

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 139**

**Representatives Perales, Keller**

**Cosponsors: Representatives Hambley, Fedor, Seitz, Dean**

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**A BILL**

To amend section 149.43 of the Revised Code to 1  
eliminate the public disclosure exemption for 2  
any permanently retained record 100 years after 3  
the date of its creation. 4

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

**Section 1.** That section 149.43 of the Revised Code be 5  
amended to read as follows: 6

**Sec. 149.43.** (A) As used in this section: 7

(1) "Public record" means records kept by any public 8  
office, including, but not limited to, state, county, city, 9  
village, township, and school district units, and records 10  
pertaining to the delivery of educational services by an 11  
alternative school in this state kept by the nonprofit or for- 12  
profit entity operating the alternative school pursuant to 13  
section 3313.533 of the Revised Code. "Public record" does not 14  
mean any of the following: 15

(a) Medical records; 16

(b) Records pertaining to probation and parole proceedings 17

or to proceedings related to the imposition of community control sanctions and post-release control sanctions;	18 19
(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;	20 21 22
(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;	23 24 25
(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;	26 27 28 29 30 31
(f) Records specified in division (A) of section 3107.52 of the Revised Code;	32 33
(g) Trial preparation records;	34
(h) Confidential law enforcement investigatory records;	35
(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;	36 37
(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;	38 39
(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;	40 41 42 43
(l) Records maintained by the department of youth services	44

pertaining to children in its custody released by the department	45
of youth services to the department of rehabilitation and	46
correction pursuant to section 5139.05 of the Revised Code;	47
(m) Intellectual property records;	48
(n) Donor profile records;	49
(o) Records maintained by the department of job and family	50
services pursuant to section 3121.894 of the Revised Code;	51
(p) Peace officer, parole officer, probation officer,	52
bailiff, prosecuting attorney, assistant prosecuting attorney,	53
correctional employee, community-based correctional facility	54
employee, youth services employee, firefighter, EMT,	55
investigator of the bureau of criminal identification and	56
investigation, or federal law enforcement officer residential	57
and familial information;	58
(q) In the case of a county hospital operated pursuant to	59
Chapter 339. of the Revised Code or a municipal hospital	60
operated pursuant to Chapter 749. of the Revised Code,	61
information that constitutes a trade secret, as defined in	62
section 1333.61 of the Revised Code;	63
(r) Information pertaining to the recreational activities	64
of a person under the age of eighteen;	65
(s) In the case of a child fatality review board acting	66
under sections 307.621 to 307.629 of the Revised Code or a	67
review conducted pursuant to guidelines established by the	68
director of health under section 3701.70 of the Revised Code,	69
records provided to the board or director, statements made by	70
board members during meetings of the board or by persons	71
participating in the director's review, and all work products of	72
the board or director, and in the case of a child fatality	73

review board, child fatality review data submitted by the board	74
to the department of health or a national child death review	75
database, other than the report prepared pursuant to division	76
(A) of section 307.626 of the Revised Code;	77
(t) Records provided to and statements made by the	78
executive director of a public children services agency or a	79
prosecuting attorney acting pursuant to section 5153.171 of the	80
Revised Code other than the information released under that	81
section;	82
(u) Test materials, examinations, or evaluation tools used	83
in an examination for licensure as a nursing home administrator	84
that the board of executives of long-term services and supports	85
administers under section 4751.04 of the Revised Code or	86
contracts under that section with a private or government entity	87
to administer;	88
(v) Records the release of which is prohibited by state or	89
federal law <u>or by the law under which a public office functions;</u>	90
(w) Proprietary information of or relating to any person	91
that is submitted to or compiled by the Ohio venture capital	92
authority created under section 150.01 of the Revised Code;	93
(x) Financial statements and data any person submits for	94
any purpose to the Ohio housing finance agency or the	95
controlling board in connection with applying for, receiving, or	96
accounting for financial assistance from the agency, and	97
information that identifies any individual who benefits directly	98
or indirectly from financial assistance from the agency;	99
(y) Records listed in section 5101.29 of the Revised Code;	100
(z) Discharges recorded with a county recorder under	101
section 317.24 of the Revised Code, as specified in division (B)	102

