

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 321

Senator Faber

Cosponsors: Senators Burke, Eklund, Jordan, LaRose, Peterson, Seitz

A BILL

To amend sections 149.43, 2323.52, 2743.03, and 2746.04 and to enact section 2743.75 of the Revised Code to create a procedure within the Court of Claims to hear complaints alleging a denial of access to public records and to modify the circumstances under which a person who files a mandamus action seeking the release of public records may be awarded court costs and attorney's fees.

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

Section 1. That sections 149.43, 2323.52, 2743.03, and 2746.04 be amended and section 2743.75 of the Revised Code be enacted to read as follows:

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

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-

profit entity operating the alternative school pursuant to	19
section 3313.533 of the Revised Code. "Public record" does not	20
mean any of the following:	21
(a) Medical records;	22
(b) Records pertaining to probation and parole proceedings	23
or to proceedings related to the imposition of community control	24
sanctions and post-release control sanctions;	25
(c) Records pertaining to actions under section 2151.85	26
and division (C) of section 2919.121 of the Revised Code and to	27
appeals of actions arising under those sections;	28
(d) Records pertaining to adoption proceedings, including	29
the contents of an adoption file maintained by the department of	30
health under sections 3705.12 to 3705.124 of the Revised Code;	31
(e) Information in a record contained in the putative	32
father registry established by section 3107.062 of the Revised	33
Code, regardless of whether the information is held by the	34
department of job and family services or, pursuant to section	35
3111.69 of the Revised Code, the office of child support in the	36
department or a child support enforcement agency;	37
(f) Records specified in division (A) of section 3107.52	38
of the Revised Code;	39
(g) Trial preparation records;	40
(h) Confidential law enforcement investigatory records;	41
(i) Records containing information that is confidential	42
under section 2710.03 or 4112.05 of the Revised Code;	43
(j) DNA records stored in the DNA database pursuant to	44
section 109.573 of the Revised Code;	45

(k) Inmate records released by the department of 46
rehabilitation and correction to the department of youth 47
services or a court of record pursuant to division (E) of 48
section 5120.21 of the Revised Code; 49

(l) Records maintained by the department of youth services 50
pertaining to children in its custody released by the department 51
of youth services to the department of rehabilitation and 52
correction pursuant to section 5139.05 of the Revised Code; 53

(m) Intellectual property records; 54

(n) Donor profile records; 55

(o) Records maintained by the department of job and family 56
services pursuant to section 3121.894 of the Revised Code; 57

(p) Peace officer, parole officer, probation officer, 58
bailiff, prosecuting attorney, assistant prosecuting attorney, 59
correctional employee, community-based correctional facility 60
employee, youth services employee, firefighter, EMT, or 61
investigator of the bureau of criminal identification and 62
investigation residential and familial information; 63

(q) In the case of a county hospital operated pursuant to 64
Chapter 339. of the Revised Code or a municipal hospital 65
operated pursuant to Chapter 749. of the Revised Code, 66
information that constitutes a trade secret, as defined in 67
section 1333.61 of the Revised Code; 68

(r) Information pertaining to the recreational activities 69
of a person under the age of eighteen; 70

(s) In the case of a child fatality review board acting 71
under sections 307.621 to 307.629 of the Revised Code or a 72
review conducted pursuant to guidelines established by the 73

director of health under section 3701.70 of the Revised Code, 74
records provided to the board or director, statements made by 75
board members during meetings of the board or by persons 76
participating in the director's review, and all work products of 77
the board or director, and in the case of a child fatality 78
review board, child fatality review data submitted by the board 79
to the department of health or a national child death review 80
database, other than the report prepared pursuant to division 81
(A) of section 307.626 of the Revised Code; 82

(t) Records provided to and statements made by the 83
executive director of a public children services agency or a 84
prosecuting attorney acting pursuant to section 5153.171 of the 85
Revised Code other than the information released under that 86
section; 87

(u) Test materials, examinations, or evaluation tools used 88
in an examination for licensure as a nursing home administrator 89
that the board of executives of long-term services and supports 90
administers under section 4751.04 of the Revised Code or 91
contracts under that section with a private or government entity 92
to administer; 93

(v) Records the release of which is prohibited by state or 94
federal law; 95

(w) Proprietary information of or relating to any person 96
that is submitted to or compiled by the Ohio venture capital 97
authority created under section 150.01 of the Revised Code; 98

(x) Financial statements and data any person submits for 99
any purpose to the Ohio housing finance agency or the 100
controlling board in connection with applying for, receiving, or 101
accounting for financial assistance from the agency, and 102

information that identifies any individual who benefits directly	103
or indirectly from financial assistance from the agency;	104
(y) Records listed in section 5101.29 of the Revised Code;	105
(z) Discharges recorded with a county recorder under	106
section 317.24 of the Revised Code, as specified in division (B)	107
(2) of that section;	108
(aa) Usage information including names and addresses of	109
specific residential and commercial customers of a municipally	110
owned or operated public utility;	111
(bb) Records described in division (C) of section 187.04	112
of the Revised Code that are not designated to be made available	113
to the public as provided in that division;	114
(cc) Information and records that are made confidential,	115
privileged, and not subject to disclosure under divisions (B)	116
and (C) of section 2949.221 of the Revised Code.	117
(2) "Confidential law enforcement investigatory record"	118
means any record that pertains to a law enforcement matter of a	119
criminal, quasi-criminal, civil, or administrative nature, but	120
only to the extent that the release of the record would create a	121
high probability of disclosure of any of the following:	122
(a) The identity of a suspect who has not been charged	123
with the offense to which the record pertains, or of an	124
information source or witness to whom confidentiality has been	125
reasonably promised;	126
(b) Information provided by an information source or	127
witness to whom confidentiality has been reasonably promised,	128
which information would reasonably tend to disclose the source's	129
or witness's identity;	130

(c) Specific confidential investigatory techniques or	131
procedures or specific investigatory work product;	132
(d) Information that would endanger the life or physical	133
safety of law enforcement personnel, a crime victim, a witness,	134
or a confidential information source.	135
(3) "Medical record" means any document or combination of	136
documents, except births, deaths, and the fact of admission to	137
or discharge from a hospital, that pertains to the medical	138
history, diagnosis, prognosis, or medical condition of a patient	139
and that is generated and maintained in the process of medical	140
treatment.	141
(4) "Trial preparation record" means any record that	142
contains information that is specifically compiled in reasonable	143
anticipation of, or in defense of, a civil or criminal action or	144
proceeding, including the independent thought processes and	145
personal trial preparation of an attorney.	146
(5) "Intellectual property record" means a record, other	147
than a financial or administrative record, that is produced or	148
collected by or for faculty or staff of a state institution of	149
higher learning in the conduct of or as a result of study or	150
research on an educational, commercial, scientific, artistic,	151
technical, or scholarly issue, regardless of whether the study	152
or research was sponsored by the institution alone or in	153
conjunction with a governmental body or private concern, and	154
that has not been publicly released, published, or patented.	155
(6) "Donor profile record" means all records about donors	156
or potential donors to a public institution of higher education	157
except the names and reported addresses of the actual donors and	158
the date, amount, and conditions of the actual donation.	159

(7) "Peace officer, parole officer, probation officer, 160
bailiff, prosecuting attorney, assistant prosecuting attorney, 161
correctional employee, community-based correctional facility 162
employee, youth services employee, firefighter, EMT, or 163
investigator of the bureau of criminal identification and 164
investigation residential and familial information" means any 165
information that discloses any of the following about a peace 166
officer, parole officer, probation officer, bailiff, prosecuting 167
attorney, assistant prosecuting attorney, correctional employee, 168
community-based correctional facility employee, youth services 169
employee, firefighter, EMT, or investigator of the bureau of 170
criminal identification and investigation: 171

