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Representative Perales

**Cosponsors: Representatives Butler, Hackett, Henne, Johnson, T., O'Brien, M.,
O'Brien, S., Landis, Retherford, Rezabek, Schaffer, Terhar, Hambley**

A BILL

To amend section 149.43 of the Revised Code to 1
specify that an order for active military 2
service or other documentation regarding the 3
call to order of an individual in the Armed 4
Forces of the United States or the Ohio 5
organized militia is not a public record for a 6
period of time. 7

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

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

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

(1) "Public record" means records kept by any public 11
office, including, but not limited to, state, county, city, 12
village, township, and school district units, and records 13
pertaining to the delivery of educational services by an 14
alternative school in this state kept by the nonprofit or for- 15
profit entity operating the alternative school pursuant to 16
section 3313.533 of the Revised Code. "Public record" does not 17

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

services or a court of record pursuant to division (E) of	45
section 5120.21 of the Revised Code;	46
(1) Records maintained by the department of youth services	47
pertaining to children in its custody released by the department	48
of youth services to the department of rehabilitation and	49
correction pursuant to section 5139.05 of the Revised Code;	50
(m) Intellectual property records;	51
(n) Donor profile records;	52
(o) Records maintained by the department of job and family	53
services pursuant to section 3121.894 of the Revised Code;	54
(p) Peace officer, parole officer, probation officer,	55
bailiff, prosecuting attorney, assistant prosecuting attorney,	56
correctional employee, community-based correctional facility	57
employee, youth services employee, firefighter, EMT, or	58
investigator of the bureau of criminal identification and	59
investigation residential and familial information;	60
(q) In the case of a county hospital operated pursuant to	61
Chapter 339. of the Revised Code or a municipal hospital	62
operated pursuant to Chapter 749. of the Revised Code,	63
information that constitutes a trade secret, as defined in	64
section 1333.61 of the Revised Code;	65
(r) Information pertaining to the recreational activities	66
of a person under the age of eighteen;	67
(s) In the case of a child fatality review board acting	68
under sections 307.621 to 307.629 of the Revised Code or a	69
review conducted pursuant to guidelines established by the	70
director of health under section 3701.70 of the Revised Code,	71
records provided to the board or director, statements made by	72

board members during meetings of the board or by persons	73
participating in the director's review, and all work products of	74
the board or director, and in the case of a child fatality	75
review board, child fatality review data submitted by the board	76
to the department of health or a national child death review	77
database, other than the report prepared pursuant to division	78
(A) of section 307.626 of the Revised Code;	79
(t) Records provided to and statements made by the	80
executive director of a public children services agency or a	81
prosecuting attorney acting pursuant to section 5153.171 of the	82
Revised Code other than the information released under that	83
section;	84
(u) Test materials, examinations, or evaluation tools used	85
in an examination for licensure as a nursing home administrator	86
that the board of executives of long-term services and supports	87
administers under section 4751.04 of the Revised Code or	88
contracts under that section with a private or government entity	89
to administer;	90
(v) Records the release of which is prohibited by state or	91
federal law;	92
(w) Proprietary information of or relating to any person	93
that is submitted to or compiled by the Ohio venture capital	94
authority created under section 150.01 of the Revised Code;	95
(x) Financial statements and data any person submits for	96
any purpose to the Ohio housing finance agency or the	97
controlling board in connection with applying for, receiving, or	98
accounting for financial assistance from the agency, and	99
information that identifies any individual who benefits directly	100
or indirectly from financial assistance from the agency;	101

(y) Records listed in section 5101.29 of the Revised Code;	102
(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B) (2) of that section;	103 104 105
(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;	106 107 108
(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;	109 110 111
(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;	112 113 114
<u>(dd) Orders for active military service or other documentation regarding the call to order of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order or other documentation regarding a call to order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order.</u>	115 116 117 118 119 120 121 122
(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:	123 124 125 126 127
(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been	128 129 130