(2) of that section;	103
(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;	104 105 106
(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;	107 108 109
(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;	110 111 112
(dd) Personal information, as defined in section 149.45 of the Revised Code;	113 114
(ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record, and records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state. As used in this division, "confidential address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.	115 116 117 118 119 120 121 122 123 124 125 126 127 128
(ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio	129 130 131

organized militia, except that, such order becomes a public 132  
record on the day that is fifteen years after the published date 133  
or effective date of the call to order. 134

A record that is not a public record under division (A)(1) 135  
of this section and that, under law, is permanently retained 136  
becomes a public record on the day that is one hundred years 137  
after the day on which the record was created, except for any 138  
record protected by the attorney-client privilege, or a trial 139  
preparation record as defined in this section. If any other 140  
section of the Revised Code establishes a time period for 141  
disclosure of a record that conflicts with the time period 142  
specified in this section, the time period in the other section 143  
prevails. 144

(2) "Confidential law enforcement investigatory record" 145  
means any record that pertains to a law enforcement matter of a 146  
criminal, quasi-criminal, civil, or administrative nature, but 147  
only to the extent that the release of the record would create a 148  
high probability of disclosure of any of the following: 149

(a) The identity of a suspect who has not been charged 150  
with the offense to which the record pertains, or of an 151  
information source or witness to whom confidentiality has been 152  
reasonably promised; 153

(b) Information provided by an information source or 154  
witness to whom confidentiality has been reasonably promised, 155  
which information would reasonably tend to disclose the source's 156  
or witness's identity; 157

(c) Specific confidential investigatory techniques or 158  
procedures or specific investigatory work product; 159

(d) Information that would endanger the life or physical 160

safety of law enforcement personnel, a crime victim, a witness, 161  
or a confidential information source. 162

(3) "Medical record" means any document or combination of 163  
documents, except births, deaths, and the fact of admission to 164  
or discharge from a hospital, that pertains to the medical 165  
history, diagnosis, prognosis, or medical condition of a patient 166  
and that is generated and maintained in the process of medical 167  
treatment. 168

(4) "Trial preparation record" means any record that 169  
contains information that is specifically compiled in reasonable 170  
anticipation of, or in defense of, a civil or criminal action or 171  
proceeding, including the independent thought processes and 172  
personal trial preparation of an attorney. 173

(5) "Intellectual property record" means a record, other 174  
than a financial or administrative record, that is produced or 175  
collected by or for faculty or staff of a state institution of 176  
higher learning in the conduct of or as a result of study or 177  
research on an educational, commercial, scientific, artistic, 178  
technical, or scholarly issue, regardless of whether the study 179  
or research was sponsored by the institution alone or in 180  
conjunction with a governmental body or private concern, and 181  
that has not been publicly released, published, or patented. 182

(6) "Donor profile record" means all records about donors 183  
or potential donors to a public institution of higher education 184  
except the names and reported addresses of the actual donors and 185  
the date, amount, and conditions of the actual donation. 186

(7) "Peace officer, parole officer, probation officer, 187  
bailiff, prosecuting attorney, assistant prosecuting attorney, 188  
correctional employee, community-based correctional facility 189

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

(a) The address of the actual personal residence of a 201  
peace officer, parole officer, probation officer, bailiff, 202  
assistant prosecuting attorney, correctional employee, 203  
community-based correctional facility employee, youth services 204  
employee, firefighter, EMT, an investigator of the bureau of 205  
criminal identification and investigation, or federal law 206  
enforcement officer, except for the state or political 207  
subdivision in which the peace officer, parole officer, 208  
probation officer, bailiff, assistant prosecuting attorney, 209  
correctional employee, community-based correctional facility 210  
employee, youth services employee, firefighter, EMT, 211  
investigator of the bureau of criminal identification and 212  
investigation, or federal law enforcement officer resides; 213

(b) Information compiled from referral to or participation 214  
in an employee assistance program; 215

(c) The social security number, the residential telephone 216  
number, any bank account, debit card, charge card, or credit 217  
card number, or the emergency telephone number of, or any 218  
medical information pertaining to, a peace officer, parole 219



officer, probation officer, bailiff, prosecuting attorney, 220  
assistant prosecuting attorney, correctional employee, 221  
community-based correctional facility employee, youth services 222  
employee, firefighter, EMT, investigator of the bureau of 223  
criminal identification and investigation, or federal law 224  
enforcement officer; 225