(a) The address of the actual personal residence of a 172
peace officer, parole officer, probation officer, bailiff, 173
assistant prosecuting attorney, correctional employee, 174
community-based correctional facility employee, youth services 175
employee, firefighter, EMT, or an investigator of the bureau of 176
criminal identification and investigation, except for the state 177
or political subdivision in which the peace officer, parole 178
officer, probation officer, bailiff, assistant prosecuting 179
attorney, correctional employee, community-based correctional 180
facility employee, youth services employee, firefighter, EMT, or 181
investigator of the bureau of criminal identification and 182
investigation resides; 183

(b) Information compiled from referral to or participation 184
in an employee assistance program; 185

(c) The social security number, the residential telephone 186
number, any bank account, debit card, charge card, or credit 187
card number, or the emergency telephone number of, or any 188
medical information pertaining to, a peace officer, parole 189

officer, probation officer, bailiff, prosecuting attorney, 190
assistant prosecuting attorney, correctional employee, 191
community-based correctional facility employee, youth services 192
employee, firefighter, EMT, or investigator of the bureau of 193
criminal identification and investigation; 194

(d) The name of any beneficiary of employment benefits, 195
including, but not limited to, life insurance benefits, provided 196
to a peace officer, parole officer, probation officer, bailiff, 197
prosecuting attorney, assistant prosecuting attorney, 198
correctional employee, community-based correctional facility 199
employee, youth services employee, firefighter, EMT, or 200
investigator of the bureau of criminal identification and 201
investigation by the peace officer's, parole officer's, 202
probation officer's, bailiff's, prosecuting attorney's, 203
assistant prosecuting attorney's, correctional employee's, 204
community-based correctional facility employee's, youth services 205
employee's, firefighter's, EMT's, or investigator of the bureau 206
of criminal identification and investigation's employer; 207

(e) The identity and amount of any charitable or 208
employment benefit deduction made by the peace officer's, parole 209
officer's, probation officer's, bailiff's, prosecuting 210
attorney's, assistant prosecuting attorney's, correctional 211
employee's, community-based correctional facility employee's, 212
youth services employee's, firefighter's, EMT's, or investigator 213
of the bureau of criminal identification and investigation's 214
employer from the peace officer's, parole officer's, probation 215
officer's, bailiff's, prosecuting attorney's, assistant 216
prosecuting attorney's, correctional employee's, community-based 217
correctional facility employee's, youth services employee's, 218
firefighter's, EMT's, or investigator of the bureau of criminal 219
identification and investigation's compensation unless the 220

amount of the deduction is required by state or federal law;	221
(f) The name, the residential address, the name of the	222
employer, the address of the employer, the social security	223
number, the residential telephone number, any bank account,	224
debit card, charge card, or credit card number, or the emergency	225
telephone number of the spouse, a former spouse, or any child of	226
a peace officer, parole officer, probation officer, bailiff,	227
prosecuting attorney, assistant prosecuting attorney,	228
correctional employee, community-based correctional facility	229
employee, youth services employee, firefighter, EMT, or	230
investigator of the bureau of criminal identification and	231
investigation;	232
(g) A photograph of a peace officer who holds a position	233
or has an assignment that may include undercover or plain	234
clothes positions or assignments as determined by the peace	235
officer's appointing authority.	236
As used in divisions (A) (7) and (B) (9) of this section,	237
"peace officer" has the same meaning as in section 109.71 of the	238
Revised Code and also includes the superintendent and troopers	239
of the state highway patrol; it does not include the sheriff of	240
a county or a supervisory employee who, in the absence of the	241
sheriff, is authorized to stand in for, exercise the authority	242
of, and perform the duties of the sheriff.	243
As used in divisions (A) (7) and (B) (9) of this section,	244
"correctional employee" means any employee of the department of	245
rehabilitation and correction who in the course of performing	246
the employee's job duties has or has had contact with inmates	247
and persons under supervision.	248
As used in divisions (A) (7) and (B) (9) of this section,	249

"youth services employee" means any employee of the department 250
of youth services who in the course of performing the employee's 251
job duties has or has had contact with children committed to the 252
custody of the department of youth services. 253

As used in divisions (A) (7) and (B) (9) of this section, 254
"firefighter" means any regular, paid or volunteer, member of a 255
lawfully constituted fire department of a municipal corporation, 256
township, fire district, or village. 257

As used in divisions (A) (7) and (B) (9) of this section, 258
"EMT" means EMTs-basic, EMTs-I, and paramedics that provide 259
emergency medical services for a public emergency medical 260
service organization. "Emergency medical service organization," 261
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as 262
in section 4765.01 of the Revised Code. 263

As used in divisions (A) (7) and (B) (9) of this section, 264
"investigator of the bureau of criminal identification and 265
investigation" has the meaning defined in section 2903.11 of the 266
Revised Code. 267

(8) "Information pertaining to the recreational activities 268
of a person under the age of eighteen" means information that is 269
kept in the ordinary course of business by a public office, that 270
pertains to the recreational activities of a person under the 271
age of eighteen years, and that discloses any of the following: 272

(a) The address or telephone number of a person under the 273
age of eighteen or the address or telephone number of that 274
person's parent, guardian, custodian, or emergency contact 275
person; 276

(b) The social security number, birth date, or 277
photographic image of a person under the age of eighteen; 278

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;	279 280
(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.	281 282 283 284 285 286
(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	287 288
(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.	289 290
(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.	291 292 293 294
(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.	295 296
(B) (1) Upon request and subject to division (B) (8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B) (8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make	297 298 299 300 301 302 303 304 305 306 307

available all of the information within the public record that 308
is not exempt. When making that public record available for 309
public inspection or copying that public record, the public 310
office or the person responsible for the public record shall 311
notify the requester of any redaction or make the redaction 312
plainly visible. A redaction shall be deemed a denial of a 313
request to inspect or copy the redacted information, except if 314
federal or state law authorizes or requires a public office to 315
make the redaction. 316

(2) To facilitate broader access to public records, a 317
public office or the person responsible for public records shall 318
organize and maintain public records in a manner that they can 319
be made available for inspection or copying in accordance with 320
division (B) of this section. A public office also shall have 321
available a copy of its current records retention schedule at a 322
location readily available to the public. If a requester makes 323
an ambiguous or overly broad request or has difficulty in making 324
a request for copies or inspection of public records under this 325
section such that the public office or the person responsible 326
for the requested public record cannot reasonably identify what 327
public records are being requested, the public office or the 328
person responsible for the requested public record may deny the 329
request but shall provide the requester with an opportunity to 330
revise the request by informing the requester of the manner in 331
which records are maintained by the public office and accessed 332
in the ordinary course of the public office's or person's 333
duties. 334

(3) If a request is ultimately denied, in part or in 335
whole, the public office or the person responsible for the 336
requested public record shall provide the requester with an 337
explanation, including legal authority, setting forth why the 338

request was denied. If the initial request was provided in 339
writing, the explanation also shall be provided to the requester 340
in writing. The explanation shall not preclude the public office 341
or the person responsible for the requested public record from 342
relying upon additional reasons or legal authority in defending 343
an action commenced under division (C) of this section. 344

(4) Unless specifically required or authorized by state or 345
federal law or in accordance with division (B) of this section, 346
no public office or person responsible for public records may 347
limit or condition the availability of public records by 348
requiring disclosure of the requester's identity or the intended 349
use of the requested public record. Any requirement that the 350
requester disclose the ~~requester's~~requester's identity or the 351
intended use of the requested public record constitutes a denial 352
of the request. 353