reasonably promised;	131
(b) Information provided by an information source or	132
witness to whom confidentiality has been reasonably promised,	133
which information would reasonably tend to disclose the source's	134
or witness's identity;	135
(c) Specific confidential investigatory techniques or	136
procedures or specific investigatory work product;	137
(d) Information that would endanger the life or physical	138
safety of law enforcement personnel, a crime victim, a witness,	139
or a confidential information source.	140
(3) "Medical record" means any document or combination of	141
documents, except births, deaths, and the fact of admission to	142
or discharge from a hospital, that pertains to the medical	143
history, diagnosis, prognosis, or medical condition of a patient	144
and that is generated and maintained in the process of medical	145
treatment.	146
(4) "Trial preparation record" means any record that	147
contains information that is specifically compiled in reasonable	148
anticipation of, or in defense of, a civil or criminal action or	149
proceeding, including the independent thought processes and	150
personal trial preparation of an attorney.	151
(5) "Intellectual property record" means a record, other	152
than a financial or administrative record, that is produced or	153
collected by or for faculty or staff of a state institution of	154
higher learning in the conduct of or as a result of study or	155
research on an educational, commercial, scientific, artistic,	156
technical, or scholarly issue, regardless of whether the study	157
or research was sponsored by the institution alone or in	158
conjunction with a governmental body or private concern, and	159

that has not been publicly released, published, or patented. 160

(6) "Donor profile record" means all records about donors 161
or potential donors to a public institution of higher education 162
except the names and reported addresses of the actual donors and 163
the date, amount, and conditions of the actual donation. 164

(7) "Peace officer, parole officer, probation officer, 165
bailiff, prosecuting attorney, assistant prosecuting attorney, 166
correctional employee, community-based correctional facility 167
employee, youth services employee, firefighter, EMT, or 168
investigator of the bureau of criminal identification and 169
investigation residential and familial information" means any 170
information that discloses any of the following about a peace 171
officer, parole officer, probation officer, bailiff, prosecuting 172
attorney, assistant prosecuting attorney, correctional employee, 173
community-based correctional facility employee, youth services 174
employee, firefighter, EMT, or investigator of the bureau of 175
criminal identification and investigation: 176

(a) The address of the actual personal residence of a 177
peace officer, parole officer, probation officer, bailiff, 178
assistant prosecuting attorney, correctional employee, 179
community-based correctional facility employee, youth services 180
employee, firefighter, EMT, or an investigator of the bureau of 181
criminal identification and investigation, except for the state 182
or political subdivision in which the peace officer, parole 183
officer, probation officer, bailiff, assistant prosecuting 184
attorney, correctional employee, community-based correctional 185
facility employee, youth services employee, firefighter, EMT, or 186
investigator of the bureau of criminal identification and 187
investigation resides; 188

(b) Information compiled from referral to or participation 189

in an employee assistance program;	190
(c) The social security number, the residential telephone	191
number, any bank account, debit card, charge card, or credit	192
card number, or the emergency telephone number of, or any	193
medical information pertaining to, a peace officer, parole	194
officer, probation officer, bailiff, prosecuting attorney,	195
assistant prosecuting attorney, correctional employee,	196
community-based correctional facility employee, youth services	197
employee, firefighter, EMT, or investigator of the bureau of	198
criminal identification and investigation;	199
(d) The name of any beneficiary of employment benefits,	200
including, but not limited to, life insurance benefits, provided	201
to a peace officer, parole officer, probation officer, bailiff,	202
prosecuting attorney, assistant prosecuting attorney,	203
correctional employee, community-based correctional facility	204
employee, youth services employee, firefighter, EMT, or	205
investigator of the bureau of criminal identification and	206
investigation by the peace officer's, parole officer's,	207
probation officer's, bailiff's, prosecuting attorney's,	208
assistant prosecuting attorney's, correctional employee's,	209
community-based correctional facility employee's, youth services	210
employee's, firefighter's, EMT's, or investigator of the bureau	211
of criminal identification and investigation's employer;	212
(e) The identity and amount of any charitable or	213
employment benefit deduction made by the peace officer's, parole	214
officer's, probation officer's, bailiff's, prosecuting	215
attorney's, assistant prosecuting attorney's, correctional	216
employee's, community-based correctional facility employee's,	217
youth services employee's, firefighter's, EMT's, or investigator	218
of the bureau of criminal identification and investigation's	219

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

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

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

As used in divisions (A) (7) and (B) (9) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

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

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

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

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

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

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

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

(a) The address or telephone number of a person under the

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

public office or person responsible for public records shall 307
make copies of the requested public record available at cost and 308
within a reasonable period of time. If a public record contains 309
information that is exempt from the duty to permit public 310
inspection or to copy the public record, the public office or 311
the person responsible for the public record shall make 312
available all of the information within the public record that 313
is not exempt. When making that public record available for 314
public inspection or copying that public record, the public 315
office or the person responsible for the public record shall 316
notify the requester of any redaction or make the redaction 317
plainly visible. A redaction shall be deemed a denial of a 318
request to inspect or copy the redacted information, except if 319
federal or state law authorizes or requires a public office to 320
make the redaction. 321