(d) The name of any beneficiary of employment benefits, 226  
including, but not limited to, life insurance benefits, provided 227  
to a peace officer, parole officer, probation officer, bailiff, 228  
prosecuting attorney, assistant prosecuting attorney, 229  
correctional employee, community-based correctional facility 230  
employee, youth services employee, firefighter, EMT, 231  
investigator of the bureau of criminal identification and 232  
investigation, or federal law enforcement officer by the peace 233  
officer's, parole officer's, probation officer's, bailiff's, 234  
prosecuting attorney's, assistant prosecuting attorney's, 235  
correctional employee's, community-based correctional facility 236  
employee's, youth services employee's, firefighter's, EMT's, 237  
investigator of the bureau of criminal identification and 238  
investigation's, or federal law enforcement officer's employer; 239

(e) The identity and amount of any charitable or 240  
employment benefit deduction made by the peace officer's, parole 241  
officer's, probation officer's, bailiff's, prosecuting 242  
attorney's, assistant prosecuting attorney's, correctional 243  
employee's, community-based correctional facility employee's, 244  
youth services employee's, firefighter's, EMT's, investigator of 245  
the bureau of criminal identification and investigation's, or 246  
federal law enforcement officer's employer from the peace 247  
officer's, parole officer's, probation officer's, bailiff's, 248  
prosecuting attorney's, assistant prosecuting attorney's, 249  
correctional employee's, community-based correctional facility 250

employee's, youth services employee's, firefighter's, EMT's, 251  
investigator of the bureau of criminal identification and 252  
investigation's, or federal law enforcement officer's 253  
compensation unless the amount of the deduction is required by 254  
state or federal law; 255

(f) The name, the residential address, the name of the 256  
employer, the address of the employer, the social security 257  
number, the residential telephone number, any bank account, 258  
debit card, charge card, or credit card number, or the emergency 259  
telephone number of the spouse, a former spouse, or any child of 260  
a peace officer, parole officer, probation officer, bailiff, 261  
prosecuting attorney, assistant prosecuting attorney, 262  
correctional employee, community-based correctional facility 263  
employee, youth services employee, firefighter, EMT, 264  
investigator of the bureau of criminal identification and 265  
investigation, or federal law enforcement officer; 266

(g) A photograph of a peace officer who holds a position 267  
or has an assignment that may include undercover or plain 268  
clothes positions or assignments as determined by the peace 269  
officer's appointing authority. 270

(8) As used in divisions (A) (7) and (B) (9) of this 271  
section, ~~"peace~~; 272

"Peace officer" has the same meaning as in section 109.71 273  
of the Revised Code and also includes the superintendent and 274  
troopers of the state highway patrol; it does not include the 275  
sheriff of a county or a supervisory employee who, in the 276  
absence of the sheriff, is authorized to stand in for, exercise 277  
the authority of, and perform the duties of the sheriff. 278

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 279

~~"correctional"~~ "Correctional employee" means any employee of the 280  
department of rehabilitation and correction who in the course of 281  
performing the employee's job duties has or has had contact with 282  
inmates and persons under supervision. 283

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 284  
~~"youth"~~ "Youth services employee" means any employee of the 285  
department of youth services who in the course of performing the 286  
employee's job duties has or has had contact with children 287  
committed to the custody of the department of youth services. 288

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 289  
~~"firefighter"~~ "Firefighter" means any regular, paid or 290  
volunteer, member of a lawfully constituted fire department of a 291  
municipal corporation, township, fire district, or village. 292

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 293  
"EMT" means EMTs-basic, EMTs-I, and paramedics that provide 294  
emergency medical services for a public emergency medical 295  
service organization. "Emergency medical service organization," 296  
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as 297  
in section 4765.01 of the Revised Code. 298

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 299  
~~"investigator"~~ "Investigator" of the bureau of criminal 300  
identification and investigation" has the meaning defined in 301  
section 2903.11 of the Revised Code. 302

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 303  
~~"federal"~~ "Federal law enforcement officer" has the meaning 304  
defined in section 9.88 of the Revised Code. 305

~~(8)~~ ~~(9)~~ "Information pertaining to the recreational 306  
activities of a person under the age of eighteen" means 307  
information that is kept in the ordinary course of business by a 308

public office, that pertains to the recreational activities of a 309  
person under the age of eighteen years, and that discloses any 310  
of the following: 311

(a) The address or telephone number of a person under the 312  
age of eighteen or the address or telephone number of that 313  
person's parent, guardian, custodian, or emergency contact 314  
person; 315