(5) A public office or person responsible for public 354
records may ask a requester to make the request in writing, may 355
ask for the requester's identity, and may inquire about the 356
intended use of the information requested, but may do so only 357
after disclosing to the requester that a written request is not 358
mandatory and that the requester may decline to reveal the 359
requester's identity or the intended use and when a written 360
request or disclosure of the identity or intended use would 361
benefit the requester by enhancing the ability of the public 362
office or person responsible for public records to identify, 363
locate, or deliver the public records sought by the requester. 364

(6) If any person chooses to obtain a copy of a public 365
record in accordance with division (B) of this section, the 366
public office or person responsible for the public record may 367
require that person to pay in advance the cost involved in 368

providing the copy of the public record in accordance with the 369
choice made by the person seeking the copy under this division. 370
The public office or the person responsible for the public 371
record shall permit that person to choose to have the public 372
record duplicated upon paper, upon the same medium upon which 373
the public office or person responsible for the public record 374
keeps it, or upon any other medium upon which the public office 375
or person responsible for the public record determines that it 376
reasonably can be duplicated as an integral part of the normal 377
operations of the public office or person responsible for the 378
public record. When the person seeking the copy makes a choice 379
under this division, the public office or person responsible for 380
the public record shall provide a copy of it in accordance with 381
the choice made by the person seeking the copy. Nothing in this 382
section requires a public office or person responsible for the 383
public record to allow the person seeking a copy of the public 384
record to make the copies of the public record. 385

(7) Upon a request made in accordance with division (B) of 386
this section and subject to division (B)(6) of this section, a 387
public office or person responsible for public records shall 388
transmit a copy of a public record to any person by United 389
States mail or by any other means of delivery or transmission 390
within a reasonable period of time after receiving the request 391
for the copy. The public office or person responsible for the 392
public record may require the person making the request to pay 393
in advance the cost of postage if the copy is transmitted by 394
United States mail or the cost of delivery if the copy is 395
transmitted other than by United States mail, and to pay in 396
advance the costs incurred for other supplies used in the 397
mailing, delivery, or transmission. 398

Any public office may adopt a policy and procedures that 399

it will follow in transmitting, within a reasonable period of 400
time after receiving a request, copies of public records by 401
United States mail or by any other means of delivery or 402
transmission pursuant to this division. A public office that 403
adopts a policy and procedures under this division shall comply 404
with them in performing its duties under this division. 405

In any policy and procedures adopted under this division, 406
a public office may limit the number of records requested by a 407
person that the office will transmit by United States mail to 408
ten per month, unless the person certifies to the office in 409
writing that the person does not intend to use or forward the 410
requested records, or the information contained in them, for 411
commercial purposes. For purposes of this division, "commercial" 412
shall be narrowly construed and does not include reporting or 413
gathering news, reporting or gathering information to assist 414
citizen oversight or understanding of the operation or 415
activities of government, or nonprofit educational research. 416

(8) A public office or person responsible for public 417
records is not required to permit a person who is incarcerated 418
pursuant to a criminal conviction or a juvenile adjudication to 419
inspect or to obtain a copy of any public record concerning a 420
criminal investigation or prosecution or concerning what would 421
be a criminal investigation or prosecution if the subject of the 422
investigation or prosecution were an adult, unless the request 423
to inspect or to obtain a copy of the record is for the purpose 424
of acquiring information that is subject to release as a public 425
record under this section and the judge who imposed the sentence 426
or made the adjudication with respect to the person, or the 427
judge's successor in office, finds that the information sought 428
in the public record is necessary to support what appears to be 429
a justiciable claim of the person. 430

(9) (a) Upon written request made and signed by a 431
journalist on or after December 16, 1999, a public office, or 432
person responsible for public records, having custody of the 433
records of the agency employing a specified peace officer, 434
parole officer, probation officer, bailiff, prosecuting 435
attorney, assistant prosecuting attorney, correctional employee, 436
community-based correctional facility employee, youth services 437
employee, firefighter, EMT, or investigator of the bureau of 438
criminal identification and investigation shall disclose to the 439
journalist the address of the actual personal residence of the 440
peace officer, parole officer, probation officer, bailiff, 441
prosecuting attorney, assistant prosecuting attorney, 442
correctional employee, community-based correctional facility 443
employee, youth services employee, firefighter, EMT, or 444
investigator of the bureau of criminal identification and 445
investigation and, if the peace officer's, parole officer's, 446
probation officer's, bailiff's, prosecuting attorney's, 447
assistant prosecuting attorney's, correctional employee's, 448
community-based correctional facility employee's, youth services 449
employee's, firefighter's, EMT's, or investigator of the bureau 450
of criminal identification and investigation's spouse, former 451
spouse, or child is employed by a public office, the name and 452
address of the employer of the peace officer's, parole 453
officer's, probation officer's, bailiff's, prosecuting 454
attorney's, assistant prosecuting attorney's, correctional 455
employee's, community-based correctional facility employee's, 456
youth services employee's, firefighter's, EMT's, or investigator 457
of the bureau of criminal identification and investigation's 458
spouse, former spouse, or child. The request shall include the 459
journalist's name and title and the name and address of the 460
journalist's employer and shall state that disclosure of the 461
information sought would be in the public interest. 462

(b) Division (B) (9) (a) of this section also applies to 463
journalist requests for customer information maintained by a 464
municipally owned or operated public utility, other than social 465
security numbers and any private financial information such as 466
credit reports, payment methods, credit card numbers, and bank 467
account information. 468

(c) As used in division (B) (9) of this section, 469
"journalist" means a person engaged in, connected with, or 470
employed by any news medium, including a newspaper, magazine, 471
press association, news agency, or wire service, a radio or 472
television station, or a similar medium, for the purpose of 473
gathering, processing, transmitting, compiling, editing, or 474
disseminating information for the general public. 475

(C) (1) If a person allegedly is aggrieved by the failure 476
of a public office or the person responsible for public records 477
to promptly prepare a public record and to make it available to 478
the person for inspection in accordance with division (B) of 479
this section or by any other failure of a public office or the 480
person responsible for public records to comply with an 481
obligation in accordance with division (B) of this section, the 482
person allegedly aggrieved may ~~commence~~ do only one of the 483
following, and not both: 484

(a) File a complaint with the clerk of the court of claims 485
or the clerk of the court of common pleas under section 2743.75 486
of the Revised Code; 487

(b) Commence a mandamus action to obtain a judgment that 488
orders the public office or the person responsible for the 489
public record to comply with division (B) of this section, that 490
awards court costs and reasonable attorney's fees to the person 491
that instituted the mandamus action, and, if applicable, that 492

includes an order fixing statutory damages under division (C) ~~(1)~~— 493
(2) of this section. The mandamus action may be commenced in the 494
court of common pleas of the county in which division (B) of 495
this section allegedly was not complied with, in the supreme 496
court pursuant to its original jurisdiction under Section 2 of 497
Article IV, Ohio Constitution, or in the court of appeals for 498
the appellate district in which division (B) of this section 499
allegedly was not complied with pursuant to its original 500
jurisdiction under Section 3 of Article IV, Ohio Constitution. 501

(2) If a ~~requestor~~ requester transmits a written request 502
by hand delivery or certified mail to inspect or receive copies 503
of any public record in a manner that fairly describes the 504
public record or class of public records to the public office or 505
person responsible for the requested public records, except as 506
otherwise provided in this section, the ~~requestor~~ requester 507
shall be entitled to recover the amount of statutory damages set 508
forth in this division if a court determines that the public 509
office or the person responsible for public records failed to 510
comply with an obligation in accordance with division (B) of 511
this section. 512

