a specified peace officer, 490
parole officer, probation officer, bailiff, prosecuting 491
attorney, assistant prosecuting attorney, correctional employee, 492
community-based correctional facility employee, youth services 493
employee, firefighter, EMT, investigator of the bureau of 494
criminal identification and investigation, or federal law 495
enforcement officer shall disclose to the journalist the address 496
of the actual personal residence of the peace officer, parole 497
officer, probation officer, bailiff, prosecuting attorney, 498
assistant prosecuting attorney, correctional employee, 499
community-based correctional facility employee, youth services 500
employee, firefighter, EMT, investigator of the bureau of 501
criminal identification and investigation, or federal law 502
enforcement officer and, if the peace officer's, parole 503
officer's, probation officer's, bailiff's, prosecuting 504
attorney's, assistant prosecuting attorney's, correctional 505
employee's, community-based correctional facility employee's, 506
youth services employee's, firefighter's, EMT's, investigator of 507
the bureau of criminal identification and investigation's, or 508
federal law enforcement officer's spouse, former spouse, or 509
child is employed by a public office, the name and address of 510
the employer of the peace officer's, parole officer's, probation 511
officer's, bailiff's, prosecuting attorney's, assistant 512
prosecuting attorney's, correctional employee's, community-based 513
correctional facility employee's, youth services employee's, 514

firefighter's, EMT's, investigator of the bureau of criminal 515
identification and investigation's, or federal law enforcement 516
officer's spouse, former spouse, or child. The request shall 517
include the journalist's name and title and the name and address 518
of the journalist's employer and shall state that disclosure of 519
the information sought would be in the public interest. 520

(b) Division (B) (9) (a) of this section also applies to 521
journalist requests for customer information maintained by a 522
municipally owned or operated public utility, other than social 523
security numbers and any private financial information such as 524
credit reports, payment methods, credit card numbers, and bank 525
account information. 526

(c) As used in division (B) (9) of this section, 527
"journalist" means a person engaged in, connected with, or 528
employed by any news medium, including a newspaper, magazine, 529
press association, news agency, or wire service, a radio or 530
television station, or a similar medium, for the purpose of 531
gathering, processing, transmitting, compiling, editing, or 532
disseminating information for the general public. 533

(C) (1) If a person allegedly is aggrieved by the failure 534
of a public office or the person responsible for public records 535
to promptly prepare a public record and to make it available to 536
the person for inspection in accordance with division (B) of 537
this section or by any other failure of a public office or the 538
person responsible for public records to comply with an 539
obligation in accordance with division (B) of this section, the 540
person allegedly aggrieved may do only one of the following, and 541
not both: 542

(a) File a complaint with the clerk of the court of claims 543
or the clerk of the court of common pleas under section 2743.75 544

of the Revised Code; 545

(b) Commence a mandamus action to obtain a judgment that 546
orders the public office or the person responsible for the 547
public record to comply with division (B) of this section, that 548
awards court costs and reasonable attorney's fees to the person 549
that instituted the mandamus action, and, if applicable, that 550
includes an order fixing statutory damages under division (C) (2) 551
of this section. The mandamus action may be commenced in the 552
court of common pleas of the county in which division (B) of 553
this section allegedly was not complied with, in the supreme 554
court pursuant to its original jurisdiction under Section 2 of 555
Article IV, Ohio Constitution, or in the court of appeals for 556
the appellate district in which division (B) of this section 557
allegedly was not complied with pursuant to its original 558
jurisdiction under Section 3 of Article IV, Ohio Constitution. 559

(2) If a requester transmits a written request by hand 560
delivery or certified mail to inspect or receive copies of any 561
public record in a manner that fairly describes the public 562
record or class of public records to the public office or person 563
responsible for the requested public records, except as 564
otherwise provided in this section, the requester shall be 565
entitled to recover the amount of statutory damages set forth in 566
this division if a court determines that the public office or 567
the person responsible for public records failed to comply with 568
an obligation in accordance with division (B) of this section. 569

The amount of statutory damages shall be fixed at one 570
hundred dollars for each business day during which the public 571
office or person responsible for the requested public records 572
failed to comply with an obligation in accordance with division 573
(B) of this section, beginning with the day on which the 574

requester files a mandamus action to recover statutory damages, 575
up to a maximum of one thousand dollars. The award of statutory 576
damages shall not be construed as a penalty, but as compensation 577
for injury arising from lost use of the requested information. 578
The existence of this injury shall be conclusively presumed. The 579
award of statutory damages shall be in addition to all other 580
remedies authorized by this section. 581

The court may reduce an award of statutory damages or not 582
award statutory damages if the court determines both of the 583
following: 584

(a) That, based on the ordinary application of statutory 585
law and case law as it existed at the time of the conduct or 586
threatened conduct of the public office or person responsible 587
for the requested public records that allegedly constitutes a 588
failure to comply with an obligation in accordance with division 589
(B) of this section and that was the basis of the mandamus 590
action, a well-informed public office or person responsible for 591
the requested public records reasonably would believe that the 592
conduct or threatened conduct of the public office or person 593
responsible for the requested public records did not constitute 594
a failure to comply with an obligation in accordance with 595
division (B) of this section; 596

(b) That a well-informed public office or person 597
responsible for the requested public records reasonably would 598
believe that the conduct or threatened conduct of the public 599
office or person responsible for the requested public records 600
would serve the public policy that underlies the authority that 601
is asserted as permitting that conduct or threatened conduct. 602

(3) In a mandamus action filed under division (C) (1) of 603
this section, the following apply: 604