(b) The social security number, birth date, or 316  
photographic image of a person under the age of eighteen; 317

(c) Any medical record, history, or information pertaining 318  
to a person under the age of eighteen; 319

(d) Any additional information sought or required about a 320  
person under the age of eighteen for the purpose of allowing 321  
that person to participate in any recreational activity 322  
conducted or sponsored by a public office or to use or obtain 323  
admission privileges to any recreational facility owned or 324  
operated by a public office. 325

~~(9)~~(10) "Community control sanction" has the same meaning 326  
as in section 2929.01 of the Revised Code. 327

~~(10)~~(11) "Post-release control sanction" has the same 328  
meaning as in section 2967.01 of the Revised Code. 329

~~(11)~~(12) "Redaction" means obscuring or deleting any 330  
information that is exempt from the duty to permit public 331  
inspection or copying from an item that otherwise meets the 332  
definition of a "record" in section 149.011 of the Revised Code. 333

~~(12)~~(13) "Designee" and "elected official" have the same 334  
meanings as in section 109.43 of the Revised Code. 335

(B) (1) Upon request and subject to division (B) (8) of this 336

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

(2) To facilitate broader access to public records, a 356  
public office or the person responsible for public records shall 357  
organize and maintain public records in a manner that they can 358  
be made available for inspection or copying in accordance with 359  
division (B) of this section. A public office also shall have 360  
available a copy of its current records retention schedule at a 361  
location readily available to the public. If a requester makes 362  
an ambiguous or overly broad request or has difficulty in making 363  
a request for copies or inspection of public records under this 364  
section such that the public office or the person responsible 365  
for the requested public record cannot reasonably identify what 366  
public records are being requested, the public office or the 367

person responsible for the requested public record may deny the 368  
request but shall provide the requester with an opportunity to 369  
revise the request by informing the requester of the manner in 370  
which records are maintained by the public office and accessed 371  
in the ordinary course of the public office's or person's 372  
duties. 373

(3) If a request is ultimately denied, in part or in 374  
whole, the public office or the person responsible for the 375  
requested public record shall provide the requester with an 376  
explanation, including legal authority, setting forth why the 377  
request was denied. If the initial request was provided in 378  
writing, the explanation also shall be provided to the requester 379  
in writing. The explanation shall not preclude the public office 380  
or the person responsible for the requested public record from 381  
relying upon additional reasons or legal authority in defending 382  
an action commenced under division (C) of this section. 383

(4) Unless specifically required or authorized by state or 384  
federal law or in accordance with division (B) of this section, 385  
no public office or person responsible for public records may 386  
limit or condition the availability of public records by 387  
requiring disclosure of the requester's identity or the intended 388  
use of the requested public record. Any requirement that the 389  
requester disclose the requester's identity or the intended use 390  
of the requested public record constitutes a denial of the 391  
request. 392

(5) A public office or person responsible for public 393  
records may ask a requester to make the request in writing, may 394  
ask for the requester's identity, and may inquire about the 395  
intended use of the information requested, but may do so only 396  
after disclosing to the requester that a written request is not 397

mandatory ~~and~~, that the requester may decline to reveal the 398  
requester's identity or the intended use, and when a written 399  
request or disclosure of the identity or intended use would 400  
benefit the requester by enhancing the ability of the public 401  
office or person responsible for public records to identify, 402  
locate, or deliver the public records sought by the requester. 403

(6) If any person ~~chooses to obtain~~ requests a copy of a 404  
public record in accordance with division (B) of this section, 405  
the public office or person responsible for the public record 406  
may require that person to pay in advance the cost involved in 407  
providing the copy of the public record in accordance with the 408  
choice made by the person seeking the copy under this division. 409  
The public office or the person responsible for the public 410  
record shall permit that person to choose to have the public 411  
record duplicated upon paper, upon the same medium upon which 412  
the public office or person responsible for the public record 413  
keeps it, or upon any other medium upon which the public office 414  
or person responsible for the public record determines that it 415  
reasonably can be duplicated as an integral part of the normal 416  
operations of the public office or person responsible for the 417  
public record. When the person seeking the copy makes a choice 418  
under this division, the public office or person responsible for 419  
the public record shall provide a copy of it in accordance with 420  
the choice made by the person seeking the copy. Nothing in this 421  
section requires a public office or person responsible for the 422  
public record to allow the person seeking a copy of the public 423  
record to make the copies of the public record. 424