The amount of statutory damages shall be fixed at one 513
hundred dollars for each business day during which the public 514
office or person responsible for the requested public records 515
failed to comply with an obligation in accordance with division 516
(B) of this section, beginning with the day on which the 517
requester files a mandamus action to recover statutory damages, 518
up to a maximum of one thousand dollars. The award of statutory 519
damages shall not be construed as a penalty, but as compensation 520
for injury arising from lost use of the requested information. 521
The existence of this injury shall be conclusively presumed. The 522
award of statutory damages shall be in addition to all other 523

remedies authorized by this section. 524

The court may reduce an award of statutory damages or not 525
award statutory damages if the court determines both of the 526
following: 527

(a) That, based on the ordinary application of statutory 528
law and case law as it existed at the time of the conduct or 529
threatened conduct of the public office or person responsible 530
for the requested public records that allegedly constitutes a 531
failure to comply with an obligation in accordance with division 532
(B) of this section and that was the basis of the mandamus 533
action, a well-informed public office or person responsible for 534
the requested public records reasonably would believe that the 535
conduct or threatened conduct of the public office or person 536
responsible for the requested public records did not constitute 537
a failure to comply with an obligation in accordance with 538
division (B) of this section; 539

(b) That a well-informed public office or person 540
responsible for the requested public records reasonably would 541
believe that the conduct or threatened conduct of the public 542
office or person responsible for the requested public records 543
would serve the public policy that underlies the authority that 544
is asserted as permitting that conduct or threatened conduct. 545

~~(2) (a) If the court issues a writ of (3) In a mandamus 546
that orders the public office or the person responsible for the 547
public record to comply with division (B) of this section and 548
determines that the circumstances described in division (C) (1) 549
of this section exist, action filed under division (C) (1) of this 550
section, the following apply: 551~~

(a) (i) If the court orders the public office or the person 552

responsible for the public record to comply with division (B) of 553
this section, the court shall determine and award to the relator 554
all court costs, which shall be construed as remedial and not 555
punitive. 556

(ii) If the court makes a determination described in 557
division (C) (3) (b) (iii) of this section, the court shall 558
determine and award to the relator all court costs, which shall 559
be construed as remedial and not punitive. 560

~~(b) If the court renders a judgment that orders the public~~ 561
~~office or the person responsible for the public record to comply~~ 562
~~with division (B) of this section, the~~The court may award 563
reasonable attorney's fees to the relator, subject to ~~reduction~~ 564
~~as described in the provisions of division (C) (2) (c) (4) of this~~ 565
~~section. The court shall award reasonable attorney's fees,~~ 566
~~subject to reduction as described in division (C) (2) (c) of this~~ 567
~~section when either,~~ if the court determines any of the 568
following applies: 569

(i) The public office or the person responsible for the 570
public records failed to respond affirmatively or negatively to 571
the public records request in accordance with the time allowed 572
under division (B) of this section. 573

(ii) The public office or the person responsible for the 574
public records promised to permit the relator to inspect or 575
receive copies of the public records requested within a 576
specified period of time but failed to fulfill that promise 577
within that specified period of time. 578

(iii) The public office or the person responsible for the 579
public records acted in bad faith when the office or person 580
voluntarily made the public records available to the relator for 581

the first time after the relator commenced the mandamus action, 582
but before the court issued any order concluding whether or not 583
the public office or person was required to comply with division 584
(B) of this section. 585

~~(c) Court costs and reasonable attorney's fees awarded~~ 586
~~under this section shall be construed as remedial and not~~ 587
~~punitive. Reasonable attorney's fees shall include reasonable~~ 588
~~fees incurred to produce proof of the reasonableness and amount~~ 589
~~of the fees and to otherwise litigate entitlement to the fees.~~ 590
The court may reduce an award of attorney's fees to the relator 591
~~or shall not~~ award attorney's fees to the relator if the court 592
determines both of the following: 593

(i) That, based on the ordinary application of statutory 594
law and case law as it existed at the time of the conduct or 595
threatened conduct of the public office or person responsible 596
for the requested public records that allegedly constitutes a 597
failure to comply with an obligation in accordance with division 598
(B) of this section and that was the basis of the mandamus 599
action, a well-informed public office or person responsible for 600
the requested public records reasonably would believe that the 601
conduct or threatened conduct of the public office or person 602
responsible for the requested public records did not constitute 603
a failure to comply with an obligation in accordance with 604
division (B) of this section; 605

(ii) That a well-informed public office or person 606
responsible for the requested public records reasonably would 607
believe that the conduct or threatened conduct of the public 608
office or person responsible for the requested public records ~~as~~ 609
~~described in division (C) (2) (c) (i) of this section~~ would serve 610
the public policy that underlies the authority that is asserted 611

as permitting that conduct or threatened conduct. 612

(4) All of the following apply to any award of reasonable 613
attorney's fees awarded under division (C)(3)(b) of this 614
section: 615

(a) The fees shall be construed as remedial and not 616
punitive. 617

(b) The fees awarded shall not exceed the total of the 618
reasonable attorney's fees incurred before the public record was 619
made available to the relator and the fees described in division 620
(C)(4)(c) of this section. 621

(c) Reasonable attorney's fees shall include reasonable 622
fees incurred to produce proof of the reasonableness and amount 623
of the fees and to otherwise litigate entitlement to the fees. 624

(d) The court may reduce the amount of fees awarded if the 625
court determines that, given the factual circumstances involved 626
with the specific public records request, an alternative means 627
should have been pursued to more effectively and efficiently 628
resolve the dispute that was subject to the mandamus action 629
filed under division (C)(1) of this section. 630

(5) If the court does not issue a writ of mandamus under 631
division (C) of this section and the court determines at that 632
time that the bringing of the mandamus action was frivolous 633
conduct as defined in division (A) of section 2323.51 of the 634
Revised Code, the court may award to the public office all court 635
costs, expenses, and reasonable attorney's fees, as determined 636
by the court. 637

(D) Chapter 1347. of the Revised Code does not limit the 638
provisions of this section. 639

(E) (1) To ensure that all employees of public offices are 640
appropriately educated about a public office's obligations under 641
division (B) of this section, all elected officials or their 642
appropriate designees shall attend training approved by the 643
attorney general as provided in section 109.43 of the Revised 644
Code. In addition, all public offices shall adopt a public 645
records policy in compliance with this section for responding to 646
public records requests. In adopting a public records policy 647
under this division, a public office may obtain guidance from 648
the model public records policy developed and provided to the 649
public office by the attorney general under section 109.43 of 650
the Revised Code. Except as otherwise provided in this section, 651
the policy may not limit the number of public records that the 652
public office will make available to a single person, may not 653
limit the number of public records that it will make available 654
during a fixed period of time, and may not establish a fixed 655
period of time before it will respond to a request for 656
inspection or copying of public records, unless that period is 657
less than eight hours. 658

(2) The public office shall distribute the public records 659
policy adopted by the public office under division (E) (1) of 660
this section to the employee of the public office who is the 661
records custodian or records manager or otherwise has custody of 662
the records of that office. The public office shall require that 663
employee to acknowledge receipt of the copy of the public 664
records policy. The public office shall create a poster that 665
describes its public records policy and shall post the poster in 666
a conspicuous place in the public office and in all locations 667
where the public office has branch offices. The public office 668
may post its public records policy on the internet web site of 669
the public office if the public office maintains an internet web 670

site. A public office that has established a manual or handbook 671
of its general policies and procedures for all employees of the 672
public office shall include the public records policy of the 673
public office in the manual or handbook. 674

(F) (1) The bureau of motor vehicles may adopt rules 675
pursuant to Chapter 119. of the Revised Code to reasonably limit 676
the number of bulk commercial special extraction requests made 677
by a person for the same records or for updated records during a 678
calendar year. The rules may include provisions for charges to 679
be made for bulk commercial special extraction requests for the 680
actual cost of the bureau, plus special extraction costs, plus 681
ten per cent. The bureau may charge for expenses for redacting 682
information, the release of which is prohibited by law. 683