(a) (i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C) (3) (b) (iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to the provisions of division (C) (4) of this section:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not

the public office or person was required to comply with division 634
(B) of this section. No discovery may be conducted on the issue 635
of the alleged bad faith of the public office or person 636
responsible for the public records. This division shall not be 637
construed as creating a presumption that the public office or 638
the person responsible for the public records acted in bad faith 639
when the office or person voluntarily made the public records 640
available to the relator for the first time after the relator 641
commenced the mandamus action, but before the court issued any 642
order described in this division. 643

(c) The court shall not award attorney's fees to the 644
relator if the court determines both of the following: 645

(i) That, based on the ordinary application of statutory 646
law and case law as it existed at the time of the conduct or 647
threatened conduct of the public office or person responsible 648
for the requested public records that allegedly constitutes a 649
failure to comply with an obligation in accordance with division 650
(B) of this section and that was the basis of the mandamus 651
action, a well-informed public office or person responsible for 652
the requested public records reasonably would believe that the 653
conduct or threatened conduct of the public office or person 654
responsible for the requested public records did not constitute 655
a failure to comply with an obligation in accordance with 656
division (B) of this section; 657

(ii) That a well-informed public office or person 658
responsible for the requested public records reasonably would 659
believe that the conduct or threatened conduct of the public 660
office or person responsible for the requested public records 661
would serve the public policy that underlies the authority that 662
is asserted as permitting that conduct or threatened conduct. 663

(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C) (3) (b) of this section: 664
665
666

(a) The fees shall be construed as remedial and not punitive. 667
668

(b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C) (4) (c) of this section. 669
670
671
672

(c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. 673
674
675

(d) The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C) (1) of this section. 676
677
678
679
680
681

(5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court. 682
683
684
685
686
687
688

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section. 689
690

(E) (1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under 691
692

division (B) of this section, all elected officials or their 693
appropriate designees shall attend training approved by the 694
attorney general as provided in section 109.43 of the Revised 695
Code. In addition, all public offices shall adopt a public 696
records policy in compliance with this section for responding to 697
public records requests. In adopting a public records policy 698
under this division, a public office may obtain guidance from 699
the model public records policy developed and provided to the 700
public office by the attorney general under section 109.43 of 701
the Revised Code. Except as otherwise provided in this section, 702
the policy may not limit the number of public records that the 703
public office will make available to a single person, may not 704
limit the number of public records that it will make available 705
during a fixed period of time, and may not establish a fixed 706
period of time before it will respond to a request for 707
inspection or copying of public records, unless that period is 708
less than eight hours. 709

(2) The public office shall distribute the public records 710
policy adopted by the public office under division (E)(1) of 711
this section to the employee of the public office who is the 712
records custodian or records manager or otherwise has custody of 713
the records of that office. The public office shall require that 714
employee to acknowledge receipt of the copy of the public 715
records policy. The public office shall create a poster that 716
describes its public records policy and shall post the poster in 717
a conspicuous place in the public office and in all locations 718
where the public office has branch offices. The public office 719
may post its public records policy on the internet web site of 720
the public office if the public office maintains an internet web 721
site. A public office that has established a manual or handbook 722
of its general policies and procedures for all employees of the 723

public office shall include the public records policy of the 724
public office in the manual or handbook. 725

(F) (1) The bureau of motor vehicles may adopt rules 726
pursuant to Chapter 119. of the Revised Code to reasonably limit 727
the number of bulk commercial special extraction requests made 728
by a person for the same records or for updated records during a 729
calendar year. The rules may include provisions for charges to 730
be made for bulk commercial special extraction requests for the 731
actual cost of the bureau, plus special extraction costs, plus 732
ten per cent. The bureau may charge for expenses for redacting 733
information, the release of which is prohibited by law. 734

(2) As used in division (F) (1) of this section: 735

(a) "Actual cost" means the cost of depleted supplies, 736
records storage media costs, actual mailing and alternative 737
delivery costs, or other transmitting costs, and any direct 738
equipment operating and maintenance costs, including actual 739
costs paid to private contractors for copying services. 740

(b) "Bulk commercial special extraction request" means a 741
request for copies of a record for information in a format other 742
than the format already available, or information that cannot be 743
extracted without examination of all items in a records series, 744
class of records, or database by a person who intends to use or 745
forward the copies for surveys, marketing, solicitation, or 746
resale for commercial purposes. "Bulk commercial special 747
extraction request" does not include a request by a person who 748
gives assurance to the bureau that the person making the request 749
does not intend to use or forward the requested copies for 750
surveys, marketing, solicitation, or resale for commercial 751
purposes. 752

(c) "Commercial" means profit-seeking production, buying, 753
or selling of any good, service, or other product. 754

(d) "Special extraction costs" means the cost of the time 755
spent by the lowest paid employee competent to perform the task, 756
the actual amount paid to outside private contractors employed 757
by the bureau, or the actual cost incurred to create computer 758
programs to make the special extraction. "Special extraction 759
costs" include any charges paid to a public agency for computer 760
or records services. 761

(3) For purposes of divisions (F)(1) and (2) of this 762
section, "surveys, marketing, solicitation, or resale for 763
commercial purposes" shall be narrowly construed and does not 764
include reporting or gathering news, reporting or gathering 765
information to assist citizen oversight or understanding of the 766
operation or activities of government, or nonprofit educational 767
research. 768

(G) A request by a defendant, counsel of a defendant, or 769
any agent of a defendant in a criminal action that public 770
records related to that action be made available under this 771
section shall be considered a demand for discovery pursuant to 772
the Criminal Rules, except to the extent that the Criminal Rules 773
plainly indicate a contrary intent. The defendant, counsel of 774
the defendant, or agent of the defendant making a request under 775
this division shall serve a copy of the request on the 776
prosecuting attorney, director of law, or other chief legal 777
officer responsible for prosecuting the action. 778

Section 2. That existing section 149.43 of the Revised 779
Code is hereby repealed. 780