(7) (a) Upon a request made in accordance with division (B) 425  
of this section and subject to division (B) (6) of this section, 426  
a public office or person responsible for public records shall 427  
transmit a copy of a public record to any person by United 428

States mail or by any other means of delivery or transmission 429  
within a reasonable period of time after receiving the request 430  
for the copy. The public office or person responsible for the 431  
public record may require the person making the request to pay 432  
in advance the cost of postage if the copy is transmitted by 433  
United States mail or the cost of delivery if the copy is 434  
transmitted other than by United States mail, and to pay in 435  
advance the costs incurred for other supplies used in the 436  
mailing, delivery, or transmission. 437

(b) Any public office may adopt a policy and procedures 438  
that it will follow in transmitting, within a reasonable period 439  
of time after receiving a request, copies of public records by 440  
United States mail or by any other means of delivery or 441  
transmission pursuant to division (B) (7) of this section. A 442  
public office that adopts a policy and procedures under division 443  
(B) (7) of this section shall comply with them in performing its 444  
duties under that division. 445

(c) In any policy and procedures adopted under division 446  
(B) (7) of this section: 447

(i) A public office may limit the number of records 448  
requested by a person that the office will physically deliver by 449  
United States mail or by another delivery service to ten per 450  
month, unless the person certifies to the office in writing that 451  
the person does not intend to use or forward the requested 452  
records, or the information contained in them, for commercial 453  
purposes; 454

(ii) A public office that chooses to provide some or all 455  
of its public records on a web site that is fully accessible to 456  
and searchable by members of the public at all times, other than 457  
during acts of God outside the public office's control or 458



maintenance, and that charges no fee to search, access, 459  
download, or otherwise receive records provided on the web site, 460  
may limit to ten per month the number of records requested by a 461  
person that the office will deliver in a digital format, unless 462  
the requested records are not provided on the web site and 463  
unless the person certifies to the office in writing that the 464  
person does not intend to use or forward the requested records, 465  
or the information contained in them, for commercial purposes. 466

(iii) For purposes of division (B)(7) of this section, 467  
"commercial" shall be narrowly construed and does not include 468  
reporting or gathering news, reporting or gathering information 469  
to assist citizen oversight or understanding of the operation or 470  
activities of government, or nonprofit educational research. 471

(8) A public office or person responsible for public 472  
records is not required to permit a person who is incarcerated 473  
pursuant to a criminal conviction or a juvenile adjudication to 474  
inspect or to obtain a copy of any public record concerning a 475  
criminal investigation or prosecution or concerning what would 476  
be a criminal investigation or prosecution if the subject of the 477  
investigation or prosecution were an adult, unless the request 478  
to inspect or to obtain a copy of the record is for the purpose 479  
of acquiring information that is subject to release as a public 480  
record under this section and the judge who imposed the sentence 481  
or made the adjudication with respect to the person, or the 482  
judge's successor in office, finds that the information sought 483  
in the public record is necessary to support what appears to be 484  
a justiciable claim of the person. 485

(9) (a) Upon written request made and signed by a 486  
journalist on or after December 16, 1999, a public office, or 487  
person responsible for public records, having custody of the 488

records of the agency employing a specified peace officer, 489  
parole officer, probation officer, bailiff, prosecuting 490  
attorney, assistant prosecuting attorney, correctional employee, 491  
community-based correctional facility employee, youth services 492  
employee, firefighter, EMT, investigator of the bureau of 493  
criminal identification and investigation, or federal law 494  
enforcement officer shall disclose to the journalist the address 495  
of the actual personal residence of the peace officer, parole 496  
officer, probation officer, bailiff, prosecuting attorney, 497  
assistant prosecuting attorney, correctional employee, 498  
community-based correctional facility employee, youth services 499  
employee, firefighter, EMT, investigator of the bureau of 500  
criminal identification and investigation, or federal law 501  
enforcement officer and, if the peace officer's, parole 502  
officer's, probation officer's, bailiff's, prosecuting 503  
attorney's, assistant prosecuting attorney's, correctional 504  
employee's, community-based correctional facility employee's, 505  
youth services employee's, firefighter's, EMT's, investigator of 506  
the bureau of criminal identification and investigation's, or 507  
federal law enforcement officer's spouse, former spouse, or 508  
child is employed by a public office, the name and address of 509  
the employer of the peace officer's, parole officer's, probation 510  
officer's, bailiff's, prosecuting attorney's, assistant 511  
prosecuting attorney's, correctional employee's, community-based 512  
correctional facility employee's, youth services employee's, 513  
firefighter's, EMT's, investigator of the bureau of criminal 514  
identification and investigation's, or federal law enforcement 515  
officer's spouse, former spouse, or child. The request shall 516  
include the journalist's name and title and the name and address 517  
of the journalist's employer and shall state that disclosure of 518  
the information sought would be in the public interest. 519