(2) To facilitate broader access to public records, a 322
public office or the person responsible for public records shall 323
organize and maintain public records in a manner that they can 324
be made available for inspection or copying in accordance with 325
division (B) of this section. A public office also shall have 326
available a copy of its current records retention schedule at a 327
location readily available to the public. If a requester makes 328
an ambiguous or overly broad request or has difficulty in making 329
a request for copies or inspection of public records under this 330
section such that the public office or the person responsible 331
for the requested public record cannot reasonably identify what 332
public records are being requested, the public office or the 333
person responsible for the requested public record may deny the 334
request but shall provide the requester with an opportunity to 335
revise the request by informing the requester of the manner in 336
which records are maintained by the public office and accessed 337

in the ordinary course of the public office's or person's 338
duties. 339

(3) If a request is ultimately denied, in part or in 340
whole, the public office or the person responsible for the 341
requested public record shall provide the requester with an 342
explanation, including legal authority, setting forth why the 343
request was denied. If the initial request was provided in 344
writing, the explanation also shall be provided to the requester 345
in writing. The explanation shall not preclude the public office 346
or the person responsible for the requested public record from 347
relying upon additional reasons or legal authority in defending 348
an action commenced under division (C) of this section. 349

(4) Unless specifically required or authorized by state or 350
federal law or in accordance with division (B) of this section, 351
no public office or person responsible for public records may 352
limit or condition the availability of public records by 353
requiring disclosure of the requester's identity or the intended 354
use of the requested public record. Any requirement that the 355
requester disclose the requestor's identity or the intended use 356
of the requested public record constitutes a denial of the 357
request. 358

(5) A public office or person responsible for public 359
records may ask a requester to make the request in writing, may 360
ask for the requester's identity, and may inquire about the 361
intended use of the information requested, but may do so only 362
after disclosing to the requester that a written request is not 363
mandatory and that the requester may decline to reveal the 364
requester's identity or the intended use and when a written 365
request or disclosure of the identity or intended use would 366
benefit the requester by enhancing the ability of the public 367

office or person responsible for public records to identify, 368
locate, or deliver the public records sought by the requester. 369

(6) If any person chooses to obtain a copy of a public 370
record in accordance with division (B) of this section, the 371
public office or person responsible for the public record may 372
require that person to pay in advance the cost involved in 373
providing the copy of the public record in accordance with the 374
choice made by the person seeking the copy under this division. 375
The public office or the person responsible for the public 376
record shall permit that person to choose to have the public 377
record duplicated upon paper, upon the same medium upon which 378
the public office or person responsible for the public record 379
keeps it, or upon any other medium upon which the public office 380
or person responsible for the public record determines that it 381
reasonably can be duplicated as an integral part of the normal 382
operations of the public office or person responsible for the 383
public record. When the person seeking the copy makes a choice 384
under this division, the public office or person responsible for 385
the public record shall provide a copy of it in accordance with 386
the choice made by the person seeking the copy. Nothing in this 387
section requires a public office or person responsible for the 388
public record to allow the person seeking a copy of the public 389
record to make the copies of the public record. 390

(7) Upon a request made in accordance with division (B) of 391
this section and subject to division (B)(6) of this section, a 392
public office or person responsible for public records shall 393
transmit a copy of a public record to any person by United 394
States mail or by any other means of delivery or transmission 395
within a reasonable period of time after receiving the request 396
for the copy. The public office or person responsible for the 397
public record may require the person making the request to pay 398

in advance the cost of postage if the copy is transmitted by 399
United States mail or the cost of delivery if the copy is 400
transmitted other than by United States mail, and to pay in 401
advance the costs incurred for other supplies used in the 402
mailing, delivery, or transmission. 403

Any public office may adopt a policy and procedures that 404
it will follow in transmitting, within a reasonable period of 405
time after receiving a request, copies of public records by 406
United States mail or by any other means of delivery or 407
transmission pursuant to this division. A public office that 408
adopts a policy and procedures under this division shall comply 409
with them in performing its duties under this division. 410

In any policy and procedures adopted under this division, 411
a public office may limit the number of records requested by a 412
person that the office will transmit by United States mail to 413
ten per month, unless the person certifies to the office in 414
writing that the person does not intend to use or forward the 415
requested records, or the information contained in them, for 416
commercial purposes. For purposes of this division, "commercial" 417
shall be narrowly construed and does not include reporting or 418
gathering news, reporting or gathering information to assist 419
citizen oversight or understanding of the operation or 420
activities of government, or nonprofit educational research. 421