(2) As used in division (F) (1) of this section: 684

(a) "Actual cost" means the cost of depleted supplies, 685
records storage media costs, actual mailing and alternative 686
delivery costs, or other transmitting costs, and any direct 687
equipment operating and maintenance costs, including actual 688
costs paid to private contractors for copying services. 689

(b) "Bulk commercial special extraction request" means a 690
request for copies of a record for information in a format other 691
than the format already available, or information that cannot be 692
extracted without examination of all items in a records series, 693
class of records, or database by a person who intends to use or 694
forward the copies for surveys, marketing, solicitation, or 695
resale for commercial purposes. "Bulk commercial special 696
extraction request" does not include a request by a person who 697
gives assurance to the bureau that the person making the request 698
does not intend to use or forward the requested copies for 699
surveys, marketing, solicitation, or resale for commercial 700

purposes. 701

(c) "Commercial" means profit-seeking production, buying, 702
or selling of any good, service, or other product. 703

(d) "Special extraction costs" means the cost of the time 704
spent by the lowest paid employee competent to perform the task, 705
the actual amount paid to outside private contractors employed 706
by the bureau, or the actual cost incurred to create computer 707
programs to make the special extraction. "Special extraction 708
costs" include any charges paid to a public agency for computer 709
or records services. 710

(3) For purposes of divisions (F) (1) and (2) of this 711
section, "surveys, marketing, solicitation, or resale for 712
commercial purposes" shall be narrowly construed and does not 713
include reporting or gathering news, reporting or gathering 714
information to assist citizen oversight or understanding of the 715
operation or activities of government, or nonprofit educational 716
research. 717

(G) A request by a defendant or counsel of a defendant in 718
a criminal action that public records related to that action be 719
made available under this section shall be considered a demand 720
for discovery pursuant to the Criminal Rules, except to the 721
extent that the Criminal Rules plainly indicate a contrary 722
intent. 723

Sec. 2323.52. (A) As used in this section: 724

(1) "Conduct" has the same meaning as in section 2323.51 725
of the Revised Code. 726

(2) "Vexatious conduct" means conduct of a party in a 727
civil action that satisfies any of the following: 728

(a) The conduct obviously serves merely to harass or 729
maliciously injure another party to the civil action. 730

(b) The conduct is not warranted under existing law and 731
cannot be supported by a good faith argument for an extension, 732
modification, or reversal of existing law. 733

(c) The conduct is imposed solely for delay. 734

(3) "Vexatious litigator" means any person who has 735
habitually, persistently, and without reasonable grounds engaged 736
in vexatious conduct in a civil action or actions, whether in 737
the court of claims or in a court of appeals, court of common 738
pleas, municipal court, or county court, whether the person or 739
another person instituted the civil action or actions, and 740
whether the vexatious conduct was against the same party or 741
against different parties in the civil action or actions. 742
"Vexatious litigator" does not include a person who is 743
authorized to practice law in the courts of this state under the 744
Ohio Supreme Court Rules for the Government of the Bar of Ohio 745
unless that person is representing or has represented self pro 746
se in the civil action or actions. For the purposes of division 747
(A) (3) of this section, "civil action" includes a proceeding 748
under section 2743.75 of the Revised Code. 749

(B) A person, the office of the attorney general, or a 750
prosecuting attorney, city director of law, village solicitor, 751
or similar chief legal officer of a municipal corporation who 752
has defended against habitual and persistent vexatious conduct 753
in the court of claims or in a court of appeals, court of common 754
pleas, municipal court, or county court may commence a civil 755
action in a court of common pleas with jurisdiction over the 756
person who allegedly engaged in the habitual and persistent 757
vexatious conduct to have that person declared a vexatious 758

litigator. The person, office of the attorney general, 759
prosecuting attorney, city director of law, village solicitor, 760
or similar chief legal officer of a municipal corporation may 761
commence this civil action while the civil action or actions in 762
which the habitual and persistent vexatious conduct occurred are 763
still pending or within one year after the termination of the 764
civil action or actions in which the habitual and persistent 765
vexatious conduct occurred. 766

(C) A civil action to have a person declared a vexatious 767
litigator shall proceed as any other civil action, and the Ohio 768
Rules of Civil Procedure apply to the action. 769

(D) (1) If the person alleged to be a vexatious litigator 770
is found to be a vexatious litigator, subject to division (D) (2) 771
of this section, the court of common pleas may enter an order 772
prohibiting the vexatious litigator from doing one or more of 773
the following without first obtaining the leave of that court to 774
proceed: 775

(a) Instituting legal proceedings in the court of claims 776
or in a court of common pleas, municipal court, or county court; 777

(b) Continuing any legal proceedings that the vexatious 778
litigator had instituted in any of the courts specified in 779
division (D) (1) (a) of this section prior to the entry of the 780
order; 781

(c) Making any application, other than an application for 782
leave to proceed under division (F) (1) of this section, in any 783
legal proceedings instituted by the vexatious litigator or 784
another person in any of the courts specified in division (D) (1) 785
(a) of this section. 786

(2) If the court of common pleas finds a person who is 787

authorized to practice law in the courts of this state under the 788
Ohio Supreme Court Rules for the Government of the Bar of Ohio 789
to be a vexatious litigator and enters an order described in 790
division (D) (1) of this section in connection with that finding, 791
the order shall apply to the person only insofar as the person 792
would seek to institute proceedings described in division (D) (1) 793
(a) of this section on a pro se basis, continue proceedings 794
described in division (D) (1) (b) of this section on a pro se 795
basis, or make an application described in division (D) (1) (c) of 796
this section on a pro se basis. The order shall not apply to the 797
person insofar as the person represents one or more other 798
persons in the person's capacity as a licensed and registered 799
attorney in a civil or criminal action or proceeding or other 800
matter in a court of common pleas, municipal court, or county 801
court or in the court of claims. Division (D) (2) of this section 802
does not affect any remedy that is available to a court or an 803
adversely affected party under section 2323.51 or another 804
section of the Revised Code, under Civil Rule 11 or another 805
provision of the Ohio Rules of Civil Procedure, or under the 806
common law of this state as a result of frivolous conduct or 807
other inappropriate conduct by an attorney who represents one or 808
more clients in connection with a civil or criminal action or 809
proceeding or other matter in a court of common pleas, municipal 810
court, or county court or in the court of claims. 811

(3) A person who is subject to an order entered pursuant 812
to division (D) (1) of this section may not institute legal 813
proceedings in a court of appeals, continue any legal 814
proceedings that the vexatious litigator had instituted in a 815
court of appeals prior to entry of the order, or make any 816
application, other than the application for leave to proceed 817
allowed by division (F) (2) of this section, in any legal 818

proceedings instituted by the vexatious litigator or another 819
person in a court of appeals without first obtaining leave of 820
the court of appeals to proceed pursuant to division (F) (2) of 821
this section. 822

(E) An order that is entered under division (D) (1) of this 823
section shall remain in force indefinitely unless the order 824
provides for its expiration after a specified period of time. 825

(F) (1) A court of common pleas that entered an order under 826
division (D) (1) of this section shall not grant a person found 827
to be a vexatious litigator leave for the institution or 828
continuance of, or the making of an application in, legal 829
proceedings in the court of claims or in a court of common 830
pleas, municipal court, or county court unless the court of 831
common pleas that entered that order is satisfied that the 832
proceedings or application are not an abuse of process of the 833
court in question and that there are reasonable grounds for the 834
proceedings or application. If a person who has been found to be 835
a vexatious litigator under this section requests the court of 836
common pleas that entered an order under division (D) (1) of this 837
section to grant the person leave to proceed as described in 838
division (F) (1) of this section, the period of time commencing 839
with the filing with that court of an application for the 840
issuance of an order granting leave to proceed and ending with 841
the issuance of an order of that nature shall not be computed as 842
a part of an applicable period of limitations within which the 843
legal proceedings or application involved generally must be 844
instituted or made. 845