(b) Division (B) (9) (a) of this section also applies to 520  
journalist requests for customer information maintained by a 521  
municipally owned or operated public utility, other than social 522  
security numbers and any private financial information such as 523  
credit reports, payment methods, credit card numbers, and bank 524  
account information. 525

(c) As used in division (B) (9) of this section, 526  
"journalist" means a person engaged in, connected with, or 527  
employed by any news medium, including a newspaper, magazine, 528  
press association, news agency, or wire service, a radio or 529  
television station, or a similar medium, for the purpose of 530  
gathering, processing, transmitting, compiling, editing, or 531  
disseminating information for the general public. 532

(C) (1) If a person allegedly is aggrieved by the failure 533  
of a public office or the person responsible for public records 534  
to promptly prepare a public record and to make it available to 535  
the person for inspection in accordance with division (B) of 536  
this section or by any other failure of a public office or the 537  
person responsible for public records to comply with an 538  
obligation in accordance with division (B) of this section, the 539  
person allegedly aggrieved may do only one of the following, and 540  
not both: 541

(a) File a complaint with the clerk of the court of claims 542  
or the clerk of the court of common pleas under section 2743.75 543  
of the Revised Code; 544

(b) Commence a mandamus action to obtain a judgment that 545  
orders the public office or the person responsible for the 546  
public record to comply with division (B) of this section, that 547  
awards court costs and reasonable attorney's fees to the person 548  
that instituted the mandamus action, and, if applicable, that 549

includes an order fixing statutory damages under division (C) (2) 550  
of this section. The mandamus action may be commenced in the 551  
court of common pleas of the county in which division (B) of 552  
this section allegedly was not complied with, in the supreme 553  
court pursuant to its original jurisdiction under Section 2 of 554  
Article IV, Ohio Constitution, or in the court of appeals for 555  
the appellate district in which division (B) of this section 556  
allegedly was not complied with pursuant to its original 557  
jurisdiction under Section 3 of Article IV, Ohio Constitution. 558

(2) If a requester transmits a written request by hand 559  
delivery or certified mail to inspect or receive copies of any 560  
public record in a manner that fairly describes the public 561  
record or class of public records to the public office or person 562  
responsible for the requested public records, except as 563  
otherwise provided in this section, the requester shall be 564  
entitled to recover the amount of statutory damages set forth in 565  
this division if a court determines that the public office or 566  
the person responsible for public records failed to comply with 567  
an obligation in accordance with division (B) of this section. 568

The amount of statutory damages shall be fixed at one 569  
hundred dollars for each business day during which the public 570  
office or person responsible for the requested public records 571  
failed to comply with an obligation in accordance with division 572  
(B) of this section, beginning with the day on which the 573  
requester files a mandamus action to recover statutory damages, 574  
up to a maximum of one thousand dollars. The award of statutory 575  
damages shall not be construed as a penalty, but as compensation 576  
for injury arising from lost use of the requested information. 577  
The existence of this injury shall be conclusively presumed. The 578  
award of statutory damages shall be in addition to all other 579  
remedies authorized by this section. 580

The court may reduce an award of statutory damages or not 581  
award statutory damages if the court determines both of the 582  
following: 583

(a) That, based on the ordinary application of statutory 584  
law and case law as it existed at the time of the conduct or 585  
threatened conduct of the public office or person responsible 586  
for the requested public records that allegedly constitutes a 587  
failure to comply with an obligation in accordance with division 588  
(B) of this section and that was the basis of the mandamus 589  
action, a well-informed public office or person responsible for 590  
the requested public records reasonably would believe that the 591  
conduct or threatened conduct of the public office or person 592  
responsible for the requested public records did not constitute 593  
a failure to comply with an obligation in accordance with 594  
division (B) of this section; 595

(b) That a well-informed public office or person 596  
responsible for the requested public records reasonably would 597  
believe that the conduct or threatened conduct of the public 598  
office or person responsible for the requested public records 599  
would serve the public policy that underlies the authority that 600  
is asserted as permitting that conduct or threatened conduct. 601

