



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Bethany Boyd

H.B. 139

132nd General Assembly
(As Introduced)

Reps. Perales and Keller, Hambley, Fedor, Seitz, Dean

BILL SUMMARY

- Eliminates the disclosure exemption for any permanently retained public record 100 years after the date of its creation, except for records protected by the attorney-client privilege and trial preparation records.
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CONTENT AND OPERATION

Time limitation on public record disclosure exemptions

The Public Records Act requires a public office to promptly prepare a public record when requested and make it available to the requester for inspection at all reasonable times during regular business hours, or to make copies of a requested public record available to the requester at cost and within a reasonable period of time. The Act contains an extensive list of categories of records kept by public offices that are **not** public records, meaning that the records are not subject to disclosure, including medical records, intellectual property records, and records the release of which is prohibited by state or federal law, to name a few.¹

The bill specifies that a record that is not a public record because it is exempted by the Act, and that, under law, is permanently retained, becomes a public record on the day that is 100 years after the day on which the record was created, except for any record protected by the attorney-client privilege, or a "trial preparation record."² In other words, once an exempt record reaches the 100-year mark, the record is no longer exempt and must be disclosed to anyone who requests to inspect or obtain a copy of it.

¹ R.C. 149.43(A)(1)(a) to (ff) and (B).

² R.C. 149.43(A)(1), after division (A)(1)(ff).

But if any other Revised Code statute establishes a time period for disclosure of a record that conflicts with the 100-year time period, the time period in the other statute prevails.³

Under continuing law, a "trial preparation record" is any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.⁴

The bill appears to also apply to records that are confidential under other Ohio laws besides those exempt records listed in the Public Records Act, and, as added by the bill, to records that are confidential under laws under which a public office functions.⁵

Application of the Public Records Act

Under continuing law, the Public Records Act applies to all "public offices," meaning any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government, except for the nonprofit corporation commonly known as JobsOhio.⁶ A "record" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, that serves to document the office's organization, functions, policies, decisions, procedures, operations, or other activities.⁷ And a "public record" is a record kept by any public office, including state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the alternative school.⁸

³ An example of a statute that has a different time period is R.C. 317.24, which states that a military discharge record is not a public record for a period of 75 years after the date a county recorder records it.

⁴ R.C. 149.43(A)(4).

⁵ R.C. 149.43(A)(1)(v). However, the bill does not apply to records that are confidential under federal law.

⁶ R.C. 149.011(A), not in the bill.

⁷ R.C. 149.011(G), not in the bill.

⁸ R.C. 149.43(A).



HISTORY

ACTION

DATE

Introduced

03-21-17

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