(2) A person who is subject to an order entered pursuant 846
to division (D) (1) of this section and who seeks to institute or 847
continue any legal proceedings in a court of appeals or to make 848

an application, other than an application for leave to proceed 849
under division (F) (2) of this section, in any legal proceedings 850
in a court of appeals shall file an application for leave to 851
proceed in the court of appeals in which the legal proceedings 852
would be instituted or are pending. The court of appeals shall 853
not grant a person found to be a vexatious litigator leave for 854
the institution or continuance of, or the making of an 855
application in, legal proceedings in the court of appeals unless 856
the court of appeals is satisfied that the proceedings or 857
application are not an abuse of process of the court and that 858
there are reasonable grounds for the proceedings or application. 859
If a person who has been found to be a vexatious litigator under 860
this section requests the court of appeals to grant the person 861
leave to proceed as described in division (F) (2) of this 862
section, the period of time commencing with the filing with the 863
court of an application for the issuance of an order granting 864
leave to proceed and ending with the issuance of an order of 865
that nature shall not be computed as a part of an applicable 866
period of limitations within which the legal proceedings or 867
application involved generally must be instituted or made. 868

(G) During the period of time that the order entered under 869
division (D) (1) of this section is in force, no appeal by the 870
person who is the subject of that order shall lie from a 871
decision of the court of common pleas or court of appeals under 872
division (F) of this section that denies that person leave for 873
the institution or continuance of, or the making of an 874
application in, legal proceedings in the court of claims or in a 875
court of appeals, court of common pleas, municipal court, or 876
county court. 877

(H) The clerk of the court of common pleas that enters an 878
order under division (D) (1) of this section shall send a 879

certified copy of the order to the supreme court for publication 880
in a manner that the supreme court determines is appropriate and 881
that will facilitate the clerk of the court of claims and a 882
clerk of a court of appeals, court of common pleas, municipal 883
court, or county court in refusing to accept pleadings or other 884
papers submitted for filing by persons who have been found to be 885
a vexatious litigator under this section and who have failed to 886
obtain leave to proceed under this section. 887

(I) Whenever it appears by suggestion of the parties or 888
otherwise that a person found to be a vexatious litigator under 889
this section has instituted, continued, or made an application 890
in legal proceedings without obtaining leave to proceed from the 891
appropriate court of common pleas or court of appeals to do so 892
under division (F) of this section, the court in which the legal 893
proceedings are pending shall dismiss the proceedings or 894
application of the vexatious litigator. 895

Sec. 2743.03. (A) (1) There is hereby created a court of 896
claims. The court of claims is a court of record and has 897
exclusive, original jurisdiction of all civil actions against 898
the state permitted by the waiver of immunity contained in 899
section 2743.02 of the Revised Code and exclusive jurisdiction 900
of the causes of action of all parties in civil actions that are 901
removed to the court of claims. The court shall have full equity 902
powers in all actions within its jurisdiction and may entertain 903
and determine all counterclaims, cross-claims, and third-party 904
claims. 905

(2) If the claimant in a civil action as described in 906
division (A) (1) of this section also files a claim for a 907
declaratory judgment, injunctive relief, or other equitable 908
relief against the state that arises out of the same 909

circumstances that gave rise to the civil action described in 910
division (A) (1) of this section, the court of claims has 911
exclusive, original jurisdiction to hear and determine that 912
claim in that civil action. This division does not affect, and 913
shall not be construed as affecting, the original jurisdiction 914
of another court of this state to hear and determine a civil 915
action in which the sole relief that the claimant seeks against 916
the state is a declaratory judgment, injunctive relief, or other 917
equitable relief. 918

(3) In addition to its exclusive, original jurisdiction as 919
conferred by ~~division~~ divisions (A) (1) and (2) of this section, 920
the court of claims has exclusive, original jurisdiction as 921
follows: 922

(a) As described in division (F) of section 2743.02, 923
division (B) of section 3335.03, and division (C) of section 924
5903.02 of the Revised Code; 925

(b) Under section 2743.75 of the Revised Code to hear 926
complaints alleging a denial of access to public records in 927
violation of division (B) of section 149.43 of the Revised Code, 928
regardless of whether the public office or person responsible 929
for public records is an office or employee of the state or of a 930
political subdivision. 931

(B) The court of claims shall sit in Franklin county, its 932
hearings shall be public, and it shall consist of incumbent 933
justices or judges of the supreme court, courts of appeals, or 934
courts of common pleas, or retired justices or judges eligible 935
for active duty pursuant to division (C) of Section 6 of Article 936
IV, Ohio Constitution, sitting by temporary assignment of the 937
chief justice of the supreme court. The chief justice may direct 938
the court to sit in any county for cases on removal upon a 939

showing of substantial hardship and whenever justice dictates. 940

(C) (1) A civil action against the state shall be heard and 941
determined by a single judge. Upon application by the claimant 942
or the state, the chief justice of the supreme court may assign 943
a panel of three judges to hear and determine a civil action 944
presenting novel or complex issues of law or fact. Concurrence 945
of two members of the panel is necessary for any judgment or 946
order. 947

(2) Whenever the chief justice of the supreme court 948
believes an equitable resolution of a case will be expedited, 949
the chief justice may appoint magistrates in accordance with 950
Civil Rule 53 to hear the case. 951

(3) When any dispute under division (B) of section 153.12 952
of the Revised Code is brought to the court of claims, upon 953
request of either party to the dispute, the chief justice of the 954
supreme court shall appoint a single referee or a panel of three 955
referees. The referees need not be attorneys, but shall be 956
persons knowledgeable about construction contract law, a member 957
of the construction industry panel of the American arbitration 958
association, or an individual or individuals deemed qualified by 959
the chief justice to serve. No person shall serve as a referee 960
if that person has been employed by an affected state agency or 961
a contractor or subcontractor involved in the dispute at any 962
time in the preceding five years. Proceedings governing referees 963
shall be in accordance with Civil Rule 53, except as modified by 964
this division. The referee or panel of referees shall submit its 965
report, which shall include a recommendation and finding of 966
fact, to the judge assigned to the case by the chief justice, 967
within thirty days of the conclusion of the hearings. Referees 968
appointed pursuant to this division shall be compensated on a 969

per diem basis at the same rate as is paid to judges of the 970
court and also shall be paid their expenses. If a single referee 971
is appointed or a panel of three referees is appointed, then, 972
with respect to one referee of the panel, the compensation and 973
expenses of the referee shall not be taxed as part of the costs 974
in the case but shall be included in the budget of the court. If 975
a panel of three referees is appointed, the compensation and 976
expenses of the two remaining referees shall be taxed as costs 977
of the case. 978

All costs of a case shall be apportioned among the 979
parties. The court may not require that any party deposit with 980
the court cash, bonds, or other security in excess of two 981
hundred dollars to guarantee payment of costs without the prior 982
approval in each case of the chief justice. 983

(4) An appeal from a decision of the attorney general 984
pursuant to sections 2743.51 to 2743.72 of the Revised Code 985
shall be heard and determined by the court of claims. 986

(D) The Rules of Civil Procedure shall govern practice and 987
procedure in all actions in the court of claims, except insofar 988
as inconsistent with this chapter. The supreme court may 989
promulgate rules governing practice and procedure in actions in 990
the court as provided in Section 5 of Article IV, Ohio 991
Constitution. 992

