

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 139

Representatives Perales, Keller

Cosponsors: Representatives Hambley, Fedor, Seitz, Dean

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