(3) In a mandamus action filed under division (C)(1) of 602  
this section, the following apply: 603

(a) (i) If the court orders the public office or the person 604  
responsible for the public record to comply with division (B) of 605  
this section, the court shall determine and award to the relator 606  
all court costs, which shall be construed as remedial and not 607  
punitive. 608

(ii) If the court makes a determination described in 609

division (C) (3) (b) (iii) of this section, the court shall 610  
determine and award to the relator all court costs, which shall 611  
be construed as remedial and not punitive. 612

(b) If the court renders a judgment that orders the public 613  
office or the person responsible for the public record to comply 614  
with division (B) of this section or if the court determines any 615  
of the following, the court may award reasonable attorney's fees 616  
to the relator, subject to the provisions of division (C) (4) of 617  
this section: 618

(i) The public office or the person responsible for the 619  
public records failed to respond affirmatively or negatively to 620  
the public records request in accordance with the time allowed 621  
under division (B) of this section. 622

(ii) The public office or the person responsible for the 623  
public records promised to permit the relator to inspect or 624  
receive copies of the public records requested within a 625  
specified period of time but failed to fulfill that promise 626  
within that specified period of time. 627

(iii) The public office or the person responsible for the 628  
public records acted in bad faith when the office or person 629  
voluntarily made the public records available to the relator for 630  
the first time after the relator commenced the mandamus action, 631  
but before the court issued any order concluding whether or not 632  
the public office or person was required to comply with division 633  
(B) of this section. No discovery may be conducted on the issue 634  
of the alleged bad faith of the public office or person 635  
responsible for the public records. This division shall not be 636  
construed as creating a presumption that the public office or 637  
the person responsible for the public records acted in bad faith 638  
when the office or person voluntarily made the public records 639

available to the relator for the first time after the relator 640  
commenced the mandamus action, but before the court issued any 641  
order described in this division. 642

(c) The court shall not award attorney's fees to the 643  
relator if the court determines both of the following: 644

(i) That, based on the ordinary application of statutory 645  
law and case law as it existed at the time of the conduct or 646  
threatened conduct of the public office or person responsible 647  
for the requested public records that allegedly constitutes a 648  
failure to comply with an obligation in accordance with division 649  
(B) of this section and that was the basis of the mandamus 650  
action, a well-informed public office or person responsible for 651  
the requested public records reasonably would believe that the 652  
conduct or threatened conduct of the public office or person 653  
responsible for the requested public records did not constitute 654  
a failure to comply with an obligation in accordance with 655  
division (B) of this section; 656

(ii) That a well-informed public office or person 657  
responsible for the requested public records reasonably would 658  
believe that the conduct or threatened conduct of the public 659  
office or person responsible for the requested public records 660  
would serve the public policy that underlies the authority that 661  
is asserted as permitting that conduct or threatened conduct. 662

(4) All of the following apply to any award of reasonable 663  
attorney's fees awarded under division (C) (3) (b) of this 664  
section: 665

(a) The fees shall be construed as remedial and not 666  
punitive. 667

(b) The fees awarded shall not exceed the total of the 668

reasonable attorney's fees incurred before the public record was 669  
made available to the relator and the fees described in division 670  
(C) (4) (c) of this section. 671

(c) Reasonable attorney's fees shall include reasonable 672  
fees incurred to produce proof of the reasonableness and amount 673  
of the fees and to otherwise litigate entitlement to the fees. 674

(d) The court may reduce the amount of fees awarded if the 675  
court determines that, given the factual circumstances involved 676  
with the specific public records request, an alternative means 677  
should have been pursued to more effectively and efficiently 678  
resolve the dispute that was subject to the mandamus action 679  
filed under division (C) (1) of this section. 680

(5) If the court does not issue a writ of mandamus under 681  
division (C) of this section and the court determines at that 682  
time that the bringing of the mandamus action was frivolous 683  
conduct as defined in division (A) of section 2323.51 of the 684  
Revised Code, the court may award to the public office all court 685  
costs, expenses, and reasonable attorney's fees, as determined 686  
by the court. 687

(D) Chapter 1347. of the Revised Code does not limit the 688  
provisions of this section. 689