(E) (1) A party who files a counterclaim against the state 993
or makes the state a third-party defendant in an action 994
commenced in any court, other than the court of claims, shall 995
file a petition for removal in the court of claims. The petition 996
shall state the basis for removal, be accompanied by a copy of 997
all process, pleadings, and other papers served upon the 998
petitioner, and shall be signed in accordance with Civil Rule 999

11. A petition for removal based on a counterclaim shall be 1000
filed within twenty-eight days after service of the counterclaim 1001
of the petitioner. A petition for removal based on third-party 1002
practice shall be filed within twenty-eight days after the 1003
filing of the third-party complaint of the petitioner. 1004

(2) Within seven days after filing a petition for removal, 1005
the petitioner shall give written notice to the parties, and 1006
shall file a copy of the petition with the clerk of the court in 1007
which the action was brought originally. The filing effects the 1008
removal of the action to the court of claims, and the clerk of 1009
the court where the action was brought shall forward all papers 1010
in the case to the court of claims. The court of claims shall 1011
adjudicate all civil actions removed. The court may remand a 1012
civil action to the court in which it originated upon a finding 1013
that the removal petition does not justify removal, or upon a 1014
finding that the state is no longer a party. 1015

(3) Bonds, undertakings, or security and injunctions, 1016
attachments, sequestrations, or other orders issued prior to 1017
removal remain in effect until dissolved or modified by the 1018
court of claims. 1019

Sec. 2743.75. (A) In order to provide for an expeditious 1020
and economical procedure that attempts to resolve disputes 1021
alleging a denial of access to public records in violation of 1022
division (B) of section 149.43 of the Revised Code, except for a 1023
court that hears a mandamus action pursuant to that section, the 1024
court of claims shall be the sole and exclusive authority in 1025
this state that adjudicates or resolves complaints based on 1026
alleged violations of that section. The clerk of the court of 1027
claims shall designate one or more current employees or hire one 1028
or more individuals to serve as special masters to hear 1029

complaints brought under this section. All special masters shall 1030
have been engaged in the practice of law in this state for at 1031
least four years and be in good standing with the supreme court 1032
at the time of designation or hiring. The clerk may assign 1033
administrative and clerical work associated with complaints 1034
brought under this section to current employees or may hire such 1035
additional employees as may be necessary to perform such work. 1036

(B) The clerk of the court of common pleas in each county 1037
shall act as the clerk of the court of claims for purposes of 1038
accepting those complaints filed with the clerk under division 1039
(D) (1) of this section, accepting filing fees for those 1040
complaints, and serving those complaints. 1041

(C) (1) Subject to division (C) (2) of this section, a 1042
person allegedly aggrieved by a denial of access to public 1043
records in violation of division (B) of section 149.43 of the 1044
Revised Code may seek relief under that section or under this 1045
section, provided, however, that if the allegedly aggrieved 1046
person files a complaint under either section, that person may 1047
not seek relief that pertains to the same request for records in 1048
a complaint filed under the other section. 1049

(2) If the allegedly aggrieved person files a complaint 1050
under this section and the court of claims determines that the 1051
complaint constitutes a case of first impression that involves 1052
an issue of substantial public interest, the court shall dismiss 1053
the complaint without prejudice and direct the allegedly 1054
aggrieved person to commence a mandamus action in the court of 1055
appeals with appropriate jurisdiction as provided in division 1056
(C) (1) of section 149.43 of the Revised Code. 1057

(D) (1) An allegedly aggrieved person who proceeds under 1058
this section shall file a complaint, on a form prescribed by the 1059

clerk of the court of claims, with the clerk of the court of 1060
claims or with the clerk of the court of common pleas of the 1061
county in which the public office from which the records are 1062
requested is located. The person shall attach to the complaint 1063
copies of the original records request and any written responses 1064
or other communications relating to the request from the public 1065
office or person responsible for public records and shall pay a 1066
filing fee of twenty-five dollars made payable to the clerk of 1067
the court with whom the complaint is filed. The clerk shall 1068
serve a copy of the complaint on the public office or person 1069
responsible for public records for the particular public office 1070
in accordance with Civil Rule 4.1 and, if the complaint is filed 1071
with the clerk of the court of common pleas, shall forward the 1072
complaint to the clerk of the court of claims, and to no other 1073
court, within three days after service is complete. 1074

(2) Upon receipt of a complaint filed under division (D) 1075
(1) of this section, the clerk of the court of claims shall 1076
assign a case number for the action and a special master to 1077
examine the complaint. Notwithstanding any provision to the 1078
contrary in this section, upon the recommendation of the special 1079
master, the court of claims on its own motion may dismiss the 1080
complaint at any time. 1081

(E) (1) Upon service of a complaint under division (D) (1) 1082
of this section, except as otherwise provided in this division, 1083
the special master assigned by the clerk under division (D) (2) 1084
of this section immediately shall refer the case to mediation 1085
services that the court of claims makes available to persons. 1086
If, in the interest of justice considering the circumstances of 1087
the case or the parties, the special master determines that the 1088
case should not be referred to mediation, the special master 1089
shall notify the court that the case was not referred to 1090

mediation, and the case shall proceed in accordance with 1091
division (F) of this section. If the case is referred to 1092
mediation, any further proceedings under division (F) of this 1093
section shall be stayed until the conclusion of the mediation. 1094
If an agreement is reached during mediation, a written 1095
agreement, including its material terms, shall be drafted and 1096
signed by all of the parties. The court shall then dismiss the 1097
complaint. If an agreement is not reached, the special master 1098
shall notify the court that the case was not resolved and that 1099
the mediation has been terminated. 1100

(2) Within ten business days after the termination of the 1101
mediation or the notification to the court that the case was not 1102
referred to mediation under division (E)(1) of this section, the 1103
public office or person responsible for public records shall 1104
file a response, and if applicable, a motion to dismiss the 1105
complaint, with the clerk of the court of claims and transmit 1106
copies of the pleadings to the allegedly aggrieved party. No 1107
further motions or pleadings shall be accepted by the clerk of 1108
the court of claims or by the special master assigned by the 1109
clerk under division (D)(2) of this section unless the special 1110
master directs in writing that a further motion or pleading be 1111
filed. 1112

(3) All of the following apply prior to the submission of 1113
the special master's report and recommendation to the court of 1114
claims under division (F)(1) of this section: 1115

(a) The special master shall not permit any discovery. 1116

(b) The parties may attach supporting affidavits to their 1117
respective pleadings. 1118

(c) The special master may require either or both of the 1119

parties to submit additional information or documentation 1120
supported by affidavits. 1121

(F) (1) Not later than seven days after receiving the 1122
response, or motion to dismiss the complaint, if applicable, of 1123
the public office or person responsible for public records, the 1124
special master shall submit to the court of claims a report and 1125
recommendation based on the ordinary application of statutory 1126
law and case law as they existed at the time of the filing of 1127
the complaint. For good cause shown, the special master may 1128
extend the seven-day period for the submission of the report and 1129
recommendation to the court of claims under this division by an 1130
additional seven days. 1131

(2) Upon submission of the special master's report and 1132
recommendation to the court of claims under division (F) (1) of 1133
this section, the clerk shall send copies of the report and 1134
recommendation to each party by certified mail, return receipt 1135
requested, not later than three days after the report and 1136
recommendation is filed. Either party may object to the report 1137
and recommendation within seven days after receiving the report 1138
and recommendation by filing a written objection with the clerk 1139
and sending a copy to the other party by certified mail, return 1140
receipt requested. Any objection to the report and 1141
recommendation shall be specific and state with particularity 1142
all grounds for the objection. If neither party timely objects, 1143
the court of claims shall promptly issue a final order adopting 1144
the report and recommendation, unless it determines that there 1145
is an error of law or other defect evident on the face of the 1146
report and recommendation. If either party timely objects, the 1147
other party may file with the clerk a response within seven days 1148
after receiving the objection and send a copy of the response to 1149
the objecting party by certified mail, return receipt requested. 1150