(8) A public office or person responsible for public 422
records is not required to permit a person who is incarcerated 423
pursuant to a criminal conviction or a juvenile adjudication to 424
inspect or to obtain a copy of any public record concerning a 425
criminal investigation or prosecution or concerning what would 426
be a criminal investigation or prosecution if the subject of the 427
investigation or prosecution were an adult, unless the request 428

to inspect or to obtain a copy of the record is for the purpose 429
of acquiring information that is subject to release as a public 430
record under this section and the judge who imposed the sentence 431
or made the adjudication with respect to the person, or the 432
judge's successor in office, finds that the information sought 433
in the public record is necessary to support what appears to be 434
a justiciable claim of the person. 435

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

attorney's, assistant prosecuting attorney's, correctional 460
employee's, community-based correctional facility employee's, 461
youth services employee's, firefighter's, EMT's, or investigator 462
of the bureau of criminal identification and investigation's 463
spouse, former spouse, or child. The request shall include the 464
journalist's name and title and the name and address of the 465
journalist's employer and shall state that disclosure of the 466
information sought would be in the public interest. 467

(b) Division (B) (9) (a) of this section also applies to 468
journalist requests for customer information maintained by a 469
municipally owned or operated public utility, other than social 470
security numbers and any private financial information such as 471
credit reports, payment methods, credit card numbers, and bank 472
account information. 473

(c) As used in division (B) (9) of this section, 474
"journalist" means a person engaged in, connected with, or 475
employed by any news medium, including a newspaper, magazine, 476
press association, news agency, or wire service, a radio or 477
television station, or a similar medium, for the purpose of 478
gathering, processing, transmitting, compiling, editing, or 479
disseminating information for the general public. 480

(C) (1) If a person allegedly is aggrieved by the failure 481
of a public office or the person responsible for public records 482
to promptly prepare a public record and to make it available to 483
the person for inspection in accordance with division (B) of 484
this section or by any other failure of a public office or the 485
person responsible for public records to comply with an 486
obligation in accordance with division (B) of this section, the 487
person allegedly aggrieved may commence a mandamus action to 488
obtain a judgment that orders the public office or the person 489

responsible for the public record to comply with division (B) of 490
this section, that awards court costs and reasonable attorney's 491
fees to the person that instituted the mandamus action, and, if 492
applicable, that includes an order fixing statutory damages 493
under division (C) (1) of this section. The mandamus action may 494
be commenced in the court of common pleas of the county in which 495
division (B) of this section allegedly was not complied with, in 496
the supreme court pursuant to its original jurisdiction under 497
Section 2 of Article IV, Ohio Constitution, or in the court of 498
appeals for the appellate district in which division (B) of this 499
section allegedly was not complied with pursuant to its original 500
jurisdiction under Section 3 of Article IV, Ohio Constitution. 501

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

The amount of statutory damages shall be fixed at one 512
hundred dollars for each business day during which the public 513
office or person responsible for the requested public records 514
failed to comply with an obligation in accordance with division 515
(B) of this section, beginning with the day on which the 516
requester files a mandamus action to recover statutory damages, 517
up to a maximum of one thousand dollars. The award of statutory 518
damages shall not be construed as a penalty, but as compensation 519
for injury arising from lost use of the requested information. 520

The existence of this injury shall be conclusively presumed. The 521
award of statutory damages shall be in addition to all other 522
remedies authorized by this section. 523

The court may reduce an award of statutory damages or not 524
award statutory damages if the court determines both of the 525
following: 526

(a) That, based on the ordinary application of statutory 527
law and case law as it existed at the time of the conduct or 528
threatened conduct of the public office or person responsible 529
for the requested public records that allegedly constitutes a 530
failure to comply with an obligation in accordance with division 531
(B) of this section and that was the basis of the mandamus 532
action, a well-informed public office or person responsible for 533
the requested public records reasonably would believe that the 534
conduct or threatened conduct of the public office or person 535
responsible for the requested public records did not constitute 536
a failure to comply with an obligation in accordance with 537
division (B) of this section; 538

(b) That a well-informed public office or person 539
responsible for the requested public records reasonably would 540
believe that the conduct or threatened conduct of the public 541
office or person responsible for the requested public records 542
would serve the public policy that underlies the authority that 543
is asserted as permitting that conduct or threatened conduct. 544

(2) (a) If the court issues a writ of mandamus that orders 545
the public office or the person responsible for the public 546
record to comply with division (B) of this section and 547
determines that the circumstances described in division (C) (1) 548
of this section exist, the court shall determine and award to 549
the relator all court costs. 550

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, the court may award reasonable attorney's fees subject to reduction as described in division (C) (2) (c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C) (2) (c) of this section when either of the following applies:

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

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

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

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division

(B) of this section and that was the basis of the mandamus 581
action, a well-informed public office or person responsible for 582
the requested public records reasonably would believe that the 583
conduct or threatened conduct of the public office or person 584
responsible for the requested public records did not constitute 585
a failure to comply with an obligation in accordance with 586
division (B) of this section; 587

(ii) That a well-informed public office or person 588
responsible for the requested public records reasonably would 589
believe that the conduct or threatened conduct of the public 590
office or person responsible for the requested public records as 591
described in division (C) (2) (c) (i) of this section would serve 592
the public policy that underlies the authority that is asserted 593
as permitting that conduct or threatened conduct. 594

(D) Chapter 1347. of the Revised Code does not limit the 595
provisions of this section. 596

(E) (1) To ensure that all employees of public offices are 597
appropriately educated about a public office's obligations under 598
division (B) of this section, all elected officials or their 599
appropriate designees shall attend training approved by the 600
attorney general as provided in section 109.43 of the Revised 601
Code. In addition, all public offices shall adopt a public 602
records policy in compliance with this section for responding to 603
public records requests. In adopting a public records policy 604
under this division, a public office may obtain guidance from 605
the model public records policy developed and provided to the 606
public office by the attorney general under section 109.43 of 607
the Revised Code. Except as otherwise provided in this section, 608
the policy may not limit the number of public records that the 609
public office will make available to a single person, may not 610

limit the number of public records that it will make available 611
during a fixed period of time, and may not establish a fixed 612
period of time before it will respond to a request for 613
inspection or copying of public records, unless that period is 614
less than eight hours. 615

(2) The public office shall distribute the public records 616
policy adopted by the public office under division (E)(1) of 617
this section to the employee of the public office who is the 618
records custodian or records manager or otherwise has custody of 619
the records of that office. The public office shall require that 620
employee to acknowledge receipt of the copy of the public 621
records policy. The public office shall create a poster that 622
describes its public records policy and shall post the poster in 623
a conspicuous place in the public office and in all locations 624
where the public office has branch offices. The public office 625
may post its public records policy on the internet web site of 626
the public office if the public office maintains an internet web 627
site. A public office that has established a manual or handbook 628
of its general policies and procedures for all employees of the 629
public office shall include the public records policy of the 630
public office in the manual or handbook. 631

(F)(1) The bureau of motor vehicles may adopt rules 632
pursuant to Chapter 119. of the Revised Code to reasonably limit 633
the number of bulk commercial special extraction requests made 634
by a person for the same records or for updated records during a 635
calendar year. The rules may include provisions for charges to 636
be made for bulk commercial special extraction requests for the 637
actual cost of the bureau, plus special extraction costs, plus 638
ten per cent. The bureau may charge for expenses for redacting 639
information, the release of which is prohibited by law. 640

- (2) As used in division (F) (1) of this section: 641
- (a) "Actual cost" means the cost of depleted supplies, 642
records storage media costs, actual mailing and alternative 643
delivery costs, or other transmitting costs, and any direct 644
equipment operating and maintenance costs, including actual 645
costs paid to private contractors for copying services. 646
- (b) "Bulk commercial special extraction request" means a 647
request for copies of a record for information in a format other 648
than the format already available, or information that cannot be 649
extracted without examination of all items in a records series, 650
class of records, or database by a person who intends to use or 651
forward the copies for surveys, marketing, solicitation, or 652
resale for commercial purposes. "Bulk commercial special 653
extraction request" does not include a request by a person who 654
gives assurance to the bureau that the person making the request 655
does not intend to use or forward the requested copies for 656
surveys, marketing, solicitation, or resale for commercial 657
purposes. 658
- (c) "Commercial" means profit-seeking production, buying, 659
or selling of any good, service, or other product. 660
- (d) "Special extraction costs" means the cost of the time 661
spent by the lowest paid employee competent to perform the task, 662
the actual amount paid to outside private contractors employed 663
by the bureau, or the actual cost incurred to create computer 664
programs to make the special extraction. "Special extraction 665
costs" include any charges paid to a public agency for computer 666
or records services. 667
- (3) For purposes of divisions (F) (1) and (2) of this 668
section, "surveys, marketing, solicitation, or resale for 669

commercial purposes" shall be narrowly construed and does not 670
include reporting or gathering news, reporting or gathering 671
information to assist citizen oversight or understanding of the 672
operation or activities of government, or nonprofit educational 673
research. 674

Section 2. That existing section 149.43 of the Revised 675
Code is hereby repealed. 676