(E) (1) To ensure that all employees of public offices are 690  
appropriately educated about a public office's obligations under 691  
division (B) of this section, all elected officials or their 692  
appropriate designees shall attend training approved by the 693  
attorney general as provided in section 109.43 of the Revised 694  
Code. In addition, all public offices shall adopt a public 695  
records policy in compliance with this section for responding to 696  
public records requests. In adopting a public records policy 697



under this division, a public office may obtain guidance from 698  
the model public records policy developed and provided to the 699  
public office by the attorney general under section 109.43 of 700  
the Revised Code. Except as otherwise provided in this section, 701  
the policy may not limit the number of public records that the 702  
public office will make available to a single person, may not 703  
limit the number of public records that it will make available 704  
during a fixed period of time, and may not establish a fixed 705  
period of time before it will respond to a request for 706  
inspection or copying of public records, unless that period is 707  
less than eight hours. 708

(2) The public office shall distribute the public records 709  
policy adopted by the public office under division (E)(1) of 710  
this section to the employee of the public office who is the 711  
records custodian or records manager or otherwise has custody of 712  
the records of that office. The public office shall require that 713  
employee to acknowledge receipt of the copy of the public 714  
records policy. The public office shall create a poster that 715  
describes its public records policy and shall post the poster in 716  
a conspicuous place in the public office and in all locations 717  
where the public office has branch offices. The public office 718  
may post its public records policy on the internet web site of 719  
the public office if the public office maintains an internet web 720  
site. A public office that has established a manual or handbook 721  
of its general policies and procedures for all employees of the 722  
public office shall include the public records policy of the 723  
public office in the manual or handbook. 724

(F)(1) The bureau of motor vehicles may adopt rules 725  
pursuant to Chapter 119. of the Revised Code to reasonably limit 726  
the number of bulk commercial special extraction requests made 727  
by a person for the same records or for updated records during a 728

calendar year. The rules may include provisions for charges to 729  
be made for bulk commercial special extraction requests for the 730  
actual cost of the bureau, plus special extraction costs, plus 731  
ten per cent. The bureau may charge for expenses for redacting 732  
information, the release of which is prohibited by law. 733

(2) As used in division (F) (1) of this section: 734

(a) "Actual cost" means the cost of depleted supplies, 735  
records storage media costs, actual mailing and alternative 736  
delivery costs, or other transmitting costs, and any direct 737  
equipment operating and maintenance costs, including actual 738  
costs paid to private contractors for copying services. 739

(b) "Bulk commercial special extraction request" means a 740  
request for copies of a record for information in a format other 741  
than the format already available, or information that cannot be 742  
extracted without examination of all items in a records series, 743  
class of records, or database by a person who intends to use or 744  
forward the copies for surveys, marketing, solicitation, or 745  
resale for commercial purposes. "Bulk commercial special 746  
extraction request" does not include a request by a person who 747  
gives assurance to the bureau that the person making the request 748  
does not intend to use or forward the requested copies for 749  
surveys, marketing, solicitation, or resale for commercial 750  
purposes. 751

(c) "Commercial" means profit-seeking production, buying, 752  
or selling of any good, service, or other product. 753

(d) "Special extraction costs" means the cost of the time 754  
spent by the lowest paid employee competent to perform the task, 755  
the actual amount paid to outside private contractors employed 756  
by the bureau, or the actual cost incurred to create computer 757

programs to make the special extraction. "Special extraction 758  
costs" include any charges paid to a public agency for computer 759  
or records services. 760

(3) For purposes of divisions (F)(1) and (2) of this 761  
section, "surveys, marketing, solicitation, or resale for 762  
commercial purposes" shall be narrowly construed and does not 763  
include reporting or gathering news, reporting or gathering 764  
information to assist citizen oversight or understanding of the 765  
operation or activities of government, or nonprofit educational 766  
research. 767

(G) A request by a defendant, counsel of a defendant, or 768  
any agent of a defendant in a criminal action that public 769  
records related to that action be made available under this 770  
section shall be considered a demand for discovery pursuant to 771  
the Criminal Rules, except to the extent that the Criminal Rules 772  
plainly indicate a contrary intent. The defendant, counsel of 773  
the defendant, or agent of the defendant making a request under 774  
this division shall serve a copy of the request on the 775  
prosecuting attorney, director of law, or other chief legal 776  
officer responsible for prosecuting the action. 777

**Section 2.** That existing section 149.43 of the Revised 778  
Code is hereby repealed. 779