The court, within seven days after the response to the objection 1151
is filed, shall issue a final order that adopts, modifies, or 1152
rejects the report and recommendation. 1153

(3) If the court of claims determines that the public 1154
office or person responsible for the public records denied the 1155
aggrieved person access to the public records in violation of 1156
division (B) of section 149.43 of the Revised Code and if no 1157
appeal from the court's final order is taken under division (G) 1158
of this section, both of the following apply: 1159

(a) The public office or the person responsible for the 1160
public records shall permit the aggrieved person to inspect or 1161
receive copies of the public records that the court requires to 1162
be disclosed in its order. 1163

(b) The aggrieved person shall be entitled to recover from 1164
the public office or person responsible for the public records 1165
the amount of the filing fee of twenty-five dollars and any 1166
other costs associated with the action that are incurred by the 1167
aggrieved person, but shall not be entitled to recover 1168
attorney's fees, except that division (G) (2) of this section 1169
applies if an appeal is taken under division (G) (1) of this 1170
section. 1171

(G) (1) Any appeal from a final order of the court of 1172
claims under this section shall be taken to the court of appeals 1173
of the appellate district where the principal place of business 1174
of the public office from which the public record is requested 1175
is located. However, no appeal may be taken from a final order 1176
of the court of claims that adopts the special master's report 1177
and recommendation unless a timely objection to that report and 1178
recommendation was filed under division (F) (2) of this section. 1179
If the court of claims materially modifies the special master's 1180

report and recommendation, either party may take an appeal to 1181
the court of appeals of the appellate district of the principal 1182
place of business where that public office is located but the 1183
appeal shall be limited to the issue in the report and 1184
recommendation that is materially modified by the court of 1185
claims. In order to facilitate the expeditious resolution of 1186
disputes over alleged denials of access to public records in 1187
violation of division (B) of section 149.43 of the Revised Code, 1188
the appeal shall be given such precedence over other pending 1189
matters as will ensure that the court will reach a decision 1190
promptly. 1191

(2) If a court of appeals in any appeal taken under 1192
division (G)(1) of this section by the public office or person 1193
responsible for the public records determines that the public 1194
office or person denied the aggrieved person access to the 1195
public records in violation of division (B) of section 149.43 of 1196
the Revised Code and obviously filed the appeal with the intent 1197
to either delay compliance with the court of claims' order from 1198
which the appeal is taken for no reasonable cause or unduly 1199
harass the aggrieved person, the court of appeals may award 1200
reasonable attorney's fees to the aggrieved person in accordance 1201
with division (C) of section 149.43 of the Revised Code. 1202

(H) The powers of the court of claims prescribed in 1203
section 2743.05 of the Revised Code apply to the proceedings in 1204
that court under this section. 1205

(I)(1) All filing fees collected by a clerk of the court 1206
of common pleas under division (D)(1) of this section shall be 1207
paid to the county treasurer for deposit into a fund for 1208
specified special projects established pursuant to section 1209
2303.201 of the Revised Code. If there is no such fund, the 1210

filing fees shall be paid to the county treasurer for deposit 1211
into the county general revenue fund. All such money collected 1212
during a month shall be transmitted on or before the twentieth 1213
day of the following month by the clerk of the court of common 1214
pleas to the county treasurer. 1215

(2) All filing fees collected by the clerk of the court of 1216
claims under division (D)(1) of this section shall be kept by 1217
the court of claims to assist in paying for its costs to 1218
implement this section. Not later than the first day of February 1219
of each year, the clerk of the court of claims shall prepare a 1220
report accessible to the public that details the fees collected 1221
during the preceding calendar year by the clerk of the court of 1222
claims and the clerks of the courts of common pleas under this 1223
section. 1224

Sec. 2746.04. In addition to any applicable fees or costs 1225
set forth in sections 2746.01 and 2746.02 of the Revised Code or 1226
any other applicable provision of law, a court of common pleas 1227
shall tax as costs or otherwise require the payment of fees for 1228
the following services rendered or as compensation for the 1229
following persons or any other of the following fees that are 1230
applicable in a particular case: 1231

(A) The fees provided for in section 2303.20 of the 1232
Revised Code; 1233

(B) Additional fees to computerize the court, make 1234
available computerized legal research services, computerize the 1235
office of the clerk of the court, provide financial assistance 1236
to legal aid societies, support the office of the state public 1237
defender, fund shelters for victims of domestic violence, and 1238
special projects of the court, as provided in section 2303.201 1239
and, for a court that has a domestic relations division, section 1240

2301.031 of the Revised Code;	1241
(C) Filing for a divorce decree under section 3105.10 or a decree of dissolution under section 3105.65 of the Revised Code, as provided in section 3109.14 of the Revised Code;	1242 1243 1244
(D) Filing of a foreign judgment pursuant to section 2329.022 of the Revised Code, as provided in section 2329.025 of the Revised Code;	1245 1246 1247
(E) Interpreters, as provided in section 2301.14 of the Revised Code;	1248 1249
(F) Jurors in civil actions, as provided in section 2335.28 of the Revised Code;	1250 1251
(G) Reporters, as provided in sections 2301.21 and 2301.24 of the Revised Code;	1252 1253
(H) In a case involving the operation by a nonresident of a vessel upon the waters in this state, or the operation on the waters in this state of a vessel owned by a nonresident if operated with his <u>the nonresident's</u> consent, actual traveling expenses of the defendant, as provided in section 1547.36 of the Revised Code;	1254 1255 1256 1257 1258 1259
(I) In a civil case, the expenses of taking a deposition of a person who is imprisoned in a workhouse, juvenile detention facility, jail, or state correctional institution within this state, or who is in the custody of the department of youth services, as provided in section 2317.06 of the Revised Code;	1260 1261 1262 1263 1264
(J) In proceedings relating to the examination of a judgment debtor under sections 2333.09 to 2333.27 of the Revised Code, compensation for clerks, sheriffs, referees, receivers, and witnesses, as provided in section 2333.27 of the Revised	1265 1266 1267 1268

Code;	1269
(K) In an appeal from an order of an agency issued	1270
pursuant to an adjudication under section 119.12 of the Revised	1271
Code, the expense of preparing and transcribing the record;	1272
(L) In a case in which the court issues a protection order	1273
upon a petition alleging that the respondent engaged in domestic	1274
violence against a family or household member, the cost of	1275
supervision of the respondent's exercise of parenting time,	1276
visitation, or companionship rights, as provided in section	1277
3113.31 of the Revised Code;	1278
(M) Upon a petition to have a person involuntarily	1279
institutionalized, the costs of appointed counsel for the	1280
respondent at a full hearing, as provided in section 5123.76 of	1281
the Revised Code;	1282
(N) In a case before the domestic relations division of	1283
the Hamilton county court of common pleas, the expense of	1284
serving a summons, warrant, citation, subpoena, or other writ	1285
issued to an officer other than a bailiff, constable, or staff	1286
investigator of the division, as provided in section 2301.03 of	1287
the Revised Code;	1288
<u>(O) The filing fee specified in section 2743.75 of the</u>	1289
<u>Revised Code in a case filed with the court of claims that</u>	1290
<u>alleges a denial of access to public records in violation of</u>	1291
<u>division (B) of section 149.43 of the Revised Code.</u>	1292
Section 2. That existing sections 149.43, 2323.52,	1293
2743.03, and 2746.04 of the Revised Code are hereby repealed.	1294